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Criminal Justice Committee  
The Scottish Parliament  
EDINBURGH  
EH99 1SP

3 September 2024

Dear Audrey

### **Stage 1 Report on the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill 2 July 2024**

Thank you for sending me the Criminal Justice Committee's report on the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill at Stage 1, published on 2 July 2024. I welcome the Committee's scrutiny of this legislation and the wide range of views gathered in written and oral evidence sessions, which importantly included those with lived experience of the police complaints and police misconduct systems.

As I stated during my evidence session with the Committee, the Bill cannot be viewed in isolation and is part of much wider work to improve the police complaints and conduct systems. This is a key point when looking holistically at all of the recommendations made by Dame Elish Angiolini in her independent review and I am pleased to note the Committee acknowledges that. Indeed, when I [wrote](#) to you in December 2023 following the Ministerial Group meeting, which I chair jointly with the Lord Advocate, I advised the committee that the group (Police Scotland, SPA, PIRC, COPFS and HMICS) took the opportunity to reflect on what has been achieved so far and consider whether those recommendations signed off as completed have delivered the intended improvements.

Policing partners confirmed that they are confident about the transformational change and improvements that have been made through implementation of the recommendations. However, they also recognise the need for, and are committed to, continuous review and improvement through their own assurance frameworks to ensure that systems and processes adapt to changing circumstances and remain fit for purpose into the future in order to maintain public confidence in policing.

This legislation underlines our overall ambition and commitment, shared with policing partners, to ensure systems and frameworks are fairer, more transparent, accountable and

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proportionate, which will ultimately help to strengthen public confidence in policing in Scotland.

The table below sets out issues raised by the Committee and my response to the recommendations made and I look forward to working with the Parliament to deliver on these important legislative proposals.

Yours sincerely



**ANGELA CONSTANCE**

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<b>Police (Ethics, Conduct and Scrutiny) (Scotland) Bill</b>	
<b>Recommendation/Clarification</b>	<b>Scottish Government response</b>
<p><b>Finance and Public Administration Committee</b></p> <p>The Committee notes the position outlined above and the importance to committees of having up-to-date costs for this Bill. Whilst we welcome the letter provided to this Committee by the Scottish Government setting out revised costs, the Committee still wishes to see a revised Financial Memorandum provided at stage 2 or sooner. In any case, the Committee requests that it is kept updated if there are further significant changes in the expected costs of this Bill. [para 29]</p>	<p>The Scottish Government acknowledges the Committee’s views on the financial aspects of this Bill and wishes to reiterate that it takes seriously the need to provide a robust articulation of the potential financial impact of the Bills it brings forward.</p> <p>In my <a href="#">oral evidence to the Finance and Public Administration Committee</a> I accepted that the Scottish Government should have written to the committee in advance of officials giving evidence, to acknowledge the revised costs and explain to that Committee that I expected officials to interrogate the figures before we arrived at a settled view.</p> <p>As previously stated, there is no process under Parliament’s Standing Orders for submission of an updated Financial Memorandum during Stage 1. Standing Orders (Rule 9.7.8B) provide only for revised or supplementary FMs to be provided if a Bill is amended at Stage 2 so as to substantially alter any costs, savings etc.</p> <p>Any document provided by the Scottish Government outside of these parameters could be given the appearance of a revised FM but would not have its status. The approach we have taken to inform the Scottish Parliament of the revised costs in this Bill - by way of letter rather than by an apparent revised FM - is therefore one of form only.</p> <p>The Scottish Government will provide a revised FM if the Bill is amended at Stage 2 so as to substantially alter any costs, savings etc.</p> <p>More generally, as set out in the letter of 26 July from my colleague the Minister for Parliamentary Business to the Finance and Public</p>

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	<p>Administration Committee, the Scottish Government will proactively write to that Committee with any significantly revised figures (including margins of uncertainty) for Financial Memoranda during Stage 1, as per the Scottish Public Finance Manual Guidance. The Minister for Parliamentary Business has written to lead Ministers and Bill Teams reminding them of the need to do this.</p>
<p><b>Section 2</b></p>	
<p>The new Code of ethics needs to be robust and reflect the challenges of modern policing. The Bill does not include details of what is to be included in the new Code and we therefore <b>recommend</b> that the Criminal Justice Committee is able to review the draft Code. The Committee asks the Scottish Government to clarify how the Code of ethics and duty of candour will impact on police staff. [para 82]</p>	<p>The Bill as introduced requires the Chief constable to publish the Code once finalised, and to lay a copy of the Code before Parliament.</p> <p>I recognise there is merit in the committee’s recommendation in allowing the Committee to have a role in reviewing the Code, and my officials have written to Police Scotland to ask them to consider an appropriate mechanism for the Committee having the opportunity to review it before publication.</p> <p>In terms of how the Code will impact on police staff, it is important to remember that there is an existing non-statutory code of ethics, which is already embedded in Scottish policing and which police staff must take account of. Staff (both police and authority staff) have a code of conduct, the purpose of which is to set out a framework for the type of conduct expected of all staff and it refers staff to the existing non-statutory code of ethics as a source of their duties and responsibilities. The Bill places the requirement for a code of ethics on a statutory footing in a way which ensures a thorough review process, widespread publication and accountability for its dissemination.</p> <p>In regard to how the duty of candour will impact on police staff, as public servants, staff are already expected to be candid. The Bill does not place any duty of candour on members of staff as individuals, however, it does</p>

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	<p>place a duty on the Chief Constable as regards staff candour: to ensure that the police service (which includes constables and staff) polices in a way which is candid and cooperative in proceedings. The implementation of this duty will be a matter for the Chief Constable but it could, for example, include additional training for staff which explains and encourages candour in various operational contexts.</p>
<p>The Committee <b>asks the Scottish Government to confirm</b> whether the intention is that the statutory Code of ethics will apply to any SPA staff. For example, those who work in forensic services. [para 83]</p>	<p>The Code of Ethics will not apply to SPA staff under the Bill. Section 2 of the Bill inserts a new section 36A into the Police and Fire Reform (Scotland) Act 2012 (“the 2012 Act”) and states the Chief Constable must prepare a Code of Ethics for the <b>Police Service</b>, which sets out the values of the Police Service and expectations relating to the conduct and practice of its <b>constables</b> and of <b>police staff</b>. Police staff takes it meaning from section 26 of the 2012 Act, and therefore the Code applies to staff who are under the direction and control of the Chief Constable to act in support of constables. This is different from staff appointed by the SPA to support it in its scrutiny role, which the Code does not apply to. SPA staff are referred to separately in the 2012 Act in Schedule 1 as Authority staff, so are not covered by the term “police staff.”</p> <p>In terms of forensic services, the 2012 Act provides for a “sterile corridor” between police investigations and forensic investigations and section 31 of that Act requires the SPA to make arrangements for the provision of a forensic service which is accountable directly to the SPA, not to the Chief Constable. The Code under section 2 of the Bill does therefore not apply to forensic services because they are not “police staff” (but in practice there is nothing preventing the SPA from adopting the Code).</p> <p>As noted above, there is a general staff code of conduct which applies to both police and authority staff to which forensic staff are subject. Forensic service staff are also subject to a Competency and Values Framework</p>

