

POLICE (AMENDMENT) BILL 2015

Explanatory Memorandum

1. This Bill is promoted by Mr Watterson on behalf of the Department of Home Affairs.
2. The Bill amends the *Police Act 1993* and the *Police Powers and Procedures Act 1998*.
3. *Clauses 1* and *2* deal with citation and commencement of the resulting Act.
4. *Clause 3* amends the *Police Act 1993* in connection with the appointment of the Chief Constable.
5. *Clause 4* (and Schedule 1) amends the *Police Powers and Procedures Act 1998* to enable the Department to contract with persons in connection with the supply of services in assistance of the police force.
6. *Clause 5* (and Schedule 2) amends the *Police Act 1993* in connection with complaints and conduct matters.
7. *Clause 6* provides for the expiry of the resulting Act (without affecting the amendments made by it to other enactments).
8. The Bill is expected to be revenue neutral and is not expected to incur additional costs to Government. The Bill is designed to enable existing human resources to continue to be deployed in the most efficient and effective roles.
9. In the opinion of the member moving the Bill its provisions are compatible with the Convention rights within the meaning of the Human Rights Act 2001.



Ellan Vannin

POLICE (AMENDMENT) BILL 2015

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Ellan Vannin

POLICE (AMENDMENT) BILL 2015

1 **A BILL** to amend the Police Act 1993 and the Police Powers and Procedures Act
2 1998; and for connected purposes.

BE IT ENACTED by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

3 **1 Short title**

4 The short title of this Act is the Police (Amendment) Act 2015.

5 **2 Commencement**

- 6 (1) This Act, except section 1 and this section, comes into operation on such
7 day or days as the Department of Home Affairs may by order appoint.
- 8 (2) An order under subsection (1) may include such supplemental,
9 incidental, consequential and transitional provisions as appear to the
10 Department of Home Affairs to be necessary or expedient.

11 **3 Appointment of Chief Constable**

12 In section 2 of the *Police Act 1993* —

13 (a) after subsection (3) insert —

14 “(3A) Where the Department has (under subsection (3) or this
15 subsection) appointed a person to be the Chief Constable for a
16 fixed term which has expired or is about to expire, it may, with
17 the approval of the Council of Ministers, appoint that person to be
18 Chief Constable for a further fixed term.

19 (3B) Subsection (2) shall not apply to an appointment under subsection
20 (3A).”; and

21 (b) in subsection (4), for “subsection (3)” substitute “subsections (3) to
22 (3B)”.

23 **4 Police powers for contracted staff**

24 (1) After section 77A of the *Police Powers and Procedures Act 1998* insert —

*“Police powers for contracted staff***77B Police powers for contracted staff**

- (1) This section has effect for the purpose of enabling the Department to enter into a contract with a person for the supply by that person of services in assistance of the police force.
- (2) The Department may by order provide for conferring or imposing powers and duties specified in the order, being powers and duties of a member of the police force, on persons, not being members of the police force, who are employed by a contractor for the purpose of exercising functions assigned to them in pursuance of such a contract.
- (3) An order under this section shall specify —
 - (a) the functions which may be assigned in pursuance of the order to contracted staff;
 - (b) the title by which contracted staff to whom a particular function is, or functions of a particular class or description are, so assigned are to be known; and
 - (c) the powers and duties which may be conferred or imposed on contracted staff to whom a particular function is, or functions of a particular class or description are, so assigned.
- (4) An order under this section may under subsection (3)(a) specify functions which, apart from the order, would be reserved to a member of the police force.
- (5) An order under this section may under subsection (3)(c) specify powers and duties —
 - (a) which are, by virtue of the order, conferred or imposed on all contracted staff to whom a specified function is, or functions of a specified class or description are, so assigned; or
 - (b) which may be conferred or imposed by a designation on contracted staff to whom a specified function is, or functions of a specified class or description are, so assigned.
- (6) An order under this section may modify in its application to contracted staff any statutory provision relating to the exercise by members of the police force of any power or duty referred to in subsection (3)(c).
- (7) Before making an order under this section the Department shall consult —

- 1 (a) the Chief Constable;
- 2 (b) the commissioner appointed under paragraph 2(1) of
- 3 Schedule 1 to the *Police Act 1993*;
- 4 (c) the Isle of Man Police Federation; and
- 5 (d) such other persons as the Department thinks fit.
- 6 (8) An order under this section shall not have effect unless it is
- 7 approved by Tynwald.
- 8 (9) Schedule 2A makes further provision about contracted staff.”.
- 9 (2) After Schedule 2 to the *Police Powers and Procedures Act 1998* insert
- 10 Schedule 2A as set out in Schedule 1 to this Act.

