



SCOTTISH EXECUTIVE

Justice Department
Police Division

St Andrew's House
Regent Road
Edinburgh EH1 3DG

Scottish Executive Justice Department Circular 13/2006

Chief Constables
Conveners of Unitary Police Authorities and Joint Police Boards

Telephone: 0131-244 3320
Fax: 0131-244 2689
Bill.barron@scotland.gsi.gov.uk
<http://www.scotland.gov.uk>

Copy: Sheriffs Principal
Area Procurators Fiscal
Sheriff Clerks
Clerk to Stipendiary Magistrates Court, Glasgow
Director of Judicial Studies
Interim Chief Executive, Scottish Police Services Authority
Director, Scottish Drug Enforcement Agency
Director, Scottish Police College
Director, Scottish Criminal Record Office
Directors of Social Work/Chief Social Work Officers
Criminal Justice Social Work Managers
Hon Secretary, Association of Chief Police Officers in Scotland
General Secretary, Association of Scottish Police Superintendents
General Secretary, Scottish Police Federation
Crown Office
Scottish Court Service

Your ref:
Our ref:

21 August 2006

Dear Sir/Madam,

Police, Public Order and Criminal Justice (Scotland) Act 2006

1. I am writing to draw your attention to a number of provisions of this Act, especially those which will be commenced (ie will come into force) on Friday, 1 September 2006. The Act itself and the explanatory notes may be accessed at <http://www.opsi.gov.uk/legislation/scotland/s-acts2006a.htm>.

Commencement dates

2. Sections 48-69, 73-81 and 98, schedule 5 and parts of schedule 6 (other than those connected with the Scottish Police Services Authority (SPSA), Scottish Crime and Drug Enforcement Agency (SDEA) or Police Complaints Commissioner) will be commenced on 1 September. Many of these sections make changes to police powers, and this letter draws your attention to some key points.

3. The Scottish Ministers intend to commence early in 2007 the provisions relating to Queen's Evidence (sections 91-97) and (subject to advice from ACPOS) section 83 (DNA retention).

4. The intention is that the provisions on the SPSA, the SCDEA, the Police Complaints Commissioner for Scotland, public processions and mandatory drug testing of arrested persons, in sections 1-47, 70-72 and 84-90, schedules 1-4 and the remainder of schedule 6, will be fully commenced on 1 April 2007.

5. The planned commencement date for section 82 (fingerprinting to establish identity of suspect) has yet to be decided.

Key issues – provisions being commenced on 1 September

Section 48: allowances payable to special constables

6. This section makes it clear that special constables can be given periodic payments as an allowance under section 3 of the Police (Scotland) Act 1967. This provision therefore clarifies that specials who commit to serving the required number of hours (currently, 180 per annum) can receive an allowance of £1000. Following the successful pilot in Grampian and Tayside, this allowance has now been made available to specials in all forces who meet the required commitment and wish to receive the allowance.

Sections 51-69: football banning orders

7. These sections bring into force arrangements for the criminal and civil courts to issue football banning orders to those who have engaged in violence or disorder, when the court believes that the order would help to prevent future football-related violence or disorder. A football banning order will prevent the banned individual from attending football grounds or other flashpoints, and where appropriate will also prevent them from travelling to football matches overseas. The legislation has been developed in discussion with ACPOS and is based on the system which has been applied successfully in England and Wales.

8. The Scottish Ministers intend to make an order under section 55 (2)(b) to ensure that the 2007 UEFA Cup Final, at Hampden Park, will be a regulated football match for the purposes of the Act.

9. Forces will wish to consider when to seek banning orders on particular individuals, either through the criminal courts or by application to a civil court. In this regard, they will have access to advice from the Football Banning Order Unit which is being set up by Strathclyde Police to support forces across Scotland.

Sections 73-75: offensive weapons

10. Section 73 amends the Criminal Law (Consolidation) (Scotland) Act 1995 by increasing the maximum term of imprisonment on summary conviction for the offences of possessing an article with a blade or point in a public place or on school premises from 6 to 12 months and increasing the maximum term of imprisonment on indictment for these offences from 2 to 4 years.

11. Section 74 amends the Criminal Law (Consolidation) (Scotland) Act 1995 to remove the current limitations on constables' powers of arrest in relation to the offences of carrying offensive weapon or an article with blade or point in a public place.

12. Section 75 amends the Criminal Justice Act 1988 by increasing the minimum age of persons to whom knives and certain articles with blade or point (other than knives designed for domestic use) may be sold, from 16 to 18 years of age.

