



**Scheme of Governance for  
Bedfordshire Police and  
Crime Commissioner**



**Scheme of Governance for  
Cambridgeshire Police and  
Crime Commissioner**



**Scheme of Governance for  
Hertfordshire Police and Crime  
Commissioner**

**(Including the Financial Regulations for Cambridgeshire only)**

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# GOVERNANCE

## SECTION A: INTRODUCTION

### A1 PURPOSE

1. On 22<sup>nd</sup> November 2012, David Lloyd, Sir Graham Bright and Oliver Martins were elected Police and Crime Commissioner (“PCC”) for their respective area and took up office with a duty, *“to secure the maintenance of the Police Force for that area, and secure that the Police Force is efficient and effective”*.<sup>1</sup>
2. The PCC<sup>2</sup> and the Chief Constable<sup>3</sup> are Corporations Sole requiring agreements of a formal nature to ensure that there is good and effective governance in each of their own areas of responsibility and also in relation to the holding to account of the Chief Constable by the PCC.
3. In the initial Scheme of Delegation a description was given of the delegated powers allowable by the PCC to his/her own staff and the Chief Constable. This was an interim arrangement brought about by a two stage process for the transfer of responsibilities for employing staff to comply with the requirements of point 3 of schedule 15 of the Police Responsibility and Social Reform Act (PRSRA). This document now formalises those issues and the document provides a single source for the description of the:
  - a) Roles and responsibilities of the PCC, his/her officers and staff and the Delegated Authorities placed upon them - **The Scheme of Delegation**.
  - b) Roles and responsibilities of the Chief Constable together with the PCC’s consent - **The Scheme of Consent**.<sup>4</sup>
  - c) The roles and responsibilities of all parties in respect of financial management - **The Financial Regulations**.

For Bedfordshire and Hertfordshire the above is supported by an Operating Model within the PCC’s office, which sets out the method of holding the force to account and in respect of working together internally and in collaboration

### A2 LEGAL CONTEXT

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<sup>1</sup> S1(6) Police Reform and Social Responsibility Act

<sup>2</sup> S1(2) PRSRA

<sup>3</sup> Schedule 2 Para 2 PRSRA

<sup>4</sup> The transfer of staff property, rights and liabilities from the PCC to the Chief Constable is described in schedule 15 of the PRSRA. It also allows for the Chief Constable to enter into contracts and other agreements as a Corporation Sole, with the consent of the PCC.

5. The PCC and the Chief Constable (and those acting under their direction and control) must comply with the law. This includes primary and secondary legislation, determinations by the Secretary of State and common law.
6. The PCC, the Chief Constable and those acting under their direction and control must have regard to guidance. This includes Statutory Guidance e.g. The Financial Management Code of Practice for the Police Service of England and Wales (“FMCP”)<sup>5</sup> and other guidance issued by professional bodies.
7. A non-exhaustive list of law and guidance which is applicable to the discharge of functions by a PCC and/or a Chief Constable is at Appendix A.
8. The arrangements contained in this Scheme of Governance are between the Police and Crime Commissioners and Chief Constables as Corporations Sole for each of the three force areas, namely Bedfordshire, Cambridgeshire and Hertfordshire. For the avoidance of doubt nothing contained in the scheme permits any delegation by the corporation soles for one force area to those of another force area.”
9. This document should be read alongside the PRSRA, The Policing Protocol, The Financial Management Code of Practice and The Strategic Policing Requirement: Should the words of this document conflict with that of the legislation the words of the legislation must be followed.

### A3 DEFINITIONS

#### Corporation Sole<sup>6</sup>

10. A Corporation Sole is a public office, created by act of parliament that has a separate and continuing legal existence and only one member. The “*corporation*” may pass from one office holder to the next successor in office.
11. Schedule 2, paragraph 15(1) protects a PCC from personal liability for any act or omission done in the exercise of the PCC’s functions unless it has been shown to have been done otherwise than in good faith. Schedule 2 paragraph 15(2) similarly protects a member of staff of a PCC from personal liability for any act or omission done in carrying out the duties as a member of staff of the PCC unless the act or omission has been done otherwise than in good faith.

#### “Consent”

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<sup>5</sup> FMCP is issued under S17 PRSRA and S39A Police Act 1996. By S17(4) PRSRA and S39(a)(7) Police Act 1996, PCC, the MOPC and the Chief Constable “*must have regard to*” the code in carrying out their functions

<sup>6</sup> The PCC is a Corporation Sole – Section1(2) PRSRA. The Chief Constable is a Corporation Sole Schedule 2 para 2 PRSRA

12. This is not defined in statute. The definition is from the ACPO<sup>7</sup>. “Consent”, *refers to the provision of approval or agreement, particularly and especially after due and full consideration. Transactions entered into following “consent” by the PCC to the Chief Constable, will be in the Chief Constable’s own name as a separate legal entity, as opposed to the name of the PCC (as would be the case if the Chief Constable was given delegated authority).*

#### Duty “to have regard to”

13. A theme of PRSRA is an obligation to “*have regard to*” an issue, policy etc. This has been interpreted by the courts in various cases<sup>8</sup>. Leading Counsel<sup>9</sup> advised that the most often cited explanation is that of Woolf J in *Gransden and Co. Ltd., v Secretary of State for the Environment* (1987) 54 P & CR 86. The fact that a decision maker is obliged to “*have regard to*” - does not mean that the decision maker needs necessarily to follow it. (It is an obligation of limited extent). A decision maker may depart from it. Before doing so, he/she must do three things (The Gransden Duties):
- a) In order to have regard to a policy etc, the decision maker must have truly brought it into account in his /her decision making.
  - b) In order to have regard to a policy, the decision maker must have interpreted it properly. If a decision maker fails properly to understand the policy, then the decision is as defective as if no regard had been paid to the policy.
  - c) If he/she is going to depart from the policy, he/she must give clear reasons for so doing in order that the recipient of the decision will know why an exception to the policy is being made.

#### “Operational Independence”

14. PRSRA does not define Operational Independence. It is a matter of common law.<sup>10</sup>
15. Police Officers are officers of the Crown and hold public office. They exercise an original jurisdiction in keeping the Queen’s Peace, which derives from the Office

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<sup>7</sup> ACPO futures Business Area 28.09.12 @ page 3

<sup>8</sup> R (Bogelo) v Barnet LBC (2010) 13 CCLR 72, *Brown v Secretary of State for Work & Pensions* [2008] EWHC 3158 (Admin), R (Domb) v Hammersmith & Fulham London Borough Council (2009) EWCA Civ 941, R (Devine) & (Lavery) v Welsh Ministers (2011) EWHC 358 (Admin), R (D) v Manchester City Council (2012) EWHC 17 (Admin) (taken from a lecture by Jeremy Johnson QC, 5 Essex Court – 28.05.12

<sup>9</sup> Jason Beer QC, 5 Essex Court in a Lecture “*The Topography of the New Landscape under PRSRA 2011*” on 28.05.12

<sup>10</sup> *Fisher v Oldham Corporation* [1930] 2 KB 364, *R v Chief Constable of Sussex ex parte International Trader’s Ferry Ltd.*, [1999] 2 AC 418

of Constable and the swearing of the Constable's Oath.<sup>11</sup> They are "*answerable to the law and to the law alone*".<sup>12</sup>

16. The policing protocol<sup>13</sup> does however, address operational independence on a number of occasions (paras 9, 12, 13, 18, 21, 22, 30, 31, 32, 33, 34, 35, 36, 37). "*...it is the will of Parliament and the Government that the office of Constable shall not be open to improper political interference....*" (para 12). "*...the PCC must not fetter the operational independence of the police force and the Chief Constable who leads it...*" (para 18)

#### "Direction & Control"

17. The Police Force and the civilian staff of the force are under the Direction and Control of the Chief Constable.<sup>14</sup> Direction and Control is about how the police service is delivered including operational policing policies, organizational decisions and general policy standards.

