



Police Investigations &  
Review Commissioner



**MEMORANDUM OF UNDERSTANDING**

**between**

**THE POLICE INVESTIGATIONS AND REVIEW COMMISSIONER**

**AND**

**THE SCOTTISH PRISON SERVICE**

Document Details	
<b>Document Title</b>	MoU effective <i>add date here</i>
<b>Version</b>	Final V1
<b>Date of Issue</b>	<i>19 February 2020</i>
<b>Author</b>	Edward Miles
<b>Status</b>	Final

## Abbreviations

The following abbreviations are used in this document:

Abbreviation	Explanation
The SPS	The Scottish Prison Service
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
MoU	Memorandum of Understanding

## Table of Contents

1.	Introduction	Page 4
2.	Purpose	Page 4
3.	Reviewing the MoU	Page 4
4.	Resolving Disagreements	Page 4
<u>Investigations</u>		
5.	Police Investigation & Review Commissioner Investigations	Page 5
6.	Statutory Role of the SPS	Page 6
7.	Powers of the Police Investigation & Review Commissioner	Page 6
8.	A Framework for Collaborative Working	Page 7
9.	Communications & the Media	Page 8
10.	Signatories	Page 9
<u>Appendix</u>		
A.	Legislative Framework for the PIRC	Page 10

## **1. Introduction**

An 'MoU' between:

- The Police Investigations and Review Commissioner, ('the PIRC'); and
- The Scottish Prison Service (SPS).

## **2. Purpose**

- 2.1 This MoU 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 the Public Order and Criminal Justice (Scotland) Act 2006 as amended by the Police and Fire Reform (Scotland) Act 2012. This agreement is in respect of the investigative functions of the PIRC.
- 2.2 This MoU 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, and the commitment of both organisations to this.

## **3. Reviewing the MoU**

- 3.1 This MoU becomes effective on 15 February 2021.
- 3.2 The MoU 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 there be any changes to the legislative framework within which the MoU operates.
- 3.3 Any party may seek to end this MoU giving one month's notice, in writing, to the other party.

## **4. Resolving Disagreements**

The PIRC and SPS 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 discussion between relevant senior managers.

# INVESTIGATIONS

## 5 PIRC Investigations

5.1 The primary legislative functions of the PIRC are set out at Appendix A.

5.2 The PIRC will undertake an investigation in the following circumstances:

5.2.1 COPFS directed investigations:

- When directed to do so by an appropriate prosecutor (of the COPFS) to investigate any circumstances in which there is an indication that a person serving with the police may have committed an offence.
- To investigate on behalf of the relevant procurator fiscal, the circumstances of any death involving a person serving with the police which that prosecutor is required to investigate under Section 1 of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 - death in police custody or following police contact

5.2.2 Police referred investigations:

- Where requested to do so by the Chief Constable to investigate and report on any serious incident involving the police:

(a) a circumstance in or in consequence of which a person has died or has sustained serious injury where:

(i) 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

(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 a serious injury at a time when the person was being detained or kept in custody by a person serving with the police; or

(ii) 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.

5.3 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.

## **6. Statutory Role of the Scottish Prison Service**

6.1 The Scottish Prison Service (SPS) is an Executive Agency of Scottish Government and was established in 1993. It is responsible for those who are committed to its care by the Courts and is accountable to the Scottish Parliament for the delivery of custodial care in accord with The Prisons and Young Offenders Institutions (Scotland) Rules 2011. SPS has a vision of:

- contributing to make Scotland safer and stronger;
- unlocking Potential; and
- transforming Lives.

6.2 The mission of SPS is to provide services that help to transform the lives of people in its care so they can fulfil their potential and become responsible citizens.

In delivering its vision and mission, the SPS operating task is to help to protect the public and reduce reoffending through the delivery of safe and secure custodial services that empower offenders to take responsibility and to fulfil their potential.

SPS currently has 13 publicly managed prisons and 2 privately managed prisons.

## **7. Powers of the Police Investigation & Review Commissioner**

7.1 The Act invests PIRC investigators with 'all the powers and privileges of a constable throughout Scotland' while conducting investigations on behalf of the Commissioner. Supporting regulations make a number of requirements of the Chief Constable of the Police Service of Scotland (PS) and the Scottish Police Authority (SPA).

These include:

- producing, in a form acceptable to the Commissioner, any document, record or other information the Commissioner may require; and
- providing such other assistance as the Commissioner may reasonably require.

## 8. A Framework for Collaborative Working


- 8.1 The PIRC and the SPS have distinct responsibilities but there are key areas where their interests may overlap, namely when there has been:
- a death in police custody, following which the Procurator Fiscal may direct the PIRC to investigate;
  - a serious injury in police custody, following which the Chief Constable must refer the circumstances to the PIRC who may decide to conduct an investigation;
  - a death following police contact, following which the Procurator Fiscal may direct the PIRC to investigate;
  - a serious injury following police contact, following which the Chief Constable of Police Service of Scotland must refer the circumstances to the PIRC who may decide to conduct an investigation.
- 8.2 The SPS may have had contact with any of the individuals mentioned above prior, or subsequent to, the matter under investigation. The Procurator Fiscal or the PIRC may determine that it would be useful to the PIRC investigation to interview relevant members of the SPS staff or to view relevant documentation or other evidence held by the SPS. The SPS is not bound by regulations to assist with the investigation, however, it is fully committed to ECHR and to the spirit of independent scrutiny intended by the Act. Therefore the SPS agrees to support investigations by:
- providing any document, record or other information requested by the PIRC investigators; and
  - providing any other assistance that the PIRC investigators may reasonably require. This will include, where appropriate, making relevant staff or prisoners available for interview, providing access to vehicles used for the transport of prisoners and the provision of evidence if requested.
- 8.3 The PIRC undertakes to request only documentation that is considered necessary for the purposes of the investigation and will request assistance only when relevant to the investigation. The PIRC will securely store any information or evidence received and treat it as confidential within the parameters of legal responsibilities. The SPS recognises that such information may be disclosed to the COPFS. A separate Information Sharing Agreement has been produced
- 8.4 The PIRC further undertakes that PIRC investigators will contact the holding establishment of any prisoner with whom they wish to interview to gain the Governor's or other appropriate permission. The PIRC's investigators will be in possession of the appropriate PIRC identification when engaging with the SPS.

## **9. Communications & the Media**

- 9.1 The SPS and the PIRC have communication teams that manage liaison with the media.
- 9.2 Each organisation recognises the demand that can arise for an immediate news release or statement following any incident.
- 9.3 In order to ensure consistency of the facts provided to the media, the communications teams of the SPS and the PIRC should, where feasible, liaise before issuing any statements to the media.



## 10. Signatories

Signed 

Date 15 February 2021

***Police Investigations & Review Commissioner***

Signed 

Date 9 February 2021

***Chief Executive, Scottish Prison Service***

## Appendix A

### Legislative Framework for the PIRC

- 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 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.4 **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)