13. You will be aware that the prospective change in powers of arrest for carrying a knife or offensive weapon in public made by section 74 has been highlighted in the advice contained in the Safer Scotland Guidance Notes booklet. The booklet notes that the new powers of arrest will assist the police in following the recent guidelines issued by the Lord Advocate on dealing with knife crime.

Section 76: possession of prohibited fireworks: powers of search and arrest

14. This section amends the Fireworks Act 2003 to give police powers of search, seizure and arrest without warrant in relation to possession offences created by regulations under that Act. At present the regulations affected are the Fireworks Regulations 2004 (2004/1836).

Sections 77-80: control of sex offenders

15. These sections strengthen and extend the notification requirements on registered sex offenders and also give additional powers to the police to enable them to fulfil their functions under the Sexual Offences Act 2003. Registered sex offenders will be required to provide details of their passports and any other information which the Scottish Ministers specify in Regulations. The Scottish Ministers intend to introduce Regulations in due course which require registered sex offenders to furnish the police with their bank account and credit card details. Registered sex offenders can also be asked to provide prints and DNA samples when they attend a police station for notification purposes.

16. These measures also make changes to the Criminal Procedure (Scotland) Act 1995 to enable the police to require registered sex offenders and those subject to Risk of Sexual Harm Orders to attend a police station in order to provide the police with prints and DNA samples, if this information is not already held.

17. Section 80 amends the 2003 Act to give the police new powers to apply to the courts to enter and search a registered sex offender's accommodation to assess and manage the risk posed by that offender, if he has failed to comply with reasonable requests for access to the accommodation.

18. The Scottish Ministers also intend to introduce Regulations under the amended section 96 of the 2003 Act to require hospital managers and prison governors to notify the police and other persons of certain specified information about the release or transfer of registered sex offenders that they are responsible for.

Section 81: power to require giving of certain information in addition to name and address

19. This section will improve the identification of suspects and witnesses. It amends section 13 of the Criminal Procedure (Scotland) Act 1995 to give the police power to require suspects and witnesses to an offence to provide details of their date and place of birth and to state their nationality, in such detail as the constable considers necessary, in addition to name and address. It will be an offence to fail to provide the required information, without reasonable excuse.

20. Section 14 of the Criminal Procedure (Scotland) Act 1995 is also amended to place an obligation on a person who has been detained to inform the police of their date and place of birth and details of their nationality as the constable considers necessary or expedient for establishing that person's identity, in addition to name and address. It will not be an offence if a person does not provide this information to the police.

Provisions to be commenced early in 2007

21. The Queen's Evidence provisions will introduce three distinct schemes giving incentives to offenders to collaborate with police and prosecution: sentence reductions for assistance by offender; sentence reductions for provision of undisclosed information; and conditional immunity from prosecution. Forces will receive further guidance on this in due course.

22. Section 83 will allow the retention, for at least 3 years, of DNA samples and profiles taken from suspects who have (a) had proceedings commenced against them for a relevant sexual or violent offence but (b) were not convicted. The Scottish DNA database will advise forces on the use of these provisions.

23. Certain provisions in respect of the SPSA, the SCDEA and the PCCS will be commenced on 1 January 2007 in order to allow these bodies to make certain appointments and make the necessary preparations for the bodies to be fully operational on 1 April 2007.

Provisions to be commenced on 1 April 2007

24. 1 April 2007 will see the commencement of the provisions which give the Scottish Police Services Authority, the Scottish Crime and Drug Enforcement Agency (replacing the SDEA) and the Police Complaints Commissioner for Scotland their functions. We will write to you towards that date to draw attention to some of the implications of these developments for the Scottish Police Service as whole.

25. The provisions on public processions will also come into force on that date. Comprehensive guidance on this matter is being developed by the Scottish Executive led Working Group on Marches and Parades (consisting of COSLA, some key local authorities, ACPOS and ASPs). The guidance is currently out for consultation. Once finalised, we expect to issue the guidance formally to all local authorities, police forces, march organisers and other interested parties by the turn of the year.

26. 1 April 2007 will also see the commencement of provisions on mandatory drug testing, contained in sections 84-90 of the Act. These arrangements will be introduced on a pilot basis, and therefore are likely to be limited to 3 or 4 police stations in the first instance. (Subsection (3)(c) of the new Section 20A of the Criminal Procedure (Scotland) Act 1995 gives the Scottish Ministers the power to specify the locations of these pilots.) We will write to you later to provide more guidance on how forces should plan to use these provisions.

Yours faithfully,

A handwritten signature in black ink that reads "Bill Barron". The signature is written in a cursive, slightly slanted style.

BILL BARRON