

Data Protection Impact Assessment

Police (Ethics, Conduct and Scrutiny) (Scotland) Bill

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BACKGROUND

In 2018 the Scottish Government and the Lord Advocate jointly commissioned Dame Elish Angiolini, a former Lord Advocate, now known as Lady Angiolini, to carry out an independent *Review of Complaints Handling, Investigations and Misconduct in Relation to Policing*¹. The Review was commissioned five years after the creation of Police Scotland, the Scottish Police Authority (SPA) and the Police Investigations and Review Commissioner (PIRC). Its focus was to look at how the structures and processes for complaints handling, investigations and misconduct issues were working, at a time when the actions of the police saw intense parliamentary, media and public scrutiny. The Review sought to bring greater fairness, transparency, accountability and proportionality to policing, while protecting the human rights of everyone involved.

In undertaking her 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; most of which were accepted by then Cabinet Secretary for Justice, Humza Yousaf, and then Lord Advocate, James Wolffe KC. Most are intended to be implemented as specifically set out, but for some there was provision to explore options to achieve the desired outcome.

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 to date 58 non-legislative recommendations for improvement have been delivered, with progress set out in the [thematic reports](#), the most recent of which was published in May 2023. These reports are prepared by the Scottish Government, overseen and approved by a three-tier governance framework, which provides assurance on policing partners progress towards implementation of recommendations.

POLICY AIMS

The overarching policy objective of this Bill is to ensure that there are robust, clear and transparent mechanisms in place for investigating complaints, allegations of misconduct, or other issues of concern in relation to conduct of police officers in Scotland. The legislation will embed good practice, underline the importance of maintaining the high standards expected of Scotland's police officers.

Police Scotland operates under the principle of policing by consent, where officers must act in a way that secures and maintains the respect and trust of the public and

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

respects human rights, working to secure fairness and access for all. Police officers and police staff work tirelessly to protect and support Scotland's communities. If the conduct of officers and staff falls short of expectations, it is essential that the public has trust in the processes in place to deal with complaints and allegations of misconduct. The Bill underlines the importance of police officers maintaining the high standards of behaviour and conduct expected of them.

The Bill amends the two main pieces of legislation in the area of Scottish policing law (the Police, Public Order and Criminal Justice (Scotland) Act 2006 and the Police and Fire Reform (Scotland) Act 2012 and regulations made under the 2012 Act (The Police Service of Scotland (Conduct) Regulations 2014, and The Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013, referred to jointly in this impact assessment as ("the conduct regulations").

The Bill contains 20 sections, which are organised under cross-headings.

Cross-heading: Ethics of the Police

The provisions under this cross-heading put Police Scotland's existing Code of Ethics on a statutory footing and confers a duty on the Chief Constable of Police Scotland with the assistance of the SPA to prepare, consult widely on, and publish the Code. This also gives power to the Chief Constable to revise the Code when necessary.

This portion of the Bill also gives legal recognition to a duty of candour on individual police constables. It also adds to the policing principles a requirement that the Police Service of Scotland will police in a way which is candid and co-operative in proceedings, including investigations against constables. Introducing an explicit duty of candour on individual constables in the Standards of Professional Behaviour by which the conduct of police officers is measured sets an organisational expectation that officers will uphold the values of policing by consent, whilst maintaining the trust and faith of the public in the execution of their duties. This makes clear on a legislative basis the need for police officers to act with integrity, fairness and respect. Furthermore, the individual and organisational duties reinforce in statute the need for a culture where officers are expected and encouraged to co-operate fully with investigations and answer questions based on their honestly held recollection of events.

Whilst there is currently an expectation that constables will positively assist in such proceedings, the objective here is to make the position clear to police officers and the public - that the service as a whole will give every assistance after a serious incident involving or about the police, in a way which is candid and co-operative.

Cross-heading: Police Conduct

This **cross-heading** of the Bill is concerned with procedures for dealing with certain types of ***Police Conduct***. It addresses a perceived gap in existing legislation by clarifying that liability for any unlawful conduct on the part of the Chief Constable sits with the SPA. In doing so it aligns the treatment of unlawful conduct by the Chief Constable with the existing treatment of unlawful conduct by other police officers.

The provisions under this cross-heading of the Bill give the PIRC a greater role in relation to misconduct proceedings, which will subsequently be set out in secondary legislation. The intention is to clarify and ensure consistency in the statutory preliminary assessment function part of the process, enhance independent scrutiny, remove any perception of familiarity, as well as avoid any duplication of functions or associated delay. This differs from the current conduct regulations, which state that if the SPA receives a complaint alleging senior officer misconduct, it assesses whether there is a case to answer. If so, it will be referred to the PIRC for an assessment by the Commissioner, unless the assessment by the SPA determines the alleged actions may be criminal, in which case it is referred to COPFS.

This cross-heading of the Bill also contains provision which ensure gross misconduct proceedings can continue or commence in respect of persons who have ceased to be constables. Ensuring proceedings reach a conclusion will improve public confidence in the police complaints and misconduct process, provide greater transparency and accountability, as well as strengthen public safety by ensuring former officers are placed on barred and advisory Lists. The establishment of a Scottish police barred list and Scottish police advisory list are also set out within the Bill. The creation of these lists will enhance vetting procedures across Great Britain as a whole and stop those who do not meet the high standards expected of police officers from gaining employment in policing. This will bring Scotland in line with England and Wales and provide a consistent approach across jurisdictions in Great Britain.

This portion of the Bill also seeks to amend legislation around the misconduct procedures for senior officers to ensure the process is open and transparent, and provide the public with 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.

This portion of the Bill also ensures that the current internal appeal processes set out in conduct regulations under section 48 of the Police and Fire Reform (Scotland) Act 2012 ("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 (PAT), in conduct cases only, in relation to any finding of disciplinary action against them.

Cross-heading: Functions of the PIRC

This **cross-heading** of the Bill concerns the ***Functions of the PIRC***. It seeks 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) should apply to those who were officers or SPA staff at the time of the act being investigated who have since resigned or retired or, were off-duty at the time the incident occurred. It also clarifies the PIRC's investigatory powers into deaths involving a person serving with the police.

This portion of the Bill also makes clear that police officers and staff who experience poor service, which affects them in their personal capacity (as opposed to their capacity as a constable or member of staff) are able to make a complaint about the police to the PIRC.

Whilst the PIRC currently have the ability to make recommendations to Police Scotland regarding the handling of individual complaints, the Bill seeks to put into statute this function alongside a responsibility that the outcomes are published and SPA or the Chief Constable (depending on who the recommendations are directed towards) respond to any recommendations. In doing so, this will 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 the complaint in question has not been properly considered by Police Scotland.

Furthermore, in order to support Police Scotland to improve guidance and practices from recommendations made by the PIRC, the PIRC will have a specific new power, similar to that of the Police Ombudsman for Northern Ireland (PONI), to review a policy or practice of the SPA, the Chief Constable or Police Scotland, where the PIRC considers that it would be in the public interest.

The provisions under this cross-heading of the Bill also seek to provide the PIRC with a power to take over consideration of (or call in) complaints being dealt with by the Chief Constable or the SPA. The criteria applied to calling in is to vary dependent on the circumstances. By placing this in statute, this will strengthen the role of the PIRC and enable greater scrutiny of Police Scotland.

Furthermore, this portion of the Bill seeks to provide the PIRC with the ability to audit the handling of whistleblowing complaints dealt with in the first instance by Police Scotland and the Scottish Police Authority. It has no impact on employment rights, and seeks to improve the transparency of processes around how public interest matters are investigated. This, in turn, will encourage people to speak up when they see wrong-doing. It also provides an opportunity for Police Scotland and the SPA to take on board learning and address issues arising from concerns raised.

The provisions under this cross-heading also make arrangements for the PIRC to investigate serious incidents or allegations of criminality involving police officers from territorial forces other than Police Scotland, when undertaking a policing function in Scotland, and to put in place reciprocal powers for other UK jurisdictions.

In addition, this portion of the Bill sets out the legislative powers that can be used to make further legislation to enable the PIRC to have direct access to Police Scotland's complaints database – Centurion – to audit and review files necessary to their function. Ensuring the PIRC can meet their statutory functions to carry out contemporaneous audit of the police case management system independently and remotely will improve efficiency, transparency, independence and public confidence in the police complaints process.

Cross-heading: Governance of the PIRC

This **cross-heading of the Bill** seeks to add to the ***Governance of the PIRC***, via the creation of a statutory advisory board. This will provide a greater degree of confidence in the scrutiny of the decision-making process, and improve accountability and transparency.

