



Police Investigations &
Review Commissioner



AGREEMENT

between

THE POLICE INVESTIGATIONS & REVIEW COMMISSIONER

AND

THE NATIONAL CRIME AGENCY

OFFICIAL-SENSITIVE

Document Details	
Document Title	NCA – PIRC Agreement effective <i>add date here</i>
Version	V 1
Date of Issue	30 April 2021
Author	PIRC

Abbreviations

The following abbreviations are used in this document:

Abbreviation	Explanation
DG	Director General of the National Crime Agency
NCA	National Crime Agency
NCA officers	The DG, permanently appointed NCA officers; and persons on secondment to the NCA who are serving as NCA officers
Participants	The PIRC and the DG
The COPFS	The Crown Office and Procurator Fiscal Service
The PIRC	The Police Investigations and Review Commissioner
ECHR	European Convention on Human Rights
GDPR	General Data Protection Regulations
'the 2006 Act'	The Police Public Order and Criminal Justice (Scotland) Act 2006 Act
'the 2007 Order'	The Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007
'the 2012 Act'	Police and Fire Reform Act 2012
'the 2013 Order'	The Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013
CCA 2013	Crime and Courts Act 2013
'the 2016 Act'	Criminal Justice (Scotland) Act 2016
DPA Act 2018	Data Protection Act
SPR	Standard Prosecution Report
CAAPD	Criminal Allegations Against The Police Division
SFIU	Scottish Fatalities Investigation Unit

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1. Introduction

1.1 This Agreement is made between:

- The Director General (DG) of the National Crime Agency (NCA) a non-ministerial department which has been established as a Crown body pursuant to Part 1 of the Crime and Courts Act 2013. and
- The Police Investigations and Review Commissioner; (the PIRC).

2. Purpose

- 2.1 The purpose of this Agreement is to set out how the PIRC will undertake independent investigations at the request of the DG into serious incidents involving NCA officers exercising NCA functions in Scotland. It is not intended to be legally binding; instead it provides a framework pursuant to which the parties will cooperate in relation to relevant serious incidents.
- 2.2 This agreement allows the PIRC, where requested to do so by the DG, to investigate and report on a serious incident involving the NCA in Scotland and provides a framework for the parties to follow.
- 2.3 This agreement gives cognisance to the requirements of the European Convention on Human Rights (ECHR) and decisions of the European Court of Human Rights (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 the ECHR, including serious incidents involving officers of the NCA exercising any of the principal activities.
- 2.4 This agreement is made pursuant to Article 3(7) of the Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013. Under that order, a serious incident involving the NCA has the same meaning as a 'serious incident involving the police' in Section 41B of the Police, Public Order and Criminal Justice (Scotland) Act 2006, except that 'a person serving with the police' means an officer of the NCA. The NCA is also empowered to enter cooperation arrangements with any other person for the purpose of discharging its functions pursuant to Schedule 3, Part 1 of the CCA 2013.
- 2.5 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.
- 2.6 The Parties believe that the arrangements set out in this agreement will be necessary and proportionate to the purpose of the agreement – the proper and effective investigation of serious incidents involving NCA officers in Scotland.
- 2.7 It should be emphasised that this updated Agreement only relates to the investigative functions of the PIRC. A separate Agreement relating to the Review functions of the PIRC, including revised Statutory Guidance, will be forwarded at a future date.

3. Reviewing the Agreement

- 3.1 This agreement becomes effective on 30 April 2021.
- 3.2 The agreement will be reviewed after three years. Any of the parties may request a review in writing and interim reviews must be implemented should there be any amendments to the existing legislative framework within which the agreement operates. Formal variations to the agreement may only be made in writing by both parties.
- 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 and the DG are set out at Appendix A. ¹
- 4.2 The PIRC will undertake either COPFS directed or NCA referred investigations.
- 4.3 COPFS 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 an officer of the NCA 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 an officer of the NCA 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 NCA referred investigations will take place when the PIRC is requested by the DG to investigate and report on serious incidents involving an officer of the NCA carrying out NCA functions; in 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 NCA 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 NCA; or
 - (ii) a person serving with the NCA has used a firearm or any other weapon of such description as the Scottish Ministers may by regulations specify.

