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Police Investigations &  
Review Commissioner



**AGREEMENT**

**Between**

**THE POLICE INVESTIGATIONS & REVIEW COMMISSIONER**

**AND**

**THE CIVIL NUCLEAR POLICE AUTHORITY**

**&**

**THE CHIEF CONSTABLE, CIVIL NUCLEAR CONSTABULARY**

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## Abbreviations

The following abbreviations are used in this document:

<b>Abbreviation</b>	<b>Explanation</b>
the Constabulary	Civil Nuclear Constabulary
the Police Authority	Civil Nuclear Police Authority
Chief Constable	Chief Constable of the Civil Nuclear Constabulary
The COPFS	The Crown Office and Procurator Fiscal Service
The PIRC	The Police Investigations and Review Commissioner
ECHR	European Convention on Human Rights
DPA Act 2018	Data Protection Act
'the 2004 Act	Energy Act 2004
'the 2006 Act'.	The Police Public Order and Criminal Justice (Scotland) Act 2006 Act
'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
'the 2016 Act'	Criminal Justice (Scotland) Act 2016
ECHR	European Convention on Human Rights
DPA Act 2018	Data Protection Act 2018
SPR	Standard Prosecution Report
CAAP-D	Criminal Allegations Against The Police Division
SFIU	Scottish Fatalities Investigation Unit

## Table of Contents

	<b>PAGE</b>
1. Introduction	4
2. Purpose	4
3. Reviewing the Agreement	5
 <b>INVESTIGATIONS</b>	
4. PIRC Investigations	5
5. Referrals by the Police Authority or Constabulary to the PIRC	6
6. Notification Timescales	7
7. COPFS directed investigations	7
8. Misconduct	8
9. Co-operation, Assistance and the Provision of Information	8
10. Investigation Processes	10
11. PIRC Reports	10
12. Family Liaison	12
13. Suspect Interviews and Arrest procedures	13
14. Communications and the Media	14
15. Signatories	16
 <b><u>APPENDICES</u></b>	
Appendix A Legislative Framework for the PIRC and the Constabulary	17
Appendix B Initial Operational Response – Death Investigation	19
Appendix C Initial Operational Response	20
Appendix D The PIRC’s on- call arrangements	21
Appendix E Specimen Letters	23

## **1. Introduction**

### **1.1 An agreement between:**

- The Police Investigations and Review Commissioner; (the PIRC)
- The Civil Nuclear Police Authority (the Police Authority ) and;
- The Civil Nuclear Constabulary (the Constabulary).

## **2. Purpose**

- 2.1 This agreement is made pursuant to article 3(3) of the 2013 Order and allows the PIRC, where requested to do so by the Civil Nuclear Police Authority or the Chief Constable of the Civil Nuclear Constabulary, to investigate and report on a serious incident involving the Civil Nuclear Constabulary in Scotland. Under article 3(4) of the 2013 Order, a serious incident involving the Civil Nuclear Constabulary 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 the Civil Nuclear Constabulary and any other persons specified in the agreement who serve with that Constabulary or who are employed by the Civil Nuclear Police Authority.
- 2.2 This agreement also covers investigation by PIRC of crimes and deaths under section 33A(b) of the 2006 Act which applies to a member of the Civil Nuclear Constabulary, any person serving with that Constabulary and any person employed by the Civil Nuclear Police Authority in the same way as to persons serving with the police pursuant to article 4(b) of the 2013 Order.
- 2.3 This agreement gives cognisance to the requirements of the European Convention on Human Rights (ECHR), decisions of the European Court of Human Right (ECtHR) and the European Commissioner for Human Rights for independent investigation of the actions of the police that engage Article 2 and 3 of ECHR, serious incidents involving the police, more commonly referred to as death or serious injury (DSI) incidents.
- 2.4 This agreement sets out procedures and processes for the PIRC, the Authority and the Chief Constable of the Civil Nuclear Constabulary and members of their respective 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.
- 2.5 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 6 April 2021
- 3.2 This 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 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 and the Constabulary under 'the 2013 Order' are set out at Appendix A. <sup>1</sup>
- 4.2 The PIRC will undertake an investigation in the following circumstances:

