Draft Order laid before Parliament under section 115(1) of, and paragraphs 1, 2, 3 and 5(1) of Schedule 7 to, the Scotland Act 1998, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2013 No.

CONSTITUTIONAL LAW
DEVOLUTION, SCOTLAND
FIRE AND RESCUE SERVICES
POLICE

The Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013

Made - - - -	*2013*
Coming into force - -	*1st April 2013*

The Secretary of State makes the following Order in exercise of the powers conferred by sections 104, 112(1), 113(2), (3), (4) and (5) and 114(1) of the Scotland Act 1998(**1**).

In accordance with section 115(1) of, and paragraphs 1, 2, 3 and 5(1) of Schedule 7(**2**) to, that Act, a draft of this Order was laid before Parliament and approved by a resolution of each House of Parliament.

PART 1

PRELIMINARY

Citation, commencement and extent

1.—(1) This Order may be cited as the Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013.

(2) This Order comes into force on 1st April 2013.

(3) Subject to paragraphs (4) to (8), the provisions of this Order extend to the whole of the United Kingdom.

(**1**) 1998 c.46. There are amendments to section 104 not relevant to this Order. Section 112 was amended by section 13(2) of the Scotland Act 2012 (c.11). Section 113 was amended by section 39(2) of the Scotland Act 2012.
(**2**) Paragraphs 1 and 2 were amended by section 39 of the Scotland Act 2012 (c.11).

(4) Articles 3 to 14 and 24 extend to Scotland only.

(5) The modifications specified in Schedule 1 (and article 25 in so far as it relates to those modifications) have the same extent as the provisions being modified, except that the modifications do not extend to Scotland.

(6) Subject to paragraph (7), the modifications specified in Schedule 2 (and article 26 in so far as it relates to those modifications) have the same extent as the provisions being modified.

(7) The modifications specified in paragraphs 65, 66, 73, 74(2) and 76 of Schedule 2 (and article 26 in so far as it relates to those modifications) extend to Scotland only.

(8) In Schedule 3—

(a) paragraphs 1 to 11 and 13 to 18 (and article 27 in so far as it relates to those paragraphs) have the same extent as the provisions to which they relate; and

(b) paragraphs 12 and 19 (and article 27 in so far as it relates to those paragraphs) extend to Scotland only.

Interpretation

2. In this Order—

"1967 Act" means the Police (Scotland) Act 1967(**3**);

"1968 Act" means the Firearms Act 1968(**4**);

"1987 Act" means the Ministry of Defence Police Act 1987(**5**);

"1988 Act" means the Firearms (Amendment) Act 1988(**6**);

"1996 Act" means the Police Act 1996(**7**);

"2000 Act" means the Regulation of Investigatory Powers Act 2000(**8**);

"2004 Act" means the Fire and Rescue Services Act 2004(**9**);

"2005 Act" means the Fire (Scotland) Act 2005(**10**);

"2006 Order" means the Fire and Rescue Services (Northern Ireland) Order 2006(**11**);

"2006 Act" means the Police, Public Order and Criminal Justice (Scotland) Act 2006(**12**);

"2012 Act" means the Police and Fire Reform (Scotland) Act 2012(**13**);

"2004 Act authority" means—

(a) a fire and rescue authority determined under section 1 of the 2004 Act;

(b) a fire and rescue service for a combined area constituted by order under section 2 of the 2004 Act(**14**);

(c) a combined authority constituted by a scheme to which section 4(**15**) of the 2004 Act applies;

(**3**) 1967 c.77.
(**4**) 1968 c.27.
(**5**) 1987 c.4.
(**6**) 1988 c.45.
(**7**) 1996 c.16.
(**8**) 2000 c.23.
(**9**) 2004 c.21.
(**10**) 2005 asp 5.
(**11**) S.I. 2006/1254 (N.I. 9).
(**12**) 2006 asp 10.
(**13**) 2012 asp 8.
(**14**) There are amendments to section 2 not relevant to this Order.
(**15**) There are amendments to section 4 not relevant to this Order.