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	<p>which applies specifically to SPA forensic services and to a Forensic Services Code of Practice, produced by the UK Forensic Science Regulator, to which SPA Forensic Services voluntarily adheres.</p>
<p>The Committee <b>agrees</b> that the Chief constable should have responsibility to prepare, consult widely on, publish and revise the Code, with the assistance of the SPA. [para 84]</p>	<p>I am pleased that the Committee agrees with this provision which creates a duty for the Chief Constable and SPA to collaborate and share expertise. Primarily for clear accountability, the Chief Constable is tasked with preparing the code, but with the involvement of the SPA.</p>
<p>The Committee supports the aims and objectives of the introduction of the provisions in the ethics of policing sections of the Bill. In particular, to improve the culture within policing and public confidence in its ability to deal effectively with police complaints. However, the Committee considers that their impact could be largely symbolic and is unable to assess what tangible impact they will have [para 141]</p>	<p>I would like to reassure the Committee that the intention is certainly that the code of ethics and duty of candour will have more than a symbolic effect.</p> <p>The statutory provisions embedding a code of ethics and duty of candour create a statutory regime which requires change to occur. By putting the code of ethics and duty of candour on a statutory footing in the various ways that the Bill provides, the central importance of ethics to policing is made clear, promoting a culture of openness, transparency, and honesty, which will strengthen public trust and confidence.</p> <p>For the Code of Ethics, requirements around the creation of the Code mean that the Chief Constable will need to involve a number of parties in consideration of the Code, and that certain key sources will have to be at the forefront of the Chief Constable's mind when preparing the Code. The Chief Constable will be accountable for ensuring that every constable and staff member is familiar with the Code. This will require meaningful training to be put in place.</p> <p>The Code is also implemented in the same way as the policing principles in the 2012 Act, meaning it is a responsibility of the Chief Constable to seek to ensure that the policing of Scotland is done with due regard to the</p>

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	<p>Code of Ethics. This in turn means that the SPA will hold the Chief Constable to account as to adherence to the Code of Ethics. The fact that constables will have to commit to following the Code when making the constable’s declaration will underscore its importance in a meaningful way at an individual level.</p> <p>The duty of candour is implemented in various ways so as to bring about measurable change. Most tangibly, the duty is to become a standard of professional behaviour for police constables. This means that if constables fail without any good reason to evidence candour, they could be subject to disciplinary proceedings. potentially resulting in their demotion, dismissal or being made subject to another disciplinary sanction. As noted above, there will also be a duty on the Chief Constable as regards ensuring that policing is done candidly, which will require meaningful organisational change. Finally, as with the Code, constables will have to commit to candour when making their declaration, making the requirement a very real, personal commitment.</p>
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**Section 3**

<b>Recommendation</b>	<b>Scottish Government response</b>
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The Committee appreciates that the overwhelming majority of police officers already adhere to the principles set out in the proposed duty of candour. For the small minority of officers who do not, **Police Scotland** should pursue the relevant disciplinary proceedings when it is demonstrated that officers are not adhering to the new duty.  
[para 145]

I agree with the Committee and reiterate Dame Elish Angiolini’s view that those who hold the office of constable, and the powers of that office, have a higher duty than others to account for their actions and record what they did or saw in the execution of their duties.

The Committee asks the Scottish Government **to clarify** the reasons for not introducing a duty of co-operation in the Bill and to respond to the Angiolini review recommendation and

I welcome the opportunity to set this out. My view is that there is no clear divide between the duty of candour and the duty of co-operation: the duty to co-operate or assist is a facet of the duty of candour, which is about

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<p>PIRC’s evidence to the Committee supporting the introduction of a duty of co-operation. [para 146]</p>	<p>being transparent and proactive in sharing relevant information and highlighting relevant issues. A new policing principal is introduced whereby the Police Service should be “candid and co-operative” in proceedings.</p> <p>The individual duty of candour for constables in the second paragraph of the duty, specifies all of the elements that Dame Elish recommended should apply to a duty of co-operation on constables, specifically requiring them to assist and participate in proceedings.</p> <p>I consider that the drafting of the Bill, as it stands, achieves the outcome that was sought in respect of co-operation. Lady Elish confirmed this view when she gave evidence to the Committee in May.</p>
<p>The Committee asks the Scottish Government to clarify whether the individual duty of candour will only apply to police officers, and that the organisational duty of candour will only apply to police staff, who have witness status, rather than to anyone working for Police Scotland who is suspected of a crime or misconduct. [para 148]</p>	<p>The individual duty of candour will only apply to those who hold the office of constable. The organisational duty only directly applies to the Chief Constable and the Police Service, though it will indirectly apply to all those under the control of the Chief Constable, that is Police Constables, and Police Staff, as part of the duty on the Chief Constable and the Police Service will be to promote candour from those persons.</p> <p>The legislation has to be applied in an ECHR compliant manner by the public bodies that are subject to it. This will include those who are interviewing officers in these investigations, whether they are PIRC employees or Police Scotland officers. Therefore, the specific protections of the general law will apply, such as the right to silence and the privilege against self-incrimination for those who have been identified as suspects in criminal cases, or those that may become suspects in the course of an interview. In addition, the rights for suspects that apply under the Criminal Justice (Scotland) Act 2016 also have to be upheld by PIRC investigators.</p>

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	<p>There is nothing in the duty of candour that overrides any of these rights.</p> <p>There is no right to silence for those who are the subject of non-criminal investigations. The right becomes relevant when a person becomes a suspect in a criminal case. This is different from there being a right to silence unless you have been confirmed as a witness. The latter would provide more protection than article 6 provides, as early on there may not be enough information to confirm someone as a witness, and if there has been nothing to cement suspicion on a particular person, they will not yet be a suspect. Limiting the duty of candour only to those who have been identified as a witness would therefore mean that those who have no right to silence but are the subject of an investigation would not be subject to a duty of candour.</p> <p>It would also exclude those who have not been identified as holding any knowledge of an event or issue and therefore have not been asked for their account but who we would expect to come forward and volunteer information. Neither would it apply to individuals who are aware of as yet undiscovered events or issues. The duty of candour should apply in both of these situations to require the individual to speak up, even though they have not been identified as a witness.</p>
<p>The Committee <b>recommends</b> that the individual duty of candour should also apply to police staff who undertake operational roles which provide them with statutory powers and duties, such as police custody and security officers. [para 149]</p>	<p>I recognise the Committee's views on this point, and I have asked my officials to discuss with Police Scotland and the SPA how best this could be progressed.</p>
<p>The Committee <b>asks the Scottish Government to consider</b> whether SPA staff who undertake relevant policing roles, such as those who work in forensic services, should also be covered by the duty of candour.</p>	<p>The forensic service is independent from the Chief Constable and is accountable directly to the SPA, not the Chief Constable. I have therefore asked officials to discuss with the SPA whether the SPA can carry out their own consideration regarding if candour should be reflected in the</p>