18. Leading Counsel advice is that direction and control includes:<sup>15</sup>

- a) The ability to issue a warrant to an attested officer with which that officer may exercise their police powers
- b) Decisions in relation to the appointment and dismissal of officers and staff;
- c) Decisions concerning the configuration and organisation of policing resources (or) the decisions whether, or whether not, to deploy police officers and staff;
- d) Total discretion to investigate or require an investigation into crimes and individuals as he/she thinks fit;
- e) Decisions taken with the purpose of balancing competing operational needs within the framework of priorities and objectives set by the PCC;
- f) Operational decisions to re-allocate resource to meet immediate demand; and
- g) The allocation of officers' specific duties and responsibilities within the force area to meet the strategic objectives set by the PCC".

#### "Statutory Officers"

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<sup>11</sup> Schedule 4 Police Act 1996

<sup>12</sup> R v Metropolitan Police Commissioner Ex parte Blackburn (No. 4) 1979 The Times December 1 Lord Denning at p136

<sup>13</sup> The Police Protocol Order 2011 (SI 2011 No. 2744)

<sup>14</sup> S2(3) PRSRA

<sup>15</sup> Jason Beer CQ in a lecture 28.03.11 "*Chief Officers' Powers & Duties under PRSRA*"

19. These are the officers which the law states have to be appointed by the PCC and by the Chief Constable respectively. The PCC must appoint “a person to be the head of the Commissioner’s staff”. (Chief Executive/Chief of Staff) and (b) “a person to be responsible for the proper administration of the Commissioner’s financial affairs”. (Chief Finance Officer) <sup>16</sup> ‘to be responsible for the proper administration of the police force’s financial affairs’.<sup>17</sup>

“Collaboration Agreements”<sup>18</sup>

20. Whereas previously under S23 Police Act 1996, there was a discretion to enter into collaboration agreements, now there is a positive duty imposed on the PCC and the Chief Constable to collaborate, to keep collaboration agreements under review<sup>19</sup> and to consider whether the exercise of collaboration functions would be in the interests of the efficiency or effectiveness of one or more police forces. Such agreements will be underpinned by appropriate governance and financial arrangements<sup>20</sup>. The Secretary of State may order or require a specific function to be exercised in accordance with Police Collaboration Provisions.<sup>21</sup>

#### A4 GENERAL PRINCIPALS OF CONSENT AND DELEGATION

21. The Police and Crime Commissioner may ask that a specific matter (excluding activities of an operational priority) is referred to him/her for a decision and not dealt with under powers of consent or delegation.
22. Giving consent and/or delegation to officers under this scheme does not prevent an officer from referring the matter to the Police and Crime Commissioner for a decision if the officer thinks this is appropriate (for example, because of sensitive issues or any matter which may have a significant financial implication).
23. When a statutory officer is considering a matter that is within another statutory officer’s area of responsibility, they should consult the other statutory officer before authorising the action.
24. All decisions statutory officers make under powers given to them by the Commissioner must be recorded and be available for inspection.
25. The Police and Crime Commissioner will want to be involved in any projects/areas of work which may have a significant impact on the Police and Crime Plan and the people of their locality (Bedfordshire, Cambridgeshire or Hertfordshire)

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<sup>16</sup> Schedule 1 para 6(1)(a) & (b) PRSRA

<sup>17</sup> Schedule 2 para 4(1) PRSRA

<sup>18</sup> See in full S23 Police Act 1996 as amended by S89 & Schedule 12 PRSRA

<sup>19</sup> S22(b) Police Act 1996 as amended by S89 PRSRA imposes a DUTY upon the Chief Constable to keep collaboration agreements under review. S22(c) Police Act 1996 imposes the same positive duty upon the PCC

<sup>20</sup> As defined within the Home Office Statutory Guidance for Police Collaboration

<sup>21</sup> S23FA Police Act 1996 as inserted by S89 PRSRA

26. In this document reference made to the statutory officers include officers authorised by them to act on their behalf.
27. The statutory officers are responsible for making sure that members of staff they supervise know about the provisions and obligations of this Scheme of Consent and/or Delegation.
28. The individuals appointed as Deputy Chief of Staff for Bedfordshire Police and Crime Commissioner, Chief Executive for Cambridgeshire Police and Crime Commissioner and the Deputy Chief Executive for Hertfordshire Police and Crime Commissioner only will also be the Monitoring Officer for their respective officers
29. The Chief Executive for Cambridgeshire Police and Crime Commissioner/Deputy Chief Executive for Hertfordshire Police and Crime Commissioner/Deputy Chief of Staff for Bedfordshire Police and Crime Commissioner and the Chief Finance Officers (section 151 officer) have statutory powers and duties relating to their positions, and therefore do not rely on matters being delegated to them to carry these out.
30. The Scheme of Consent/Delegation provides a Statutory Officer with the legal power to carry out duties of the Commissioner. In carrying out these duties the Statutory Officer must comply with all other statutory and regulatory requirements and relevant professional guidance.
31. The Police and Crime Commissioner may give additional delegation to his/her officers under section 18 of the Act. This Scheme is a record of the formal delegations that are in effect at the time of its publication. The Police and Crime Commissioner's governance framework, including the Scheme of Corporate Governance will be reviewed annually. With the exception, of those matters listed in paragraph 74, the scheme allows any person, with appropriate authority, to delegate that power further.
32. The Police and Crime Commissioner must not restrict the operational independence of the police force or the Chief Constable who leads it.
33. To enable the Police and Crime Commissioner to exercise the functions of their office effectively they will need access to information, and officers and staff within their force area. An Information Protocol governing the relationship between the Commissioner and Chief Constable and their respective staff is in place.

## **A5 URGENT MATTERS**

34. If any matter which would normally be referred to the Police and Crime Commissioner (or Deputy Commissioner) for a decision arises and cannot be delayed, the matter may be decided by the appropriate chief officer. Urgent decisions taken must be reported to the Police and Crime Commissioner as soon as practicable and in any event within 2 days.

35. The appropriate chief officers authorised to decide urgent matters are:
- a) the Chief Executive/Chief of Staff (all issues other than operational matters);
  - b) the Police and Crime Commissioner's Chief Finance Officer (all statutory, delegated financial and related issues)
  - c) the Chief Constable (operational issues affecting their respective locality of either Bedfordshire, Cambridgeshire or Hertfordshire Constabulary).

## SECTION B: ROLE OF POLICE AND CRIME COMMISSIONER

### B1 INTRODUCTION

36. The functions of a PCC are summarised in S1(5) PRSRA and fall into three categories.
- a) Specific functions conferred by S1 PRSRA
  - b) Functions relating to Community Safety and Crime Prevention (which are set out in Chapter 3 PRSRA) and
  - c) *“other functions conferred by this act and other enactments”*.
37. The PCC has certain restrictions on delegation of functions<sup>22</sup> and in particular cannot delegate his/her *“functions”* to a *“constable”*.