- 4.5 The DG agrees to refer to the PIRC all serious incidents involving any officer of the NCA exercising NCA functions in Scotland, 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 The NCA's principal functions set out in section 1 of the CCA 2013 are:
- i. a "crime-reduction function" of securing that efficient and effective activities to combat organised crime and serious crime are carried out (whether by the NCA, other law enforcement agencies, or other persons); and
 - ii. a "criminal-Intelligence function".
- 4.7 The purposes of this Agreement "Activities" in terms of Paragraph 6(1) and 6(2) of Schedule 1 to the 2013 Act should be defined as follows:
- (1) "any action or deployment undertaken for the purpose of the prevention, detection or investigation of crime, whether the NCA is acting on its own behalf or in support of another law enforcement agency."
- 4.8 This agreement does not apply to any matter that relates to the direction and control of the NCA by the DG. Any direction and control matter will not be subject to referral to the PIRC.
- 4.9 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 the DG.
- 4.10 The term 'Serious injury' includes (but is not limited to) 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.
- 5. Referrals by the DG to the PIRC**
- 5.1 The PIRC's on-call arrangements provides the appropriate prosecutor and policing body with a call out response to urgent incidents on a 24 hour basis, 365 days a year. The arrangements are set out at Appendix D.
- 5.2 Notification timescales are set out in Section 6.
- 5.3 Referrals by the DG will be made through PSU.
- 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, CCTV or any other material considered appropriate by the DG to allow the PIRC to gain an understanding of the incident.

¹ See Appendix A for the detailed provisions.

² Crime and courts Act 2013 Sec 1(4) and (5)

- 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 the NCA to assist their assessment.
- 5.6 The PIRC will assess the referral from the NCA 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 the NCA of its decision.
- 5.7 Deaths and serious injury in NCA custody, deaths following NCA contact or discharge of conventional firearms leading to injury may be referred verbally to the PIRC by the NCA (PSU) 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.
- 5.8 Where the NCA instigates Post Incident Procedures (PIP) following a death or serious injury, the PIRC will be notified immediately of the decision by PSU and afforded the opportunity to attend the incident and PIP suite. Such a notification will be considered a referral to the PIRC. Police Scotland would have primacy in any PIP involving a death in a Police Scotland custody suite.
- 5.9 Where the NCA refers a **matter** which arises from a 'Whistle-blower', the status of the Whistle-blower will be clearly identified to the PIRC and all the rights and protection enshrined in legislation will be afforded by the PIRC, to ensure a consistent approach. The NCA will only name a whistle-blower where identification is permissible by law.

6. Notification Timescales

6.1 Notification timescales:

- For a death or serious injury following contact with the NCA 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 out with office hours, notification will occur within 24 hours of the incident or on the Monday following an incident occurring at a weekend.
- For incidents, including use of Taser, notification will occur within 24 hours of PSU being informed 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 a death in custody or death following NCA contact.

- 7.2 The NCA will notify the PIRC of any death following NCA 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 the DG makes the referral only, the PIRC may decide to investigate the circumstances under the '2013 Order'
- 7.3 The procedure for reporting and investigation between the COPFS and the NCA is subject of a separate agreement between those parties.

8. Misconduct

- 8.1 The PIRC has no powers or authority to undertake misconduct investigations against an NCA officer.
- 8.2 The PIRC recognises that where it identifies actions which may breach the Standards of Professional Behaviour 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 will be investigated or considered and ultimately improved. Where the PIRC identifies potential breaches of Standards of Professional Behaviour or a performance issue(s) during any investigation, it will notify the NCA accordingly and provide all relevant information to allow the NCA to examine the matter.

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

- 9.1 Any officer of the NCA may make a disclosure to the PIRC for the purpose of enabling the PIRC to discharge their functions as agreed with the DG. Article 3(1) 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. The NCA is also empowered to disclose information obtained in connection with its functions for any permitted purpose under the CCA 2013 (section 7), subject to the statutory restrictions on disclosure outlined in Schedule 7.
- 9.2 The DG agrees that any NCA officer where requested by the Commissioner, for the purposes of an investigation produce in a form acceptable to the Commissioner, any document, record or other information the Commissioner may require to the extent that such disclosure is permissible by law;
- 9.3 The Commissioner will issue a notice in the form of a letter to the NCA 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 Commissioner's functions may be disclosed by the Commissioner to any public body or office-holder:

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(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).