SPECIFIC PROVISIONS WITH DATA PROCESSING IMPLICATIONS

As outlined above, the Bill includes amendments to the two main pieces of legislation in the area of Scottish policing law (the Police, Public Order and Criminal Justice (Scotland) Act 2006 and the Police and Fire Reform (Scotland) Act 2012) and regulations made under the 2012 Act. Many of the provisions will amend duties that specific policing bodies already hold to process data in compliance with UK GDPR, and the provisions will not change the purpose for gathering data, how the data is processed or what type of information is gathered.

This DPIA is concerned with those specific provisions within the Bill that are likely to amend powers that are relevant to the processing and management of personal information as follows:

Police Barred and Advisory Lists:

The Bill provides that the SPA must establish and maintain a Scottish Police Barred List and a Police Advisory List (similar to existing lists for English and Welsh forces held by the College of Policing). The Bill sets out the circumstances in which a person is to be entered on each of the lists and gives broad secondary legislation making powers to Scottish Ministers to make detailed provision in regards to the framework around these lists. It is envisaged that the section in the Bill (section 7) providing for the SPA to establish and maintain the lists will be commenced at the same time as regulations come into force providing for the framework of the lists. Regulations are subject to affirmative procedure and these will be consulted on with the ICO, and a DPIA will need to be completed prior to the regulations coming into force. It is envisaged that the SPA will take on the role of data controller of both lists and will be required to ensure compliance with UK GDPR when managing the lists.

Cross-Jurisdictional Investigations:

Provision is made to expand PIRC's role to enable them to investigate officers from other jurisdictions operating in Scotland in the same way they can with officers from Police Scotland, in relation to potential criminal offending of these officers, or investigations into a serious incident.

A serious incident investigation here is one requested by the chief officer or chief constable of the individual's home force, involving a member of that force, who, whilst engaged in duties in Scotland:

- had contact (directly or indirectly), at or before the time of their death or serious injury, with a person who died or was seriously injured; and where

there is an indication that the contact may have caused or contributed to (directly or indirectly), the death or serious injury;

- where serious injuries were sustained by a person detained or kept in custody by a member of a force from England, Wales or the Police Service of Northern Ireland;
- where certain weapons or firearms were discharged by a person from a police force from England or Wales, or the Police Service of Northern Ireland.

This is a new power for the PIRC to investigate and inevitably data sharing will take place between policing partners in order to carry out that investigation. Where the information is being shared for the investigation of criminal proceedings, this is classed as law enforcement processing and is therefore governed by Part 3 of the Data Protection Act 1998. The PIRC are a competent authority in line with Part 3 of the Data Protection Act 2018 and have compliant processes in place for sharing information in relation to Scottish constables for such investigations and will be able to adopt these in relation to investigations that will require the holding of information pertaining to English, Welsh or Northern Irish constables.

Where the information is being shared for the investigation of serious incidents, again the PIRC already have UK GDPR compliant processes in place in relation to Scottish constables that can be adopted in relation to information pertaining to English, Welsh, or Northern Irish constables. Again, the proposal here is seeking to share the same type of information that is already shared between Police Scotland and the PIRC, but between the PIRC and wider policing bodies within other UK jurisdictions.

In some cases here, a new duty will not be needed to share data as there is existing primary legislation in place. In other cases powers or duties to share information relevant to these investigations will need to be put in place.

The position is as follows:

Where Police Scotland is the body sharing the relevant information, the obligation to share information in relation to PIRC's functions in section 44 will continue to apply. Police Scotland will already be sharing information about criminal investigations as and when required with the PIRC, and the PIRC with the Crown Office and Procurator Fiscal Service.

In relation to any sharing of information from the PIRC to Chief officers or constables of English, Welsh or Northern Irish forces, section 46 of the 2006 Act will allow the Commissioner to share data with territorial forces from outside Scotland.

For information sharing from the territorial forces to the PIRC, plans are in place to ask the UK Government to make an order via section 104 of the Scotland Act 1998 to make provision requiring police forces in England and Wales or the Police Service of Northern Ireland to share information required for the PIRC to carry out these new functions. We cannot make provision for this in the Bill as it would be out with the legislative competence of the Scottish Parliament. We do not consider that existing provision in section 46(4) would necessarily be considered to apply to forces in England, Wales and Northern Ireland, as they are situated outside of Scotland and

for the most part, the Scottish Parliament does not have the legislative competence to make provision that has legal effect outside of Scotland.

Where the information is being shared for the investigation of criminal proceedings, this is law enforcement processing, and so is governed by Part 3 of the Data Protection Act 1998, and there will already be in place compliant plans and processes for such sharing in relation to Scottish constables that will be able to be adopted in relation to information pertaining to English, Welsh or Northern Irish constables.

Where the information is being shared for the investigation of serious incidents, there will already be in place UK GDPR compliant processes for such sharing in relation to Scottish constables that will be able to be adopted in relation to information pertaining to English, Welsh, or Northern Irish constables. Again, the proposal here is seeking to share a type of information that is already shared between Police Scotland and the PIRC, but between the PIRC and a wider group of Police forces.

There is to be an order which will be made under section 104 of the Scotland Act 1998, which will oblige the chief officer of police forces in England and Wales, or the chief constable of the Police Service of Northern Ireland, to provide information to the PIRC that is necessary to carry out these new functions. The chief constable's (or, if relevant, the Scottish Police Authority's) existing obligations to provide information to the PIRC under section 44 of the 2006 Act will apply to this new function.

PIRC Access to Police Scotland's Complaints Database:

Another relevant provision in the Bill will add to current powers the Scottish Ministers have to make regulations around information sharing. The provision amends section 44 of the 2006 Act and sets out that regulations may be made requiring the Scottish Police Authority or the chief constable to provide information and documents to the PIRC by giving the PIRC access to an electronic system on which they are stored. This will allow secondary legislation to be made requiring Police Scotland to provide the PIRC with remote access to the Police Scotland Complaints Database from a PIRC office or place of work. This, in turn, will allow PIRC to meet their statutory responsibilities and carry out reviews of complaints made against Police Scotland or its Constables, as well as contemporaneous audit of how complaints are being dealt with more widely (the latter in terms of their duties under section 40A of the Police, Public Order and Criminal Justice (Scotland) Act 2006).

The PIRC already has access to information held on this system when necessary for carrying out their functions (under section 44 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (the 2006 Act), under which they can request information under a notification procedure), but where the PIRC accesses the Centurion System for information, this is under supervision in Police Scotland premises, to deliver their statutory responsibilities. The Bill suggests a change in how this access is provided – notably suggesting this is made available remotely and without Police Scotland supervision. These access arrangements are in place for two reasons:

- because the current system provides information about complaints and conduct, and the PIRC functions should only relate to complaints (their current functions in relation to misconduct investigations being quite limited, albeit there are plans to expand these to implement recommendations of the Dame Elish Angiolini Review). We understand that this position is to be resolved shortly, with the complaints information being separated from the conduct information. However, if the necessary changes have not been made before the Bill comes into force, the Scottish Ministers can await making any regulations making substantive provision until the changes are made;
- there is uncertainty around whether the existing legislative gateway for information sharing (section 44) goes as far as permitting the PIRC direct access to the Centurion System.

Police Scotland will remain as the data controller for personal information held on this system, including special category personal information, and therefore continue to hold responsibility for ensuring appropriate management of the data.

It would therefore be the responsibility of Police Scotland, as data controller, and PIRC, who will also be a data controller when fulfilling their functions, to ensure the protection of this existing data and to comply with their obligations under the UK GDPR. As Police Scotland and PIRC are processing the same data but for different purposes it has been established their relationship will be Controller-Controller. As Controllers it is their responsibility to comply with data protection regulations, this includes drafting of DPIAs, and ensuring the necessary Data Sharing Agreement is in place and adhered to.

PIRC Power to Audit Whistleblowing Complaints:

The Bill includes 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. The PIRC will also have to secure that these arrangements are (i) efficient and effective; contain and manifest an appropriate degree of independence; and are adhered to. There is also provided a power for the PIRC to make recommendations or give advice to the SPA or the Chief Constable on the arrangements for the handling of whistleblowing complaints. The PIRC will have to write a report of any individual whistleblowing complaint they investigate (the PIRC can do this under the already existing sections 33A(d) and 41C of the 2006 Act), and also to report to the Scottish Ministers on more general audits of whistleblowing complaints. The PIRC can make recommendations about the arrangements for investigation of whistleblowing complaints, either in a report, or via more informal avenues. If the information is in a report, then the Police Service of Scotland or the SPA must respond in writing. Reports can be published, as can responses, however, when published, they should not reveal any information that would allow any individual (other than the chief constable) to be identified. The PIRC will also be given the option to publish a report on the audit if they consider it to be appropriate, and to disclose the findings to the appropriate prescribed body.