### B2 FUNCTIONS CONFERRED BY S1 PRSRA

38. The PCC must secure the maintenance of the police force and secure that the force is efficient and effective.<sup>23</sup>
39. The PCC must hold the Chief Constable to account for the exercise of the Chief Constable’s functions and the functions of persons under his/her direction and control.<sup>24</sup>
40. Specifically the PCC must hold the Chief Constable to account for:-
- a) His/Her duty to have regard to the Police & Crime Plan<sup>25</sup>
  - b) His/Her duty to have regard to the Strategic Policing Requirement<sup>26</sup>
  - c) His/Her duty to have regard to Codes of Practice issued by the Secretary of State<sup>27</sup>
  - d) The effectiveness and efficiency of the Chief Constable’s arrangements for cooperating with other persons in the exercise of his/her functions (whether under S22A of the Police Act or otherwise)<sup>28</sup>
  - e) The effectiveness and efficiency of the Chief Constable’s arrangements for engaging with local people<sup>29</sup>

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<sup>22</sup> S1(5)(c) PRSRA

S18 PRSRA

S18(2),(3)(c), 6(a) PRSRA

<sup>23</sup> S1(6) PRSRA

<sup>24</sup> S1(7) PRSRA

<sup>25</sup> S1(8)(a) & S8(2) PRSRA

<sup>26</sup> S1(8)(b) PRSRA & S37A(2) Police Act 1996

<sup>27</sup> S1(8)(c) PRSRA & S39A(7) Police Act 1996

<sup>28</sup> S1(8)(d) PRSRA

- f) The extent to which the Chief Constable has complied with his/her duty “to secure that good value for money is obtained”<sup>30</sup>
- g) The exercise of duties relating to equality and diversity that are imposed on the Chief Constable by any enactment<sup>31</sup>
- h) The exercise of the Chief Constable’s duties to safeguard children and the promotion of child welfare imposed by S10 &11 Children Act 2004<sup>32</sup>

### **B3 FUNCTIONS RELATING TO COMMUNITY SAFETY AND CRIME PREVENTION**

- 41. The PCC must issue a Police & Crime Plan within the financial year in which each ordinary election is held and must comply with this duty as soon as practicable after the PCC takes office.<sup>33</sup> The PCC may at any time issue a Crime Plan and may vary a Crime Plan.<sup>34</sup> Before issuing or varying a Police & Crime Plan, the PCC must have regard to the Strategic Policing Requirement<sup>35</sup> and must comply with the procedural requirements and publication requirements<sup>36</sup> in S1(6)(7)(8) & (9) PRSRA. This includes consultation with the Chief Constable<sup>37</sup> in the preparation of any draft plan or variation and the duty to have regards to the recommendations made by the Police & Crime Panel.<sup>38</sup>
- 42. The Secretary of State may give guidance as to the matters to be dealt with in the plan.<sup>39</sup> The content of the plan is listed in Section 7 namely the PCC’s Police & Crime Objectives, the policing which the Chief Constable is to provide, the financial and other resources which the PCC will provide to the Chief Constable, the means by which the Chief Constable will report to the PCC, the means by which the Chief Constable’s performance will be measured and any Crime & Disorder Grants which the PCC is to make, together with any conditions attaching. The term “*Police & Crime Objectives*” is further defined as a) the policing of the PCC’s area, b) crime and disorder reduction in that area and c) the discharge by the relevant police force of its national or international functions.<sup>40</sup> The PCC must “have regard to” the plan in exercising his/her functions.

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<sup>29</sup> S1(8)(e) & S34 PRSRA

<sup>30</sup> S1(8)(f) & S5(1) PRSRA

<sup>31</sup> An overview of the general equality duty under The Equality Act 2010 & specific duties provided by The Equality Act 2010 (Specific Duties) Regulations 2011 as it applies to a Chief Constable & a PCC is at Appendix B, page.....

<sup>32</sup> S1(8)(h) S10 & 11 of Children Act 2004, under S10 the Chief Constable is a ‘relevant partner’ with a duty to cooperate to improve the well being in the Local Authority Areas covered by his/her force. Under S11 in discharging his/her functions, the Chief Constable needs t have regard to the need to safeguard and promote the need of children eg R (on the application of) Castle, Castle & Eaton v Commissioner of Police for the Metropolis [2011] EWHC 2317

<sup>33</sup> S5(1) & (2) PRSRA

<sup>34</sup> S5(3)(4) PRSRA

<sup>35</sup> S5(5) PRSRA & S37A Police Act 1996

<sup>36</sup> S5(6)(f) PRSRA

<sup>37</sup> S5(6)(b) PRSRA

<sup>38</sup> S5(6)(c)(d) PRSRA

<sup>39</sup> S7(4) PRSRA

<sup>40</sup> S7(2) PRSRA

43. The PCC may make a Crime & Disorder Grant to any person, to secure or contribute to securing crime and disorder reduction.<sup>41</sup>
44. The PCC must publish information specified by the Secretary of State<sup>42</sup> and must publish information necessary to allow the public in the area to assess the performance of the PCC and Chief Constable.<sup>43</sup>
45. The PCC has a duty to “have regard to” the relevant priorities of each “responsible authority”.<sup>44</sup>
46. The PCC must cooperate with “responsible authorities” (ie those in S5 Crime & Disorder Act 1998, essentially the Community Safety Partnership members) and has a duty to ensure an efficient and effective Criminal Justice System.
47. The PCC and “criminal justice bodies”<sup>45</sup> must make arrangements for the exercise of functions to provide an efficient and effective criminal justice system for the police area. The composition of “criminal justice bodies” is different to “responsible authorities”.<sup>46</sup> There is some overlap but not completely. A useful explanation of these duties and the practical challenge of implementing them has been give by leading Counsel.<sup>47</sup>
48. The PCC has a duty to collaborate<sup>48</sup> changing the previous discretion under S23 Police Act 1996 to enter into collaboration agreements into a positive duty. This duty applies both to the Chief Constable and the PCC who must keep collaboration agreements under review.<sup>49</sup> The Secretary of State may also by order direct a “specified police function” to be exercised in accordance with Police Collaboration Provision.<sup>50</sup>
49. The PCC must publish an “annual report” on the exercise of his/her functions and the progress which has been made in the financial year in meeting the Police & Crime Objectives in the plan. The Police & Crime Panel have a role to play which is detailed in S12 PRSRA.

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<sup>41</sup> S9 PRSRA. It may be subject to conditions S9(3) PRSRA

<sup>42</sup> Eg The Elected Local Policing Bodies (Specified Information) Order 2011

<sup>43</sup> S11 PRSRA. (There is a wide discretion to publish further information

<sup>44</sup> “Responsible Authority” has the same meaning as in S5 Crime & Disorder Act 1998 namely the Community Safety Partnership.

<sup>45</sup> S10(5) PRSRA defines these as:- The Chief Constable, the CPS, the Lord Chancellor, a minister of the Crown in exercising functions relating to prisons, Youth Offending Teams, a person who has a contact with the Secretary of State under S3(2) Offender Management Act 2007, the Secretary of State in making probation provisions under S3(2) ante

<sup>46</sup> S5 Crime & Disorder Act 1998: The individual members retain their own legal identity.

<sup>47</sup> Fiona Barton QC “*Cooperative Working and Collaboration*” 28.05.12

<sup>48</sup> S89 PRSRA inserts a new S22A into the Police Act 1996

<sup>49</sup> The new S22B Police Act 1996 creates a duty upon the Chief Constable to keep collaboration agreements under review and S22C a positive duty upon the PCC to keep collaboration agreements under review.

<sup>50</sup> S89 inserts a new S23FA into the Police Act 1996

#### **B4 DUTY TO PROVIDE INFORMATION TO THE POLICE AND CRIME PANEL**

50. The PCC “*must*” provide the panel with any information it “*may reasonably*” require in order to carry out its functions. However, this is subject to the views of the Chief Constable<sup>51</sup>. Information need not be required if in the Chief Constable’s view, it would be against the interests of national security, may jeopardise the safety of any person or would prejudice the prevention or detection of crime, the apprehension or prosecution of offenders or the administration of justice.
51. The PCC has a duty to make arrangements to obtain the views of people in the police area about policing of the area and their cooperation with the police in preventing crime in that area.<sup>52</sup> Under PRSRA, that duty now specifically includes the views of victims.<sup>53</sup>
52. Before a plan is issued, the PCC must seek the views of people and victims in the police area.<sup>54</sup>
53. Schedule 5 of the PRSRA sets out the process for issuing a precept, including the panel’s role in reviewing the proposed precept, their power to veto the precept and steps to be taken if they do veto the proposed precept. Schedule 5 requires:
- a) The PCC to notify the panel of his/her proposed precept;
  - b) The panel to review the proposed precept;
  - c) The panel to make a report to the PCC on the proposed precept;
  - d) The PCC to have regard to the report made by the panel
  - e) The PCC to give the panel a response to their report;
  - f) The PCC to publish the response.