11 5 Complaints and conduct matters

- 12 (1) In section 9 of the *Police Act 1993* (including the cross heading
- 13 immediately before it) —
- 14 (a) for the section-heading substitute “Complaints and conduct
- 15 matters”;
- 16 (b) at the end insert “, and the investigation of certain other matters
- 17 relating to the conduct of the police”.
- 18 (2) Schedule 1 to the *Police Act 1993* is amended in accordance with Schedule
- 19 2 to this Act.
- 20 (3) This section applies to matters arising before as well as after this section
- 21 comes into operation.

22 6 Expiry

- 23 (1) This Act expires —
- 24 (a) on the day after its promulgation, if all of its provisions are in
- 25 operation on its promulgation; or
- 26 (b) otherwise, on the day after the last provision is brought into
- 27 operation.
- 28 (2) The expiry does not —
- 29 (a) affect the continuing operation of the amendments made by this
- 30 Act; or
- 31 (b) revive any provision not in operation when the amendments took
- 32 effect.

SCHEDULE 1

Section 4(2)

SCHEDULE 2A TO THE POLICE POWERS AND PROCEDURES ACT 1988
INSERTED

“SCHEDULE 2A

Section 77B(9)

CONTRACTED STAFF

1 **Designation of contracted staff**

- (1) The Chief Constable may by a designation in writing (and not otherwise) assign functions specified in the designation to a contracted person named in it.
- (2) A contracted person so designated —
- (a) shall have the powers and duties conferred or imposed on him or her —
- (i) by any relevant provision made under section 77B(5)(a); and
- (ii) by the designation in accordance with section 77B(5)(b); and
- (b) when exercising any of those powers or performing any of those duties, shall act under the direction and control of the Chief Constable.
- (3) The Chief Constable shall not designate a contracted person under this paragraph unless he or she is satisfied that that person —
- (a) is a suitable person to carry out the functions assigned to him or her;
- (b) is capable of effectively carrying out those functions; and
- (c) has received adequate training in the carrying out of those functions and in the exercise and performance of the powers and duties to be conferred or imposed on him or her as mentioned in sub-paragraph (2)(a).
- (4) The Chief Constable shall not designate a contracted person under this paragraph unless he or she is satisfied that the contractor is a fit and proper person to supervise the carrying out of the functions assigned to the contracted person.
- (5) A designation, unless it is previously withdrawn or ceases to have effect in accordance with sub-paragraph (6), shall remain in force for such period as may be specified in the designation; but it may

1 | be renewed at any time with effect from the time when it would
2 | otherwise expire.

- 3 | (6) A designation shall cease to have effect —
4 | (a) if the contracted person ceases to be an employee of the
5 | contractor;
6 | (b) if the contract between the Department and the contractor
7 | is terminated or expires; or
8 | (c) if it is withdrawn under sub-paragraph (7).

9 | (7) The Chief Constable may at any time, by notice to a contracted
10 | person, modify or withdraw a designation.

11 | (8) Where a contracted person's designation is modified or
12 | withdrawn, the Chief Constable shall send a copy of the notice to
13 | the contractor by whom that person is employed.

14 | 2 Powers and duties of contracted staff

15 | (1) A contracted person authorised or required to do anything by
16 | virtue of a designation —

- 17 | (a) shall not be authorised or required by virtue of that
18 | designation to engage in any conduct otherwise than in the
19 | course of his or her employment by the contractor; and
20 | (b) shall be so authorised or required subject to such
21 | restrictions and conditions (if any) as may be specified in
22 | that designation.

23 | (2) Where any power exercisable by any person in reliance on his or
24 | her designation is a power which, in the case of its exercise by a
25 | constable, includes or is supplemented by a power to use
26 | reasonable force, any person exercising that power in reliance on
27 | that designation shall have the same entitlement as a constable to
28 | use reasonable force.

29 | (3) Where any power exercisable by any person in reliance on his or
30 | her designation under this section includes power to use force to
31 | enter any premises, that power shall not be exercisable by that
32 | person except —

- 33 | (a) in the company, and under the supervision, of a constable;
34 | or
35 | (b) for the purpose of saving life or limb or preventing serious
36 | damage to property.

37 | (4) A contracted person who exercises or performs any power or duty
38 | in relation to any person in reliance on his or her designation, or
39 | who purports to do so, shall produce that designation to that
40 | person, if requested to do so.