Under the current policies and legislative framework, constables and staff within Police Scotland and the SPA can disclose relevant concerns internally, or to external organisations, provided they are named on the list of prescribed persons (or bodies

to Whistleblow to) and handle matters relevant to the issue being disclosed, for example to the Information Commissioner's Office (ICO) in relation to data breaches, and they will be protected from detriment in their employment or office under the Employment Rights Act 1996. As indicated above, it is already considered that the PIRC could investigate the underlying issue raised in a whistleblowing case, under the PIRC's power to investigate matters in the public interest. There are plans to continue discussions with the UK Government to investigate the possibility of adding the PIRC to the list of prescribed persons, via secondary legislation in the UK Parliament. If these were to happen, any constables or staff who did chose to whistleblow direct to the PIRC would be legally protected from suffering detriment in their employment or office.

No new power for the PIRC to seek information or obligation for the chief constable or SPA to share information is required here, as section 44 of the 2006 Act provides that information must be shared with the PIRC when the IRC notifies that such information is required for the purposes of carrying out the PIRC's functions (see section 44(2)).

Under this new power allowing PIRC power to carry out an audit of whistleblowing complaints, PIRC have responsibility to comply with data protection regulations, this includes drafting of DPIAs, and ensuring the necessary Data Sharing Agreement is in place and adhered to.

PIRC to Call-in Relevant Complaints:

The PIRC can currently review the way in which Police Scotland (or the SPA) have handled non-criminal complaints made about them by members of the public through a complaint handling review (CHR). In practice, a CHR will only be undertaken once the complaint has been dealt with through the complaints handling process of the policing body, and a final response has been issued from them to the complainer.

In reviewing the complaint, the PIRC will look at the evidence used by the police to assess the complaint and form a view on whether they handled the complaint to a reasonable standard. In doing so, the PIRC can make recommendations for improvements, issue learning points and, through a statutory power, issue a reconsideration direction which requires the policing body to look at the complaint again in full. A reconsideration direction would require the policing body to appoint a person with no prior involvement to reconsider the complaint. The direction may also be subject to supervision of the PIRC, depending on the seriousness of the case and public interest considerations. Ultimately, the decision on whether a complaint is upheld lies with the policing body.

The Bill provides the PIRC with a power to take over consideration of (or call in) complaints being dealt with by the Chief Constable or the SPA under the following circumstances:

- where the PIRC determines, following a CHR that the complaint is to be considered by the PIRC;
- when requested to do so by the authority to which the complaint was made; or

- of the PIRC's own volition, and following consultation with the authority, if the Commissioner has reasonable grounds to believe that the complaint has not been, or is not being, considered properly by the appropriate authority and the Commissioner is satisfied it is in the public interest for the Commissioner to consider the complaint.

The Bill clarifies that PIRC can call in a complaint at any stage in the CHR, or reconsideration, and provides the Commissioner with the ability to review the complaint handling following a request from the complainer before deciding whether to call it in. This aims to address any concerns from the complainer around a lack of progress in the handling of their complaint and ultimately improve the efficiency of the process.

Placing all of the above in statute will strengthen the role of the PIRC and enable greater scrutiny of the way Police Scotland handles complaints.

No new power for the PIRC to seek information or obligation for the chief constable or SPA to share information is required here, as section 44 of the 2006 Act provides that information must be shared with the PIRC when the IRC notifies that such information is required for the purposes of carrying out the PIRC's functions (see section 44(2)).

Definition of person serving with the police in section 33A(b) of the 2006 Act

The PIRC, where directed by the appropriate prosecutor to do so, can currently investigate alleged criminal offending by a person serving with the police (a constable of the Police Service of Scotland, or a member of staff of the Police Service of Scotland or the Scottish Police Authority). This has been interpreted as ambiguous as to whether it is only relating to person who is currently a person serving with the police, due to the wording of the section. Anyone who is currently a police constable, or who has been a police constable, or who is a member of staff, will have contacts in the Police Service. In some circumstances, it might be deemed better if a body that is independent of the Police Service can investigate such persons. The amendment makes it clear that the PIRC can be directed by the appropriate prosecutor to investigate the circumstances of any alleged offence involving someone who has been or is a constable/member of staff.

The amendments to 33A(b) also clarify that the PIRC can be directed to investigate a sudden death or fatal accident by the appropriate prosecutor, where the death involved a person serving with the police, regardless of whether the person serving with the police was on duty/working at the time of the circumstances concerned.

This will result in the same type of information being shared in relation to such persons, between the Police Service, the PIRC and the prosecution service, that already was shared in relation to those currently serving with the police, in investigations concerning those who were persons serving with the police but no longer are. The PIRC therefore already has systems and processes in place for processing this information.

Provision not dealt with in this DPIA:

Other provisions in the Bill may result in data being shared, but do not require it is shared, but they have not been included below as they do not in fact change the position on data sharing.

Duty of Candour

The duty of candour provisions do the following:

- 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. This includes an expectation that constables will attend interviews and participate in proceedings (including investigations against constables) openly, promptly and professionally, in line with the expectations of a police constable.
- Add to the policing principles a requirement that the Police Service will be candid and co-operative in proceedings, including investigations against constables.

Whilst no such explicit requirements as the above are currently contained in legislation, it is considered that they were already implicit requirements to be candid and to assist with investigations, that could be taken from the Standards of Behaviour that sit in the conduct regulations, which require, amongst other things, that constables are "honest, act with integrity" and require them not to "compromise or abuse their position."

The provisions do not require constables to carry out any particular action, or to give any particular information, in order to meet the duty. There is no legal effect of the provisions, nor any criminal enforcement for failure to adhere to them. If the Standard of Behaviour is breached, it might, but would not necessarily, lead to a finding of misconduct by the constable. For these reasons, these provisions have not been referred to below.

FURTHER INFORMATION

The responsibility for considering and undertaking a DPIA and data sharing agreements on the data protection of these provisions will be the responsibility of individual policing partners. The Scottish Government has already made this clear to partners.

This Data Protection Impact Assessment (DPIA) works in conjunction with the [Article 36\(4\) ICO](#) consultation form submitted in advance of this, as the proposal requires consultation with the Information Commissioner's Office (ICO).

Scottish Government have consulted with policing organisations, including with Police Scotland, the SPA and the PIRC to ensure that legislative proposals are possible to implement and their views on proposed changes are considered.

Additionally the Scottish Government are considering the need for guidance for organisations in reference to the Bill provisions.

1. Contact and schedule information

1.1	SG department	Police Division
1.2	Contact email	John Somers, Deputy Director
1.3	Data protection support email Data protection officer	dpa@gov.scot dataprotectionofficer@gov.scot
1.4	Is your proposal primary legislation, secondary legislation or other form of statutory measure?	Primary Legislation
1.5	What stage is the legislative process at? Please indicate any relevant timescales and deadlines.	Preparation for parliamentary introduction in this parliamentary term (on 6 th June 2023). Parliamentary passage is due to conclude in 2024/25.

2. Introductory information

	Questions	Comments
2.1	Summary of proposal	<p>This Bill will provide greater clarity around the police complaints and misconduct processes, ensuring there are robust, clear and transparent mechanisms in place to investigate complaints, misconduct or other issues of concern.</p> <p>The legislative proposals we are bringing forward will embed good practice and underline the importance of maintaining the high standards expected of Scotland’s police officers, further strengthening public confidence in policing.</p> <p>The Bill aligns with the recommendations made by Dame Elish Angiolini in her <i>Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing</i>.</p> <p>For more detailed information about the provisions of the Bill, please see above.</p>
2.2	<p>Description of the personal data involved</p> <p>Please also specify if this personal data will be special category data, or relate to criminal convictions or offences</p>	<p>Provisions within this Bill relate to data processing of special category data including:</p> <ul style="list-style-type: none"> • personal data revealing racial or ethnic origin; • biometric data (where used for identification purposes) <p>Separately, there is information about criminal convictions that may be processed as a result of the proposed changes.</p> <ul style="list-style-type: none"> • criminal convictions in regard to processing of Barred and Advisory lists. <p>Police Barred and Advisory Lists:</p> <p>The Bill places a duty on the SPA to establish and maintain Scottish Police Barred and Advisory Lists. This is underpinned by broad regulation making powers to allow Scottish Ministers to make detailed provision as regards the framework of these lists. The bill will provide for the collation of (as yet unspecified) new data. This will be set out in regulations, but is likely to include: name of constable, date of birth, rank, date of gross misconduct finding, description of the misconduct that led to being included on the list. The</p>