If there is no veto and the PCC has published his/her response to the panel’s report, the PCC may then issue the proposed precept - or a different precept (but only if in accordance with a recommendation in the panel’s report to do so).

54. The PCC’s arrangements at 49 to 52 must be made after consulting the Chief Constable.<sup>55</sup>

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<sup>51</sup> S13(2) PRSRA

<sup>52</sup> S96 Police Act 1996 (as amended by PRSRA)

<sup>53</sup> S14 PRSRA amends S98(1)(b) Police Act 1996

<sup>54</sup> S14(3) PRSRA inserts S79(1)(1A) into the Police Act 1996

<sup>55</sup> S96(2) Police Act 1996 as amended by S14(4) PRSRA

## **B5 OTHER FUNCTIONS CONFERRED BY THIS ACT AND OTHER ENACTMENTS**

55. The PCC has other statutory duties, for example under The Equality Act 2010.
56. Under section 56 of the Domestic Violence, Crime and Victims Act 2004 the Home Office will be transferring the funding to the Police and Crime Commissioner to commission victims services.
57. Schedule 16 PRSRA deals with “Police Reform: Minor & Consequential Amendments”. This schedule amends a number of legislative provisions and thereby creates “functions” of the PCC, for example the PCC becomes the “compensation authority” for claims brought under the Riot (Damages) Act 1886.
58. “A PCC may do anything which is calculated to facilitate or is conducive or incidental to the exercise of the functions of Commissioner, this includes entry into contracts and other agreements (whether legally binding or not) acquiring and/or disposing of property (including land) borrowing money”<sup>56</sup> This power is subject to the other provisions of the Act and any other enactment about the powers of PCC’s.<sup>57</sup>
59. The Police and Crime Commissioner Chief Financial Officer has certain statutory duties which cannot be delegated, namely, reporting any potentially unlawful decisions by the Commissioner on expenditure and preparing each year, in accordance with proper practices in relation to reporting accounts, statement of the Commissioner’s accounts, including group accounts.

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<sup>56</sup> Schedule 1, para 14(1)

<sup>57</sup> Schedule 1, para 14(2)

## **SECTION C: THE PCC'S OFFICE AND DELEGATED AUTHORITIES**

### **C1 ROLES & RESPONSIBILITIES**

#### **THE CHIEF EXECUTIVE/THE CHIEF OF STAFF**

60. The PCC appoints a Chief Executive/Chief of Staff to lead the PCC's Staff<sup>58</sup>. As this role is currently a part time role some of the functions associated with it are deputed to the Deputy Chief Executive (for Hertfordshire Police and Crime Commissioner)/Deputy Chief of Staff (for Bedfordshire Police and Crime Commissioner).
61. The Chief Executive/Chief of Staff is responsible for advising upon policy and strategy and in particular to provide support with strategy and resource planning, partnership working, commissioning and service delivery, engagement and information management and scrutiny, evaluation and performance
62. The Chief Executive/Chief of Staff is responsible for preparing for the PCC's approval and keeping under review any delegations or consents required to be issued, revoked or varied, together with the preparation of an amendment to the Governance Arrangements and the Financial and Contract Regulations.
63. The Chief Executive/Chief of Staff is responsible for ensuring that all decisions taken by the PCC are made and recorded in a form to be agreed by the Chief Executive and the PCC and to maintain and publish appropriate records and minutes of such decisions.
64. The Chief of Staff for Bedfordshire Police and Crime Commissioner and the Chief Executive for Cambridgeshire Police and Crime Commissioner is designated the "Monitoring Officer" for the respective offices.

#### **THE DEPUTY CHIEF EXECUTIVE (Hertfordshire Police and Crime Commissioner)/Deputy Chief of Staff (Bedfordshire Police and Crime Commissioner)**

65. The Deputy Chief Executive/Deputy Chief of Staff shall deputise for the Chief Executive/Chief of Staff in his/her absence and upon such other occasion and in such circumstances as the Chief Executive/Chief of Staff may from time to time direct.
66. The Deputy Chief Executive is designated the "Monitoring Officer" for Hertfordshire Police and Crime Commissioner.

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<sup>58</sup> Para 6(1)(a) Schedule 1 PRSRA

## **THE PCC CHIEF FINANCE OFFICER**

67. The Commissioner is required to appoint a Chief Finance Officer.
68. The PCC Chief Finance Officer (PCCCFO) must be a member of a prescribed body such as CIPFA.<sup>59</sup>
69. The PCCCFO has responsibility for proper financial administration and a personal fiduciary responsibility to the local council taxpayer.
70. The PCCCFO's duties are set out in legislation, regulations, Financial Management Code of Practice and CIPFA guidance and codes of practice.
71. The PCCCFO's statutory responsibilities are set out in Paragraph 6 of Schedule 1 to the Police Reform and Social Responsibility Act 2011, Sections 112 and Section 114 Local Government Finance Act 1988 (formal powers to safeguard lawfulness and propriety in expenditure); and The Accounts and Audit Regulations 2011.

## **THE CHIEF CONSTABLE'S CHIEF FINANCE OFFICER**

72. The Chief Constable is required to appoint a Chief Finance Officer.
73. The Chief Constable Chief Finance Officer (CCCFO) must be a member of a prescribed body such as CIPFA.<sup>60</sup>
74. The CCCFO has responsibility for proper financial administration and a personal fiduciary responsibility to the local council taxpayer.
75. The CCCFO's duties are set out in legislation, regulations, Financial Management Code of Practice and CIPFA guidance and codes of practice.
76. The CCCFO's statutory responsibilities are set out in Paragraph 6 of Schedule 1 to the Police Reform and Social Responsibility Act 2011, Sections 112 and Section 114 Local Government Finance Act 1988 (formal powers to safeguard lawfulness and propriety in expenditure); and The Accounts and Audit Regulations 2011.
77. The statutory responsibilities of the Chief Constables Chief Finance Officer are largely identical to those set-out above for the PCC's Chief Finance Officer.

## **INFORMATION SHARING BETWEEN THE CHIEF FINANCE OFFICERS**

78. As set out in section 36 of the Police Reform and Social Responsibility Act 2011, a Chief Constable must give the relevant PCC such information on policing matters that the body may require. As a result the Chief Finance Officer of the PCC must have full access to all relevant financial information. The Chief Finance Officers of the PCC and the Chief Constable will work together to ensure that wherever

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<sup>59</sup> Para 6 (4) Schedule 1 PRSA, S113 (3) LGFA1988

<sup>60</sup> Para 6 (4) Schedule 1 PRSA, S113 (3) LGFA1988

possible, any duplication of work and data collection by the finance functions of the two corporations sole is minimised. It is expected that the principles of goodwill, professionalism, openness and trust will underpin the relationship and that all parties will do their utmost to make the relationship work.

