



Police Investigations &
Review Commissioner



HM Revenue
& Customs

AGREEMENT

between

THE POLICE INVESTIGATIONS AND REVIEW COMMISSIONER

AND

HER MAJESTY'S REVENUE AND CUSTOMS

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Abbreviations

The following abbreviations are used in this document:

Abbreviation	Explanation
HMRC	Her Majesty's Revenue and Customs
The PIRC	The Police Investigations and Review Commissioner
COPFS	Crown Office and Procurator Fiscal Service
'the 2006 Act'	The Police Public Order and Criminal Justice (Scotland) Act 2006 Act
'the Order'	The Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013
ECHR	European Convention on Human Rights
GDPR	General Data Protection Regulations
DPA	Data Protection Act 2018

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1. Introduction

An 'Agreement' between:

- Her Majesty's Revenue and Customs (HMRC); and
- The Police Investigations and Review Commissioner (PIRC).

2. Purpose

- 2.1 This agreement allows the PIRC, where requested to do so by HMRC, to investigate and report on a serious incident involving HMRC in Scotland.
- 2.2 This agreement gives cognisance to the requirements of the European Convention on Human Rights (ECHR) and decisions of the European Court of Human Right (ECtHR) and the European Commissioner for Human Rights relating to the need for independent investigations of the actions of state agencies that engage Article 2 and 3 of ECHR, including serious incidents involving officers of HMRC exercising enforcement functions.
- 2.3 Under the Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013, a serious incident involving HMRC has the same meaning as a 'serious incident involving the police' in terms of Section 41B of the Police, Public Order and Criminal Justice (Scotland) Act 2006, except that 'a person serving with the police' means an employee of HMRC.
- 2.4 This agreement sets out procedures and processes for the respective parties and any member of their staff, to adhere to in respect of the provision, sharing and exchange of information or services to allow each organisation to fulfil their functions and where necessary, obligations under legislation. This agreement is in respect of the investigative functions of the PIRC.

3. Reviewing the Agreement

- 3.1 This agreement becomes effective on 30 October 2020.
- 3.2 The agreement will be reviewed every three years. Any of the parties may request a review at an earlier point if required. Interim reviews must be implemented should any there be any changes to the legislative framework within which the agreement operates.
- 3.3 Any party may seek to end this agreement giving 1 months' notice, in writing, to all other parties.

INVESTIGATIONS

4. PIRC Investigations

- 4.1 The primary legislative functions of the PIRC, HMRC are set out at Appendix A.
- 4.2 The PIRC will undertake either Crown directed or HMRC referred investigations.
- 4.3 Crown directed investigations will take place:
- When the PIRC is directed by the relevant procurator fiscal (of the Crown Office and Procurator Fiscal Service - COPFS) to investigate any circumstances in which there is an indication that a person employed by HMRC may have committed an offence.
 - When the PIRC is directed to investigate on behalf of the relevant procurator fiscal, the circumstances of any death involving a person employed by HMRC which the procurator fiscal is required to investigate under section 1 of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016.
- 4.4 HMRC referred investigations will take place when the PIRC is requested by the Chief Executive and First Permanent Secretary at HMRC to investigate and report on serious incidents involving Commissioners for and officers of HMRC carrying out enforcement functions.
- 4.5 HMRC agrees that it will refer to the PIRC all serious incidents involving the Commissioners for and officers of HMRC, with 'serious incident' having the same meaning as set out under sections 41B(1)(a) and (b) of the Police, Public Order and Criminal Justice (Scotland) Act 2006, but not as specified in regulations made under 41B(1)(c) of the same Act.¹
- 4.6 For the purpose of this agreement, 'enforcement functions' has the same meaning as in article 2 of the Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013². HMRC's enforcement functions also include any compliance action taken in respect of the functions of HMRC. Compliance action includes HMRC's civil compliance and criminal investigative activity.
- 4.7 This agreement does not apply to any matter that relates to the direction and control of HMRC by the Commissioners for HMRC. Any direction and control matter will not be subject to referral to the PIRC.
- 4.8 Cross border incidents, or incidents for which the PIRC's jurisdiction is in question, will be considered on a case by case basis upon referral to the PIRC by HMRC.

