

Criminal Justice Committee

**18th Meeting, 2023 (Session 6), Wednesday,
7 June 2023**

Subordinate legislation

Note by the clerk

Purpose of the paper

1. This paper invites the Committee to consider the following affirmative instrument:
 - [The Police Negotiating Board for Scotland \(Constitution, Arbitration and Qualifying Cases\) Regulations 2023 \[SSI 2023/draft\]](#)

Introduction

2. The instrument was laid before the Parliament on 2 May 2023 and is subject to the affirmative procedure.
3. The instrument is proposed to be made in exercise of the powers conferred by paragraphs 5(7), 7 and 8 of schedule 2A and section 125(1) of the Police and Fire Reform (Scotland) Act 2012 (“the 2012 Act”).
4. It allows for the preparation and publication of the constitution of the Police Negotiating Board for Scotland (PNBS); the disapplication of mandatory statutory arbitration rules; and sets out those ‘qualifying cases’ that may form representations referred to arbitration.
5. Further details on the purpose of the instrument can be found in the policy note attached in **Annex A**.

Correspondence received

6. The Committee has received a written submission from the Scottish Police Federation in relation to the instrument. A copy of the letter can be found in **Annex B**.

Delegated Powers and Law Reform Committee Consideration

7. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 9 May 2023.
8. The DPLR Committee agreed that it did not need to draw it to the attention of the Parliament on any grounds within its remit.

Criminal Justice Committee Consideration

9. **The Committee is required to report to the Parliament by 10 June 2023.**
10. Motion S6M-08783 has been lodged proposing that the Committee recommends approval of the instrument. The Cabinet Secretary for Justice and Home Affairs is due to attend the meeting on 7 June to answer any questions on the instrument and to move the motion for approval.
11. **It is for the Committee to decide whether to agree to the motion, and then to report to the Parliament. Thereafter, the Parliament will be invited to approve the instrument based on the Committee's recommendation.**
12. **The Committee is asked to delegate to the Convener authority to approve the report on the instrument for publication.**

**Clerks to the Committee
June 2023**

Annex A

Policy Note

The Police Negotiating Board for Scotland (Constitution, Arbitration and Qualifying Cases) Regulations 2023

SSI 2023/XXX

1. The above instrument was made in exercise of the powers conferred by paragraphs 5(7), 7 and 8 of schedule 2A and section 125(1) of the Police and Fire Reform (Scotland) Act 2012 (“the 2012 Act”). The instrument is subject to affirmative procedure.

<p>Purpose of the instrument. This instrument allows for the preparation and publication of the constitution of the Police Negotiating Board for Scotland (PNBS); the disapplication of mandatory statutory arbitration rules; and sets out those ‘qualifying cases’ that may form representations referred to arbitration.</p>
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Policy Objectives

2. Chapter 6 and Schedule 3 of the Criminal Justice Act (Scotland) 2016 provides for the establishment of the Police Negotiating Board for Scotland and inserts sections 55A to 55E and Schedule 2A into “the 2012 Act”.

3. The aim of these sections and the schedule is to provide for establishment of a mechanism for negotiating the pay and conditions of service of constables of the Police Service of Scotland, the Police Negotiating Board for Scotland (PNBS).

4. The establishment of PNBS will allow police constables to negotiate their terms and conditions, through collective bargaining, directly with those who manage and fund the service.

5. The negotiation of constables terms and conditions is currently undertaken through the Police Negotiating Board (PNB) as set out under section 61 of the Police Act 1996. The PNB used to negotiate the terms and conditions for all police officers in the UK but the body was abolished in England, Wales and Northern Ireland when section 131 of the Anti-social Behaviour, Crime and Policing Act 2014 was commenced on 7 August 2014.

6. The PNB remains a UK body, that only extends to Scotland, and the aim of these regulations is to put in place a Scottish negotiating body that continues the collective

bargaining for the terms and conditions of Police constables in Scotland. England, Wales and Northern Ireland have moved away from collective bargaining and now use the Police Remuneration and Review Body, reporting to the Home Secretary.