	Questions	Comments
		<p>collation of this data is deemed necessary and proportionate in order to enable the lists to work. Consideration has been given to whether the date of birth is necessary for inclusion, given there may be more than one officer with the same name it is considered necessary to eliminate mistaken identity. In some cases, the description of misconduct might include criminal conduct, or a conviction.</p> <p>Cross Jurisdictional Investigation:</p> <p>The Bill will also create provision to allow the PIRC to investigate the actions of English and Welsh and Northern Irish police officers of territorial forces who were operating in Scotland when involved in potential criminal offending, or a serious incident (under clearly defined specific circumstances). Whilst this is a new power for the PIRC to investigate, inevitably data sharing will take place between policing partners in order to carry out that investigation. This will be data about either the nature/circumstances of the alleged offence, and the names of those involved, or the circumstances of the serious incident, and those involved. This will be data of the same nature as is shared already in respect of PIRC investigations into criminal offending, or serious incidents, involving constables from the Police Service of Scotland.</p> <p>Gateways to share data necessary to allow these functions to be carried out sit in section 44 of the 2006 Act (in respect of the chief constable of the Police Service of Scotland), or will be set up in a Section 104 order under the Scotland Act 1998, in respect of police forces in England and Wales, or the Police Service of Northern Ireland.</p> <p>PIRC Access to Police Scotland’s Complaints Database:</p> <p>Data is already collected on the existing Police Scotland Complaint Database – Centurion - and the Bill does not propose collecting additional data. The PIRC is already entitled to receive information necessary to perform their complaints handling functions. The Bill will not amending provisions on which data the PIRC is entitled to receive. However, this Bill does make provision to allow secondary legislation to be made changing how the PIRC will access this information on Centurion from the current</p>

	Questions	Comments
		<p>arrangement; in essence it will change the method by which the information is processed.</p> <p>The PIRC currently has supervised access to files held on the database (as described above) at Police Scotland premises, the Bill will allow regulations to be made, to make provision requiring the Authority or the chief constable to provide information and documents to the PIRC, in such circumstances and in accordance with such requirements as may be set out in the regulations, access to an electronic storage system on which they are stored. This would allow unsupervised and remote access to by the PIRC to the Centurion database, with necessary ICT securing arrangements in place.</p> <p>In order to ensure compliance with data protection policies, Police Scotland, as the data controller, are aware that they will be responsible for working with the complaints system provider to ensure PIRC staff will have only the specific ICT network connections, access and privileges assigned through their system log-ins to allow them access to the data they require to meet their statutory functions.</p> <p>Both Police Scotland and the PIRC's Information Management Teams will work together to ensure their individual Data Protection Policies, Data Sharing Agreements and Privacy Notices are updated to reflect any changes to access and legislation.</p> <p>It is possible that the information about specific complaints will reveal information about special category data, such as whether the police constable involved (or the complainer) had any particular vulnerabilities. It might also reveal data around criminal convictions, such as whether the person complaining was someone accused of an offence or with a criminal record. The latter might arise if the complainer complains, for example, that a police constable did not take into account their disability when interacting with them, or said or did something in relation to a disability that was inappropriate. It is possible that the PIRC, when reviewing a complaint, may come to the view that what has been categorised as a complaint by the police may be more accurately described as a potential offence by a Police constable. If the PIRC did become so aware, they could refer the case to the Crown Office and Procurator Fiscal Service under section 46 of the</p>

	Questions	Comments
		<p>2006 Act, or suggest to Police Scotland that they should refer the case.</p> <p>PIRC Power to Audit Whistleblowing Complaints:</p> <p>The Bill includes an obligation on the PIRC to keep under review arrangements maintained by the SPA and the Chief Constable of Police Scotland 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.</p> <p>The PIRC will have to write a report of any individual whistleblowing complaint they investigate (the PIRC can do this under the already existing sections 33A(d) and 41C of the 2006 Act), and also to report to the Scottish Ministers on more general audits of whistleblowing complaints.</p> <p>The PIRC will also be given the option to publish a report on the audit if they consider it to be appropriate, and to disclose the findings to the appropriate prescribed body. A whistleblowing complaint under the Employment Rights Act 1996 (the definition of which is being adopted in the Bill) means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest, and shows one or more of the following- (a) that a criminal offence has been committed, is being committed or is likely to be committed, (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject, (c) that a miscarriage of justice has occurred, is occurring or is likely to occur, (d) that the health or safety of any individual has been, is being or is likely to be endangered, (e) that the environment has been, is being or is likely to be endangered, or (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed. The information the PIRC will have access to as part of this audit function will relate to complaints made under these headings, and the records of how they were handled. This will include detail of the complainers.</p> <p>It is possible that the information about specific complaints will reveal information about special</p>

	Questions	Comments
		<p>category data, such as whether the police constable(s) involved had any particular vulnerabilities. In carrying out these functions PIRC have responsibility to comply with data protection regulations, this includes drafting of DPIAs, and ensuring the necessary Data Sharing Agreement is in place and adhered to.</p> <p>PIRC to Call in Complaints:</p> <p>The Bill provides the PIRC with a power to take over consideration of (or call in) complaints being dealt with by the Chief Constable or the SPA. The criteria applied to calling in is to vary dependent on the circumstances. PIRC already have powers to access this same data in relation to CHRs, under section 44 of the 2006 Act, and have responsibility to comply with data protection regulations, this includes drafting of DPIAs, and ensuring the necessary Data Sharing Agreement is in place and adhered to.</p> <p>This information access will include information about the circumstances of the complaint, and around how it was handled, as well as the details of the complainer and constable involved.</p> <p>Person serving with the police:</p> <p>As set out above, this widens the class of persons in respect of which the PIRC can carry out a criminal investigation, where directed to do so, instead of the Police Service of Scotland carrying out that investigation. The information being shared will be about the circumstances of the alleged offence, the victim, the accused, and witnesses. There might be special category information shared, about vulnerabilities of accused, witnesses or persons serving with the police, for example. The same type of information is already shared with the PIRC, who carry out investigations into those currently serving with the police.</p>
2.3	Will the processing of personal data as a result of the proposal have an impact on decisions made about individuals, groups or categories of persons?	<p>Police Barred and Advisory Lists:</p> <p>The Bill provides for a Police Barred List to be established that will comprise of a list of names and details of constables, or former constables, who have committed gross misconduct and have been (or would have been) dismissed as a result with the intention of preventing such constables from being employed or appointed to a policing role in Scotland in the future.</p>

	Questions	Comments
	<p>If so, please explain the potential or actual impact. This may include, for example, a denial of an individual's rights, or use of social profiling to inform policy making.</p>	<p>Furthermore, the establishment of a Police Advisory List will comprise of a list of former constables who are under investigation or are subject to disciplinary proceedings in respect of a gross misconduct allegation. Accordingly, the impact would be felt by an individual who is placed on either list as it means the person will find it difficult in the future to be employed or appointed to a policing role in Scotland. Once regulations are in place, the information will also be shared with the English and Welsh College of Policing meaning that English and Welsh forces will be aware of that person's gross misconduct, effectively barring them from employment in England and Wales.</p> <p>Cross Jurisdictional Investigations:</p> <p>The Bill will also create provision to allow the PIRC to investigate the actions of English and Welsh and Northern Irish police officers of territorial forces who were operating in Scotland when involved in a serious incident under clearly defined specific circumstances. This is a new power for the PIRC to investigate, and inevitably data sharing will take place between policing partners in order to carry out that investigation. Here, however, the proposal is just to share the same type of information (information required for the investigation of a criminal investigation, or investigation into a serious incident) between a wider group of persons (all of which are public bodies).</p> <p>This is not envisaged however, to have any different real world impact on the individuals involved in these investigations. If there had been a criminal offence committed previously, then it could only have been investigated by the Police Service of Scotland, and not the PIRC. The person who investigates, however, should not make an impact on the processes for investigation. They will still need to be carried out in a manner which is human rights and data protection compliant (including respecting the right to a fair trial), regardless of who carries out the investigation. The PIRC and her staff are already experienced in criminal investigation, as they have such a function in relation to constables of the Police Service of Scotland (and staff of the Police Service and the SPA).</p> <p>Investigations into serious incidents are not criminal investigations, and there is no sanction on any person</p>