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[para 150]	staff code and their terms of conditions and employment.
<p>The Bill introduces an individual duty of candour on constables by adding the duty to the standards of professional behaviour within the conduct regulations for all officers. The standards of professional behaviour apply to officers whether they are on or off duty. The Committee <b>asks Police Scotland to clarify</b> its reasons for asking that care be taken when extending the duty of candour to circumstances that happen off duty.</p> <p>[para 151]</p>	<p>I note that this request is aimed at Police Scotland, but should it be useful to the Committee, I can provide the following comments.</p> <p>Police Scotland’s existing standards of professional behaviour include honesty and integrity, and this reflects Police Scotland’s expectations of officers, whether on or off duty.</p> <p>Candour is an extension of honesty and integrity. It is about being transparent and proactive in sharing relevant information and highlighting relevant issues. It will primarily apply when an officer is being asked to give an account of something, which may have occurred while that officer was on or off duty. The officer will have the usual protections offered by the general law, such as the privilege against self-incrimination. It will be for disciplinary panels to shape the application of the new duty of candour going forward, however, it is likely to have a similar scope of application as the standard of honesty and integrity which is capable of applying to off duty matters in line with the general position as regards the standards of professional behaviour.</p>
<b>Section 4</b>	
<b>Recommendation</b>	<b>Scottish Government response</b>
<p>The Committee <b>asks the Scottish Government to clarify</b> whether the intention is that any report on the misconduct of the Chief constable will be published.</p> <p>[para 169]</p>	<p>This provision is to ensure that any victims of unlawful conduct are protected by clarifying that liability for any unlawful conduct on the part of the Chief Constable sits with the SPA, bringing the position into line with other officers.</p> <p>This provision does not affect the reporting of misconduct. Recommendation 58 from the Dame Elish final report, broadly accepted by the Scottish Government at the time, was to publish the outcome of</p>

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	<p>gross misconduct hearings.</p> <p><i>Recommendation 58: The outcome of gross misconduct proceedings should be made public. The Chair's report, subject to any necessary redactions, should be published by the Scottish Police Authority on its website for a period of no less than 28 days.</i></p> <p>Police Scotland have now started this practice.</p>
<p><b>Section 5 (related)</b></p>	
<p><b>The Committee recommends</b> that PIRC should continue its policy to reduce the reliance on the employment of former police officers and introduce procedures to ensure that people who have worked together previously must declare an interest and are prevented from investigating one another. [para 199]</p>	<p>As a result of a non-legislative recommendation made in relation to <b>Training and HR</b>, PIRC has taken action to adapt its recruitment policy to recruit staff who are non-police officers, depending on the skills required for the vacancy. Recruitment practices focus on assessing the skills the PIRC requires at the point of a vacancy being created, including recruiting investigators from a wide range of investigative backgrounds, and through PIRC's own investigative trainee programme.</p> <p>PIRC require staff to have a mix of skills to be able to effectively hold policing to account, this will continue to include staff who understand the policing environment, and those who have specialist skills such as the investigation of major and complex crime, the use of force, and the police use of firearms. This was reflected on during the evidence sessions by Lady Elish Angiolini and the Cabinet Secretary for Justice and Home Affairs.</p> <p>PIRC recognise there has to be a balance between their credibility as an effective investigative body and ensuring that public confidence is not affected by a perception of a close relationship between investigators and those being investigated.</p>

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The Committee agrees with the SPA that there should be a role for PIRC to receive and carry out an initial assessment of all complaints about senior officers, Assistant Chief constable and above, and not only those relating to misconduct.  
[para 239]

I welcome the Committee's views and can reassure the Committee that very careful consideration has been given to these views, along with those of stakeholders. As a result of extensive conversations with the PIRC, SPA and the Scottish Public Services Ombudsman (SPSO) the Scottish Government considers that, on balance, the Bill as currently drafted is appropriate and sufficient. I will, however, ask for this to be kept under review as the provisions bed in and it can be seen how they work in practice.

The PIRC, in contrast to the SPA, was not in support of a move of the initial assessment of complaints against senior officers to the PIRC, arguing that the PIRC is primarily an oversight body and if the PIRC dealt with all such complaints in the first instance, then there would be no one to provide oversight of the PIRC.

It is expected that where an organisation such as the PIRC or the SPA receives a complaint or misconduct issue that is not for them to deal with, that they pass it onto the appropriate body to deal with the issue, and that they advise the member of the public that this has been done. There are legal information sharing gateways in place to allow for this. For this reason, it is not considered problematic for the SPA and PIRC to be dealing with different types of issue relating to senior officers. In practice the likelihood is that there will be a degree of movement of cases between the two bodies regardless of where responsibility lies, as complainers may unknowingly direct their complaints to the wrong body.

The PIRC will be dealing with the most serious misconduct issues in relation to senior officers going forward, as the PIRC will be carrying out preliminary assessments of misconduct and the PIRC will continue to be able to deal with allegations of criminality where directed to do so by the appropriate prosecutor. If the PIRC is not directed to investigate the

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criminal offence (and to note they are currently directed to investigate all offences that might amount to a breach of article 3 (torture, inhuman or degrading treatment) or article 5 (unlawful detention) then the Police Service will investigate. The most serious complaints are likely fall under either criminal or misconduct matters and will be dealt with therefore by the PIRC.

In relation to complaint matters, which will therefore likely be the less serious issues, the SPSO recommends that complaints should be dealt with at first instance internally. Here, the SPA is in charge of senior officer appointment and, where required of asking them to resign under section 14 of the 2012 Act. The SPA will also continue to have responsibility for implementation of any disciplinary action in relation to senior officers. The SPA therefore has significant responsibilities in relation to senior officers, as compared to the PIRC, who has no link to the senior officers.

The Bill paves the way for PIRC undertaking preliminary assessments for misconduct complaints. Maintaining receipt of all complaints by SPA offers a chance of quicker organisational learning and the alternative, for PIRC to take receipt initially, would mean that grievances and other issues, not for the PIRC would have to be passed to the SPA resulting in unnecessary delays in resolving grievances.

Other checks and balances, such as the increased ability for the PIRC to undertake independent audits of 2006 Act complaint handling by accessing computer systems, and the PIRC being able to call in cases, minimise any systemic issue with SPA failing to pass on cases that should have been passed on as possible misconduct cases. The expectation is that regulations will include a legal duty on the SPA to refer any misconduct allegations received against Senior Officers to the PIRC for assessment.