Provisions

7. The provisions in these regulations allow for the preparation and publication of the Constitution of PNBS; the disapplication of mandatory statutory arbitration rules; and sets out those 'qualifying cases' that may form representations referred to arbitration and where Scottish Ministers must, in accordance with section 55D of the 2012 Act, take all reasonable steps appearing to them necessary for giving effect to those representations.

8. Regulation 2 sets out that the constitution of the PNBS will be published on the Scottish Government web site and in line with section 5 of schedule 2A of the 2012 Act. The constitution will include the following areas in relation to the PNBS:

- PNBS functions and issues it will consider
- membership
- how the constitution will be determined
- provision of the Chairperson and Secretariat
- procedures for negotiation, conciliation and arbitration
- costs
- requirement for and content of Annual Reports

9. Regulation 3 allows for the mandatory rules in schedule 1 of the Arbitration (Scotland) Act 2010 (Scottish Arbitration Rules), listed in the schedule to these Regulations, to be disapplied to disputes submitted to arbitration in accordance with the PNBS's constitution. The aim is for the PNBS to carry out conciliation and arbitration as set out in the constitution and under procedural guidance agreed with Acas Scotland. These procedures will take into account the Scottish Arbitration Rules as they apply to arbitration of pay and conditions disputes.

10. Regulation 4 sets out the Qualifying cases for the purposes of section 55D of the Act. The aim is to allow the members of the PNBS to take disagreements to arbitration in specific 'Qualifying cases' and for these cases to form representations where Scottish Ministers must, in accordance with section 55D of the 2012 Act, take all reasonable steps appearing to them necessary for giving effect to those representations.

11. It has been agreed that there may be two qualifying cases in any one reporting year. One of these cases will involve the 'annual pay award', unless the PNBS agrees there is no requirement for an 'annual pay award' in that reporting year (for instance in the event that a multi-year pay settlement has previously been agreed by PNBS and continues to apply). This provision provides additional security to PNBS members, that the annual pay award takes precedence over other qualifying cases, therefore that Scottish Ministers will not set aside representations in relation to the annual pay award which are made following arbitration. The PNBS members may take other disputes to arbitration, outwith the qualifying cases, but these

representations will not specifically require Scottish Ministers to take all reasonable steps appearing to them necessary for giving effect to those representations.

Consultation

12. In light of the proposal by the UK Government to abolish the PNB, the views of the members of the PNB 'Scotland Standing Committee' were sought on whether they wished to join an independent pay review body or retain a collective bargaining mechanism. All the members indicated that they preferred a collective bargaining approach. The members of PNB have been consulted on the detailed arrangements set out in these regulations and Acas Scotland has been consulted on the arrangements for conciliation and arbitration. The views of these stakeholders have been taken into account.

Impact Assessments

13. An Equality Impact Assessment (EQIA) was undertaken by the Scottish Government during development of policy and provisions in the Criminal Justice (Scotland) Bill. It found that there would be no negative impacts for persons within the protected groups.

14. A Financial Memorandum was published for the Criminal Justice (Scotland) Bill and no additional costs were identified for other bodies, individuals or businesses. No BRIA is therefore required for these regulations.

Scottish Government
Safer Communities Directorate
May 2023

Annex B

24 May 2023

Dear Committee Member

Police Negotiating Board for Scotland (PNBS)

Thank you for the opportunity to submit evidence on this subject. I hope what follows is of use to you in your deliberations. I also hope it does not read too much like a history lesson but I feel some background information is important to explain why the Police Negotiating Board, fair pay, and fair pay arrangements, are so vital to the police and police officers.