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- (5) Except in such circumstances as may be specified in an order under section 77B, a power exercisable by a contracted person in reliance on his or her designation shall exercisable only by a person wearing such uniform as may be –
- (a) determined or approved by the Chief Constable for the purpose of this sub-paragraph; and
- (b) identified or described in the designation.

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3 Complaints etc.

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- (1) An order under section 77B shall apply to contracted persons the provisions of Schedule 1 to the *Police Act 1993* with respect to complaints against or misconduct of members of the police force, with such modifications as are specified in the order.
- (2) For the purposes of determining liability for the unlawful conduct of contracted staff, conduct by a contracted person in reliance or purported reliance on a designation shall be taken to be conduct in the course of his or her employment by the contractor by whom he or she is employed; and, in the case of a tort, that contractor shall fall to be treated as a joint tortfeasor accordingly.

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4 Offences against contracted staff

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- (1) Any person who assaults a contracted person in the execution of his or her duty is guilty of an offence and liable on summary conviction to custody for a term not exceeding 12 months or to a fine not exceeding £5,000, or to both.
- (2) Any person who resists or wilfully obstructs a contracted person in the execution of his or her duty is guilty of an offence and liable on summary conviction to custody for a term not exceeding 3 months or to a fine not exceeding £1,000, or to both.
- (3) Any person who, with intent to deceive –
- (a) impersonates a contracted person;
- (b) makes any statement or does any act calculated falsely to suggest that he or she is a contracted person; or
- (c) makes any statement or does any act calculated falsely to suggest that he or she has powers as a contracted person that exceed the powers he or she actually has,
- is guilty of an offence and liable on summary conviction to custody for a term not exceeding 12 months or to a fine not exceeding £5,000, or to both.
- (4) In this paragraph references to the execution by a contracted person of his or her duty are to his or her exercising any power or

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performing any duty conferred or imposed on him or her as mentioned in paragraph 1(2)(a).”



SCHEDULE 2

Section 5(2)

AMENDMENTS TO SCHEDULE 1 TO THE POLICE ACT 1993

1 Interpretation

- (1) In paragraph 1, at the appropriate places in alphabetical order insert —
- “**conduct**” includes acts, omissions and statements (whether actual, alleged or inferred), and “behave” has a corresponding meaning;”
- “**conduct matter**” means any matter which is not and has not been the subject of a complaint but in the case of which there is an indication (whether from the circumstances or otherwise) that a member of the police force may have —
- (a) committed a criminal offence; or
- (b) behaved in a manner which would justify the bringing of disciplinary proceedings;”
- “**disciplinary proceedings**” means proceedings against a member of the police force under regulations made by virtue of section 8(2)(e) or 8A(2)(c);”
- “**member of the police force**” includes a special constable;”
- “**police custody**” means —
- (a) police detention (within the meaning of the *Police Powers and Procedures Act 1998*); or
- (b) the custody of a member of the police force;”
- “**serious injury**” means a fracture, a deep cut, a deep laceration or an injury causing damage to an internal organ or the impairment of any bodily function.”
- (2) In paragraph 1, in the definition of “investigation”, for “paragraph 4 into a complaint” substitute “paragraph 4, 4B or 4D”.

2 Complaints

In paragraph 4, after sub-paragraph (5) insert —

- “ (6) A complaint is not suitable for informal resolution if the conduct to which it relates —
- (a) involves the death of, or serious injury to, any person; or
- (b) is of a description specified for the purposes of this sub-paragraph in regulations made by the Department.”

3 Conduct matters

After paragraph 4 insert —

“Reference of conduct matters in certain cases

4A (1) The Chief Constable shall refer to the commissioner any conduct matter which comes to his or her attention, if it appears to the Chief Constable that the conduct in question —

- (a) has resulted in the death of, or serious injury to, any person;
- (b) has caused a member of the public to suffer, or to be in danger of suffering, any harm, loss, damage, distress or inconvenience; or
- (c) is of a description specified for the purposes of this sub-paragraph in regulations made by the Department.

(2) Nothing in sub-paragraph (1) requires the Chief Constable to refer any conduct matter if he or she is satisfied that the matter has been, or is already being, dealt with by means of criminal or disciplinary proceedings against the person to whose conduct the matter relates.

(3) The Chief Constable shall refer to the commissioner any conduct matter if the commissioner notifies him or her that the matter is to be referred to the commissioner for consideration.

(4) The Chief Constable may refer to the commissioner any conduct matter (other than one falling within sub-paragraph (1) or (3)) if the Chief Constable considers that it would be appropriate to do so by reason of —

- (a) the gravity of the matter; or
- (b) any exceptional circumstances.