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<p>Whilst the Committee heard evidence from witnesses recommending that PIRC should carry out the initial assessment and investigation of all complaints about officers of any rank, we view that approach as premature, disproportionate and resource intensive. [para 240]</p>	<p>I welcome this view. Dame Elish recommended that the case for all complaints being received by an independent police complaints body such as the PIRC should be <b>kept under review</b> by Scottish Ministers and if, after a reasonable passage of time, the changes recommended in her report have not secured appropriate improvement, then Scottish Government should consider afresh whether they want to move to a PONI (Police Ombudsman for Northern Ireland) model where all complaints go to that independent body in the first instance.</p> <p>The Scottish Government will, therefore, consider the effectiveness of implementing the changes recommended made by Dame Elish, including those requiring legislation to implement <b>after</b> the legislative process and changes to regulations have concluded and been implemented.</p>
<p><b>The Committee recommends</b> that the SPA keeps under review the PSD’s role in carrying out the initial assessment and investigation of allegations of misconduct and complaints about non-senior officers. To inform this review, the SPA’s Complaints and Conduct Committee should seek the views of those who have made complaints and those who have been the subject of a complaint. This recommendation reflects the evidence we heard from those with personal experiences of the police complaints system. The new approach where a centralised professional standards department considers all complaints is a welcome development. However, it is essential for public confidence that this new approach is subject to robust and transparent oversight and governance, to ensure that those who make complaints do not have the same experiences as the people who spoke to us. [para 242]</p>	<p>I understand that this recommendation is aimed at the SPA, however, should this be helpful to the Committee, I can offer the following information about the wider context here;</p> <p>In terms of SPA’s oversight role, Dame Elish made several non-legislative recommendations to enhance the Complaints and Conduct Committee’s (CCC) scrutiny of the organisations involved in complaint handling. The CCC hold quarterly meetings whereby the SPA and Police Scotland submits detailed performance reports - published online with meetings streamed live for transparency and accountability.</p>

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<p>The Committee <b>asks the Scottish Government to consider</b> the reasons given by PIRC for its strenuous objection to the proposal that it could take on the role of presentation of cases at senior officer misconduct hearings and to clarify whether this remains the Scottish Government’s intention. [para 261]</p>	<p>The Scottish Government have considered representations from the PIRC during the engagement on the Dame Elish final report recommendations.</p> <p>Whilst this is not for the Bill itself, on balance, our intention is to consult on this when considering regulations with the the Scottish Police Consultative Forum. My view is that PIRC are best placed to carry out this role. PIRC will have conducted the initial assessment, carried out the investigation and have all the documentation to present the case, though they may opt to procure the required skill set when necessary.</p>
<p>As the costs for implementing the police conduct provisions cannot be fully assessed at this time, <b>the Committee recommends</b> that the Scottish Government keeps these costs under review and revises them in accordance with the actual costs for Police Scotland and PIRC, once known, and informs the Committee of any changes to costs. [para 277]</p>	<p>If there is any change in the Scottish Government’s assessment of the costs, the figures will be presented to Parliament at the earliest opportunity. I can reassure the Committee that the Finance Committee has the most up to date figures that are available at present.</p> <p>Where changes to the conduct regime are delivered through secondary legislation, those instruments will be accompanied by Business and Regulatory Impact Assessments.</p>
<p><b>Section 6</b></p>	
<p>The Committee asks the Scottish Government <b>to clarify</b> whether gross misconduct proceedings can continue beyond the 12-month period if they have begun within this period, or whether the intention is that allegations can be raised and continue until conclusion, however long that takes. [para 335]</p>	<p>This issue was raised when I gave evidence on 29 May, and I further clarified in my letter to the Criminal Justice Committee on the 10 June 2024.</p> <p>The intention is for any time limit that is set in regulations to apply to the time in which proceedings must be commenced. Having this time limit will avoid stale allegations being pursued against former constables. Provided the proceedings are commenced within this time period, they can continue to conclusion, however long that takes. The Bill provisions also recognise the fact that misconduct investigations may involve varying degrees of</p>

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complexity and therefore permit regulations to specify criteria to allow a case to proceed even after the time limit has passed. The detail of this, however, will be set out in regulations, which will need to be subject to further consultation. Therefore, current plans could be subject to change depending on what representations are made during the consultation process.

The Bill gives the Scottish Ministers the power to set a point in time after which the conduct procedures cannot be applied in respect of the person, unless particular criteria are met. Whether there will be a time restriction, when it is, and what the criteria are for being able to carry on past this point in time are not therefore set in stone by the Bill. These would be subject to further consultation at the time they are added to draft regulations.

However, the Scottish Government thinking is set out in the consultation on the Review, and also at paragraph 74 of the policy memorandum. This thinking is subject to consideration of representations made during the consultation process for the regulations. The policy memorandum explains that the proposed time beyond which proceedings cannot be taken unless specific criteria are met is 12 months from the time the person ceased to be a constable.

The proposed criteria for a case being brought after that point are that:

- The case is serious and exceptional,
- The case is likely to damage public confidence in policing, and
- The PIRC has determined disciplinary proceedings are reasonable and proportionate.

The time restriction proposed is similar to what is in place in England and Wales regarding former officers.

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<p>The Committee would have concerns if any investigations into gross misconduct took longer than is necessary. As such, <b>the Committee recommends</b> that any investigations into an officer who has left the force should be completed as timeously as possible. We <b>also recommend that</b> the SPA monitors this process over the initial years to ensure that this is the case and shares its findings with the Committee. [para 336]</p>	<p>The delay of investigations into gross misconduct prolongs the impact on victims and on the officers, so I very much agree with the Committees concerns if delays were to occur. With my officials and policing partners, I will explore ways to mitigate this in advance of the process being put in place.</p> <p>Moreover, I will consider with the SPA mechanisms that can enable monitoring and reviewing of the impact of section 6 of the Bill when it is brought into force and used.</p>
<p>The Committee <b>asks the Scottish Government to confirm</b> the circumstances in which PIRC will carry out a preliminary assessment of an allegation to assess whether it would amount to gross misconduct. [para 337]</p>	<p>I am considering whether the PIRC should carry out the preliminary assessment process for all cases where consideration is being given to raising gross misconduct proceedings against <b>former constables</b>. This will, however, be subject to further consultation when the regulations setting this out are drafted.</p> <p>The preliminary assessment is a mechanism in the existing regulatory conduct regime by which the seriousness of an allegation against a constable assessed in advance of a full fact-finding process. The preliminary assessment will be used by the PIRC as the basis for deciding whether the former constables provisions apply, and this is reflected in the drafting in new subsection (2A) which the Bill inserts into section 52 of the 2012 Act.</p> <p>The PIRC already conduct a similar assessment in cases where a senior officer misconduct allegation has been referred to the PIRC by the SPA for investigation (see regulation 9 of the Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013).</p>