5. Referrals by HMRC to PIRC

¹ See Appendix A for the detailed provisions.

² See Appendix A.

- 5.1 The PIRC's on-call arrangements provide the appropriate prosecutor and HMRC with a call out response to urgent incidents on a 24-hour basis, 365 days a year.
- 5.2 Notification timescales are set out in Section 6.
- 5.3 Referrals by HMRC will be made through Internal Governance.
- 5.4 The referral to the PIRC will normally take the form of a briefing document outlining the full circumstances of the incident. The briefing document may be accompanied by statements or any other material considered appropriate by HMRC to allow the PIRC to gain an understanding of the incident.
- 5.5 Where insufficient information is available to allow the PIRC to determine whether or not an investigation is required, the PIRC may request additional material from HMRC to assist their assessment.
- 5.6 The PIRC will assess the referral from HMRC and decide whether to investigate the incident. The PIRC undertakes to complete its assessment within 7 working days of receipt of the referral (and any additional material provided) and notify HMRC of its decision.
- 5.8 Deaths in custody or deaths following HMRC contact may be referred verbally to the PIRC by HMRC to allow immediate decisions to be taken. A follow up briefing document and other relevant material will be provided to the PIRC as soon as practicable thereafter.

6. Notification Timescales

- 6.1 Notification timescales:
 - For a death or serious injury following HMRC contact and where it is considered that there may be contributable or causal factors notification will occur as soon after the incident as reasonably practicable.
 - For incidents outwith office hours, notification will occur within 24 hours of the incident or on the Monday following an incident occurring at a weekend.

7. COPFS directed investigations

- 7.1 The COPFS may direct the PIRC to undertake investigation of death in custody or death following HMRC contact.
- 7.2 HMRC will notify the PIRC of any death following HMRC contact, where it is considered that there may be contributable or causal factors. The COPFS may direct the PIRC to investigate the circumstances (Section 33A(b)(ii) of the 2006 Act) or if HMRC make the referral only, the PIRC may decide to investigate the circumstances under the 2013 Agreement.

- 7.3 Procedure for reporting and investigation between the COPFS and HMRC is set out in the 2009 Protocol for Reporting to the Procurator Fiscal and Subsequent Investigation of Allegations of Suspected Criminality in Scotland by HM Revenue and Customs Employees.

8. Misconduct

- 8.1 The PIRC has no powers or authority to undertake misconduct investigations against members of HMRC.
- 8.2 The PIRC recognises that where it identifies actions which may amount to misconduct or may be considered a performance matter and where there is scope for improvement(s), there is a legitimate public interest and expectation that such matters may be investigated or considered and ultimately improved by HMRC. Where the PIRC identifies potential breaches of acceptable standards of conduct or a performance issue(s) during any investigation, it will notify HMRC accordingly and provide relevant information to allow HMRC to examine the matter.

9. Co-operation, Assistance and the Provision of Information

- 9.1 Any officer of HMRC may make a disclosure to the PIRC for the purpose of enabling the PIRC to discharge their functions (including the function to investigate complaints as agreed with the Commissioners for Revenue and Customs). Article 3 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007 provides that any person may disclose information to the PIRC if, the disclosure is made for the purposes of the exercise or carrying out by the PIRC of any of the Commissioners functions within the meaning of the Act.
- 9.2 HMRC agree that their employees will, where requested to do so by the PIRC for the purposes of an investigation produce, in a form acceptable to the PIRC, any document, record or other information the PIRC may require.
- 9.3 The PIRC will issue a notice in the form of a letter to HMRC setting out the nature of the investigation and requesting information, documents or other records required for the purposes of the investigation.
- 9.4 Section 46 of 'the 2006 Act' allows for the disclosure of information by the PIRC. Information obtained by the Commissioner in connection with any of the Commissioners functions may be disclosed by the Commissioner to any public body or office-holder:
- (a) for any purpose connected with the carrying out of any of the Commissioner's functions; or
 - (b) for the purpose of enabling or assisting the public body or office-holder to carry out any function.

