



Police Investigations &  
Review Commissioner

## **AGREEMENT**

between

**THE POLICE INVESTIGATIONS & REVIEW COMMISSIONER**

and

**THE SECRETARY OF STATE FOR DEFENCE**

## **1. INTRODUCTION**

This agreement is made between the Secretary of State for Defence and the Police Investigations and Review Commissioner ("the PIRC") pursuant to article 3(5) of the Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013 [S.I. 2013/602] to enable the PIRC to investigate and report on any serious incident that occurred in Scotland involving the Ministry of Defence Police (MDP) at the request of the Chief Constable of the MDP. For the purposes of this Agreement, "serious incident" has the meaning set out in section 41B of the Police Public Order and Criminal Justice (Scotland) Act 2006 ("the 2006 Act").

It takes into account the provisions of the 2006 Act as amended by the Police and Fire Reform (Scotland) Act 2012 ("the 2012 Act") and the Police Investigations and Review Commissioner (Investigations Procedure, Serious Incidents and Specified Weapons) Regulations 2013 ("the Regulations"). The agreement also recognises the obligations of the parties under section 6(1) of the Human Rights Act 1998, and, in particular, the obligation to act compatibly with Articles 2 and 3 of the European Convention on Human Rights (ECHR).

This agreement relates only to the investigative functions of the PIRC. A separate agreement is in place with the Secretary of State in relation to PIRC's complaint review functions.

## **2. INVESTIGATIVE FUNCTION OF THE PIRC**

The former Police Complaints Commissioner for Scotland (established by section 33 of the 2006 Act) was renamed the PIRC by sections 61 of the 2012 Act and its functions extended by section 62. Those extended statutory functions include:

- to investigate, where directed to do so by the appropriate prosecutor, any circumstances in which there is an indication that a person serving with the police may have committed a crime, or the circumstances of any death involving a person serving with the police which the Procurator Fiscal is required to investigate under the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976; and
- to determine whether to investigate, where requested to do so by the Scottish Police Authority ("the SPA") or the chief constable of the Police Service of Scotland ("the PSS"), certain serious incidents involving the police.

The 2006 Act, as amended, vests PIRC investigators with 'all the powers and privileges of a constable throughout Scotland' while conducting investigations on behalf of the PIRC. The Regulations make various requirements on the PSS and SPA regarding the provision of information and other assistance to the PIRC, and permits PIRC's investigators entry to premises used by the PSS or SPA.

This agreement broadly reflects the relevant provisions of the 2006 Act, as amended, and the Regulations.

### **3. A FRAMEWORK FOR COLLABORATIVE WORKING**

The Secretary of State agrees that the PIRC may investigate and report, when requested to do so by the Chief Constable of the MDP, on any serious incident that has occurred in Scotland involving the Ministry of Defence Police.

“Serious incident involving the Ministry of Defence Police” is defined in article 3(6) of the Order and covers:

- a) a circumstance in or in consequence of which a person has died or sustained serious injury<sup>1</sup> where –
  - i. the person, at or before the time of death or serious injury, had contact (directly or indirectly) with a member of the Ministry of Defence Police acting in the exercise of their duties; and
  - ii. there is an indication that the contact may have caused (directly or indirectly) or contributed to the death or serious injury;
- b) any other circumstance in or in consequence of which –
  - i. a person has otherwise sustained serious injury at a time when the person was being detained or kept in custody by a member of the Ministry of Defence Police; or
  - ii. a member of the Ministry of Defence Police has used a firearm.<sup>2</sup>
- c) any circumstance in which a member of the Ministry of Defence Police has, while acting in the exercise of their duties, used any item to:
  - i. attempt to cause a member of the public a serious injury; or
  - ii. cause or attempt to cause a member of the public an injury which is not serious.
- d) any circumstance in which a member of the Ministry of Defence Police has, while acting in the exercise of their duties, used a straight, side handled or friction lock truncheon (sometimes known as a baton).