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<p>The Committee notes the recommendation from Police Scotland at paragraph 325 to amend section 9 of the 2014 conduct regulations for officers to make the default position that misconduct proceedings “must proceed without delay”, notwithstanding extant or possible criminal proceedings, provided that to do so does not prejudice the criminal proceedings. The Committee asks the Scottish Government to provide a view on this recommendation and whether a similar amendment should be made to section 7 of the 2013 conduct regulations for senior officers. [para 339]</p>	<p>My officials will consult with the Scottish Police Consultative Forum on this issue, alongside other aspects of the conduct regulations (for senior and non-senior officers).</p> <p>The views of the Crown Office and Procurator Fiscals Service will also be important as, constitutionally, the Scottish Government cannot make changes which impact on the prosecutorial discretion of the Lord Advocate.</p> <p>As my officials confirmed in the evidence session, we do not agree with the suggestion that the regulations have an in-built assumption not to proceed. The regulations give the relevant Deputy Chief Constable, or the SPA, the discretion to suspend or postpone misconduct proceedings, but it does not oblige them to do so. Therefore, it is not the current legislation that is preventing cases from proceeding without delay.</p> <p>It is not clear whether any amendment would make a practical difference to the position, as the ability of COPFS to direct the police in potential prosecutions would have to be preserved.</p> <p>We are also of the view that there may be a workable solution to be found between Police Scotland and the COPFS which would deliver the same result more quickly and without the need for legislation. We would therefore encourage Police Scotland to explore these options directly with COPFS.</p>
<p><b>Section 7 (related)</b></p>	
<p>We <b>recommend that Scotland follows</b> the practice in England and Wales where the barred list is published, but only relevant organisations are able to access the advisory list.</p>	<p>The Scottish Government will advocate for this outcome in the Scottish Police Consultative Forum subgroup when this regulation is consulted on.</p> <p>Beyond this undertaking, it is not possible at this stage to provide more</p>

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[para 361]	certainty as to the final outcome, as the Scottish Government is obliged to consult the Scottish Police Consultative Forum and a number of other parties prior to making regulations under new section 59A(7) (contained in section 7 of the Bill). In order for that consultation to be meaningful, it is not possible to commit to a particular result but the Scottish Government supports it and will seek to advance it.
The <b>Committee recommends</b> that the Bill should include a power for the Chief constable to remove someone who is unable to maintain their vetting [para 371]	I welcome the committee's recommendation and I am considering it in detail how best to implement it and the HMICS recommendation from their 'Assurance review of vetting policy and procedures within Police Scotland' (3 October 2023) ahead of stage 2.
The Committee notes the evidence it received that there should be a significant new power for the Chief constable to dismiss officers in the most egregious of cases. <b>The Committee requests an update from the Cabinet Secretary</b> in her response to this report on the Scottish Government's view. The Committee will come to a view on this issue once that update is received. para 374]	<p>The Scottish Government is consulting with the Scottish Police Consultative Forum on the separate Dame Elish recommendations (which can be delivered in secondary legislation) that there should be provision for accelerated misconduct hearings for all ranks to deal with circumstances where the evidence is incontrovertible and where that evidence means that without further evidence it is possible to prove gross misconduct, or where the subject officer admits to their behaviour being gross misconduct. This might help to deal with any issues that Lady Elish, or stakeholders, felt merited the need for summary dismissal.</p> <p>There is also a need not to impact on the Lord Advocate's prosecutorial discretion, and so COFPS would have to be consulted on whether any such move could adversely impact that. Previous discussions with the Crown Office on this have had their officials reinforce that criminal proceedings have primacy and misconduct procedures should not jeopardise a potential criminal conviction.</p>

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<p><b>Section 8</b></p>	
<p>The Committee welcomes the proposal for an independent panel to consider senior officer conduct cases and for there to be an appeals process to the Police Appeals Tribunal against any decision to take disciplinary action, and not just where there is dismissal or demotion. However, the Committee did not hear a significant amount of evidence about these proposals or the reasons for their introduction.[para 397]</p>	<p>We are pleased that the Committee welcomes this proposal. We are aware that the issue of parity across all ranks was raised through written and oral evidence by SPF.</p> <p>Every constable (senior or not) has a right to appeal to the PAT against a decision to dismiss or demote, whether in respect of conduct or performance.</p> <p>Having an independent panel making decisions in all senior officer cases of misconduct and gross misconduct means it would not be appropriate to have an ‘internal’ appeal’ mechanism in regulations as this would be less independent than the case decided at first instance.</p> <p>As the Committee recognises, appeal rights to the PAT will not change for cases of dismissal or demotion in rank. However, in conduct cases senior officers are given an additional right of appeal to the PAT where the decision is less serious than demotion or dismissal.</p> <p>Non-senior officers can appeal to the PAT for dismissal or demotion in rank, but have an internal appeal process for appealing other actions which will continue to be provided for in regulations.</p> <p>The details will be set out to the Scottish Police Consultative Forum subgroup when this is consulted on.</p>
<p><b>The Committee asks the Scottish Government for its view</b> on the point raised by the Scottish Police Federation about the proposal to change the appeals process only for senior officers and the lack of parity for non-senior officers. [para 398]</p>	<p>I note the evidence given to the committee but consider that the wording “lack of parity” is somewhat misleading. There will still be parity in the sense that senior and non senior officers will continue to have appeal mechanisms which are proportionate and appropriate.</p>

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	<p>Therefore, non senior officers will continue to have sufficient appeal mechanisms as part of regulations, as well as the right they currently have to appeal any decision to dismiss the constable, or demote the constable in rank, to a police appeals tribunal.</p> <p>For Senior Officers, as they will no longer have any appeal mechanism as part of Regulations, there is a need to give Senior Officers a right of appeal to a police appeals tribunal against any decision to take disciplinary action, not just demotion in rank and dismissal. This is a result of Senior Officer misconduct hearings being led by an independent panel. It would not be appropriate for an appeal to be heard in a forum that is less independent than the forum where disciplinary action was decided on at first instance.</p>
<p>The <b>Committee asks the Scottish Government to confirm</b> that the Police Appeals Tribunal will be transferred to the Scottish Courts and Tribunals Service prior to the enactment of the Bill. [para 399]</p>	<p>The PAT is currently scheduled to transfer into the wider Scottish Tribunals structure in 2025 which will then allow the enabling regulations around S8 of the Police (Ethics, Conduct and Scrutiny) Bill to be laid.</p>
<p>The Committee heard conflicting evidence on the merits of gross misconduct hearings being held in public. Members of the Committee also hold opposing views on this matter. <b>We recommend</b> that the Scottish Government sets out the case for public hearings in its response to this report and provides clarification of the meaning of “in public”. [para 412]</p>	<p>The recommendations were broadly accepted when they were first made by Dame Elish in Nov 2020, however, on this aspect the Bill itself does not provide for holding hearings in public , as the procedures for conduct hearings are contained in regulations made under the Police and Fire Reform (Scotland) Act 2012. Any amendments to conduct regulations are going to be dealt with in the package of secondary legislation that will come after the Bill. In the final report, Dame Elish set out the case for holding hearings in public:</p> <p><i>“Holding all police officer gross misconduct hearings in public will ensure greater transparency. This would align policing in Scotland with other professions where gross misconduct hearings are held in public, such as</i></p>