Crown directed investigations:

- When directed to do so by an appropriate prosecutor (of the Crown Office and Procurator Fiscal Service - COPFS) to investigate any circumstances in which there is an indication that a person serving with the Constabulary 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 Constabulary 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

Constabulary referred investigations:

- Where requested to do so by the Police Authority or the Chief Constable to investigate and report on any serious incident involving the Constabulary:
  - (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 Constabulary 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:

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<sup>1</sup> See Appendix A

- (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.

- 4.3 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.
- 4.4 In any referral by the Police Authority or the Constabulary to the PIRC, following assessment by the PIRC, should there be any inference of criminality, the PIRC will notify COPFS and await the COPFS assessment and determination as to the mode of investigation. (Reproduced in high level diagrammatic format in Appendices B and C).

## **5. Referrals by the Police Authority or the Constabulary 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 In terms of the 2013 Order the Constabulary agree to request that the PIRC investigate any serious incident involving the Constabulary as described in Section 41B of 'the 2006 Act'
- 5.3 Notification timescales are set out in Section 6.
- 5.4 Referrals by the Police Authority or the Constabulary will be made via the Force Duty Officer, except for Taser referrals.
- 5.5 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 Constabulary to allow the PIRC to gain an understanding of the incident.
- 5.6 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 Constabulary to assist their assessment.
- 5.7 The PIRC will assess the referral from the Police Authority or the Constabulary and decide whether to investigate the incident. The PIRC undertakes to complete its assessment within 5 working days of receipt of the referral (and any additional material provided) and notify the Constabulary of its decision.
- 5.8 Referrals in respect of the use of Taser by a Specially Trained Officer (STO) will be made on agreed pro-forma documents by the Constabulary in Scotland.
- 5.9 Deaths and serious injury in police custody, deaths following police contact or discharge of conventional firearms leading to injury may be referred verbally to the PIRC by the Constabulary (PSD) 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.

- 5.10 Where the Constabulary instigates Post Incident Procedures (PIP) following a death or serious injury, the PIRC will be notified immediately of the decision by the Force Duty Officer 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.
- 5.11 Where the Police Authority or the Constabulary 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.

## 6. Notification Timescales

### 6.1 Notification timescales:

- For a death following contact with the Constabulary 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 where serious injury has occurred and the person's life may be at risk given the nature of the injuries, notification will occur as soon after the incident as reasonably practicable.
- For incidents, including use of Taser, notification will occur within 24 hours of PSD being informed of the incident or on the Monday following an incident occurring at a weekend.
- For a Captor discharge, notification will occur within 7 days of the incident

## 7. COPFS directed investigations

### 7.1 The COPFS may direct the PIRC to undertake investigation of; a

- Criminal allegation against serving members of the Constabulary
- Death in custody or death following police contact.

### 7.2 The Police Authority or the Constabulary will notify the COPFS of any death in police custody.

### 7.3 The Constabulary will notify the PIRC of any death following Constabulary 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 Constabulary makes the referral only, the PIRC may decide to investigate the circumstances under the '2013 Order'

### 7.4 Notification timescales

- Notification by the Police Authority or the Constabulary to the COPFS and the PIRC should occur as soon after the incident as reasonably practicable.
- Where the PIRC are directed by the COPFS to investigate a criminal allegation against a member of the Police Authority or the Constabulary, the PIRC will notify the Police Authority or the Constabulary within two working days.

## **8. Misconduct**

- 8.1 The PIRC has no powers or authority to undertake misconduct investigations against members of the Constabulary.
- 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 by the Constabulary. Where the PIRC identifies potential breaches of Standards of Professional Behaviour or a performance issue(s) during any investigation, it will notify the Constabulary accordingly and provide all relevant information to allow those organisations to examine the matter.