## **C2 DELEGATIONS**

### **THE DEPUTY PCC<sup>61</sup>**

79. The PCC delegates to his/her deputy the authority to act in his/her absence or in accordance with his/her direction in the exercise of all his/her functions, except for those which cannot be delegated as per S18, namely:
- a) issuing a Police & Crime Plan<sup>62</sup>
  - b) determining police and crime objectives;
  - c) appointing the Chief Constable, suspending the Chief Constable
  - d) calling upon the Chief Constable to retire or resign<sup>63</sup>
  - e) calculating a budget requirement<sup>64</sup>
  - f) attendance at a meeting of a police and crime panel in compliance with a requirement by the panel to do so
  - g) preparing an annual report to a policing and crime panel

### **THE CHIEF EXECUTIVE/CHIEF OF STAFF**

80. The Chief Executive/Chief of Staff is responsible for the leadership and general administration of the Commissioner's office. The Chief Executive/Chief of Staff has the delegated authority:
- a) To coordinate the production of the Police & Crime Plan.
  - b) To produce an annual report.<sup>65</sup>
  - c) Subject to the views of the Chief Constable<sup>66</sup>, to publish information on behalf of the PCC as required by the Elected Local Policing Bodies (Specified Information) Order 2011.

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<sup>61</sup> S18 PRSRA

<sup>62</sup> S18 (3)(b), S18(7)(a) & S5 PRSRA

<sup>63</sup> S18(3)(b), S18(7)(e) & S38 PRSRA

<sup>64</sup> S18(3), S18(7)(f) & S43 Local Government Act 1992

<sup>65</sup> The PCC must produce an annual report – See S12 PRSRA

<sup>66</sup> The Chief Constable can express a view if publication would be against the interests of national security, jeopardise the safety of any person or prejudice the investigation and detection of

- d) To provide information to the PCP to enable it to carry out its functions.
- e) To sign contracts on behalf of the PCC and to affix a common seal of the PCC (in accordance with the Financial & Contract Regulations):
  - to all contracts, agreements or transactions in respect of which there is no consideration
  - that relate to the provision of goods and services by the Police and Crime Commissioner above the thresholds consented to the Chief Constable as set-out in the Contract Standing Orders.
  - which grant or convey an interest in land
  - that are £500k Bedfordshire/Cambridgeshire and £750k Hertfordshire or above in value over the life of the contract.
  - which are grants above £100,000 lawfully authorised by the Commissioner
  - when it is determined by the Police and Crime Commissioner (or Deputy Commissioner) there is a particular need for the seal to be attached.
- f) To consider whether, in consultation with the Chief Finance Officer, to provide an indemnity for the PCC or his/her deputy in accordance with the Local Authorities (Indemnities for Members & Officers) Order 2004.
- g) To consider and approve if appropriate, the provision of indemnities and/or insurance for officers.<sup>67</sup>
- h) To make arrangements to institute, defend or participate in any legal proceedings in any case where such action is necessary to give effective decisions of the PCC or in any case in which the Chief Executive/Chief of Staff considers that such action is necessary to protect the PCC's interests.
- i) To consider with the PCC any complaint made against the Chief Constable and where appropriate to make arrangements for appointing an officer to investigate the complaint.
- j) To respond to consultations and proposals affecting the PCC after first taking into consideration the views of the PCC, the Chief Finance Office and/or the Chief Constable as appropriate.
- k) To obtain legal or other expert advice and to appoint legal professionals whenever this is considered to be in the PCC's best interest and/or for his or her benefit.
- l) To ensure in consultation with the Chief Constable, that appropriate arrangements are made to gather the community's views on the policing of,

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crime/apprehension of offenders/administration of justice – Para 2(2)(a)-(c) The Elected Local Policing Bodies (Specified Information) Order 2011

<sup>67</sup> In this context "officers" means officers/staff of the PCC not police officer

Crime Prevention and Anti-Social Behaviour, within the region in which the respective Chief Executive, Police and Crime Commissioner represents.

- m) In accordance with the requirements of the PCCs for Hertfordshire and Cambridgeshire respectively, to advise upon and negotiate in consultation with the Chief Finance Officer, any variation to services provided by the respective County Councils.
- n) Such matters that are referred for decision by the Chief Executive/Chief of Staff in the Financial and Contract Regulations.
- o) To appoint and dismiss, in consultation with the PCC, staff who are not under the direction and control of the Chief Constable.
- p) To make recommendations to the PCC with regard to staff terms and conditions of service, in relation to those staff not under the direction and control of the Chief Constable.
- q) To settle Employment Tribunal claims brought against the PCC, within the scope of those claims where the PCC's approval is required to settle, a limitation on the value of any claim, unless it is considered that value would in itself cause the PCC to be exposed to serious public criticism, involves a high profile claimant, involves a particular public interest or causes any serious weakness in the organisation, policies or procedures of the office of PCC,
- r) To settle appeals against decisions of the Senior Administrator of the Local Government Pension Scheme, in line with the Occupational Pension Schemes (Internal Dispute Resolution Procedures) Regulations 1996.
- s) To appoint and if necessary terminate the appointment of independent custody visitors in accordance with Section 51 Police Reform Act 2002.
- t) To place orders (but not determine the need for orders) for goods, services and work within budget provision, up to the value at which the European Procurement Directives apply, subject to compliance with Financial & Contract Regulations and a report being submitted to the PCC for information.
- u) To appoint technical consultants as and when required to progress the Capital and Revenue programmes.
- v) To authorise persons to enter and survey land pursuant to Section 15 Local Government (Miscellaneous Provisions) Act 1976 and Section 324(6) Town & Country Planning Act 1990.
- w) To grant licences and fees for radio installations/masts and aerials which conform to approved standards and to report such approvals retrospectively to the PCC for information.

- x) To let non-surplus empty properties to be managed in-house and let at market rents after being advertised on the open market, subject to retrospective reporting to the PCC.
- y) To arrange for the service of notices to quit in order to obtain possession of land for a purpose already approved by the PCC or to enable a variation to be made in the terms upon which a tenancy of land is held.
- z) To make application to the Highways Authority for the grant of licences for operators over, in and under streets required for the PCC's development.

**THE DEPUTY CHIEF EXECUTIVE for Hertfordshire Police and Crime  
Commissioner/DEPUTY CHIEF OF STAFF for Bedfordshire Police and Crime  
Commissioner**

81. The Deputy Chief Executive/Deputy Chief of Staff has responsibility for the day to day management and running of the PCC's office and is also delegated to undertake the functions of the Chief Executive/Chief of Staff in his/her absence.

**MONITORING OFFICER**

82. As Monitoring Officer the Deputy Chief Executive (and the Chief Executive for Cambridgeshire Police and Crime Commissioner and Chief of Staff for Bedfordshire Police and Crime Commissioner) is responsible for:
- a) ensuring the legality of the actions of the Commissioner and his/her officers;
  - b) ensuring that procedures for recording and reporting key decisions are operating effectively;
  - c) advising the Commissioner and officers about who has authority to take a particular decision;
  - d) advising the Commissioner about whether a decision is likely to be considered contrary or not wholly in accordance with the policy framework; and
  - e) advising the Commissioner on matters relating to standards of conduct.
  - f) signing contracts on behalf of the Commissioner above the thresholds delegated to the Chief Constable within approved Contract Regulations

**THE PCC CHIEF FINANCE OFFICER (PCCCFO)**

83. The PCCCFO shall be responsible for<sup>68</sup>:
- a) ensuring that the financial affairs of the Commissioner are properly administered and that Financial Regulations are observed and kept up to date;
  - b) ensuring regularity, propriety and Value for Money (VFM) in the use of public funds;
  - c) ensuring that the funding required to finance agreed programmes is available from Central Government, council tax precept, other contributions and recharges;

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<sup>68</sup> Para 4.1 FMCP pg 9-10

- d) Reporting to the Commissioner, the Police and Crime Panel and to the external auditor: any unlawful, or potentially unlawful, expenditure by the Commissioner or officers of the Commissioner when it appears that any expenditure is likely to exceed the resources available to it to meet that expenditure;
- e) advising the Commissioner on the robustness of the estimates and the adequacy of financial reserves;
- f) preparing the annual statement of accounts, in conjunction with the Chief Constables Chief Finance Officer (CCCFO);
- g) ensuring the provision of an effective internal audit service, in conjunction with the CCCFO;
- h) securing the treasury management function, including loans and investments;
- i) advising, in consultation with the Chief Executive/Chief of Staff on the safeguarding of assets, including risk management and insurance
- j) arranging for the determination and issue of the precept
- k) liaising with the external auditor; and
- l) advising the Commissioner on the application of value for money principles by the Constabulary to support the Commissioner in holding the Chief Constable to account for efficient and effective financial management.