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	<p><i>doctors, dentists, accountants and lawyers. The Chair should have discretion to restrict attendance as appropriate but the aim should be to ensure that as much of a hearing is held in public as possible” (DEA, Final Report, p33).</i></p> <p>I am aware that there are conflicting views on this matter and my officials are engaging with the Scottish Police Consultative Forum to consider this issue, alongside other aspects of the regulations, both at this stage and when require to consult on draft regulations (the latter as required under the 2012 Act)..</p> <p>I hope it is helpful to inform the Committee that Police Scotland have begun publishing the outcome of hearings, in line with a recommendation from the Dame Elish final report.</p>
<p>If gross misconduct hearings are to be held in public, <b>we agree</b> with Lady Angiolini’s recommendations that there should be appropriate safeguards put in place for vulnerable witnesses, and that the Chair should have discretion to restrict attendance as appropriate, whilst ensuring that as much of the hearing is held in public as possible. [para 413]</p>	<p>The committee’s recommendation is noted and will be set out to the Scottish Police Consultative Forum when regulations are consulted on.</p>
<p><b>Section 9</b></p>	
<p>The Committee <b>seeks clarifications</b> from the Scottish Government about whether the use of the term ‘person serving with the police’, means that these provisions will also apply to police staff. [para 431]</p>	<p>This section of the Bill is to ensure that there is the ability to have an organisation independent of the Police Service of Scotland able to investigate potential criminal offences and to investigate deaths involving all persons who are or have been a person serving with the police, in order to avoid accusations of familiarity between the person being investigated and those carrying out the investigation.</p>

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	<p>A person serving with the police will take the definition in the 2006 Act and includes: Police Constables, Police Staff and SPA staff.</p> <p>It includes former constables and those who have become constables since the incident took place, in order to provide assurances that the PIRC can investigate when directed by COPFS.</p>
<p>The Committee asks the Scottish Government to <b>clarify</b> how the off-duty provisions will work alongside the Fatal Accidents and Sudden Deaths etc (Scotland) Act 2016 requirement to investigate only those accidents occurring while the person was acting in the course of their employment or occupation. [para 440]</p>	<p>I welcome the opportunity to clarify this. A death in circumstances involving a person serving with the police could mean the death of a person who is not linked to the Police Service or SPA in any way, but who died in circumstances involving a person serving with the police. A death involving a person serving with the police could also be the death of a person serving with the police.</p> <p>The Bill is making no changes in this respect, other than confirming that a death does not have to happen in the course of a person serving with the police's duty or employment.</p> <p>Under section 1 of the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Act 2016, the COPFS is required to investigate where an inquiry is to be held into the death of a person in accordance with sections 2-7 of the relevant Act.</p> <p>Sections 2-7 include when there is either:</p> <ul style="list-style-type: none"> <li>• a mandatory inquiry (such as where a person dies in the course of their employment or occupation or where they die in custody), <b>OR</b></li> <li>• a discretionary inquiry (where a death was sudden, unexpected or unexplained or occurred in circumstances giving rise to serious public concern and the Lord Advocate decides it would be in the public interest for there to be an inquiry).</li> </ul>

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	<p>Therefore the COPFS is required to investigate in a range of circumstances, going beyond just deaths in the course of employment or occupation.</p> <p>The PIRC already have the power to investigate deaths involving people serving with the police under the 2006 Act, this does not mean that the PIRC is required to investigate all deaths involving a person serving with the police. This would only be when directed by COPFS, which is most likely in the circumstances that there could be accusations of familiarity.</p> <p>The COPFS may ask the police to investigate, if there were no concerns about proximity between the death and those investigating.</p>
<p>The Committee also <b>seeks clarification</b> as to whether these provisions are to apply to the death of a person serving with the police, whether they are on or off-duty. [para 441]</p>	<p>This provision explains that a death does not have to happen in the course of a person’s duty or employment. The ability for the PIRC to investigate the deaths of persons serving with the police, when directed by the COPFS, is already in statute under the existing wording of the 2006 Act.</p> <p>Therefore, this will allow the PIRC to investigate deaths involving persons serving with the police who were off duty at the time of the death in the same way that they can investigate deaths involving a person serving with the police who was on duty at the time of the death (under the direction of COPFS), in line with the 2016 Act. This would include deaths involving a person serving with the police, where this person was the person who died.</p>
<p><b>Section 10</b></p>	
<p>The Committee asks the Scottish Government to <b>clarify</b> whether the Bill’s intention is that only acts or omissions</p>	<p>The policy objective of section 10 was to make it clear that constables and police staff are able to complain about things that happen to them and</p>

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<p>which directly affect people, and not those which are witnessed by a person serving with the police in their personal capacity, will be defined as a relevant complaint. [para 454]</p>	<p>which affect them in their personal capacity, where they are in a position akin to a member of the public. This provision will raise awareness that those serving with the police are able to raise a complaint, in the same way as all other members of the public, if an act or omission affects them in their personal capacity (whether on or off duty). This could include a person serving with the police who witnesses something that affects them in their personal capacity, if it is something that could amount to a relevant complaint under the 2006 Act.</p> <p>If a person serving with the police witnesses something whilst on or off duty, then there are already internal mechanisms through which they can, and are encouraged to, raise concerns or grievances about performance or, conduct matters relating to colleagues.</p>
<p>The Committee <b>asks the Scottish Government to consider</b> whether the term “relevant complaint” is sufficiently understood by members of the public and, if it is not, consider changing the term to “public complaint”. [para 455]</p>	<p>The Explanatory Notes to the Bill set out that the definition stems from Section 34 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 Act.</p> <p>A complaint means a statement expressing dissatisfaction about any action or omission by or on behalf of the subject of the complaint, and/or the standard of any service which the subject of the complaint has failed to provide.</p> <p>Currently, subsections (1) and (6) provide that a relevant complaint is one made by a member of the public who claims (a) to be the person in relation to whom the act or omission took place, (b) to have been adversely affected by the act or omission, or (c) to have witnessed the act or omission.</p> <p>The Bill will amend subsection (6) to reference persons instead of members of the public, to make it clearer that a person serving with the</p>

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	<p>police can complain.</p> <p>The use of the word relevant is a common and useful technique in legislation. Within the context of policing law in Scotland, the term “relevant complaint” is well-established as carrying a technical meaning, which defines when various legal powers and duties arise. That is not to say however that it is an essential term to use in discussion with laypeople and it should not be used to imply that the complaint is without merit or insignificant.</p> <p>The Scottish Government view is that the way this is communicated to the person complaining should be reviewed with a mind to clarifying this, rather than amending the statutory definition.</p>
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**Section 11**