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

- 9.1 Any person serving with the Constabulary 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 Chief Constable). 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 The Chief Constable agrees that a member of the Constabulary 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.
- 9.3 The Chief Constable agrees that a member of the Constabulary 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
- 9.4 The Commissioner will issue a notice in the form of a letter to the Chief constable setting out the nature of the investigation and requesting information, documents or other records required for the purposes of the investigation.
- 9.5 Section 46 of the 2006 Act allows for the disclosure of information by and to 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:

(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).

9.6 The Constabulary shall use all reasonable endeavour, subject to the Nuclear Industries Security Regulations 2003 to permit the PIRC to enter any premises which are used by the Constabulary subject to the appropriate notice period required by the site license company, wherever possible.

### **Witness Statements**

9.7 Further to 9.2 above, where any person serving with the Constabulary 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.

9.8 A relevant person is:

- A member of the Constabulary employed by the Police Authority (other than the Chief Constable) under the direction and control of the chief constable under Section 55 (2) of 'the 2004 Act' ;

9.9 The Police Authority or the Chief Constable may request any police officer, or member of police staff 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 a member of the Constabulary refuses to co-operate with a PIRC investigation through the provision of information, the PIRC will notify the Chief Constable accordingly for their consideration of misconduct or appropriate action.

9.11 The Police Authority or the Chief Constable 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 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 Chief Constable, 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 PSD and relevant point of contact in PSD of 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 Chief Constable.
- 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 Chief Constable and the person will be notified accordingly. The Chief Constable will notify any member of the Constabulary when they are the subject of a criminal investigation by the PIRC, unless the investigation may be hampered in doing so. The PIRC will ensure the Chief Constable is informed when they can advise these officers or staff at the earliest opportunity to allow appropriate welfare support.
- 10.6 The Chief Constable 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 interview of a member of the Constabulary. Where a SPOC is on annual leave or absent during a PIRC investigation, they will identify another person to undertake their role.
- 10.7 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
  - CAAPD reports – submitted to the COPFS;
  - Death investigation reports – submitted to the COPFS;
  - Investigation reports – submitted to the Police Authority or the Chief Constable.

### **Report Publication**

- 11.2 The PIRC may publish:
- The Constabulary 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 Constabulary:

- Full reports; and
- Public Facing reports.

- 11.5 Full reports contain all the details of the PIRC investigation and are for consideration by the Constabulary. 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 Constabulary for factual accuracy checking. The PIRC will take cognisance of any identified error of fact, omission or additional representation made by the Constabulary 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 Constabulary 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 public, officer or staff safety and require immediate action by the Constabulary, the PIRC will notify them at that time and not wait until the issuance of its report.
- 11.10 The PIRC will issue its reports to:
- Full Report – The Chief Constable;
  - Public Report – The Chief Constable.
- 11.11 The PIRC may issue its reports to;
- Public Report – The Police Authority, The COPFS and HMICS
- 11.12 Prior to publication of a Public Facing report, the PIRC will provide the Constabulary with at least 48 hours' notice of the date and time of publication.

### **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 Constabulary agree to 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 Constabulary 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**

11.17 In terms of a COPFS directed investigation, the PIRC will submit its report to the appropriate prosecutor.

11.18 The PIRC will notify the Constabulary at the time it is directed 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 Constabulary of the identity of any member of the Constabulary and any other persons specified in the agreement who serve with that Constabulary or who are employed by the Civil Nuclear Police Authority who are subject to investigation and the nature of the allegations. This is to allow the Constabulary to consider implementing certain decisions to mitigate the risk to the public, the officer and the Constabulary. This may include 'Duty Restrictions' or on the rare occasion, suspension from duty. It will also allow for other measures, including welfare considerations, for a subject officer. The Constabulary will notify the subject officer that they are subject to a criminal investigation by the PIRC.

11.20 The PIRC will notify the Constabulary 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 Constabulary 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. Notification will normally be undertaken by Police Scotland following a discussion with the Constabulary's Force Duty Officer.