- 9.5 The PIRC investigators are vetted to SC level and others to DV Level. The PIRC will ensure that all documents, records or other information are examined only by staff vetted to do so. PIRC investigators do not fall into a category of person allowed to access 'raw' material which would include knowledge of who was intercepted. The Legislation enables the PIRC where necessary for the purposes of an investigation to access sanitised intelligence where the origin is not disclosed to the PIRC.
- 9.6 The legislation does not differentiate 'classes' of material which may be required by or provided to the PIRC to allow it to investigate any matter.
- 9.7 The provision of sensitive and intelligence material gives rise to additional concerns regarding its use, storage and handling. The PIRC recognise the fundamental requirement to manage intelligence material appropriately, particularly that arising from secret or sensitive sources and give due weight to any concerns expressed by the NCA in respect of such material and sources.

Witness Statements

- 9.8 Further to 9.2 above, where an NCA officer is a witness to the matter being investigated, the PIRC may request them 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.
- 9.9 The NCA may request any NCA officer, 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.
- 9.10 Where an NCA officer, who PIRC considers to be a witness, refuses to co-operate with a PIRC investigation through the provision of information, the PIRC will notify the DG accordingly for their consideration or appropriate action.
- 9.11 The NCA 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.
- 9.12 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

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place any necessary or reasonable adjustments in order to facilitate the gathering of their evidence.

10. Investigation Processes

- 10.1 The PIRC will notify the DG, in writing, of any decision to investigate or of the COPFS instruction to investigate an incident or criminal allegation.
- 10.2 The PIRC will also notify the Head of PSU and any other relevant PSU officer the decision or instruction to investigate.
- 10.3 The PIRC will appoint a member of its Investigations staff as the lead investigator for any investigation and notify the NCA.
- 10.4 The PIRC will make clear the status of any person involved in an investigation (witness or suspect). If a person's status changes, the NCA and the person will be notified accordingly.
- 10.5 The NCA agree to 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 interview of an NCA officer. Where a SPOC is on annual leave or absent during a PIRC investigation, they will identify another person to undertake their role.
- 10.6 For complex investigations, involving more than one business area of the NCA 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
- CAAPD reports – submitted to the COPFS;
- Death investigation reports – submitted to the COPFS;
- Investigation reports – submitted to the DG.

Report Publication

11.2 The PIRC may publish:

- The NCA 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; and

11.3 The PIRC will not publish:

- SPRs or CAAPD 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 the NCA:
- Full reports; and
 - Public Facing reports.
- 11.5 Full reports contain all the details of the PIRC investigation and are for consideration by the NCA. 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 the NCA for factual accuracy checking. The PIRC will take cognisance of any identified error of fact, omission or additional representation made by the NCA 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 the NCA has 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 the public, or an NCA officer's safety and require immediate action by the NCA the PIRC will notify them 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 the NCA with at least 48 hours' notice of the date and time of publication.
- 11.11 The PIRC will issue its reports to:
- Full Report – The DG; via the Head of PSU
 - Public Report –The DG; via the Head of PSU.
- 11.12 The PIRC may issue its reports to;
- Public Report – COPFS and HMICS

Findings and Recommendations

- 11.13 The PIRC's reports may contain Findings and Recommendations.
- 11.14 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.
- 11.15 The NCA will notify the PIRC within 3 months of receiving the report of any steps taken or measures implemented to address the Recommendations.

- 11.16 Where the DG disagrees 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