	Questions	Comments
		<p>serving with the police that would happen under the 2006 Act. The PIRC's investigations could potentially unearth conduct that could, for example, be deemed misconduct. That would not however be dealt with under this legislation and consideration of any conduct would be a matter for the individual's home force. If the PIRC considers it appropriate to do so, they can publish a report on a serious incident, though these reports do not name individuals or contain particulars that are likely to lead to a person's identification, unless the PIRC considers it would be necessary (in the public interest) for this information to be present. It is unlikely, therefore, that there will be any great impact on an individual's rights beyond any limited impact involved in requiring them to co-operate with such an investigation. There is clearly a public interest in being able to investigate such serious incidents (the details of which are set out above).</p> <p>PIRC Access to Police Scotland's Complaints Handling Database:</p> <p>There should not be any practical difference in relation to individuals, groups, or categories of persons and decision making in relation to them.</p> <p>The Bill will make provision to allow secondary legislation to be made changing the method by which the PIRC will access and process data held on Police Scotland's Complaint Database – Centurion - but does not propose collecting additional data to that already held, nor amending provisions on which data the PIRC is entitled to receive. This will ensure the relevant data is available for PIRC to make decisions specifically around investigations of how complaints made against Police Scotland or their Constables were handled. PIRC already has a statutory duty to access this type of data when necessary for investigations under section 44 of the Police, Public Order and Criminal Justice (Scotland) Act 2006.</p> <p>The PIRC would use information about complaints going forward to:</p> <p>(1) carry out their audit function under section 40A, where the PIRC is to assess a number of complaints to ascertain if complaints as a whole are being dealt with to a good standard,</p>

	Questions	Comments
		<p>(2) in assessing whether to takeover consideration of a complaint that Police Scotland or the SPA has been dealing with; and</p> <p>(3) to consider how the complaint has been handled by Police Scotland or the SPA (as opposed to carrying out their own investigation into the circumstances of the complaint) (sections 34-41 of the 2006 Act).</p> <p>The PIRC is going to have access to the same information as before, to carry out the same functions as before (with the exception of the new power to takeover investigation of a complaint, but the information relevant to making such decisions on taking over a complaint was already relevant to the PIRC’s functions regarding complaints audit and review of complaints handling, and so the PIRC could already access this information), only via a different means.</p> <p>PIRC Power to Audit Whistleblowing Complaints:</p> <p>By placing this within the Bill it has no impact on employment rights of whistle-blowers, which is dealt with under reserved UK Parliament legislation, but it should improve transparency of processes around how public interest matters are investigated, and therefore improve the position of whistleblowers. This, in turn, will encourage people to speak up when they see wrong-doing. It also provides an opportunity for Police Scotland and the SPA to take on board learning and address issues arising from concerns raised.</p> <p>PIRC to Call in Complaints:</p> <p>The PIRC will be able to call in complaints of individual’s, including where the individual has not asked for this to happen (similarly to what is already in place regarding complaint handling reviews (“CHR”), where the Police Service of Scotland or the SPA could request the PIRC carry out a CHR).</p> <p>However, it is envisaged that if the PIRC calls in a complaint, it will either be at the request of the complainant (who presumably therefore wants the PIRC to consider their complaint) or where there is otherwise very good reason to do so. If the PIRC calls in a complaint unilaterally they will have to be satisfied it is in the public interest for them to do so, and therefore</p>

	Questions	Comments
		<p>this should not happen for trivial reasons. The intent of these provisions is to ensure more transparent and effective investigation of complaints for members of the public, and it is considered that overall the effect on the rights of individuals complaining should be positive, and any effect on the rights of persons complained about will be in pursuance of, and proportionate to, the aim of improving matters for the public.</p> <p>Person serving with the police:</p> <p>Similarly to what is set out around criminal investigations into officers from outwith Scotland above, this simply changes who can investigate criminal offences, not whether or not a criminal offence can be investigated at all. The PIRC will have to carry out lawful and fair investigations, respecting the human rights etc. of those investigated, and is already well versed in carrying out criminal investigations, with the knowledge and processes in place to protect these rights.</p>
2.4	<p>Necessity, proportionality and justification</p> <p>What issue/public need is the proposal seeking to address?</p> <p>What policy objective is the legislation trying to meet?</p> <p>Were less invasive or more privacy-friendly options considered, and if so why were these options rejected?</p> <p>Are there any potential unintended consequences with regards to the provisions e.g., would the provisions result in unintended</p>	<p>The collection of this data is deemed necessary for stated purposes. This personal data is required to inform decisions made around complaints handling and any conduct proceedings.</p> <p>Mitigations and safeguards will be ensured via policing partners being required to develop data sharing agreements and DPIAs prior to the provisions in the Bill being implemented. It is expected that proposals will reflect the need for improving the services provided and to ensure best practice working requirements.</p> <p>Barred and Advisory list:</p> <p>There is no possibility of implementing the Bill provisions without the need for collection and processing of personal data, particularly in reference to the Barred and Advisory Lists. The provisions are considered necessary to encourage positive behaviours by officers and protect the public from potential negative behaviours by officers who have committed serious wrongdoings.</p> <p>Access to complaints database:</p> <p>As indicated above, the proposals in relation to the Complaints Database are not going to make any</p>

	Questions	Comments
	<p>surveillance or profiling?</p> <p>Have you considered whether the intended processing will have appropriate safeguards in place? If so briefly explain the nature of those safeguards and how any safeguards ensure the balance of any competing interests in relation to the processing.</p>	<p>change to which information the PIRC is entitled to access. They only change the gateway and means by which the PIRC can access this information. However, they are considered necessary in order to allow the PIRC to have access to complaints information that is not filtered by Police Scotland constables or employees prior to the PIRC accessing the information. The changes will also save on Police Scotland and PIRC resource which is currently used facilitating PIRC access at police stations.</p> <p>Implementation of these proposals will be expected in 2024/25 and consideration of safeguards, details of data sharing agreements and DPIAs on the operational detail will be agreed and consulted on prior to implementation (and at the appropriate point in time when regulations taking forward provisions are being prepared).</p> <p>Cross Jurisdictional Investigations:</p> <p>It is considered necessary and proportionate that there is the option of an independent body being able to investigate alleged offending or serious incidents involving police constables carrying out duties in Scotland. At present, we understand there is no independent body able to carry out such investigations, as such powers are not set in either UK Parliament or Scottish Parliament legislation. It is considered that this improves the independence of investigations where such independence might be called into question by either the Police Service of Scotland or another police force carrying out the investigation, and in turn is arguably improving compliance with the state's positive obligations under article 2 and 3 of the ECHR to provide an effective investigation into deaths, or allegations of inhuman and degrading treatment, involving agents of the state.</p> <p>The PIRC already investigates offences, deaths and serious injuries, and safeguards are in place when they do this. These same safeguards will be adopted for these investigations.</p> <p>PIRC Power to Audit Whistleblowing Complaints:</p> <p>The PIRC already has powers to investigate the issues in a whistleblowing complaint, under their power to investigate matters concerning the SPA or the Police</p>

	Questions	Comments
		<p>Service, where it would be in the public interest to do so.</p> <p>This power is deemed necessary. The Angiolini review identified that there were concerns within policing bodies about how safe it was to whistleblow. It was deemed that the PIRC should be an available body to whistleblow to, but also that the PIRC should be able to audit how the Police Service of Scotland or the SPA deals with whistleblowing complaints, to help ensure transparency and that complaints are being dealt with properly.</p> <p>PIRC to Call in Complaints:</p> <p>It is considered necessary and proportionate to allow the PIRC to be able to freshly consider complaints directed at the Police Service of Scotland and the SPA.</p> <p>The Angiolini review heard evidence around PIRC concerns that some complaints, albeit rarely, had been subject to very poor investigation by the police. It was recommended that the PIRC should have the additional power to call in complaints in order to deal with such circumstances, rather than having to send the complaint back to the police for reconsideration. It is considered that this is a good option for complainers, to not have to have the police reconsider the complaint, when the trust has potentially already been lost. It is considered that other options would not be as effective in this situation.</p> <p>Person serving with the police:</p> <p>It is considered necessary to have the option of the PIRC being able to investigate the criminal offending of any person serving with the police, or who has served with the police. It will allow a body independent of the police to be directed to investigate persons serving with the police. For the same reasons set out above in relation to investigations into constables from outwith Scotland, it is necessary and proportionate for the PIRC to be able to carry out this function.</p>
2.5	Will the implementation be accompanied by guidance or by an associated Code of Conduct?	The data controllers and processors that will be impacted by provisions in this Bill that involve data management, collection, sharing and processing are established public bodies with robust and trusted policies and procedures in place for data protection. They already have extensive responsibilities and