12.3 PIRC FLOs may be deployed in the following instances:

- Death in custody,
- Death following police contact; 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 The 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 a member of the Constabulary as a suspect.
- 13.3 The PIRC will notify PSD of any intention to interview any member of the Constabulary as a suspect.
- 13.4 The PIRC will not normally arrest a member of the Constabulary at their home or place of work, unless in specific circumstances this is deemed appropriate.
- 13.5 PSD will notify the member of the Constabulary 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 office, for the purposes of interview.
- 13.6 PSD will appoint a dedicated liaison officer to any PIRC investigation where a member of the Constabulary or Police Authority's staff is to be subject to a suspect interview. The role of that PSD officer 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.
- 13.7 The PIRC undertakes, insofar as may be practicable, that if a member of the Police Authority's staff or Constabulary staff attend for interview under caution or are arrested (not officially accused), their attendance / arrest will be in a police area other than that in which they serve. These matters will be arranged by PSD.
- 13.8 Where it is necessary to arrest a member of the Constabulary, other than a person who has attended a pre-arranged suspect interview, PSD 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 will be alerted by PSD staff, allowing the Cluster Inspector and the relevant Custody Review Inspector and Force Custody Inspector to be informed. In the event that a spontaneous arrest has to be presented by PIRC at a Police Scotland custody suite then the Cluster Inspector, Area Commander or on call CJSD Chief Inspector and the on duty Custody Review Inspector should be notified immediately. When a PIRC arrest is within a custody suite the relevant 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.

- 13.10 Care and Welfare - whilst a member of the Constabulary is under arrest in custody, responsibility for the individual's care and welfare rests with Police Scotland.
- 13.11 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.
- 13.12 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.
- 13.13 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*'.
- 13.14 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
- 13.15 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.
- 13.16 Where a PIRC DSI authorises the taking of Criminal Justice (CJ) samples these will be taken by Police Scotland staff.
- 13.17 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 /PSD of any necessary or reasonable adjustments required to be put in place.

## **14. Communications & the Media**

- 14.1 The Police Authority, the Constabulary and the PIRC have communication teams that manage liaison with the media.
- 14.2 Following any incident which involves a matter falling within the scope of the 2006 Act, 'the 2013 Regulations', whereby the Police Authority or the Constabulary 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.

- 14.3 Each organisation recognises the demand that can arise for an immediate news release or statement following any incident.
- 14.4 In order to ensure consistency of the facts provided to the media, the communications teams of the Police Authority or the Constabulary and the PIRC should, where feasible, liaise before issuing statements to the media.
- 14.5 In any investigation instructed by the COPFS, the PIRC and the Police Authority or the Constabulary will liaise with the COPFS communication team before making any media release.
- 14.6 Prior to the publication of any PIRC investigation report, an 'embargoed' copy of the report and associated media release will be provided to the Police Authority or the Constabulary at least 48 hours in advance of publication for information purposes only.
- 14.7 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.
- 14.8 Active' proceedings (i.e. following an arrest)
- Where the media intend to publish anything where proceedings are 'active' the PIRC and the Police Authority or the Constabulary 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.

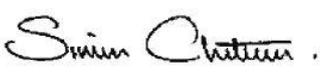
## 15. Signatories

Enactment: This Agreement comes into effect on [date]

Signed 

Date 15 February 2021

***The Police Investigations & Review Commissioner***

Signed 

Date 6 April 2021

***Chief Constable of The Civil Nuclear Constabulary***

Signed 

Date 6 April 2021

***Civil Nuclear Police Authority***

## Appendix A

### Legislative Framework for the PIRC and the Constabulary

#### 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 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 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 includes; a member of the Civil Nuclear Constabulary, and any other persons specified in the agreement who serve with that Constabulary or who are employed by the Civil Nuclear Police Authority.
- A.4 In terms of Reg 3(3) of the '2013 Order' the PIRC and the Civil Nuclear Police Authority may enter into an agreement for the PIRC to investigate and report, where requested to do so by that Authority or the chief constable of the Civil Nuclear Constabulary, on any serious incident involving the Civil Nuclear Constabulary.
- A.5 In terms of Reg 3(4) of the '2013 Order, a "serious incident involving the "Civil Nuclear Constabulary" 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 the Civil Nuclear Constabulary and any other persons specified in the agreement who serve with that Constabulary or who are employed by the Civil Nuclear Police Authority.
- A.6 **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)
  - Energy Act 2004
  - The Criminal Justice (Scotland) Act 2016;
  - The Data Protection Act 2018 (DPA)
  - Investigatory Powers Act 2016