Action on a reference under paragraph 4A

4B (1) The commissioner shall determine whether any conduct matter referred to him or her by the Chief Constable under paragraph 4A should be investigated, and shall inform the Chief Constable of his or her determination.

(2) If the commissioner determines under sub-paragraph (1) that a conduct matter should be investigated, the Chief Constable shall, after consultation with the commissioner, appoint a member of the police force to investigate it formally.

Notification of other cases involving death or serious injury

4C (1) This paragraph applies to any circumstances in or in consequence of

- 1 which a person has died or suffered serious injury while in police
2 custody.
- 3 (2) This paragraph also applies to any circumstances in or in consequence of
4 which a person has died or suffered serious injury if —
- 5 (a) the death or injury occurred while or after the person had contact
6 (of whatever kind, and whether direct or indirect) with a member
7 of the police force acting in the execution of his or her duties; and
- 8 (b) there is an indication that the contact may have caused (whether
9 directly or indirectly), or contributed to, the death or injury.
- 10 (3) The Chief Constable shall notify the commissioner of any circumstances
11 to which this paragraph applies, unless —
- 12 (a) they are or have been the subject of a complaint;
- 13 (b) they amount to a conduct matter; or
- 14 (c) if he or she is satisfied that they have been, or are already being,
15 dealt with by means of criminal or disciplinary proceedings
16 against any person.

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18 *Action on a notification under paragraph 4C*

- 19 **4D** (1) The commissioner shall determine whether any circumstances notified
20 to him or her by the Chief Constable under paragraph 4C should be
21 investigated, and shall inform the Chief Constable of his or her
22 determination.
- 23 (2) If the commissioner determines under sub-paragraph (1) that any
24 circumstances should be investigated, the Chief Constable shall, after
25 consultation with the commissioner, appoint a member of the police
26 force to investigate them formally.

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28 *Change of scope of investigation*

- 29 **4E** (1) Subject to sub-paragraph (2), the commissioner may, after consultation
30 with the Chief Constable, direct that any matter which is being, or is to
31 be, investigated under paragraph 4, paragraph 4B or paragraph 4D shall
32 instead be investigated under another of those provisions.
- 33 (2) The commissioner may not direct that a complaint which is being, or is to
34 be, investigated under paragraph 4 be investigated under paragraph 4B
35 or 4D unless the complaint is withdrawn or the complainant indicates
36 that he or she does not wish any further steps to be taken.”.

37 **4 Supervision of investigations**

- 38 (1) In paragraph 5, after sub-paragraph (1) insert —

1 “(1A) The commissioner shall supervise the investigation of any
2 conduct matter —

3 (a) which appears to him or her to have resulted in the death
4 of, or serious injury to, any person; or

5 (b) in which it appears to him or her that a member of the
6 police force may have committed an offence falling within
7 sub-paragraph (1)(b).

8 (1B) The commissioner shall supervise the investigation of any
9 circumstances under paragraph 4D(2).”.

10 (2) In paragraph 5(2), after “complaint” insert “or conduct matter”, and after
11 “sub-paragraph (1)” insert “or (1A), as the case may be,”.

12 (3) In paragraph 5(3)(a), after “paragraph 4(1) or (3)” insert “, 4B(2) or
13 4D(2)”.

14 5 Report on investigation

15 (1) In paragraph 6(3)(c)(i) and (4), for “the complainant” substitute “any
16 complainant”.

17 (2) In paragraph 6(5), for “disciplinary charge” substitute “disciplinary
18 proceedings”.

19 6 Steps to be taken after investigation

20 (1) In paragraph 7(2), for "has preferred disciplinary charges in respect of the
21 conduct which was the subject of the investigation" substitute "referred
22 the conduct which was the subject of the investigation to disciplinary
23 proceedings".

24 (2) In paragraph 7(3), for "preferred or proposes to prefer disciplinary
25 charges in respect of the conduct which was the subject of the
26 investigation" substitute "referred or proposes to refer the conduct which
27 was the subject of the investigation to disciplinary proceedings".

28 (3) in paragraph 7(4), after "(b)" insert "in the case of an investigation under
29 paragraph 4,".

30 (4) For paragraph 7(6) and (7) substitute —

31 “(6) Subject to paragraph 9(5), if a memorandum under sub-paragraph
32 (2) states that the Chief Constable proposes to refer the conduct
33 which was the subject of the investigation to disciplinary
34 proceedings, the Chief Constable shall so refer the conduct and
35 shall not withdraw the case.