<p>The Committee is of the view that the Bill should be <b>amended</b> to include provisions requiring the SPA and Police Scotland to be under a duty to comply with PIRC’s recommendations, subject to a public interest test, unless there are operational reasons not to. However, there may be cost implications associated with this recommendation and we ask Scottish Ministers to keep these under review. [para 472]</p>	<p>I welcome the Committee’s feedback on this provision. When drafting the provision, my officials were mindful of finding a balance between ensuring transparency and the PIRC’s ability to enforce its recommendations, and on the other hand the Chief Constable’s operational autonomy, accountability and knowledge of operational and resourcing requirements (including cost implications).</p> <p>From engagement with the PIRC, we understand that Police Scotland could choose to respond to a recommendation a different way, and PIRC would welcome this as long as it addressed the issue. There are parallels with aspects of the 2012 Act which say the Chief constable is to respond to HMICS and SPA recommendations in the manner they think is relevant. So placing a duty to comply with PIRC recommendations would be at odds with how other parts of policing legislation operates.</p>
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	I understand the Committee's position and will ensure Scottish Ministers keep under review Police Scotland and SPA's compliance with recommendations made by the PIRC.
<p>We <b>recommend</b> that the Bill be <b>amended</b> to include a presumption that PIRC publishes the responses by Police Scotland and the SPA to its recommendations for them in complaint handling review reports, unless there are exceptional circumstances. [para 473]</p>	<p>I accept the Committee's comments and confirm that an amendment will be drafted to provide for a presumption that the PIRC will publish the response from Police Scotland or SPA, in an appropriate manner.</p> <p>If there is a concern that a response may reveal sensitive information including operational matters or personal details then the PIRC will use their discretion (which the legislation will have to provide for) as to whether and how the information will be published.</p> <p>This may include consideration of redactions of the responses, to protect personal details.</p>
<b>Section 12</b>	
<p><b>The Committee seeks clarity</b> from the Scottish Government on how PIRC's new process to call-in complaints is to be monitored, and what the appeals process will be for a complainer who is dissatisfied with PIRC's handling of a "called-in" complaint. [para 492]</p>	<p>This process is intended to strengthen the powers of the PIRC. As the ultimate arbiter, there is no further right of appeal on the substance of the complaint. However, there are administrative bodies which may investigate complaints about the manner in which a complaint was dealt with and decisions of public authorities. For instance, the Scottish Public Services Ombudsman (SPSO), and the Scottish Information Commissioner are regulators who can investigate decisions made by public authorities. And, of course, as a public body, the PIRC is also subject to judicial review.</p>
<b>Section 13</b>	
<p>The <b>Committee is of the view</b> that both PIRC and the SPA should be added as prescribed persons in UK legislation. This will provide a relevant independent third party for</p>	<p>Whilst, I am happy to consider this view, this matter is outwith the Bill as the management of the Prescribed Bodies List is a reserved matter and therefore would need to be subject to agreement by the UK Government</p>

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<p>employees of Police Scotland and the SPA to report whistleblowing concerns to. [para 513]</p>	<p>to take forward legislation in the UK Parliament..</p> <p>It might also be useful to note that there are already protections from detriment in their work for police constables, police staff and SPA staff who whistleblow to Police Scotland and/or SPA (as relevant) as their employers (or equivalent), under reserved UK parliamentary legislation.</p> <p>Making a body a prescribed person therefore will only make a difference to those persons who are not employees of the organisation, in giving them a person independent of their employer to whistleblow to, whilst the legislation at the same time places a legal obligation on the employer to provide protection to the person from suffering detriment in their employment.</p>
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**Section 15**

<p>The Committee would <b>welcome the Cabinet Secretary’s views</b> on her consideration of the proposal from HMICS for PIRC to have the power to refer particular matters to HMICS, should that be appropriate. [para 551]</p>	<p>The Scottish Government does not consider any legislative amendments are needed in relation to this proposal. The PIRC already have the power to refer any matter it considers appropriate to HMICS. Section 46 of the 2006 Act provides the information sharing gateway to allow the PIRC to pass information to HMICS should that be necessary to allow HMICS to carry out their work.</p> <p>The original recommendation in Dame Elish Angiolini’s report recognised this and that this was not happening, therefore the process needed to be strengthened.</p> <p>In addition, section 85 of the 2012 Act places a duty on PIRC and HMICS to “co-operate and co-ordinate activity with each other with a view to improving the carrying out of their respective functions in relation to the Authority and the Police Service”, and to make arrangements with a view to “preventing any unnecessary duplication in relation to any inspections,</p>
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	<p>investigations, inquiries or examinations carried out, or to be carried out, by them in relation to the Authority or the Police Service".</p>
<p><b>Section 16</b></p> <p>The Committee seeks clarification from the Scottish Government on the oversight measures which will be in place to ensure that all complaints are added to the Police Scotland database. [para 578]</p>	<p>There are strong processes to mitigate against this. If an officer was to not put something on record, this could likely be a breach of the Standards of Professional Behaviour (SOPB). Moreover, officers would be in a stronger position, if they have a record of events, if there were allegations made against them.</p> <p>The scrutiny powers of the PIRC are being enhanced to audit data, policies and processes, this includes direct access to the Centurion system, and obligations to audit handling of whistleblowing complaints. If the PIRC comes across information in the course of carrying out their other functions, that reveals that a complaint was made and not recorded in the system, they would be able to call in the matter under section 12.</p> <p>The SPA also have significant responsibilities to provide oversight and monitor Police Scotland's performance in this area. There is an established route to interrogate the data gathered by Police Scotland on complaints through the SPA's Complaints and Conduct Committee.</p> <p>Section 12 provides the PIRC with a power to take over consideration of (or call in) complaints, which could be utilised by a complainer where they have reason to believe that their complaint has not been handled correctly by Police Scotland, including situations where the case is taking unjustifiably long to resolve, or has not been accepted as a complaint in the first instance (which would seem to be an inevitable consequence of a complaint not being added to the relevant database).</p>

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The Committee also **seeks confirmation** from the Scottish Government that necessary security and data protection safeguards will be in place prior to the provisions being enacted. [para 579]

This provision does not give the PIRC access to any new categories of information. The PIRC is already entitled to access complaints reports for their complaint handling review and complaints auditing functions. This provision only changes how the PIRC can access this information. Therefore, the PIRC must continue to ensure they have established necessary safeguards to process this information to comply with data protection legislation.

As set out below, the Data Protection Impact Assessment (DPIA) for the Bill acknowledged that further consideration on the detail of protections would need to be undertaken at the time regulations were being drafted. A further DPIA would also be required at this point.