In the early 1900's, police officers in Scotland were suffering poverty and debt. There were 62 police forces in Scotland, all on differing rates of pay roughly equivalent to that for agricultural and unskilled labourers. Discipline in the service was harsh with regular sackings without notice or reasons given. Officers were writing to newspapers drawing attention to their plight. They achieved public sympathy but no official recognition of their situation and certainly no financial improvement.

In 1913, a National Union of Police and Prison Officers was formed. Membership was also open to members of Dock and Railway Police. The mottoes on the membership card were, "Tyranny is not Discipline." "Quit Ye Like Men. Be Strong." "Unity is Strength." The authorities were unhappy to say the least that police officers were members of the Union and membership carried the threat of instant dismissal but by 1916 the Union was affiliated to the TUC.

By the late summer of 1918 there was a real threat of a police strike. Poor pay was still the major issue but long hours of duty and strain of war-time; depleted officer numbers and the rising cost of living all contributed to this sorry situation. The Union demanded improvements and official recognition. On 28th August 1918, the Union gave the Government a 24 hour deadline to meet demands or face a police strike. The Prime Minister, Lloyd George, refused. On 30th and 31st August 1918, large numbers of police officers failed to report for duty. The Government deployed 8,000 special constables and 300 Guardsmen. There were no major incidents and no widespread civil unrest but the Government clearly recognised the seriousness of the situation.

Lloyd George met Union leaders and a significant pay rise was awarded. Constables' pay was increased from £2.00 to £2.13 shillings (£2.65) a week. He said he could not 'recognise' the Union during wartime but seemed to indicate that it would be recognised when hostilities ceased.

In March 1919, Government announced the creation of the Desborough Committee. It also said that in no circumstances would the Union be officially recognised. When it reported on 1st July 1919, the Desborough Committee promised a Bill which would introduce reforms to place the police on a better footing with regard to pay and conditions. The Bill also brought about The Police Act, 1919. It outlawed police

membership of unions and created the Scottish Police Federation. It stated:

'For the purposes of enabling the members of the Police Forces to consider and bring to the notice of the police authorities and the Secretary of State all matters affecting their welfare and efficiency ... there shall be established in accordance with the Schedule to this Act an organisation to be called the Police Federation....'

The Act also brought about the forerunners of the Police Negotiating Board, the Police Council for Scotland and the Police Council for England and Wales. They sat independently but pay and the vast majority of other arrangements were identical north and south of the border.

In 1953 a Police Council for Great Britain was established to deal with negotiable matters and separate Police Advisory Boards for Scotland and England and Wales were created to deal with non-negotiable matters.

In 1978, the Edmund-Davies Committee recommended a new negotiating body. The Official Side and Staff Side arrangement would be carried over from the Police Council but the "cornerstone" of the new body would be an independent chairman and an independent secretariat. The new Police Negotiating Board for the United Kingdom held its first meeting on 16 August 1979. In 1980 statutory effect was given to the Police Negotiating Board for the United Kingdom under the Police Negotiating Board Act 1980.

In 2014, PNB became a Scotland only body.

The Scottish Police Federation (SPF) has been asked to comment on the creation of the Police Negotiating Board for Scotland (PNBS) and its powers. A Police Negotiating Board has been in place for 44 years and has been fully supported by the SPF over that time. In the history of police industrial relations since the 1900's, this has been a period of unparalleled harmony and co-operation where the vast majority of problems were resolved without significant difficulty. It is also worth noting that the PNB has never reached an agreement which is outside Government pay policy.

Successive Commissions and Committees of Inquiry have concluded that the lack of the right to strike or join a trade union justifies the existence of the SPF as opposed to a trade union, a pay negotiating body and fair pay. Beyond anything else, SPF seeks fairness in pay and how it is set.

We make the following comments on the draft Police Negotiating Board for Scotland (Constitution, Arbitration and Qualifying Cases) Regulations 2023, and the proposed Constitution.