36 (6A) Subject to paragraph 9(5), if a memorandum under sub-paragraph
37 (2) states that the Chief Constable has referred the conduct which
38 was the subject of the investigation to disciplinary proceedings,
39 the Chief Constable shall not withdraw the case.

- 1 (7) No memorandum need be sent under this paragraph if the
 2 conduct which was the subject of the investigation has been
 3 referred to disciplinary proceedings and the officer concerned has
 4 admitted the conduct and that it amounted to misconduct or gross
 5 misconduct, and has not withdrawn his or her admission.”.
- 6 (5) In paragraph 7(8)(a), for “disciplinary charges preferred and of any
 7 punishment imposed” substitute “conduct which was the subject of the
 8 investigation and of any disciplinary action taken”.

9 7 Power as to disciplinary proceedings

10 For paragraph 9 (including the cross heading immediately before it)
 11 substitute –

12 *“Power as to disciplinary proceedings*

- 13 9. (1) Where a memorandum under paragraph 7 states that the Chief
 14 Constable has not referred the conduct which was the subject of
 15 the investigation to disciplinary proceedings or does not propose
 16 to do so, the commissioner may recommend the Chief Constable to
 17 do so.
- 18 (2) Subject to sub-paragraph (5), the Chief Constable may not
 19 withdraw any case which he or she has referred to disciplinary
 20 proceedings in accordance with a recommendation under sub-
 21 paragraph (1).
- 22 (3) If, after the commissioner has made a recommendation under this
 23 paragraph and consulted him or her, the Chief Constable is still
 24 unwilling to refer the conduct to disciplinary proceedings, the
 25 commissioner may direct the Chief Constable so to refer that
 26 conduct, and where the commissioner does so, he or she shall
 27 furnish the Chief Constable with a written statement of his or her
 28 reasons for doing so.
- 29 (4) Subject to sub-paragraph (5), the Chief Constable shall refer a case
 30 to disciplinary proceedings in accordance with a direction under
 31 sub-paragraph (3) and shall not withdraw the case.
- 32 (5) The commissioner may give the Chief Constable permission –
- 33 (a) not to refer to disciplinary proceedings a case which
 34 paragraph 7(6) or sub-paragraph (4) would otherwise
 35 oblige the Chief Constable to refer; or
- 36 (b) to withdraw a case which paragraph 7(6A) or sub-
 37 paragraph (2) or (4) would otherwise oblige the Chief
 38 Constable not to withdraw.”.

8 Regulations

- (1) In paragraph 13, after sub-paragraph (1) insert —
- “(1A) Without prejudice to the generality of sub-paragraph (1), regulations under that sub-paragraph may prescribe —
- (a) the time within which any conduct matter is to be referred to the commissioner or any case is to be notified to the commissioner under paragraph 4C;
 - (b) the information and evidence to be supplied to the commissioner on any such reference or notification; and
 - (c) the steps to be taken to obtain and preserve evidence relating to the subject matter of the complaint, conduct matter or notification.”
- (2) In paragraph 13(2), at the appropriate places insert —
- “(aa) subject to such exceptions as may be so specified, for the furnishing of particulars of any conduct matter referred to the commissioner under paragraph 4A to the person to whose conduct the matter relates;”;
- “(ba) for giving the person to whose conduct a conduct matter relates an opportunity to comment orally or in writing on the matter;”;
- “(da) for the notification of the outcome of the reference of any conduct matter under paragraph 4A to the person to whose conduct the matter relates;”;
- and omit paragraph 13(2)(h).
- (3) After paragraph 13(2) insert —
- “(3) The Department shall provide by regulations for the investigation, in such cases as may be specified in the regulations, of a complaint or a conduct matter by —
- (a) a member of a police force in a relevant territory, appointed for the purpose in accordance with arrangements made with the authority by which the force is maintained; or
 - (b) a member or officer of a body, or the holder of an office or an officer of such an office-holder, having functions in a relevant territory corresponding to any functions of the commissioner, appointed for the purpose in accordance with arrangements made with that body or office-holder; and
 - (c) for the modification of the foregoing provisions of this Schedule in relation to such an investigation.

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(4) In paragraph (3) “relevant territory” means any part of the United Kingdom, any of the Channel Islands or the Republic of Ireland.”.

IN THE KEYS

POLICE (AMENDMENT) BILL 2015

A BILL to amend the Police Act 1993 and the Police Powers and Procedures Act 1998; and for connected purposes.

Approved by the Council of Ministers
for introduction in the House of Keys.

MR WATTERSON

OCTOBER 2015