84. The PCCCFO, in consultation with the Chief Executive/Chief of Staff, CCCFO and/or Chief Constable as appropriate, has powers to institute any proceedings or take any action necessary to safeguard the finances of the OPCC and the Constabulary.

## SECTION D: CONSENTS

### D1 THE ROLE & RESPONSIBILITIES OF THE CHIEF CONSTABLE

85. This section relates to the functions of the Chief Constable and the consents, where appropriate, given to him/her for exercising by officers and staff under his/her direction and control. More detailed commentary of finance is contained within the Financial Regulation Section.
86. Under the PRSRA the Chief Constable is a Corporation Sole.<sup>69</sup> The Chief Constable is responsible for maintaining the Queen's Peace. He/She is accountable for the exercise of policing powers and has direction and control over the force's officers and staff.<sup>70</sup> He/She must exercise this power in such a way as is reasonable to assist the PCC discharge his/her functions.<sup>71</sup> In exercising his/her functions the Chief Constable must secure that good value for money is obtained.<sup>72</sup>
87. The Chief Constable is an officer of the Crown, holding a public office. His/Her policing powers are set out in statute and common law. However the power to appoint, suspend or call upon the Chief Constable to resign or retire is vested in the PCC.<sup>73</sup> The Chief Constable must resign or retire if called upon to do so by the PCC.<sup>74</sup> There is however, a "scrutiny process" which must be followed.<sup>75</sup> This power is subject to any regulations which may be issued by the Secretary of State under S50 Police Act 1996. These currently include the Police (Conduct) Regulations 2008, The Police (Performance & Conduct) (Amendment) Regulations 2012, The Police (Complaints & Misconduct) Regulations 2012 and the Police (Conduct) Regulations 2012. ("Conduct Regulations"). Legal authority provides that if there is a dispute as to the facts upon which a decision is to be made, the Chief Constable will be entitled to the protection of the Conduct Regulations.<sup>76</sup>
88. The Chief Constable must "*have regard to*" the Police & Crime Plan issued by the PCC<sup>77</sup> and undertake a number of functions:
- a) The Chief Constable must make arrangements for obtaining the views within each neighbourhood in the Police Area about crime and disorder.<sup>78</sup> It is for the Chief Constable to determine what is a "neighbourhood".<sup>79</sup> He/she must provide information about policing in the neighbourhood including how he/she aims to deal with crime and disorder.<sup>80</sup> He/She must arrange regular neighbourhood meetings.<sup>81</sup>

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<sup>69</sup> See para 3.1 at page 5 For explanatory note

<sup>70</sup> S2(3) PRSRA

<sup>71</sup> S2(5) PRSRA

<sup>72</sup> S35(1) PRSRA

<sup>73</sup> S38 PRSRA

<sup>74</sup> S38(4) PRSRA

<sup>75</sup> This is set out in Schedule 8 PRSRA

<sup>76</sup> Eg See R (Kay) v Chief Constable of Northumbria [2009] EWHC 1835

<sup>77</sup> S8(2) PRSRA

<sup>78</sup> S.34(1) PRSRA

<sup>79</sup> S.34 (4) PRSRA

<sup>80</sup> S.34(2) PRSRA

<sup>81</sup> S34(4) PRSRA

- b) The Chief Constable must give such information to the PCC as he/she requires.<sup>82</sup> The PCC may arrange for that information to be published or require the Chief Constable to publish it.<sup>83</sup> The PCC determines the manner in which the information is published.<sup>84</sup> This is, of course, subject to confidentiality considerations.
- c) The Secretary of State may require the Chief Constable to provide information in connection with the policing of the police area or the discharge of national or international functions of his/her force. This may include statistical data. The Secretary of State may require the Chief Constable to publish information in a manner in which the Secretary of State considers appropriate.<sup>85</sup>
- d) The Chief Constable must provide to an Inspector, information, documents and “*all such evidence and other things specified*” as appear to an Inspector to be required for the papers of an inspection, described in a notification given to him/her by an Inspector.<sup>86</sup>
- e) The Chief Constable is also required to allow an Inspector access to premises and to documents on the premises for the purpose of an inspection.
- f) The Chief Constable has the same duties of cooperation as the PCC. These are set out in full at para 46 page 12 of this document.
- g) The Chief Constable has a positive duty to collaborate<sup>87</sup> and to keep collaboration agreements under review.<sup>88</sup> (See explanation at para 20 page 7 and para 48 page 12 of this document and footnotes thereto)
- h) The Chief Constable must “*have regard to*” the Policing Protocol in exercising his/her functions.<sup>89</sup>
- i) The Chief Constable in exercising his/her functions must “*have regard to*” the Strategic Policing Requirement which sets out the Secretary of State’s view of national threats and appropriate national policing and capabilities to counter those threats.<sup>90</sup>

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<sup>82</sup> S36(1) PRSRA

<sup>83</sup> S36 (3) PRSRA

<sup>84</sup> S36(4) PRSRA

<sup>85</sup> S44 and s45 Police Act 1996 are substituted by the sections redrafted at S92 PRSRA

<sup>86</sup> S86 PRSRA inserts S6A into the Police Act 1996. Further details re timing and manner of the provision of information is detailed within the section.

<sup>87</sup> S89, Schedule 8 PRSRA

<sup>88</sup> S89 PRSRA amends S22(b) Police Act 1996

<sup>89</sup> S79(2) PRSRA – Note: S79(6) The Chief Constable, the PCC, the Secretary of State and the Police & Crime Panel are all “*relevant persons*”, they must all *have regard to* the Policing Protocol.

<sup>90</sup> S77 PRSRA inserts a new S37A into the Police Act 1996

- j) The Chief Constable must ensure that good value for money is obtained, this includes ensuring that persons under his/her direction and control obtain good value for money<sup>91</sup>
- k) The Chief Constable must discharge his/her functions having regard to the need to safeguard and promote the welfare of children.<sup>92</sup>
- l) The Chief Constable must make arrangements for the purpose of assessing and managing the risks posed by relevant sexual and violent offenders and other persons who may cause serious harm to the public.<sup>93</sup>
- m) The Chief Constable has the obligation to determine applications for Firearms & Shotgun Certificates.<sup>94</sup>
- n) The Chief Constable is a “responsible authority” for licensing purposes.<sup>95</sup>
- o) A general equality duty under the Equality Act 2010 and the specific duties provided by The Equality Act 2010 (Specific Duties) Regulations 2011.
- p) The Chief Constable becomes the “*Police Pensions Authority*”.<sup>96</sup>
- q) The Chief Constable has a duty (in the absence of a premises licence - where the duty rests upon the relevant licensing authority) to institute proceedings for failing to provide for safety of children at entertainments.<sup>97</sup>
- r) The Chief Constable replaces the Police Authority within the definition of “*Law Enforcement Agency*”.<sup>98</sup>

## D2 CONSENTS TO THE CHIEF CONSTABLE

### INTRODUCTION

- 89. The consents agreed by the PCC are to have effect from 1st April 2014. They may be varied by the PCC in consultation with the Chief Constable at any time. Any variations to the scheme will be published as soon as practicable.<sup>99</sup>
- 90. Any reference to the Chief Constable shall refer to any staff delegated under his/her authority.