Nothing in this section requires or authorises the disclosure of any information relating to a particular investigation carried out by the Commissioner on the direction of the appropriate prosecutor in pursuance of paragraph (b) of section 33A (unless the appropriate prosecutor consents to such disclosure).

Witness Statements

- 9.5 Further to 9.2 above, where an employee of HMRC is a witness to the matter being investigated, the PIRC may request the witness to produce information in the form of a witness statement or have the information produced in the form of a witness statement taken from them by PIRC investigators.
- 9.6 HMRC may request any employee who is a witness in a PIRC investigation to co-operate with the investigation and provide any document, record or other information, which may include the provision of a witness statement or witness account.
- 9.7 Where an employee of HMRC refuses to co-operate with a PIRC investigation through the provision of information, the PIRC will notify HMRC accordingly for their consideration or appropriate action.
- 9.8 HMRC and the PIRC will work co-operatively in the obtaining (by the PIRC) of any witness testimony provided by any person identified as a potential witness in a PIRC investigation.
- 9.9 The PIRC will take cognisance of the needs of any person identified (to the PIRC) as having or who identifies that they have a '**relevant protected characteristic**' and put in place any necessary or reasonable adjustments in order to facilitate the gathering of their evidence.

10. Investigation Processes

- 10.1 The PIRC will notify HMRC in writing, of any decision to investigate or of the COPFS instruction to investigate an incident or criminal allegation.
- 10.2 The PIRC will make clear the status of any person involved in an investigation (witness or suspect). If a person's status changes, HMRC and the person will be notified accordingly.
- 10.3 The PIRC will appoint a member of its Investigations staff as the lead investigator for any investigation and notify HMRC of that person.
- 10.4 HMRC will appoint an appropriate 'single point of contact' (SPOC) for every PIRC investigation to facilitate the acquisition and provision of any document, record or other information to the PIRC. The SPOC will also be the conduit for facilitating any witness or other interviews of HMRC staff. Where a SPOC is on annual leave or absent during a PIRC investigation, they will identify another person to undertake their role.

10.5 For complex investigations it may be necessary to appoint additional SPOCs to facilitate the provision of information, etc.

11. PIRC Reports

11.1 PIRC produce different reports dependent on the type of investigation:

- Standard Prosecution Report (SPRs) – submitted to the COPFS
- Death investigation reports – submitted to the COPFS
- Investigation reports – submitted to HMRC.

Report Publication

11.2 The PIRC may publish:

- HMRC referred investigation reports;
- COPFS death reports, where the COPFS have decided that no Fatal Accident Inquiry will take place, and where agreement has been obtained from the COPFS prior to publication.

11.3 The PIRC will not publish:

- SPRs reports
- Death reports where an FAI is to be or has been held

11.4 The PIRC produces two types of report in respect of investigations referred by HMRC:

- Full reports; and
- Public Facing reports.

11.5 Full reports contain all the details of the PIRC investigation and are for consideration by HMRC. Full reports contain the names of any person relevant to the investigation. Full reports are not published.

11.6 Public facing reports are published and contain a summary of the investigation, findings and recommendations but do not normally identify any person.

11.7 Prior to the issuing of any report, the PIRC will submit a draft of the Full Report and Public Facing report to HMRC for factual accuracy checking. The PIRC will take cognisance of any identified error of fact, omission or additional representation made by HMRC before finalising the report. Where significant changes are requested, the PIRC will re-submit the draft report for a further factual accuracy check prior to publication.

11.8 Where HMRC have taken steps, implemented change or introduced revised policies and procedures as a result of their own internal review of the matter subject to investigation, the PIRC should be notified during the factual accuracy check and will make mention of these measures within their published report.

- 11.9 Where the PIRC identify any matter, during the course of any investigation, which may impact on public or staff safety and require immediate action by HMRC, the PIRC will notify HMRC at that time and not wait until the issuance of its report.
- 11.10 Prior to publication of a Public Facing report, the PIRC will provide HMRC with at least 48 hours' notice of the date and time of publication.