	Questions	Comments
	If the latter, what will be the status of the Code of Conduct? (statutory or voluntary?)	<p>understand the sensitivities and legal requirements for handling this type of data, therefore it would not be necessary for SG to introduce new guidance. Further, as the data controllers are operationally independent from SG, it would not be appropriate for SG to prescribe a Code of Conduct.</p> <p>However, where organisations would welcome further guidance on data sharing and management as a result of the Bill to supplement their established practices, this will be considered and further explored.</p>

3. Data Controllers

Organisation	Chief Constable of the Police Service of Scotland
Activities	<p>Police Scotland collects and processes data for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security.</p> <p>The Bill will allow provisions to be made under regulations, to enable secondary legislation to be made for Police Scotland to provide the PIRC with unsupervised and remote access to their Complaints Database to meet statutory responsibilities.</p> <p>The chief constable may also be required to share information with the PIRC as a result of the requirement to audit whistleblowing complaints, the power to call in complaints, and in relation to serious incidents involving officers from outwith Scotland, in relation to civil matters, and information in relation to criminal investigations both of officers from outwith Scotland, and into persons who once, but no longer, serve with the police.</p>
Is the organisation a public authority or body as set out in Part 2, Chapter 2, Section 7 of the Data Protection Act 2018?	The Chief Constable of the Police Service of Scotland is a public authority.

<p>Lawful basis for processing under UK General Data Protection Regulation (UK GDPR) Article 6 for the collection and sharing of personal data – general processing</p>	<p>As a competent authority, Police Scotland already hold a lawful basis for the collection and sharing of personal data under UK GDPR due to legal obligation - Article 6(1)(c);</p> <p>It is for the relevant data controllers (in this case Police Scotland) to identify whether the processing falls under the UK GDPR rules, or satisfies the criteria of the law enforcement purposed under Part 3 of the DPA 2018 and ensure compliance with the data protection principles. This includes identifying lawful basis to ensure the processing is fair and lawful (Principle (a): Lawfulness, fairness and transparency ICO).</p> <p>Any operational DPIAs, data sharing agreements and privacy notices should be produced by the data controller and be clear on their lawful basis for processing the data where appropriate.</p>	<p>Lawful basis for processing under UK General Data Protection Regulation (UK GDPR) Article 9 – special category data or Article 10 – criminal convictions data</p> <p>Include condition from Schedule 1 or 2 of the Data Protection Act 2018</p>	<p>As a competent authority, Police Scotland already hold a lawful basis for collection and sharing of special category personal data under UK GDPR (Article 9). The lawful basis for processing is necessary for <i>‘Reasons of substantial public interest’</i>, Article 9(2)(g)</p> <p>This shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and interests of the data subject.</p> <p>It is for the relevant data controllers (in this case Police Scotland) to identify the correct regime and ensure compliance with UK GDPR.</p>
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<p>Law Enforcement – if any law enforcement processing will take place – lawful basis for processing under Part 3 of the Data Protection Act 2018</p>	<p>Functions that the PIRC already carry out in relation to investigation of criminal offences by persons currently serving with the police will be extended to allow them to investigate those who have left the police force. This may involve the chief constable providing information relevant to the investigation to the PIRC.</p> <p>Functions that the PIRC already carries out in relation to investigation of criminal offending of Police constables of Police Scotland will be extended to investigation of Police constables from England, Wales and the Police Service of Northern Ireland, meaning that there will be more “categories” of constable who can be investigated, and information being shared in relation to these constables. This will mean there will be law enforcement processing happening in relation to new categories of constable.</p>	<p>Legal gateway for any sharing of personal data between organisations</p>	<p>Existing legal gateways will continue to apply to allow the sharing of data under which Data Sharing Agreements exist between policing organisations; Police Scotland, SPA and PIRC. It is considered that the legal basis for processing (Police Scotland sharing with the PIRC and vice versa) will be provided for under section 44 and section 46.</p> <p>Section 46 will also allow the PIRC to share information with any English, Welsh or Northern Irish police force.</p> <p>Any co-operation required from forces in England, Wales or Northern Ireland with the PIRC will need to be provided for under new reserved legislation. The Scottish Government is progressing discussions on this with the UK Government.</p> <p>It is considered that the legal condition for any sensitive processing required will be that it is necessary for the exercise of PIRC</p>
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Organisation	Police Investigations and Review Commissioner (PIRC)
Activities	<p>The PIRC is an independent body and its role is to provide independent oversight, investigating incidents involving the police and reviewing the way the police handle complaints from the public. Their aim is to secure public confidence in policing in Scotland.</p> <p>The Bill will allow provisions to:</p> <ul style="list-style-type: none"> • enable secondary legislation to be made for Police Scotland to provide the PIRC with unsupervised and remote access to their Complaints Database to meet specific statutory responsibilities to audit and review the way in which police have handled complaints from the public. • Allow the PIRC to investigate serious incidents, and criminal offending involving members of forces from outwith Scotland, • Allow the PIRC to call in complaints being dealt with by the chief constable or the SPA, • Allow the PIRC to audit the arrangements of how the chief constable and the SPA investigate information provided in a whistleblowing complaint. • Allow the PIRC to investigate alleged criminal offending by anyone who is, or has been, a person serving with the police, if directed to do so by the appropriate prosecutor. • Allow the PIRC to investigate a sudden death or fatal injury which the procurator fiscal is required to investigate under section 1 of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016, where the person serving with the police was not on duty at the time the relevant circumstances occurred, where directed by the appropriate prosecutor to do so.
Is the organisation a public authority or body as set out in Part 2, Chapter 2, Section 7 of the Data Protection Act 2018?	PIRC is a public authority.

<p>Lawful basis for processing under UK General Data Protection Regulation (UK GDPR) Article 6 for the collection and sharing of personal data – general processing</p>	<p>As a competent authority, the PIRC already hold a lawful basis for the collection and sharing of personal data under UK GDPR due to legal obligation - Article 6(1)(c);</p> <p>It is for the relevant data controllers (in this case the PIRC) to identify whether the processing falls under the UK GDPR rules, or satisfies the criteria of the law enforcement purposed under Part 3 of the DPA 2018 and ensure compliance with the data protection principles. This includes identifying lawful basis to ensure the processing is fair and lawful (Principle (a): Lawfulness, fairness and transparency ICO).</p> <p>Any operational DPIAs, data sharing agreements and privacy notices should be produced by the data controller and be clear on their lawful basis for processing the data where appropriate.</p>	<p>Lawful basis for processing under UK General Data Protection Regulation (UK GDPR) Article 9 – special category data or Article 10 – criminal convictions data</p> <p>Include condition from Schedule 1 or 2 of the Data Protection Act 2018</p>	<p>As a competent authority, the PIRC already hold a lawful basis for collection and sharing of personal data under UK GDPR (Article 9). The lawful basis for processing is necessary for ‘Reasons of substantial public interest’, Article 9(2)(g)</p> <p>This shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and interests of the data subject.</p> <p>It is for the relevant data controllers (in this case the PIRC) to identify the correct regime and ensure compliance with UK GDPR.</p>
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<p>Law Enforcement – if any law enforcement processing will take place – lawful basis for processing under Part 3 of the Data Protection Act 2018</p>	<p>Functions that the PIRC carries out investigating the alleged offending of</p> <p>Functions that the PIRC already carries out in relation to investigation of criminal offending of Police constables of Police Scotland will be extended to investigation of Police constables from England, Wales and the Police Service of Northern Ireland, meaning that there will be more “categories” of constable who can be investigated, and information being shared in relation to these constables. This will mean there will be law enforcement processing happening in relation to new categories of constable.</p> <p>If there is information relevant to the offence that is in the hands of English, Welsh or Northern Irish forces they might need to share information with the PIRC, who will then use it.</p>	<p>Legal gateway for any sharing of personal data between organisations</p>	<p>Existing legal gateways will continue to apply to allow the sharing of data under which Data Sharing Agreements exist between policing organisations; Police Scotland, SPA and PIRC. There is existing primary legislation in place to allow the sharing of data to take place, through Section 44 and Section 46 of the 2006 Act between Police Scotland and the PIRC. This legislation should also allow the PIRC to share relevant information with territorial forces, should this be necessary.</p> <p>As noted above, additional legislation will be required to provide the information sharing gateway between territorial forces from England or Wales or the Police Service of Northern Ireland, to require them to share information with the PIRC, should this be necessary for the PIRC to investigate one of their officers.</p> <p>If there is sensitive processing, we consider that the</p>
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	<p>The PIRC will also be sharing information with the Chief Constable of the Police Service of Scotland, and the Chief constable with the PIRC , to facilitate investigations of criminal offending.</p>		<p>legal condition for any sensitive processing required will be that it is necessary for the exercise of PIRC functions conferred by an enactment or rule of law, and necessary for reasons of substantial public interest, or, alternatively, it is necessary processing for the administration of justice.</p>
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Organisation	Scottish Police Authority (SPA)
Activities	<p>SPA provides oversight in scrutinising policing in Scotland and holding the Chief Constable to account; and its supportive role in maintaining and improving the police service. SPA aims to increase public trust and confidence in the policing of Scotland in the way it carries out its functions and through the quality of its governance arrangements.</p> <p>The Bill requires the SPA to establish and maintain a Scottish Police Barred List and a Police Advisory List, sets out the circumstances in which the SPA must enter a person on each of the lists and gives broad regulation-making powers to Scottish Ministers to make provision for the framework to underpin those lists. Once such lists are established it is envisaged that the SPA will take on the role of data controller of both lists and will manage these. It is envisaged that the section in the Bill (section 7) providing for the SPA to establish and maintain the lists will be commenced at the same time as regulations come into force providing for the framework of the lists. Regulations are subject to affirmative procedure and these will be consulted on with the ICO, and a DPIA will need to be completed prior to the regulations coming into force.</p>
Is the organisation a public authority or body as set out in Part 2, Chapter 2, Section 7 of the Data Protection Act 2018?	SPA is a public authority.