The Scottish Government's Data Protection Impact Assessment (DPIA) is available here: [Further Information - Police \(Ethics, Conduct and Scrutiny\) \(Scotland\) Bill: data protection impact assessment - gov.scot \(www.gov.scot\)](#),

It sets out that:

*“PIRC already has a statutory duty to access this type of data when necessary for investigations under section 44 of the Police, Public Order and Criminal Justice (Scotland) Act 2006.*

*The PIRC would use information about complaints going forward to: (1) carry out their audit function under section 40A, where the PIRC is to assess a number of complaints to ascertain if complaints as a whole are being dealt with to a good standard, (2) in assessing whether to takeover consideration of a complaint that Police Scotland or the SPA has been dealing with; and (3) to consider how the complaint has been handled by Police Scotland or the SPA (as opposed to carrying out their own*

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	<p><i>investigation into the circumstances of the complaint) (sections 34-41 of the 2006 Act). The PIRC is going to have access to the same information as before, to carry out the same functions as before (with the exception of the new power to takeover investigation of a complaint, but the information relevant to making such decisions on taking over a complaint was already relevant to the PIRC's functions regarding complaints audit and review of complaints handling, and so the PIRC could already access this information), only via a different means.”</i></p> <p><i>“Both Police Scotland and the PIRC's Information Management Teams will work together to ensure their individual Data Protection Policies, Data Sharing Agreements and Privacy Notices are updated to reflect any changes to access and legislation.”</i></p>
<p>As the costs for implementing the functions of the Police Investigations and Review Commissioner provisions cannot be fully assessed at this time, the Committee <b>recommends</b> that the Scottish Government keeps these costs under review and revises them in accordance with the actual costs for PIRC, Police Scotland and the SPA, once known. [para 585]</p>	<p>If there is any change in the Scottish Government's assessment of the costs, the figures will be presented to Parliament at the earliest opportunity. I can reassure the Committee that the Finance Committee has the most up to date figures that are available at present.</p> <p>Where changes to the conduct regime are delivered through secondary legislation, those instruments will be accompanied by Business and Regulatory Impact Assessments.</p>
<p><b>Section 17</b></p>	
<p>The Committee <b>recommends</b> that the Scottish Government takes measures to ensure that the Advisory Board's membership reflects the diverse groups in society and that its role and work are transparent. This is important for public confidence in the role of PIRC. [para 602]</p>	<p>The Equality Act 2010 sets a statutory duty that appointments must not discriminate against applicants due to protected characteristics. The Public Sector Equality Duty (PSED) also requires all public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people, when carrying out their activities.</p>

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	<p>Whilst recruitment of members for the Advisory Board to the PIRC will be based on merit it must also comply with the Equality Act 2010 and the PSED. Membership should reflect the diverse and intersectional experiences of protected characteristics groups. It may be helpful to be aware that all PIRC’s recruitment procedures are impact assessed.</p> <p>The Policy Memorandum sets out that the AAC has already established Terms of Reference and a Code of Conduct in line with the standards outlined for Statutory Boards through Scottish Government guidance.</p>
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**Miscellaneous**

<p>In <a href="#">correspondence</a> to the Committee, Police Scotland requested that consideration be given to making legislative changes to address the following issues—</p> <p>“To introduce accelerated misconduct proceedings for cases where; (i) the factual evidence is incontrovertible and; (ii) that evidence is incontrovertibly gross misconduct; and (iii) dismissal is mandated in the public interest”.</p> <p>“At present, there is no provision within the PSoS (Conduct) Regulations 2014 for a case to be presented to a Chair of a Gross Misconduct Hearing. This requires an urgent update to provide the Deputy Chief Constable (DCC) with the right to legal representation to present a case”. This is to address the inequality of arms in representation in gross misconduct hearings.</p> <p>“An amendment to Regulation 7 of the PSoS Regulations 2013 and Regulation 9 of the PSoS (Conduct) Regulations 2014 should be made to make it the default position that misconduct proceedings “must proceed without delay”. This is to address potential issues in cases where there are</p>	<p>The Scottish Government has covered some of these elements in the relevant sections of the report (in response to paragraphs 339, 371 and 374). As explained, any changes to conduct regulations are subject to consideration of representations made during the consultation process with the Scottish Police Consultative Forum in line with obligations under the 2012 Act.</p> <p>In terms of with cause samples, it is considered that the existing regulation making powers in the 2012 Act could be used to put in place substance misuse testing for constables and therefore the Bill does not need to be amended to allow for this. This would require a change to the terms and conditions of police officers which are set out in regulations and determinations, and are negotiated by the Scottish Police Consultative Forum.</p>
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<p>outstanding or possible criminal proceedings.</p> <p>“There must be a mechanism for removing an individual who cannot maintain their vetting from Police Scotland”.</p> <p>“... explicit legislation which provides express statutory powers to support the organisation’s ability to:</p> <ul style="list-style-type: none"> <li>○ require a police officer or member of police staff to provide a ‘with cause’ sample where information or intelligence of substance misuse is received;</li> <li>○ permit random drug and alcohol testing amongst police officers and members of police staff;</li> <li>○ compel police officers and members of police staff to provide associated samples”.</li> </ul> <p>[para 605]</p>	
<p>In its <a href="#">written evidence</a>, PIRC requested that the following issue be addressed—</p> <p>“Lady Angiolini highlighted the lack of parity of powers available to PIRC in Crown directed investigations. It was her recommendation that this lack of parity be addressed and identical powers – such as those found within Regulation 5 [of the Police Investigations and Review Commissioner (Investigations Procedure, Serious Incidents and Specified Weapons) Regulations 2013] – be created to apply in Crown directed investigations as for investigations carried out under Section 33A(c) and 33A(d) [of the 2006 Act]. (Page 452, para 30.86). PIRC concurs that this inconsistency should be rectified in the manner proposed in Lady Angiolini’s Report and submits that S41F [of the 2006 Act] should also apply to</p>	<p>In regard to powers available to PIRC in Crown directed investigations (investigations under section 33A(b) of the 2006 Act), we considered the possibility of amending Regulation 5 of the 2013 Regulations to cover COPFS directed investigations during preparations for the Bill. Our analysis identified ECHR concerns, in particular whether changing the Regulations in this way might risk breaches of the right to silence and the protection against self-incrimination if an individual was forced to provide evidence in a criminal case that could later be used in a prosecution of them. The Scottish Government view is that there are good reasons as to why the powers available to the PIRC differ for investigations conducted under section 33A(c) and (d) of the 2006 Act as compared with COPFS directed investigations under section 33A(b). Furthermore, we were not in receipt of evidence to state that this was a substantial issue for the PIRC. In fact, PIRC advised that to date she has not experienced any difficulty in obtaining information for COPFS directed investigations and mainly</p>

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<p>Crown directed investigations.</p> <p>PIRC does not accept that the application of S41F to Crown directed investigations – nor the application of Regulation 5 of the 2013 Regulations – would be problematic in terms of ECHR nor that it would erode the protection against self-incrimination. Such provisions would apply to witnesses only”. [para 606]</p>	<p>argues for change due to an apparent incongruence of powers. We do not consider this to be a good reason for making a legislative change and given our ECHR concerns, we have decided not to progress this matter via legislation.</p> <p>We are also of the view that there may be a workable solution to be found between PIRC and the COPFS which would deliver the same result more quickly and without the need for legislation. We would therefore encourage PIRC to explore these options directly with COPFS.</p>
<p>In its <a href="#">written evidence</a>, Amnesty International UK indicated that there is no consistent, standardised information published on a designated part of Police Scotland and the SPA’s websites concerning Independent Advisory Groups (IAGs). In its submission, Amnesty provides a list of the essential criteria for IAGs that should be built into regulations under the new Bill. [para 607]</p>	<p>The Scottish Government does not view this as a matter for legislation and will consider the most appropriate way to address the Committee’s views on this matter with the SPA and Police Scotland.</p>

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