Findings and Recommendations

- 11.11 The PIRC's reports may contain Findings and Recommendations.
- 11.12 Recommendations are designed to address any issues identified as a result of the investigation. Recommendations may be specific to the investigation or to address wider issues identified as a result of the investigation.
- 11.13 HMRC agree to notify the PIRC within 3 months of receiving the report of any steps taken or measures implemented to address the Recommendations.
- 11.14 Where HMRC disagree with any Findings or Recommendations, they should identify this during consideration of the draft report and their view will be taken cognisance of by the PIRC prior to finalising the report.

COPFS directed Investigations

- 11.15 In terms of a COPFS directed investigation, the PIRC will submit its report to the appropriate prosecutor.
- 11.16 The PIRC will inform HMRC at the time it is directed by COPFS to investigate any matter, of the nature of the investigation.
- 11.17 The PIRC will notify HMRC when it submits an SPR to the COPFS. This notification will provide details of the alleged offences and the category of the submitted report in order for HMRC to consider their obligations under applicable conduct or discipline regulations.

12. Family Liaison

- 12.1 Following any death investigated by the PIRC, Family Liaison Officers (FLOs) may be deployed.
- 12.2 Responsibility for notification of the death to family members (immediately following the death) rests with the police. This is the case irrespective of the investigating agency.
- 12.3 PIRC FLOs may be deployed in the following instances:
- Death in custody,
 - Death following HMRC contact or
 - Investigations, not involving death, where the involvement of FLOs may enhance the gathering of evidence from family members and/or the provision of information and assistance.
- 12.4 The PIRC FLOs will take cognisance of the needs of any person identified (to the PIRC) as having or who identifies that they have a 'relevant protected characteristic' and put in place any necessary or reasonable adjustments in order to facilitate the gathering of their evidence or the provision of information to them.

13. Communications & the Media

- 13.1 HMRC and the PIRC have communication teams that manage liaison with the media.
- 13.2 Following any incident which involves HMRC and has been referred to the PIRC for investigation there may be media interest or media requests for information.
- 13.3 Each organisation recognises the demand that can arise for an immediate news release or statement following any incident.
- 13.4 In order to ensure consistency of the facts provided to the media, the communications teams of HMRC and the PIRC should, where feasible, liaise before issuing any statements to the media.
- 13.5 In any investigation instructed by the COPFS, the PIRC and HMRC will liaise with the COPFS communication team before making any media release.
- 13.6 Prior to the publication of any PIRC investigation report, an 'embargoed' copy of the report and associated media release will be provided to HMRC at least 48 hours in advance of publication for information purposes only.
- 13.7 The PIRC may publish an initial statement confirming they have been instructed by the COPFS to investigate a criminal matter but give no other details.
- 13.8 'Active' proceedings (i.e. following an arrest)

- Where the media intend to publish anything where proceedings are 'active' the PIRC and HMRC communication teams will ensure that the media are made aware of the 'active' status of the proceedings.
- Proceedings are 'active' on arrest, the granting of a warrant for arrest, the service of an indictment or complaint, or the grant of a warrant to cite.
- [Amended Guidelines](#) issued by the Lord Advocate for Police and the Media will be adhered to.

14. Signatories

Enactment: This Agreement comes into effect on 30 October 2020

Signed



Date **30 October 2020**

*Director General – Customer Compliance
On behalf of Her Majesty’s Revenue and Customs*