## The Constabulary

### Energy Act 2004

#### Section 55 Jurisdiction of Constabulary

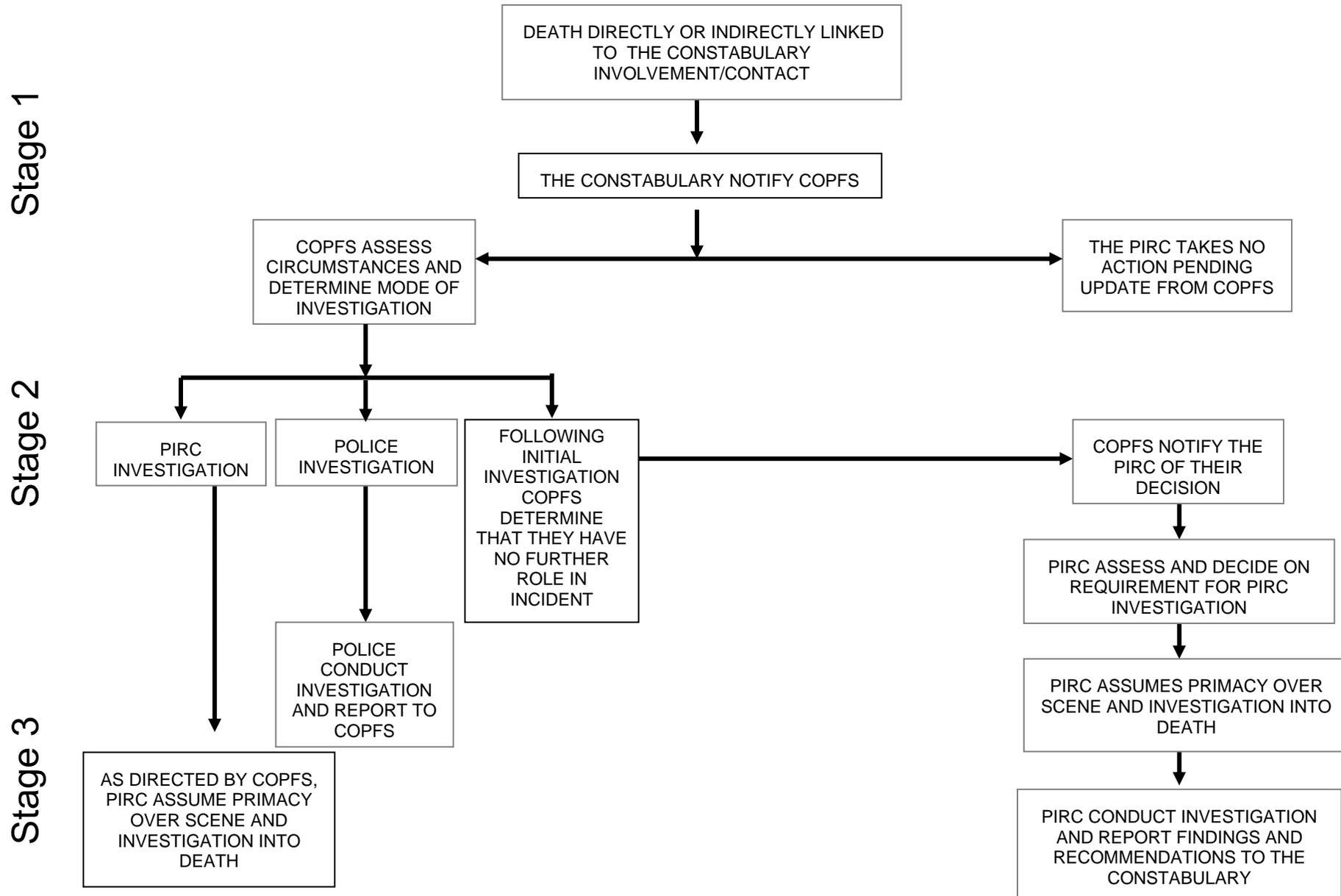
- (1) A member of the Constabulary shall have the powers and privileges of a constable—
  - (a) at every place comprised in a relevant nuclear site; and
  - (b) everywhere within 5 kilometres of such a place.
- (2) A member of the Constabulary shall have the powers and privileges of a constable at every trans-shipment site where it appears to him expedient to be in order to safeguard nuclear material while it is at the site.
- (3) A member of the Constabulary shall have the powers and privileges of a constable at every other place where it appears to him expedient to be in order to safeguard nuclear material which is in transit.
- (4) A member of the Constabulary shall have the powers and privileges of a constable at every place where it appears to him expedient to be in order to pursue or to detain a person whom he reasonably believes—
  - (a) to have unlawfully removed or interfered with nuclear material being safeguarded by members of the Constabulary; or
  - (b) to have attempted to do so.
- (5) A member of the Constabulary shall have the powers and privileges of a constable throughout Great Britain for purposes connected with
  - (a) a place mentioned in subsections (1) to (4);
  - (b) anything that he or another member of the Constabulary is proposing to do, or has done, at such a place; or
  - (c) anything which he reasonably believes to have been done, or to be likely to be done, by another person at or in relation to such a place.
- (6) This section has effect in United Kingdom waters adjacent to Great Britain as it has effect in Great Britain, but as if references to the powers and privileges of a constable were references to the powers and privileges of a constable in the nearest part of Great Britain.