- 11.17 In terms of a COPFS directed investigation, the PIRC will submit its report to the appropriate prosecutor.
- 11.18 The PIRC will notify the NCA at the time it is directed by COPFS to investigate any matter, of the nature of the investigation.
- 11.19 Where the PIRC are directed to undertake a criminal investigation, it will notify the NCA of the identity of any NCA officer who are subject to investigation and the nature of the allegations. This is to allow the NCA to consider implementing certain decisions to mitigate the risk to the public, the NCA officer and the NCA. This may include 'Duty Restrictions' or, suspension from duty. It will also allow for other measures, including welfare considerations, for an NCA officer. The NCA will notify the NCA officer that they are subject to a criminal investigation by the PIRC.
- 11.20 The PIRC will notify the NCA when it submits an SPR or CAAPD report to the COPFS. This notification will provide details of the alleged offences and the category of the submitted report in order for the NCA 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 who the investigating agency will be.
- 12.3 PIRC FLOs may be deployed in the following instances:
- Death in custody,
 - Death following contact with the NCA; or
 - In 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 Where Police Scotland has deployed FLOs following a death, as the initial investigating agency, and there is a later decision that the investigation should be undertaken by the PIRC, responsibility for family liaison should transfer to the PIRC FLOs. Taking cognisance of the need to effectively support the family, it is imperative that during the initial decision making stage and any handover there are no gaps in the provision of support to the family. All decisions will be documented. This will be covered and agreed within any initial strategy meeting or discussions.

- 12.5 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. Suspect Interviews and Arrest procedures

- 13.1 PIRC investigators have all the powers and privileges of a constable when undertaking any investigation on behalf of the Commissioner.
- 13.2 During the course of a criminal investigation the PIRC investigators may require to interview an NCA officer as a suspect.
- 13.3 The PIRC will notify PSU of any intention to interview an NCA officer as a suspect.
- 13.4 The PIRC will not normally arrest a member of the NCA at their home or place of work, unless in specific circumstances this is deemed appropriate.
- 13.5 PSU will notify the NCA officer that they are to be subject to a suspect interview and invite them to present themselves at a suitably identified time and date, at an identified police station, for the purposes of interview.
- 13.6 Where it is practicable to do so, PSU will appoint a dedicated liaison officer to any PIRC investigation where an NCA officer is to be subject to a suspect interview. The role of that PSU officer where possible will be to facilitate all aspects of the PIRC interview including, identification of suitable premises, access to premises, video and audio recording equipment and briefing of custody staff. For practical purposes a PSU officer from Police Scotland could perform this function.
- 13.7 The PIRC undertakes, insofar as may be practicable, that if any NCA officer attend for interview under caution or are arrested (not officially accused) [Suspect], their attendance / arrest will where practicable be arranged by PSU.
- 13.8 Where it is necessary to arrest an NCA officer, other than a person who has attended a pre-arranged suspect interview, PSU where practicable staff will accompany PIRC investigators at the arrest.
- 13.9 The PIRC arrests will be planned in advance and the appropriate Criminal Justice Services Division (CJSD) Area Commander from Police Scotland (PS) will be alerted by PSU staff, allowing the Cluster Inspector (CI) and the relevant Custody Review Inspector (CRI) and Force Custody Inspector (FCI) to be informed.
- 13.10 In the event that a spontaneous arrest has to be presented by the PIRC at a PS custody suite then the CI, Area Commander or on call CJSD Chief Inspector and the on duty CRI and FCI should be notified immediately. When a PIRC arrest is within a custody suite the relevant on custody supervisors will require to consider the wider impact on the routine running of the custody suite and to consider any protections or limitations that require to be put in place.

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- 13.11 Care and Welfare - whilst an NCA officer is under arrest in custody, responsibility for the individual's care and welfare rests with Police Scotland.
- 13.12 The PIRC will inform the custody supervisor at the custody suite of the identity of the nominated PIRC investigator who will be responsible for custody decisions relating to the investigation.
- 13.13 The National Custody System (NCS) will remain the recording platform for all matters relating to the care and welfare of an individual whilst they are in custody. The PIRC staff are not NCS trained and will have no access to the system.
- 13.14 Police Scotland custody staff will record on the NCS all required information other than the rationale for the PIRC custody decisions which will be recorded as '*Decision taken by the PIRC and recorded on the PIRC Policy File*'.
- 13.15 A PIRC Deputy Senior Investigator (DSI) (or above) will undertake all custody related decisions in respect of:
- Authorisation for keeping in custody
 - Custody Review
 - Investigative Liberation – release on conditions
 - Modification or removal of conditions
 - Release on Undertaking
 - Rights to have a solicitor present
 - Right to have intimation sent to another person
 - Right to have intimation sent to a solicitor
 - Right to consult with a solicitor
- 13.16 The 6 hour review process and any extension beyond 12 hours are duties that are normally completed by the CRI. A PIRC Senior Investigator (SI) will undertake this role and will consult with the CRI to ensure the decision is recorded on NCS.
- 13.17 Where a PIRC DSI authorises the taking of Criminal Justice (CJ) samples these will be taken by Police Scotland staff.
- 13.18 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 notify Police Scotland custody staff /PSU of any necessary or reasonable adjustments required to be put in place