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<sup>91</sup> S35 (1) & (2) PRSRA

<sup>92</sup> S11 Children Act 2004

<sup>93</sup> S325(2) Criminal Justice Act 2003

<sup>94</sup> S26A, S26B Firearms Act 1968

<sup>95</sup> S13(4) Licensing Act 2003

<sup>96</sup> S11(2) Police Pensions Act 1976

<sup>97</sup> S12 Children & Young Persons Act 1933 as amended by Schedule 16 PRSRA

<sup>98</sup> S39(10) Serious Crime Act 2007 as amended by Schedule 16 PRSRA

<sup>99</sup> It has to be remembered that officers and staff are already under direction and control of the Chief Constable and, of course, that police officers are not employees of the PCC>

## STAGE 2 TRANSFER

91. In accordance with part 3 of Schedule 15 of the PRSRA:
- a) All police staff, with the exception of those employed specifically in the office of the PCC, will transfer to become a member of the civilian staff of the police force<sup>100</sup>
  - b) Any contract of employment which the person had before becoming a member of the civilian staff of a police force will have effect (subject to any modifications) as if originally made between that person and the chief officer.<sup>101</sup>
  - c) Any employee currently on secondment will continue to be seconded on the same terms and conditions as agreed ahead of the transfer.<sup>102</sup>
  - d) The chief constable will assume the rights, powers, duties and liabilities of the employer under or in connection with the contract of employment<sup>103</sup> and any periods before a person became a member of the civilian staff of the police force will count as periods of employment with the chief officer, and a period of continuous employment.<sup>104</sup>

## EMPLOYMENT

The Chief Constable;

92. May appoint such other staff as he/she thinks appropriate and linked to the Police and Crime Plan, to enable him/her to exercise his/her functions or otherwise to assist the force.
93. May appoint officers and determine ranks. However, he/she must consult the PCC before appointing a person as an Assistant Chief Constable<sup>105</sup> Deputy Chief Constable<sup>106</sup> or increasing the numbers of Deputy Chief Constables the force has.<sup>107</sup>
94. Must ensure staff under his/her direction and control comply with the law, including the Employment Rights Act 1996 and Contracts of Employment, which include the police staff conditions of service.
95. Must comply with the law, which currently includes The Police (Conduct) Regulations 2008, The Police (Performance & Conduct) (Amendment) Regulations 2012, The Police Appeals Tribunal Rules 2012, The Police (Complaints &

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<sup>100</sup> S13 pt3 Schedule 15 PRSRA

<sup>101</sup> Ibid s13(2)

<sup>102</sup> Ibid s14

<sup>103</sup> Ibid s15

<sup>104</sup> Ibid s16

<sup>105</sup> S40(2) PRSRA

<sup>106</sup> S39(3) PRSRA

<sup>107</sup> S38(2) PRSRA

Misconduct) Regulations 2012, The Police (Conduct) Regulations 2012 and The Police Reform Act 2002. Additionally, he/she has the power to discharge a Probationer under Regulation 13 The Police Regulations 2003<sup>108</sup>

96. May appoint, suspend or remove (by calling upon retirement or resignation) senior Police Officers (Deputy Chief Constable/Assistant Chief Constable) in compliance with S39(4), S39(5)<sup>109</sup>, S40(4)(5)<sup>110</sup> Part 3 of Schedule 8 PRSRA. The Chief Constable must NOTIFY the PCC of any suspension but CONSULT the PCC before calling for a retirement or resignation. As for Chief Constables, this is subject to regulations made by the Secretary of State under S50 Police Act 1996<sup>111</sup>. If there is a dispute as to the facts upon which a decision is based, Senior Officers are entitled to the protection of the Conduct Regulations.
97. May determine remuneration, allowances and gratuities for staff,<sup>112</sup> paying pensions or making payments towards provision of pensions to members or former members of the force's civilian staff.<sup>113</sup>
98. The Chief Constable may also pay pensions to police staff members or former police staff members.<sup>114</sup> Allowances are defined as "*expenses incurred by the member of staff in the course of employment*".
99. Can retire police officers and police staff on grounds of ill health and the payment of ordinary and ill health pensions and other payments as appropriate as the Pensions Authority<sup>115</sup> and make payment of ordinary and ill health pensions and other payments as appropriate.
100. Must comply with the law, including the Employment Rights Act 1996 and the Equality Act 2010 when dismissing a police staff member by reason of retirement or some other substantial reason.<sup>116</sup>
101. Enforce retirement in the interests of the efficiency of the service of employees under the direction and control of the Chief Constable.<sup>117</sup>
102. Retire a police staff member by reason of efficiency of the service.<sup>118</sup> Subject to compliance with the relevant law including the Employment Rights Act 1996 and the Equality Act 2010.
103. May second his/her staff as he/she sees fit.<sup>119</sup>

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<sup>108</sup> Eg See R(on the application of Khan) v Chief Constable of Lancashire [2009] EWHC 472 (Admin)

<sup>109</sup> For Deputy Chief Constables

<sup>110</sup> For Assistant Chief Constables

<sup>111</sup> The Police (Conduct) Regulations 2008, The Police (Performance & Conduct)(Amendment) Regulations 2012, The Police Appeals Tribunals Rules 2012, The Police (Complaints & Misconduct) Regulations 2012, The Police (Conduct) Regulations 2012

<sup>112</sup> Schedule 2 para 6(1)

<sup>113</sup> Schedule 2 para 6(2) (a) & (b)

<sup>114</sup> Schedule 2, paragraph 6(2)(a) and (3)

<sup>115</sup> S11(2) Police Pensions Act 1976

<sup>116</sup> Schedule 15 Part 2 para 7(10)(c) PRSRA

<sup>117</sup> S11(2) Police Pensions Act 1976

<sup>118</sup> Schedule 15, Part 2, para 7(10)(c) PRSRA

104. May make staff redundant but he/she must comply with the law including the Employment Rights Act 1996 and the Equality Act 2010. However, if he/she intends to make an enhanced redundancy payment this must be done in consultation with the PCC, Chief Executive/Chief of Staff and the two Chief Finance Officers.
105. Approve police officer and police staff visits to countries outside the United Kingdom in duty time.<sup>120</sup>

## FINANCE

106. The PCC holds the Police Fund and agrees the Chief Constable's revenue budget determining the resource envelope in which the Chief Constable operates. For each financial year the PCC will consent to the Chief Constable a revenue budget. This revenue budget:
- a) sets the level of resources against which expenditure will be incurred at the request of the Chief Constable in meeting his/her responsibilities as set out above and any other areas agreed with the PCC.
  - b) does not represent a freedom to generate income other than on behalf of the PCC.
  - c) does not represent a transfer of financing, in that all expense incurred by the Chief Constable will be paid from the PCC's bank accounts.
  - d) does not represent a right to carry forward unspent budget other than that which is agreed by the PCC as set out in B2 of the Financial Regulations.
  - e) does not represent permission for the Chief Constable to hold any year end cash backed balances.
107. The Chief Constable is responsible for the day to day financial management of the Constabulary within the framework of the agreed revenue budget consent, levels of authorisation, rules of virement and reporting arrangements agreed by the Commissioner<sup>121</sup> and set out in section B2 of the Financial Regulations.
108. In operating day to day financial management, the Chief Constable shall comply with the approved policies and framework of accountability.
109. The PCC will approve an annual capital programme in-line with section B3 of the Financial Regulations. All capital expenditure incurred during the year must be in line with the approved capital programme. The PCC shall retain ownership of all non-current assets (property, plant and equipment etc with a life of more than one

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<sup>119</sup> S2(3) PRSRA

<sup>120</sup> S2(3) PRSRA

<sup>121</sup> Para 9.1 FMCP pg 15

year). All contracts for the purchase of non-current assets shall be in the name of the PCC. The PCC shall fund all capital purchases and all such expenditure will be met from the PCC's bank accounts. The PCC consents to the Chief Constable permission for the day to day financial management of the capital programme within the authorised limits set-out within the Financial Regulations.