#### Section 56A Exercise of powers and privileges in Scotland

- (1) Where a member of the Constabulary exercises in Scotland any power or privilege of a constable, Parts 1 and 2 of the Criminal Justice (Scotland) Act 2016 (in this section “the 2016 Act”) apply in relation to the exercise as though the power or privilege were exercised by a constable of the Police Service of Scotland.
- (2) For the purposes of subsection (1)—
  - (a) in section 64 of the 2016 Act (police custody), references to a person arrested by a constable are to be read as including a person arrested by a member of the Constabulary.

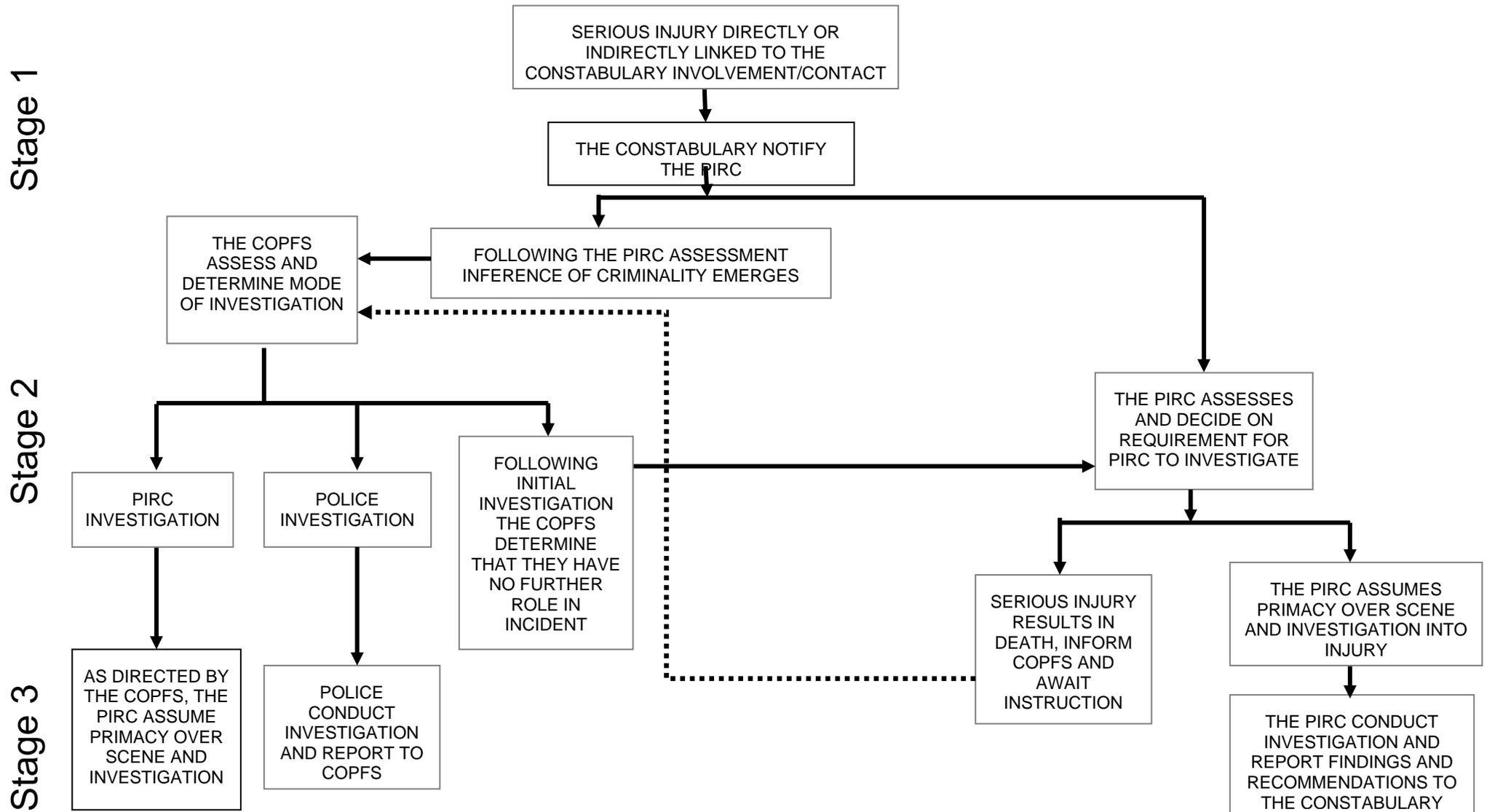
**APPENDIX B**

**INITIAL OPERATIONAL RESPONSE**



APPENDIX C

INITIAL OPERATIONAL RESPONSE



## APPENDIX D

### The PIRC's on-call arrangements

The PIRC provides the appropriate prosecutor and PS 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 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

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 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 PS 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 PS in writing. He/she will also note any requests made to PS 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 PS 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 - A COPFS Instructed investigation into a Death**

Recipient Details

Operation Name  
PIRC Ref Number

cc: Head of PSD

Date

Dear XXXX

**Death in Custody –Date and Locus**

The Crown Office and Procurator Fiscal Service (COPFS) has instructed the PIRC under the terms of Section 33A(b)(ii) of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (as amended) to investigate the death of xxxx, who died on xxxx.

The PIRC has been instructed to investigate the circumstances of xxxx arrest and demise from the point at which police officers were alerted to attend at xxxx until being declared dead in xxxx at xxxx hours.

The following information or documents which are specified below should be produced to the PIRC within 7 days.

I understand that the Chief Constable will appoint a single point of contact (SPOC) to facilitate the production of the specified information or documents and to deal with any subsequent notifications of specification under the '2006 Act'.