14. Information Management and data protection obligations

- 14.1 The parties acknowledge that information exchanged pursuant to this agreement will include personal data, as defined by the GDPR and DPA. The parties will only use and process such data only for the purpose set out in this agreement and only in accordance with all applicable law, and in particular the GDPR/DPA.
- 14.2 The parties will not use the data for any purpose other than as set out in this agreement, except with the prior consent of the other party.

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- 14.3 The parties understands that once it is in receipt of the other's data, it, will be a data controller for that data and will be responsible for complying with the principles of the DPA in relation to its further processing of that data. The data controller will be responsible and liable for any subsequent data loss or breach of the data protection principles resulting from the processing by them. In the event of any data loss or other breach of the data protection principles, the data controller will promptly notify the other party and confirm next steps. The relevant data controller will be responsible for any action necessary to resolve or notify the incident to the Information Commissioner. If either party receives a data subject access request which may include personal data derived from the other, they shall immediately notify the other party and work with that party in relation to the response
- 14.4 Where data consists of personal data, the data controller will only transfer the data on a case-by-case basis outside the EEA where it is in the substantial public interest of the United Kingdom or where the recipient provides adequate safeguards. Any disclosure to an overseas authority which is outside the EEA will be made in accordance with the FCO Overseas Security and Justice Assistance Guidance.
- 14.5 The parties will only retain personal data for the period necessary to fulfil the purpose set out in this agreement. Where there is no longer a need to retain personal data, the data shall be securely deleted in line with the parties' respective retention schedules.
- 14.6 The parties will take appropriate security, technical and organisational measures to protect the data from unauthorised access and from any loss or damage.
- 14.7 The NCA is not a public authority for the purposes of the Freedom of Information Act 2000. The NCA will not disclose any information pursuant to that legislation. If any requests are made to the PIRC and comprise data originating from the NCA, the NCA should be informed immediately.

15. Communications & the Media

- 15.1 The NCA and the PIRC have communication teams that manage liaison with the media.
- 15.2 Following any incident which involves a matter falling within the scope of the 2006 Act, 'the 2013 Regulations', whereby the NCA agree to refer a matter to the PIRC for consideration of investigation, or an instruction by the COPFS to the PIRC to investigate any matter, there may be media interest or media requests for information.
- 15.3 Each organisation recognises the demand that can arise for an immediate news release or statement following any incident.
- 15.4 In order to ensure consistency of the facts provided to the media, the communications teams of the NCA and the PIRC should, where feasible, liaise before issuing statements to the media.
- 15.5 In any investigation instructed by the COPFS, the PIRC and the NCA will liaise with the COPFS communication team before making any media release.

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- 15.6 Prior to the publication of any PIRC investigation report, an 'embargoed' copy of the report and associated media release will be provided to the NCA at least 48 hours in advance of publication for information purposes only.
- 15.7 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.
- 15.8 Active' proceedings (i.e. following an arrest)
- Where the media intend to publish anything where proceedings are 'active' the PIRC and the NCA 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.

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16. Signatories

Enactment: This Agreement comes into effect on 30 April 2021

Signed 
Date 30 April 2021

Police Investigations & Review Commissioner

Signed 
Date 13 July 2021

Director General (Operations) of the National Crime Agency

Appendix A

Legislative Framework for the PIRC and the Director General

The PIRC

- A.1 Section 33A of 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 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 the police 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 By virtue of the Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013 ('2013 Order'), for the purposes of section 33A(b) of the 2006 Act, a person serving with the police means an NCA officer.
- A.4 In terms of Reg 3(7) of the '2013 Order' the PIRC and the Secretary of State may enter into an agreement for the Commissioner to investigate and report, where requested to do so by the DG of the NCA, on any serious incident involving the NCA.
- A.5 In terms of Reg 3(8) of the '2013 Order, a "serious incident involving the "NCA" 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 an NCA officer.
- A.6 A "serious incident involving the police" which the Commissioner may investigate in pursuance of paragraph (c) of section 33A is —
- (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; or

(c) any other circumstance involving the Authority, the Police Service or a person serving with the police as may be specified in regulations made by the Scottish Ministers.