110. The PCC consents to the Chief Constable free and unfettered access to, and full operational use of, all non-current assets, as to enable him/her to meet the responsibilities set-out above and any others agreed with the PCC. (See section C5 of the Financial Regulations) All income from the disposal of non-current assets will be due to the PCC.
111. The Chief Constable shall appoint a Chief Finance Officer (CCCFO) to lead the Constabulary on financial management and be responsible for the proper administration of the Chief Constable's financial affairs<sup>122</sup> in accordance with his/her responsibilities.<sup>123</sup>
112. The Chief Constable shall prepare Financial Instructions (the Chief Constable's Scheme of Delegation) to supplement these Financial Regulations and provide detailed advice on the operation of the specific financial processes delegated to them.
  - a) They shall ensure that all employees are made aware of the existence of these Regulations and are given access to them.
  - b) Where appropriate, training shall be provided to ensure that the Regulations can be complied with<sup>124</sup>.

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<sup>122</sup> PRSRA –Para 4 (1) schedule 2

<sup>123</sup> Para 4.2 FMCP pg 10-11

<sup>124</sup> Para 6 FMCP pg 2

## LEGAL

113. In respect of legal matters (disregarding those matters which should be dealt with by the office of the PCC) the Chief Constable, working through those employed under his/her direction and control shall;
114. Ensure that all matters that currently have litigation attached are appropriately subject of a notification of change of action.
115. That all matters brought against the office<sup>125</sup> of Chief Constable are appropriately supported (eg by virtue of S.88 Police Act 1996 which makes the Chief Constable vicariously liable for the acts or omissions of officers).
116. That all claims made against the PCC will be the responsibility of the Chief Executive/Chief of Staff who will be provided with legal support through Legal Services in order to manage the principle that the PCC cannot delegate to police staff transferred to the Chief Constables direction and control.<sup>126</sup>
117. The Chief Constable will exercise responsibility for all civil actions against the force subject to appropriate legal and financial advice. He will report any trends and risk management steps that he is taking to reduce or minimise liabilities. The Chief Constable will inform and consult the PCC (via the Chief Executive/Chief of Staff) in any exceptional case including:
  - a) a high profile claimant;
  - b) a case which could incur serious criticism of the force or of an officer of member of staff;
  - c) a case which may establish new law having an impact on other forces/employers;
  - d) a case in which a Chief Officer is involved as a witness.
118. Only make settlements in accordance with the limits set-out in the financial regulations Section C1.

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<sup>125</sup> Note also:- S42 Equality Act 2010 (as amended by PRSRA) treats holding the office of Constable as “employment” “by the Chief Officer”.

S43 (1)(c) The Employment Rights Act 1996 – treats an officer as an employee, employed by the “relevant officer” defined as the Chief Constable.

S41 Working Time Regulations 1998 – contract of employment is treated as being with the “relevant officer” defined as the Chief Officer of Police.

<sup>126</sup> The PCC could instruct the force Legal Department through other arrangements but not via delegation – S18 PRSRA. It is also arguable in insured claims that the solicitor is in fact instructed on behalf of the insurance company through its rights of “subrogation”, rather than by the Chief Constable and therefore could continue to act.

## CONTRACTS AND PROCUREMENT

119. The PCC consents permission to the Chief Constable for the daily management and operation of all contracts within the limits set-out in the Financial Regulations. All contracts will be in the name of the PCC. This consent includes permission to undertake all such steps necessary to prepare contracts up to the approval stage, sign the contract when it is within the agreed limits, pass to the PCC for approval when limits are exceeded and to utilise the contract once entered into.

## SECTION E: WORKING AGREEMENTS BETWEEN PCC AND CHIEF CONSTABLE

### E1 GENERAL

120. The PCC and Chief Constable have agreed to work together in co-operation to ensure the effective and efficient delivery of policing services. Notwithstanding their separate legal identities as Corporation Sole it is acknowledged that they have such interdependence as to require the sharing of significant areas of business support. Indeed Section 2 (5) of the Police Reform and Social Responsibility Act 2011 provides:

“A Chief Constable must exercise the power of direction and control in such a way as is reasonable to assist the relevant Police and Crime Commissioner to exercise the Commissioner’s functions.”

121. The sharing of business support, for example Finance/Payroll, HR, ICT, Performance, Consultation, Legal is not regarded as the provision of services by one to the other but rather a co-operative arrangement for the effective delivery of business support essential to the operation of both Corporation Sole. At all times both Corporation Sole will operate to the general principle of reasonableness. The provision of business support by the Chief Constable to the PCC is to be funded from the budget provided by the PCC to the Chief Constable rather than under any separate arrangement. There is no intention on either part to create enforceable private law rights or liabilities in relation to the provision of such business support.

## **APPENDIX A**

### **a) Primary & Secondary Legislation**

1. Police Regulations 2003
2. The Employment Rights Act 1996
3. The Data Protection Act 1998
4. The Freedom of Information Act 2000
5. The Equality Act 2010
6. The Equality Act 2010 (Specific Duties) Regulations 2011
7. The Police Act 1996
8. The Official Secrets Act 1989
9. The Human Rights Act 1998
10. Policing Protocol Order 2011
11. Riot (Damages) Act 1886
12. The Rehabilitation of Offenders Act 1975 (and Exception Orders)
13. The Police (Equipment) Regulations 2011
14. Crime & Disorder Act 1998
15. Civil Contingencies Act 2004
16. The Police Reform Act 2002
17. The Police (Conduct) Regulations 2008
18. The Police (Performance & Conduct)(Amendment) Regulations 2012
19. The Police Appeals Tribunal Rules 2012
20. The Police (Complaints & Misconduct) Regulations 2012
21. The Police (Conduct) Regulations 2012

### **b) Guidance**

1. Independent Police Complaints Commission - Statutory Guidance to the Police Service on the Handling of Complaints
2. "Statutory Guidance on Police Collaboration" (made under S23F Police Act 1996 as amended).

### **c) Finance - Law**

1. The Accounts & Audit (England) Regulations 2011 (sets out the financial reporting framework for Local Government Bodies)
2. S25 Police Act 1996 - Special Police Service
3. Police Pension Act 1976
4. Police Pensions Regulations 2007
5. Police Pension Fund Regulations 2007
6. LGPS (Benefits, Membership & Contributions) Regulations 2007
7. LGPS (Administration) Regulations 2008 (issued under S7 Superannuation Act 1972).
8. The Superannuation (Miscellaneous Provisions) Act 1967

d) **Finance - Guidance**

1. The Code of Practice on Local Authority Accounting issued by CIPFA - proper practices for Local Government Bodies.
2. Code of Practice for Internal Audit & Local Government in the United Kingdom - CIPFA
3. Delivering Good Governance in Local Government - CIPFA/SOLACE
4. Statement on the Role of the Chief Finance Officer - CIPFA
5. Standing Guidance for the Commissioning Local Authority Work and Services - CIPFA
6. Prudential Code for Capital Finance in Local Authorities - CIPFA
7. Treasury Management in the Public Services Code of Practice & Cross Sectorial Guidance Notes - CIPFA