The Secretary of State confirms that the Chief Constable of the MDP has agreed to refer to the PIRC for investigation all ‘serious incidents’ as set out at paragraphs (a) and (b) above, immediately it becomes clear that the matter should be referred. The Chief Constable may also refer to PIRC for investigation those serious incidents set out at paragraphs (c) and (d).

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<sup>1</sup> The term ‘serious injury’ means a fracture, deep cut, deep laceration, injury causing damage to an internal organ or the impairment of any bodily function, or severe psychological trauma from which the victim’s recovery is expected to be difficult or impossible

<sup>2</sup> The definition of use of a Taser or Spray is ‘discharge’ of these articles. The definition of use of other firearms is ‘instances where the police have discharged a firearm or presented a firearm at a person’.

The PIRC will investigate any serious incident set out at paragraph (a) above in which the person concerned has died. On receipt of all other referrals the PIRC will decide whether or not to investigate the incident. Should the PIRC decline to investigate, the Commissioner will refer the matter back to the Chief Constable and may include, for his/her consideration, recommendations on how an investigation of the incident might be taken forward.

The PIRC must investigate certain kinds of incident if directed to do so by the Crown Office and Procurator Fiscal Service ("the COPFS"). These consist of investigations of deaths which the Procurator Fiscal is required to investigate under the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976; and circumstances in which there is an indication that a member of the Ministry of Defence Police may have committed an offence in Scotland. For the purposes of this Agreement, in respect of these incidents, the Chief Constable of the MDP is deemed to have made a request for the PIRC to investigate and report.

The Secretary of State and the Chief Constable will in respect of any serious incident referred to PIRC for investigation:

- produce in a form acceptable to the PIRC investigators, any document, record or other information which the PIRC investigators may require;
- permit the PIRC's investigators to –
  - enter any premises which are used by the Ministry of Defence Police within their power or authority to do so
  - inspect those premises and anything on those premises which PIRC investigators consider to be relevant to the investigation within their power or authority to do so; and
  - remove from those premises anything for which the Ministry of Defence Police have primary ownership which the PIRC investigators consider to be relevant to the investigation; and
- provide any other assistance to the PIRC that the PIRC investigators may reasonably require. This will include acting as intermediaries to secure access to sites on which Ministry of Defence officers are based.
- ensure that referrals to the PIRC do not delay any initial action by the Ministry of Defence Police in managing the scene of a live incident or securing or preserving evidence, and
- provide PIRC investigators with assistance at the scene of a live incident.

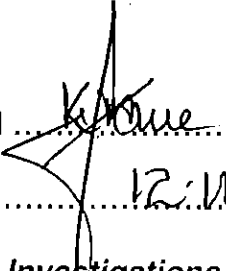
PIRC will, in respect of any incident referred to PIRC for investigation, ensure that any document, record or information provided by MDP to PIRC investigators are protected and handled in accordance with its security classifications and/or privacy markings.

#### 4. RESOLVING DISAGREEMENTS

The parties to this agreement are committed to working together in an environment of mutual trust and respect and in promoting a culture of openness. This approach should minimise the risk of disagreements. Should disagreements arise, they should be resolved amicably between the people concerned, and failing that through discussions between relevant senior managers.

#### 5. REVIEWING THE AGREEMENT

This agreement will be reviewed by the parties annually to ensure the parties are working within the agreed framework, and consider whether the framework needs to be revised to meet changing circumstances.

Signed .....  .....

Date..... 12.11.14 .....

*Police Investigations & Review Commissioner*

Signed .....  .....

Date..... 2 . xi . 14 .....

*For Secretary of State for Defence*





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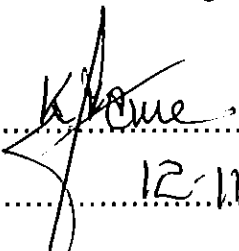
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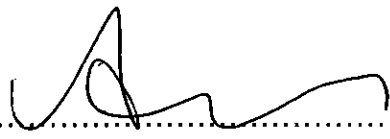
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Date..... 12.11.14 .....

*Police Investigations & Review Commissioner*

Signed .....  .....

Date..... 2.xi.14 .....

*For Secretary of State for Defence*