<p>Lawful basis for processing under UK General Data Protection Regulation (UK GDPR) Article 6 for the collection and sharing of personal data – general processing</p>	<p>As a competent authority, the SPA already hold a lawful basis for the collection and sharing of personal data under UK GDPR due to legal obligation - Article 6(1)(c);</p> <p>It is for the relevant data controllers (in this case SPA) to identify whether the processing falls under the UK GDPR rules, or satisfies the criteria of the law enforcement purposed under Part 3 of the DPA 2018 and ensure compliance with the data protection principles. This includes identifying lawful basis to ensure the processing is fair and lawful (Principle (a): Lawfulness, fairness and transparency ICO).</p> <p>Any operational DPIAs, data sharing agreements and privacy notices should be produced by the data controller and be clear on</p>	<p>Lawful basis for processing under UK General Data Protection Regulation (UK GDPR) Article 9 – special category data or Article 10 – criminal convictions data</p> <p>Include condition from Schedule 1 or 2 of the Data Protection Act 2018</p>	<p>As a competent authority, the SPA already hold a lawful basis for collection and sharing of personal data under UK GDPR (Article 9). The lawful basis for processing is necessary for 'Reasons of substantial public interest', Article 9(2)(g)</p> <p>This shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and interests of the data subject.</p> <p>It is for the relevant data controllers (in this case SPA) to identify the correct regime and ensure compliance with UK GDPR.</p>
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	their lawful basis for processing the data where appropriate.		
Law Enforcement – if any law enforcement processing will take place – lawful basis for processing under Part 3 of the Data Protection Act 2018	No new law enforcement processing is included in this Bill.	Legal gateway for any sharing of personal data between organisations	<p>Data sharing agreements exist between policing organisations; Police Scotland, SPA, PIRC and COPFS.</p> <p>New agreements will be required for those who should be able to access the barred and advisory lists including England and Wales police forces, the college of policing for England and Wales and the IOPC. It will be the responsibility of SPA, as data controllers, to comply with obligations under GDPR and to complete a DPIA and draft the necessary Data Sharing Agreements as appropriate.</p>

4. Consultation

	Questions	Comments
4.1	<p>Have you consulted with the ICO using the Article 36(4) form?</p> <p>(please provide a link to it)</p> <p>If the ICO has provided feedback, please include this.</p>	<p>The Article 36(4) form was submitted to the ICO on 3 March 2023. This followed previous engagement with ICO in January 2023 and previous meetings that took place prior to the public consultation for the Bill going live in summer 2022.</p> <p>Officials met with the ICO in March 2023 to discuss the contents of the Article 36 (4) form to which they indicated that they are content and highlighted the need to complete further Article 36 (4) forms for subsequent regulations that will provide further detail on how the provisions will be implemented. They also confirmed that this will also be the case for the Section 104 Order that will be required for Cross Jurisdictional information sharing and the possible Section 104 Order for Barred and Advisory List provisions.</p> <p>As we have continued to work through the provisions in the Bill we have captured further provisions in this DPIA to those previously outlined in the Article 36 (4) form shared with the ICO. As such we approached ICO officials to engage further on those provisions through meetings in May 2023 .</p>
4.2	<p>Do you need to hold a public consultation and if so has this taken place? What was the result?</p>	<p>We publicly consulted on Police Complaints, Investigations and Misconduct legislation between 24 May to 16 August 2022. This delivered our 2021 to 2022 Programme for Government commitment to consult on legislative proposals made by Dame Elish Angiolini's Review, published in November 2020.</p> <p>We published the consultation analysis on Police Complaints, Investigations And Misconduct legislation (as well as a summary of the consultation analysis) on 30 November 2022. All consultation responses which gave permission to be published are also available.</p>
4.3	<p>Were there any Comments/feedback from the public consultation about privacy, information or data protection?</p>	<p>Conclusions of the consultation did not provide any opinions on the data protection relevant proposals which differ from those we have already heard through prior direct consultation with policing organisations. Advice and intelligence from policing organisations are included in proposals and will continue to be included as implementation of these provisions is reached.</p>

5. Further assessment and risk identification

	Question	Comments
5.1	Will the proposal require the creation of new identifiers, or require the use of existing ones?	No new identifiers are being introduced.
5.2	Will the proposal require regulation of: <ul style="list-style-type: none"> • technology relating to processing • behaviour of individuals using technology • technology suppliers • technology infrastructure • information security 	<p>This proposal will not require additional regulation of technology or information security, as PIRC are currently able to access Police Scotland's Complaints Database – Centurion – and rather the bill provides regulation making powers to allow the Scottish Ministers to set out how the PIRC will access this database.</p> <p>The subsequent regulations will potentially have some detail as to behaviour of individuals, etc, but this will be set out in the DPIA for those regulations.</p>
5.3	Will the proposal require establishing or change to operation of an established public register (e.g. Accountancy in Bankruptcy, Land Register etc.) or other online service/s?	No change to established public registers required.
5.4	Please provide details of whether the proposal will involve the collection or storage of data to be used as evidence or use of investigatory powers (e.g.in relation to fraud, identify theft, misuse of public funds, any possible criminal activity, witness information, victim information or other	<p>Police Barred and Advisory Lists: Personal data which is included in the proposed barred list will be publicly available information and therefore could be used as evidence of previous wrongful behaviour in relation to any separate investigation.</p> <p>Cross Jurisdictional Issues and clarification of person serving with the police for criminal investigations: As set out above, this will involve the sharing of information about criminal investigations, in respect of wider classes of constable. The PIRC will need to be able to store information whilst they are carrying out an investigation.</p>

	Question	Comments
	monitoring of online behaviour)	<p>PIRC Access to Police Scotland’s Complaints Handling Database:</p> <p>The information about complaints is already being collected and shared. This only changes the method by which it will be shared. To note, complaints about an act or omission of a police constable, Police Scotland or the SPA could not be investigated under the complaints investigation or complaints handling review provisions of the 2006 Act if they relate to criminal conduct.</p> <p>PIRC Power to Audit Whistleblowing Complaints:</p> <p>This will involve the sharing of information in respect of audit of whistleblowing complaints. The PIRC will need to be able to store information whilst they are carrying out an investigation.</p> <p>PIRC to Call in a Complaint:</p> <p>The information about complaints is already being collected and shared, but this will involve it being used for a different function in relation to complaints investigation, as set out above.</p>
5.5	Would the proposal have an impact on a specific group of persons e.g. children, vulnerable individuals, disabled persons, persons with health issues, persons with financial difficulties, elderly people? (Please specify) In what way?	A full equality impact assessment has been undertaken with no identifiable direct impacts on specific groups. For more information see the full EQIA .
5.6	Is there anything potentially controversial or of significant public interest in the policy proposal as it relates to processing of data? For example, is the public likely to views the measures	<p>There is a high level of public interest in the conduct of police officers across the UK.</p> <p>Police Barred and Advisory Lists:</p> <p>The Barred and Advisory Lists is already an established mechanism used by the College of Policing in England and Wales to increase the accountability of those who are dismissed from policing. The lists are expected to further the transparency of the Scottish policing discipline</p>