The Chief Constable has a reasonable time to comply with the notice of specification 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 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 police officers and staff 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 witness, including rank or occupation of witness, police identification or shoulder number, 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 police officers or members of police staff, involved in the incident from the time that the deceased xxxx was reported to be at xxxx until pronounced life extinct at xxxx;
2. Copies of witness statements from all civilian witnesses, including paramedics and other medical personnel obtained during the course of the police investigation;
3. Copies of recordings of all telephone communications and Airwave radio traffic related to the incident and index of content to show file number/dates/times of recordings and identification of police officers and police staff;
4. Copies of relevant command and control incident logs (Full STORM prints);
5. Copies of all minutes and other documentation from all meetings and any other briefing documents held in furtherance of this investigation;
6. Copies of Police Scotland Death Report and medical records/background in relation to xxxx;
7. Copies of any records held by the Constabulary in relation to the deceased xxxx, including any records from the Scottish Intelligence Database (SID), Interim Vulnerable Persons Database (IVPD) or other relevant databases (CHS and PNC);
8. Copies of custody records and CCTV footage from xxxx at xxxx, in relation to the deceased;
9. Copies of public space CCTV in relation to the report of xxxx at;

10. A full list of productions seized by Police Scotland as part of their investigation.
11. Copies of SPA Forensic Services reports, photographs and video footage taken in relation to the deceased;

The Chief Constable 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 Police Scotland with a specification under Section 44(2) to recover these documents or information.

Where possible all documents should be transmitted electronically to the following secure email address at [referrals@pirc.scot.gov](mailto:referrals@pirc.scot.gov) The availability of the hard copy material should be notified to xxxx PIRC DSI who will arrange collection.

xxxx DSI can be contacted on telephone number on xxxx or by email to [xxxx@pirc.gov.scot](mailto: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**

**SPECIMEN NOTIFICATION - Constabulary Referral**

Recipient Name

Operation Name  
PIRC Ref No

cc: xxxx PSD

Date

Dear xxxx

**Police Referred Investigation – (Nature of Serious Incident)**

On (date), (officer) of PSD, 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 Inspector 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 Chief Constable has a reasonable time to comply with the notice of specification and, in this regard, should Inspector 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 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 police officers and staff 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 witness, including rank or occupation of witness, police identification or shoulder number, 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. Copies of witness statements from police officers and civilian witnesses, including xxxx and medical personnel which are in possession of the Chief Constable 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 (police 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, police 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 Police Scotland forms created in relation to the arrest of xxxx.
8. Details of any complaint against the Constabulary by xxxx relating to this incident.

The Chief Constable 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.gsi.gov.uk](mailto:referrals@pirc.gsi.gov.uk). 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](mailto: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 - A COPFS Instructed Criminal Investigation**

Recipient Name

Operation Name  
PIRC Ref No

cc: xxxx PSD

Date

Dear xxxx

**COPFS Instructed Investigation – (Nature of Investigation)**

On (date), the COPFS, instructed the Police Investigations and Review Commissioner (PIRC) in terms of Section 33A(b) of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (as amended) to investigate (outline the nature 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 Inspector 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.

As you are aware, the Chief Constable has a reasonable time to comply with the notice of specification and, in this regard, should Inspector 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 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 police officers and staff 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 witness, including rank or occupation of witness, police identification or shoulder number, 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. Copies of witness statements from police officers and civilian witnesses, including xxxx and medical personnel which are in possession of the Chief Constable 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 (police 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, police 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 Standard Prosecution Report and Crime Report submitted in relation to the preceding incident involving xxxx.
7. A copy of any relevant Airwave transmissions relating to the initial report relating to xxxx and also broadcasts made during xxxx arrest and thereafter.
8. Copy of any other Police Scotland forms created in relation to the arrest of xxxx.
9. Details of any complaint against the Constabulary made by xxxx relating to this incident.

The Chief Constable 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.gsi.gov.uk](mailto:referrals@pirc.gsi.gov.uk). 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](mailto: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**

Recipient Name

cc: xxxx PSD

Date

Dear,

**Serious Injury Following Police 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**

**SPECIMEN – Request for Factual Accuracy Check**

Recipient Name

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 the Chief Constable. This will be published on the PIRC website.

Yours sincerely

**Head of Investigations**