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 Investigations and Review Commissioner (Investigations Procedure, Serious Incidents and Specified Weapons) Regulations 2013 (the PIRC Regulations);
- The Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013 (the Order)
- The Crime and Courts Act 2013
- The Criminal Justice (Scotland) Act 2016
- The General Data Protection Regulations (GDPR);
- The Data Protection Act 2018 (DPA)
- Investigatory Powers Act 2016

A.8 Section 33A(c) of the 2006 Act provides that the PIRC, where requested to do so by the DG investigate and report on certain serious incidents involving the police.

A.9 Section 33A(d) of the 2006 Act provides that the PIRC may investigate other matters relating to the DG where the Commissioner considers that it would be in the public interest to do so.

Functions of the NCA

A.10 The NCA's principal functions set out in the Crime and Courts Act 2013 ("CCA") are:

A.11 (i) a "crime-reduction function" of securing that efficient and effective activities to combat organised crime and serious crime are carried out (whether by the NCA, other law enforcement agencies, or other persons); and

(ii) a "criminal-Intelligence function".

A.12. This gives the NCA a responsibility to lead the overall effort to tackle serious crime and organised crime, as well as a set of specific statutory and national responsibilities in conjunction with UK law enforcement.

A.13. The NCA will ensure that the activities of NCA officers are aligned with the aims and outcomes of Scotland's Serious Organised Crime Strategy, (published June 2015).

A.14. The NCA shares information pursuant to its section 7 CCA statutory gateway and subject to the statutory restrictions set out in schedule 7 to the CCA 2013.

APPENDIX B

INITIAL OPERATIONAL RESPONSE

Stage 1

DEATH DIRECTLY OR INDIRECTLY LINKED TO NCA INVOLVEMENT/CONTACT



NCA NOTIFY COPFS AND PIRC



COPFS ASSESS CIRCUMSTANCES AND DETERMINE MODE OF INVESTIGATION



THE PIRC TAKES NO ACTION PENDING UPDATE 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