On 2 October 2008, during a discussion in the Scottish Parliament on the Police Negotiating Board Replacement, John Scott MSP asked, "Given last year's unilateral decision by the Home Secretary to overturn an independently arbitrated police pay award, it is no surprise that serving officers across Scotland and the rest of the UK have no faith in her proposals to review the police negotiating machinery. Scottish police officers must be assured of a fair and transparent system for negotiating their

pay, especially in recognition of the special circumstances whereby police officers are unable to take industrial action in pursuit of pay claims. Will the cabinet secretary support the calls from the Scottish Police Federation that an arbitrated pay settlement should be binding—unless in the exceptional circumstances of a vote to the contrary in Parliament?”

Kenny MacAskill MSP, then Cabinet Secretary for Justice replied, “Not only does the member have such an assurance, but he can go on the record of this Government. When the situation arose last year, we did not hesitate to ensure that our police officers—who have served our communities well, often in difficult and dangerous circumstances—received the judgment that had been decided on. We felt that to be an appropriate view then, and I see nothing to change it now. I assure the member that we meet regularly with the Scottish Police Federation to take on board its concerns. The Government believes that, if someone enters into arbitration, they should accept the result—other than, as the member suggests, in the most exceptional circumstances. That is why we honoured the position for our police officers last year.”

This was our understanding of what would be included in the new arrangements and it was fleshed out in a Paper for noting: Police Negotiating Board for Scotland (PNBS), Qualifying cases, by the Police Division on 13 June 2016 which detailed the arrangements for legally binding (LBA) and Non-Legally Binding (NLBA).

We note that this commitment has been altered and downgraded from arbitration binding on Scottish Ministers to “Scottish Ministers have a duty to take all reasonable steps appearing to them to be necessary for giving effect to those representation” where PNBS makes representations following arbitration in respect of a qualifying case.

We have given long and serious consideration to this change and have concluded that guided by our desire for fair arrangements, this weaker arrangement is still relatively strong in our favour and in the spirit of fairness, acceptable to SPF.

In the Constitution of the Police Negotiating Board for Scotland we comment as follows:

3. The Board – SPF would like to see included, “It may also consider matters affecting its own constitution.”

9. Sub-committee and working groups – SPF would like to see included words to the effect, “Sides may nominate persons who are not representatives to serve on sub-committees and working groups with the permission of the Chairperson.”

37 (a) & (b) There seems to be scope for either of the Sides to prevent such a matter going to arbitration or for the Chairperson to decide not to refer a matter to arbitration and this could lead to a deadlock.

42. It is hard to envisage the Board failing to make recommendations based on an arbitration award. It seems to open the door for either Side to delay or block a PNB agreement based on an arbitration award and this would be highly unsatisfactory.

43-45 This removes previous benefits of binding arbitration promised to the SPF.

For the sake of completeness, SPF would like to bring to the Committee's attention, its belief that a vital part of PNB arrangements is the process for resolving disputes. We understand this will be the subject of a further consultation but in summary, previous iterations of the PNB Constitution (PNB Circulars 07/2003 & 19/2001) described this as follows:

The Board will provide assistance to parties in dispute locally about the interpretation of agreements reached by the Board or its standing committees or about the application of Police Regulations covering Board matters on request. In cases where negotiations between local parties are in progress and have not been exhausted, enquiries or disputes may be brought to the PNB by the Secretaries of the Staff or Official Side, or through the Independent Secretary to the Board. It will normally be possible for the joint Secretaries to provide authoritative advice on the interpretation or application of PNB agreements.

A form of conciliation was provided for as was referral to the PNB or even arbitration. In recent years, this dispute resolution process has been less effective than it was and SPF believes this important element of the process should be re-invigorated. It can avoid confusion and delay for individuals and SPA and PSoS staff and avoid costly court cases where the outcome is occasionally less than ideal for all parties.

Again, thank you for the opportunity to explain our views on the PNB and its future arrangements.

Yours sincerely

David Kennedy
General Secretary