Signed



Date: **20 October 2020**

Police Investigations & Review Commissioner

Appendix A

Legislative Framework for the PIRC and HMRC

- A.1 Section 33A of the The Police Public Order and Criminal Justice (Scotland) Act 2006, as amended by the Police and Fire Reform (Scotland) Act 2012, outlines the general functions of the PIRC.
- A.2 Section 33A(b) of the 2006 Act, as modified by article 4 of the Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013 provides that the PIRC, where directed to do so by the appropriate prosecutor, (i) investigate any circumstances in which there is an indication that a person serving with HMRC may have committed an offence; (ii) investigate, on behalf of the relevant procurator fiscal, the circumstances of any death involving a person serving with the police which that procurator fiscal is required to investigate under Section 1 of the Inquiries into Fatal Accidents and Sudden Deaths (Scotland) Act 2016.
- A.3 Regulation 3(9) of the 2013 Order provides that the PIRC, where requested to do so by HMRC, investigate and report on certain serious incidents involving HMRC as described in Section 41B of the 2006 Act.
- A.4 Regulation 3(10) of the 2013 Order provides that a serious incident involving HMRC has the same meaning as a 'serious incident involving the police' in section 41B of the 2006 Act, except that 'a person serving with the police' means a member of HMRC staff but only when acting in the exercise of such enforcement functions' as specified in this agreement. Under this agreement, HMRC agrees that 'serious incident' has the same meaning as set out under sections 41B(1)(a) and (b) of the Police, Public Order and Criminal Justice (Scotland) Act 2006 only, but not as specified in regulations made under 41B(1)(c) of the same Act.
- A.5 Article 2 of the Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013 provide that enforcement functions include, in particular, reference to powers of: entry; search of persons or property; seizure or detention of property; arrest and detention of persons; the examination of persons or otherwise to obtain information (including powers to take fingerprints or to acquire other personal data).
- A.6 Section 41B(1)(a) and (b) of the 2006 Act provide that a serious incident is:
- (a) a circumstance in or in consequence of which a person has died or has sustained serious injury where the person, at or before the time of death or serious injury, had contact (directly or indirectly) with a person serving with the police acting in the execution of that person's duties; and there is an indication that the contact may have caused (directly or indirectly) or contributed to the death or serious injury; or,
 - (b) any other circumstance in or in consequence of which a person has otherwise sustained a serious injury at a time when the person was being detained or kept in custody by a person serving with the police; or a person serving with the police has

used a firearm or any other weapon of such description as the Scottish Ministers may by regulations specify.

A.7 Applicable legislation:

- The Human Rights Act 1998;
- The Police Public Order and Criminal Justice (Scotland) Act 2006 Act, (the 2006 Act);
- The Police and Fire Reform (Scotland) Act 2012 (the 2012 Act);
- The Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013 (the Order)
- The General Data Protection Regulations (GDPR);
- The Data Protection Act 2018 (DPA)

APPENDIX B

INITIAL OPERATIONAL RESPONSE

Stage 1

DEATH IN CUSTODY LINKED TO HMRC INVOLVEMENT/CONTACT

HMRC NOTIFY COPFS AND PIRC

COPFS ASSESS CIRCUMSTANCES AND DETERMINE MODE OF INVESTIGATION

THE PIRC TAKES NO ACTION PENDING INSTRUCTION FROM COPFS

Stage 2

PIRC INVESTIGATION

Police INVESTIGATION

FOLLOWING INITIAL INVESTIGATION COPFS DETERMINE THAT THEY HAVE NO FURTHER ROLE IN INCIDENT

COPFS NOTIFY THE PIRC OF THEIR DECISION

PIRC ASSESS AND DECIDE ON REQUIREMENT FOR PIRC INVESTIGATION

PIRC ASSUMES PRIMACY OVER INVESTIGATION INTO DEATH

Stage 3

AS DIRECTED BY COPFS, PIRC ASSUME PRIMACY OVER the INVESTIGATION INTO DEATH

Police CONDUCT INVESTIGATION AND REPORT TO COPFS

PIRC CONDUCT INVESTIGATION AND REPORT FINDINGS AND RECOMMENDATIONS TO HMRC

APPENDIX C

Death or Serious Injury Referrals

Stage 1

DEATH OR SERIOUS INJURY
DIRECTLY OR INDIRECTLY LINKED TO
HMRC INVOLVEMENT/CONTACT



Stage 2

HMRC NOTIFY PIRC



PIRC ASSESSES AND
DECIDE ON
REQUIREMENT FOR
INVESTIGATION



Stage 3

NO
INVESTIGATION
REQUIRED

INVESTIGATION
REQUIRED



REFER BACK TO
HMRC



PIRC CONDUCT
INVESTIGATION AND
REPORT FINDINGS AND
RECOMMENDATIONS TO
HMRC

SPECIMEN NOTIFICATION - HMRC Referral

xxxx
HMRC

Operation Name
PIRC Ref No

cc: xxxx PSD

Date

Dear xxxx

HMRC Referred Investigation – (Nature of Serious Incident)