"2004 Act function" means a function conferred by or under any of sections 7 to 9 and 11 of the 2004 Act;

"board function" means a function conferred by or under any of articles 5 to 8 of the 2006 Order;

"customs revenue functions" has the meaning given in section 7(9) of the Borders, Citizenship and Immigration Act 2009(**16**);

"customs revenue official" means a person designated by the Director of Border Revenue under section 11 of the Borders, Citizenship and Immigration Act 2009;

"Director of Border Revenue" means the official designated by the Secretary of State under section 6 of the Borders, Citizenship and Immigration Act 2009;

"enforcement functions" includes, in particular, reference to—

(d) powers of entry;

(e) power to search persons or property;

(f) power to seize or detain property;

(g) power to arrest persons;

(h) power to detain persons; and

(i) powers to examine persons or otherwise to obtain information (including powers to take fingerprints or to acquire other personal data);

"fire and rescue officer" has the meaning given by article 2(2) of the 2006 Order;

"general customs functions" has the meaning given in section 1(8) of the Borders, Citizenship and Immigration Act 2009(**17**);

"general customs official" means a person designated by the Secretary of State under section 3 of the Borders, Citizenship and Immigration Act 2009;

"immigration officer" means a person appointed under paragraph 1 of Schedule 2 to the Immigration Act 1971(**18**);

"Northern Ireland Board" means the Northern Ireland Fire and Rescue Service Board;

"Scottish chief officer" means a chief constable of a police force maintained under section 2 of the 1967 Act.

"SFRS" means the Scottish Fire and Rescue Service;

"SFRS function" means a function conferred by or under any of sections 9 to 11 and 13 of the 2005 Act;

"SOCA" means the Serious Organised Crime Agency;

"the Commissioner" means the Police Investigations and Review Commissioner; and

"the relevant day" is the day on which this Order comes into force.

(**16**) 2009 c.11.
(**17**) Section 1(8) has been amended by the Treaty of Lisbon (Change in Terminology) Order 2011 (S.I. 2011/1043), Part 2, article 6(2)(a).
(**18**) 1971 c.77. Paragraph 1 of Schedule 2 has been amended by the Health Protection Agency Act 2004 (c.17), Schedule 3, paragraph 3 and by S.I. 1993/1813, Schedule 5, paragraph 1(a).

PART 2

POLICE

Agreements to investigate serious incidents

3.—(1) The Commissioner and the British Transport Police Authority may enter into an agreement for the Commissioner to investigate and report, where requested to do so by that Authority or the chief constable of the British Transport Police Force, on any serious incident involving the British Transport Police Force.

(2) A "serious incident involving the British Transport Police Force" has the same meaning as a "serious incident involving the police" in section 41B of the 2006 Act(**19**) except that "a person serving with the police" means a constable of the British Transport Police Force and any other persons specified in the agreement who serve with that Force or who are employed by the British Transport Police Authority.

(3) The Commissioner and the Civil Nuclear Police Authority may enter into an agreement for the Commissioner to investigate and report, where requested to do so by that Authority or the chief constable of the Civil Nuclear Constabulary, on any serious incident involving the Civil Nuclear Constabulary.

(4) A "serious incident involving the Civil Nuclear Constabulary" has the same meaning as a "serious incident involving the police" in section 41B of the 2006 Act except that "a person serving with the police" means a member of the Civil Nuclear Constabulary and any other persons specified in the agreement who serve with that Constabulary or who are employed by the Civil Nuclear Police Authority.

(5) The Commissioner and the Secretary of State may enter into an agreement for the Commissioner to investigate and report, where requested to do so by the chief constable of the Ministry of Defence Police, on any serious incident involving the Ministry of Defence Police.

(6) A "serious incident involving the Ministry of Defence Police" has the same meaning as a "serious incident involving the police" in section 41B of the 2006 Act except that "a person serving with the police" means a member of the Ministry of Defence Police.