	Question	Comments
	<p>as intrusive or onerous?</p> <p>Are there any potential unintended consequences with regards to the provisions e.g. would the provisions result in unintended surveillance or profiling.</p> <p>Have you considered whether the intended processing will have appropriate safeguards in place? If so briefly explain the nature of those safeguards and how any safeguards ensure the balance of any competing interests in relation to the processing.</p>	<p>system by publishing details of these individuals, where appropriate, in order to raise public confidence in the police.</p> <p>SPA will have responsibility for managing the list that will mirror the safeguards provided in England and Wales to those on the list by allowing certain exemptions, and reviews after agreed periods of time.</p>
5.7	<p>Are there consequential changes to in other legislation that need to be considered as a result of the proposal or the need to make further subordinate legislation to achieve the aim?</p>	<p>The Bill will enable regulation making powers. Regulations made under those powers will be subject to compliance with UK GDPR when made and appropriate impacts assessments completed.</p> <p>Amendments to regulations will be coordinated and considered alongside implementation of the Bill provisions after parliamentary passing of the Bill.</p> <p>As described above, it is also envisaged that there will be an order under s104 of the Scotland Act 1998 to ensure that police forces in England and Wales and the Police Service of Northern Ireland will be sharing information with the PIRC to allow them to fulfil their functions around investigations of constables.</p>
5.8	<p>Will this proposal necessitate an associated code of conduct? If so, what will be the status of the code of</p>	<p>There is no necessity for an associated code of conduct to be produced by the Scottish Government in reference to provisions for this Bill that relate to the safe management of data. The data controllers operate independently of the Scottish Government, and therefore are best placed to create appropriate</p>

	Question	Comments
	conduct (statutory, voluntary etc.)?	<p>guidance to ensure compliance with their data protection obligations under the UK GDPR.</p> <p>Separately there is an existing code of ethics for policing managed by Police Scotland. Provisions within this Bill will create a statutory obligation to prepare and maintain that code and will include additional requirements for consultation and regular consideration involving relevant stakeholders.</p>
5.9	<p>Have you considered whether the intended processing will have appropriate safeguards in place, for example in relation to data security, limitation of storage time, anonymisation? If so briefly explain the nature of those safeguards</p> <p>Please indicate how any safeguards ensure the balance of any competing interests in relation to the processing.</p>	<p>The data controllers already have policies and procedures in place for the handling of data, and are well versed in the sensitivities and legal requirements for processing personal data. They will continue to ensure they comply with their statutory duties and have appropriate safeguards in place. This includes drafting of operational DPIAs, Data Sharing Agreements and updating Privacy Notices as appropriate.</p> <p>Safeguards for the Centurion system proposals will be shared in the DPIA for the regulations.</p>
5.10	<p>Will the processing of personal data as a result of the proposal have an impact on decisions made about individuals, groups or categories of persons? If so, please explain the potential or actual impact. This may include, for example, a denial of an individual's rights or use of social profiling to inform policy making.</p>	<p>See Section 2.3</p>

	Question	Comments
5.11	Will the proposal include automated decision making/profiling of individuals using their personal data?	No
5.12	Will the proposal require the transfer of personal data to a 'third country'? (Under UK GDPR this is defined as country outside the UK.)	No

6. Risk Assessment

Risk	Solution or mitigation	Likelihood (Low/ Med/ High)	Severity (Red/ Amber/ Green)	Result
<p>6.1.1 Risk to individual rights</p> <ul style="list-style-type: none"> • right to be informed • right of access • right to rectification • right to erasure • right to restrict processing • right to data portability • right to object • rights in relation to automated decision making and profiling <p>Will this initiative result in any detriment if individuals do not want their personal data to be processed?</p> <p>This is particularly relevant if special category data is being processed</p>	<p>The majority of provisions within the Bill do not create new impacts on individual's rights.</p> <p>Provisions that relate to the publishing of the Barred List, sharing of the Advisory List.</p> <p>Provisions allowing the PIRC to call in complaints would allow the PIRC in theory to call in a complaint even if the complainer did not want them to. However, this would only happen if it was in the public interest for it to.</p> <p>Provisions relating to the investigation of criminal conduct do not change the position on whether the criminal conduct would be investigated, only around who would investigate it, and so there is no impact on these rights.</p> <p>There is potential that those whose whistleblowing complaints were audited may not have sought to involve the PIRC, but the aim of these provisions is to improve the position for whistleblowers more generally and therefore there is a public interest in progressing this.</p>	Med	Green	Accepted

Risk	Solution or mitigation	Likelihood (Low/ Med/ High)	Severity (Red/ Amber/ Green)	Result
	<p>There may be constables from England, Wales or Northern Ireland who would not wish to take part in an investigation into a serious incident, however, again there is a strong public interest in investigating why a person was seriously injured or died following contact with the police, or to ensure that weapons are only discharged or utilised when necessary by investigating when they are used.</p> <p>However, on balance these changes are required to strengthen public confidence in policing.</p> <p>Necessary mitigations will be considered in regulations to minimise risk, such as redactions where necessary and appropriate.</p> <p>Data controllers must ensure they apply suitable consideration to individual rights within privacy statements and give due consideration to these when conducting DPIA's and setting up Data Sharing Agreements.</p>			

Risk	Solution or mitigation	Likelihood (Low/ Med/ High)	Severity (Red/ Amber/ Green)	Result
<p>6.2.1 Privacy risks</p> <p>Purpose limitation</p>	<p>The purpose of holding data is not changed by the Bill.</p> <p>Data will continue to be collected and processed by data controllers for the same purposes as it currently is.</p>	Low	Green	No new impact
<p>6.2.2 Privacy risks</p> <p>Transparency – data subjects may not be informed about the purposes and lawful basis for the processing, and their rights</p>	<p>The Bill does not impact on the way data subjects are informed about the purpose and lawful basis for the processing, and their rights.</p>	Low	Green	No new impact
<p>6.2.3 Privacy risks</p> <p>Minimisation and necessity</p>	<p>There will be no change to the way in which data is collected and processed as a result of the Bill by operational partners. The Centurion changes will come into force as a result of regulations made in the future.</p> <p>Data collection and Processing will continue to be proportionate and in line with pre-existing purposes.</p>	Low	Green	No new impact
<p>6.2.4 Privacy risks</p> <p>Accuracy of personal data</p>	<p>The Bill does not impact the accuracy of personal data. Data controllers will continue to be responsible for ensuring that the information they hold about</p>	Low	Green	No new impact

Risk	Solution or mitigation	Likelihood (Low/ Med/ High)	Severity (Red/ Amber/ Green)	Result
	a subject is accurate and up-to-date.			
6.3.1 Security risks Keeping data securely Retention	The Bill will not impact the way in which data controllers store or retain data. Operational partners are responsible for ensuring the necessary safeguards are in place to manage data securely and to ensure appropriate data sharing agreements are in place to comply with UK GDPR.	Low	Green	No new impact
6.3.2 Security risks Transfer – data may be lost in transit	The Bill will not impact the way in which data controllers transfer data (any change as a result of the Centurion proposals will come in regulations). It is not envisaged that access to the system when it is provided for will provide opportunities for information to be lost in transit. Operational partners are responsible for ensuring the necessary safeguards are in place to manage data securely and to ensure appropriate processes are in place for safe and secure transfer of data to comply with UK GDPR.	Low	Green	No new impact
6.3.3 Security risks	The Bill will not bring in provisions that will impact data security or create security risks. Operational	Low	Low	No new impact

Risk	Solution or mitigation	Likelihood (Low/ Med/ High)	Severity (Red/ Amber/ Green)	Result
	partners who are Data Controllers hold the responsibility for ensuring the necessary safeguards are in place to manage data security and to carry out risk assessments.			
6.4.1 risks	Other N/A	N/A	N/A	N/A

Data Protection Officer (DPO)

The DPO may give additional advice, please indicate how this has been actioned.

Advice from DPO	Action
Advice was given from DPO in SG (as well as engagement with ICO). Advice from DPO was around terminology, where responsibility sits and on engaging with ICO.	Comments from DPO were taken on board.

I confirm that the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill has been sufficiently assessed in compliance with the requirements of the UKGDPR and Data Protection Act 2018

Name and job title of a IAO or equivalent	Date each version authorised
John Somers, Deputy Director for Police Division, Scottish Government.	11 May 2023



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