On (date), HMRC referred the above incident to the Police Investigations and Review Commissioner (PIRC) in terms of the agreement made under the Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013, as a serious incident involving HMRC, within the meaning of a 'serious incident involving the police' in Section 41B of the Police, Public Order and Criminal Justice (Scotland) Act 2006.

I have decided that the PIRC will investigate this matter. The investigation will examine (terms of reference of the investigation).

I hereby give notice that the information or documents specified below should be produced to the PIRC within 7 days.

I understand that HMRC will appoint a single point of contact (SPOC) to facilitate the production of the specified information or documents and to deal with any subsequent requests for information.

The PIRC is required to give HMRC a reasonable time provide the requested information and, in this regard, should the appointed SPOC encounter any difficulties in complying with the timeframes for the production of information or documents, I will be obliged if they can inform the appointed PIRC investigator accordingly.

I have appointed xxxx Deputy Senior Investigator (DSI) with PIRC to undertake the investigation.

I will be obliged if you will arrange for the specified information and documents outlined hereafter to be submitted to xxxx Deputy Senior Investigator (DSI) by specific date.

Please note that the documents or other information should, where possible, be produced in the form specified.

Please provide documents in Microsoft Word format or Adobe pdf format, any audio material in WAV format, and ensure that any video material supplied can be viewed/played in Windows Media files.

Please provide all witness statements in MS Word format on standard statement forms. In this regard, please ensure that all appropriate sections of the statement form are completed with the relevant details of the witness, including rank, grade or occupation of witness, full citation address including post code for citation purposes, all relevant contact details, including landline telephone number, mobile number and email address where relevant.

Documents of Information specified:

1. Witness statements from all HMRC staff, involved in the incident from the time that the deceased xxxx was reported to be at xxxx until he was pronounced life extinct at xxxx;
2. Copies of witness statements obtained from any other witnesses held by HMRC;
3. Copies of any records held by HMRC in relation to the deceased xxxx, including any records from the databases, criminal records, etc.;

HMRC may consider or be aware of other documents or information which are connected to this incident and which have not been initially specified above. I would be obliged if you can identify any such document in order that I can provide HMRC with a request to provide these documents or information.

Where possible all documents should be transmitted electronically to the following secure email address referrals@pirc.gov.scot The availability of any hard copy material should be notified to Investigator xxxx who will arrange collection.

Investigator xxxx can be contacted on xxxx, by mobile telephone number on xxxx or by email on xxxx@pirc.scot.gov

Should you have any queries in respect of this matter please do not hesitate to contact me.

Yours sincerely

Head of Investigations

SPECIMEN NOTIFICATION - Notification that a matter will not be Investigated

Name
HMRC

cc: xxxx PSD

Date

Dear,

HMRC Referral – (Nature of Serious Incident)

Thank you for your referral of **** on **** in respect of the above incident.

Having considered the circumstances and the information provided, I have concluded that we will not be carrying out an investigation into this matter at this time.

Should you subsequently become aware of any additional information regarding this incident please notify me accordingly.

Yours sincerely,

Head of Investigations

SPECIMEN – Request for Factual Accuracy Check

XXXX
HMRC

Operation Name
PIRC Ref No

cc: xxxx PSD

Date

Dear XXXX

[INSERT NATURE AND DATE OF INCIDENT]

I attach for your consideration a draft report of the PIRC investigation in respect of the incident on [INSERT] in [INSERT] where [INSERT].

I will be obliged if you can arrange for the report to be checked for factual accuracy and notify me within 5 working days of any errors of fact that you consider require amendment.

Following your response I will issue the final report to HMRC. A public facing report will be / will not be published on the PIRC website.

Yours sincerely

Head of Investigations