(7) The Commissioner and SOCA may enter into an agreement for the Commissioner to investigate and report, where requested to do so by SOCA, on any serious incident involving SOCA.

(8) A "serious incident involving SOCA" has the same meaning as a "serious incident involving the police" in section 41B of the 2006 Act except that "a person serving with the police" means a member of the staff of SOCA.

(9) The Commissioner and the Commissioners for Her Majesty's Revenue and Customs may enter into an agreement for the Commissioner to investigate and report, where requested to do so by the Commissioners for Revenue and Customs, on any serious incident involving Her Majesty's Revenue and Customs.

(10) A "serious incident involving Her Majesty's Revenue and Customs" has the same meaning as a "serious incident involving the police" in section 41B of the 2006 Act except that "a person serving with the police" means an officer of Revenue and Customs, but only when acting in the exercise of such enforcement functions as may be specified in an agreement made under paragraph (9).

(11) The Commissioner and the Secretary of State may enter into an agreement for the Commissioner to investigate and report on any serious incident involving an immigration officer or an official of the Secretary of State carrying out functions relating to immigration or asylum.

(**19**) Section 41B was inserted by section 64 of the Police and Fire Reform (Scotland) Act 2012 (asp 8) (the "2012 Act").

(12) A "serious incident involving an immigration officer or an official of the Secretary of State carrying out functions relating to immigration or asylum" has the same meaning as a "serious incident involving the police" in section 41B of the 2006 Act except that "a person serving with the police" means an immigration officer or an official of the Secretary of State carrying out functions relating to immigration or asylum, but only when acting in the exercise of such enforcement functions as may specified in an agreement made under paragraph (11).

(13) An agreement made under paragraph (11) of this article must not establish and maintain procedures in relation to complaints about the exercise by any person of a function conferred on him by or under Part 8 of the Immigration and Asylum Act 1999(**20**).

(14) The Commissioner and the Secretary of State may enter into an agreement for the Commissioner to investigate and report on a serious incident involving a general customs official.

(15) A "serious incident involving a general customs official" has the same meaning as in section 41B of the 2006 Act except that "a person serving with the police" means a general customs official or any other person exercising general customs functions under the authority of the Secretary of State or the Director of Border Revenue, but only when acting in the exercise of such enforcement functions as may be specified in an agreement under paragraph (14).

(16) The Commissioner and the Director of Border Revenue may enter into an agreement for the Commissioner to investigate and report on a serious incident involving a customs revenue official.

(17) A "serious incident involving a customs revenue official" has the same meaning as in section 41B of the 2006 Act except that "a person serving with the police" means a customs revenue official or any other person exercising customs revenue functions under the authority of the Director of Border Revenue, but only when acting in the exercise of such enforcement functions as may be specified in an agreement made under paragraph (16).

(18) An agreement made under this article is not to be made, varied or terminated without the approval of—

(a) the Scottish Ministers in a case where—

(i) the Secretary of State is a party to the agreement; or

(ii) the agreement is made under paragraph (9); and

(b) in all other cases, the Secretary of State and the Scottish Ministers.

(19) Where the Commissioner enters into an agreement under this article, for the purposes of section 33A of the 2006 Act(**21**) the Commissioner is to be regarded as having the functions set out in the agreement.

(20) An agreement made under this article—

(a) may specify types or categories of serious incident which may or may not be investigated and reported on by the Commissioner;

(b) may make different provision for different purposes or circumstances;

(c) include provision for payment to the Commissioner for any function which the Commissioner may exercise under it;

(d) may make provision only in relation to Scotland.

Investigation of crimes and deaths

4. For the purposes of section 33A(b) of the 2006 Act, a person serving with the police includes—

(a) a constable of the British Transport Police Force, any person serving with that Force and any person employed by the British Transport Police Authority;

(**20**) 1999 c.33.
(**21**) Section 33A was inserted by section 62 of the 2012 Act.