Stage 3

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

POLICE CONDUCT INVESTIGATION AND REPORT TO COPFS

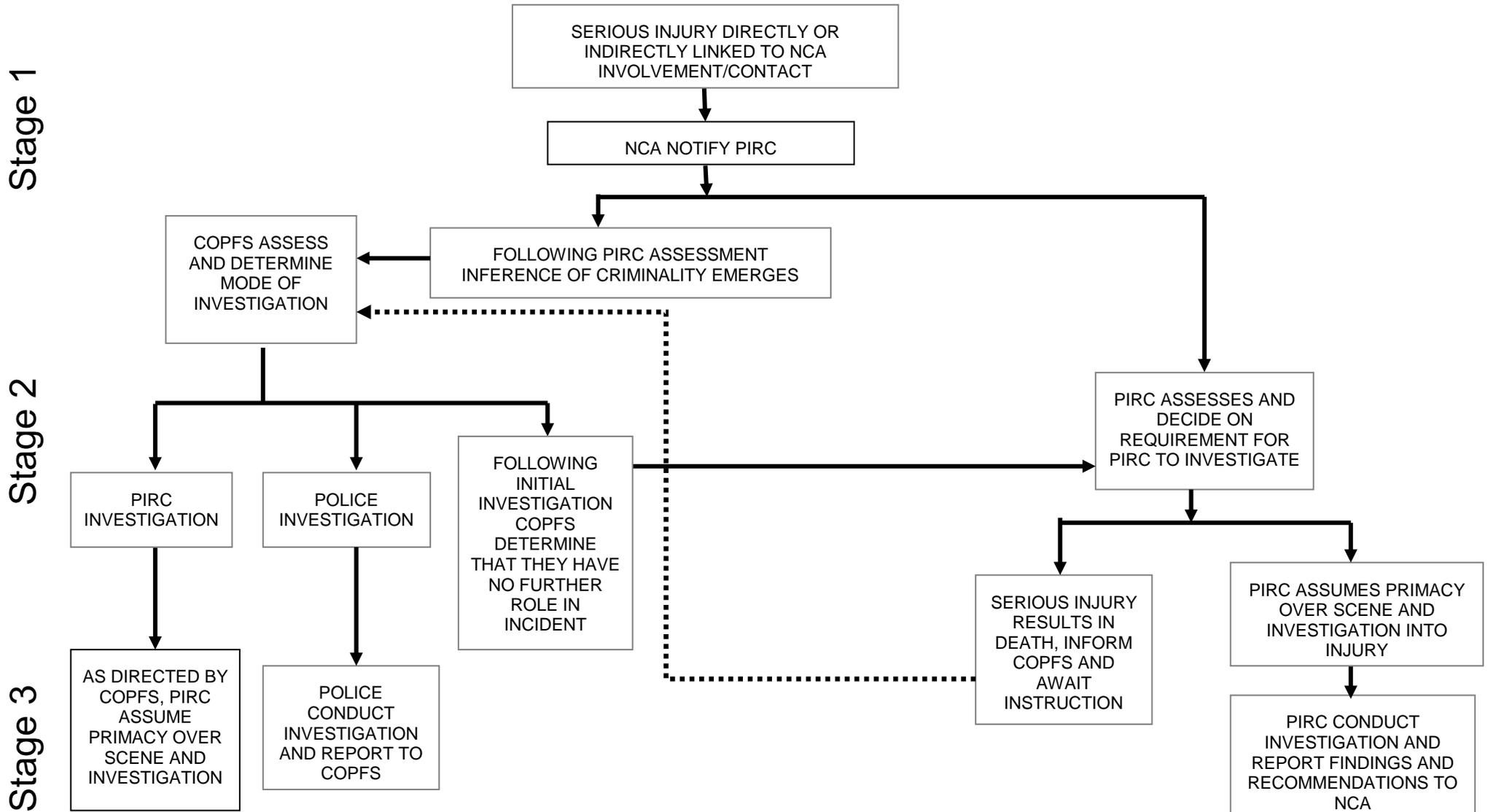
PIRC ASSESS AND DECIDE ON REQUIREMENT FOR PIRC INVESTIGATION

PIRC ASSUMES PRIMACY OVER SCENE AND INVESTIGATION INTO DEATH

PIRC CONDUCT INVESTIGATION AND REPORT FINDINGS AND RECOMMENDATIONS TO NCA

APPENDIX C

INITIAL OPERATIONAL RESPONSE



APPENDIX D

The PIRC's on-call arrangements

The PIRC provides the appropriate prosecutor and the NCA with a call out response to urgent incidents on a 24 hour basis, 365 days a year.

The response will be directed by, at a minimum, one of the PIRC's Deputy Senior Investigator.

There will be a designated Deputy Senior Investigator (called the "The PIRC Duty Senior Investigator") on-call on a weekly basis.

There is a dedicated, single use, mobile telephone held by the PIRC Duty Senior Investigator This number is: **07854 672164**.

The on-call contact number will be associated with the dedicated telephone number only. The phone will be allocated to the person on-call at the commencement of their period of time on-call. Once the person's period of being on-call terminates the phone will be passed to the next member of staff on the rota.

In the case of a death in custody, or case of death or serious injury following police contact (direct or indirect) there must be no delay in the NCA following the processes set out in Appendices A and B. In the early stages there may be only limited relevant information available about the circumstances. However, this should never prevent early notification once it is clear that the incident falls into one of the relevant categories.

The PIRC Duty Senior Investigator, based on the information supplied and in consultation with the appropriate prosecutor (where investigating on the instructions of the appropriate prosecutor), will make the initial assessment as to how to resource the PIRC response to the reported incident. The PIRC Duty Senior Investigator will ascertain, as far as possible, from the appropriate prosecutor or the NCA

1. A concise account of the incident
2. The location of the incident
3. Time occurred and time elapsed
4. The principal parties identified
5. Any actions taken by police or the NCA to preserve the scene or to collect evidence
6. Contact details of the senior police officer at the scene (from the appropriate prosecutor)

The PIRC Duty Senior Investigator will then contact the police incident officer or senior investigating officer at the scene and confirm the information. He/she will require that the Police Service of Scotland (PSoS) undertake certain actions pending the deployment of the PIRC team (including the call out of specialist and/or forensic assistance where that is deemed to be necessary). The PIRC Duty Senior Investigator will obtain direct contact details for the responsible Police Command and Control Centre dealing with the incident.

The PIRC Duty Senior Investigator will note the information supplied by the appropriate prosecutor and PSoS in writing. He/she will also note any requests made to PSoS and the subsequent responses. The police incident officer or senior investigating officer should

also note down any requirement made by the PIRC Senior Investigator and his/her response to it.

For the purpose of independence of investigation the police incident/senior investigating officer will undertake to perform the actions requested by the PIRC Duty Senior Investigator.

The PIRC will deploy to the scene as soon as is reasonably practicable at which point there will be a formal 'minuted' meeting between the PIRC and PSoS senior investigators. The meeting will clarify who has primacy for the scene, identify roles and responsibilities, and set out the process for information-sharing.

APPENDIX E

(SPECIMEN LETTERS)

SPECIMEN NOTIFICATION - National Crime Agency Referral

Recipient Name
National Crime Agency

Operation Name
PIRC Ref No

cc: xxxx PSU

Date

Dear xxxx

NCA Referred Investigation – (Nature of Serious Incident)

On (date), (officer) of PSU, referred the above incident to the Police Investigations and Review Commissioner (PIRC) in terms of Section 33A(c) of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (as amended) and the Police Investigations and Review Commissioner (Investigations Procedure, Serious Incidents and Specified Weapons) Regulations 2013, in relation to (describe serious incident).

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

Specified information, records or documents which are specified below should be produced to the PIRC within 7 days.

I understand that xxxx has been appointed as the Single Point of Contact (SPOC) to facilitate the production of the specified information or documents and who may deal with any subsequent notifications of specification under the Act and Regulations.

Notwithstanding, the DG has a reasonable time to comply with the notice of specification and, in this regard, should xxxx encounter any difficulties in complying with the timeframes for the production of information or documents I will be obliged if xxxx could inform the appointed PIRC investigator accordingly.

I have appointed xxxx, Investigator 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 the PIRC Investigator xxxx by xxxx hours on xxxx. Please note that the documents or other information should 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 from civilian witnesses and NCA officers in MS Word format on the National Standard statement form. In this regard, please ensure that all appropriate sections of the statement form are fully completed with the relevant details of the

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witness, including occupation of witness, identification number, full 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. Copies of witness statements from any NCA officers and civilian witnesses, including xxxx and medical personnel which are in possession of the DG and which are relevant to this incident.
2. Copies of relevant Command and Control incident logs (full STORM prints) in relation to the initial report regarding xxxx and xxxx subsequent apprehension.
3. List of any known witnesses (NCA or civilian) who have not yet provided witness statements and attended this incident. Please provide full contact details for these individuals.
4. Copies of any medical related reports obtained regarding the serious injury to xxxx.
5. Copies of any other relevant public space CCTV, NCA vehicle CCTV or Body Worn Camera footage of the incident. In this regard, please identify any officers who feature in this footage.
6. A copy of any relevant Airwave transmissions relating to the initial report relating to xxxx and also broadcasts made during xxxx arrest and thereafter.
7. Copy of any other NCA forms created in relation to the arrest of xxxx.
8. Details of any complaint against the police made by xxxx relating to this incident.

The DG may consider or be aware of other documents, records 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 documents, records or information in order that I can recover these documents, records 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.gov.scot

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

Yours sincerely

Head of Investigations

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SPECIMEN NOTIFICATION - Notification that a matter will not be Investigated

Recipient Name
National Crime Agency

cc: xxxx PSU

Date

Dear,

Serious Injury Following NCA Contact, etc. – NAME on DATE

Thank you for your referral 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

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SPECIMEN – Request for Factual Accuracy Check

Recipient Name
National Crime Agency

Operation Name
PIRC Ref No

cc: xxxx PSU

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 the Director General. This will be published on the PIRC website.

Yours sincerely

Head of Investigations