



**Isle of Man
Government**

Reiltys Ellan Vannin



DEPARTMENT OF HOME AFFAIRS

Consultation on Proposals to Contract-Out Certain Police Functions

June 2017

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INTRODUCTION

The draft Order attached proposes the contracting-out of two matters and in this document a brief overview will be given of each proposal and the reasons for the proposal.

The Department is required to consult the Chief Constable, the Police Federation and the Police Complaints Commissioner. It considers that the matters contained within the draft Order are such that a wider consultation to canvass opinion from other interested parties and members of the public would be beneficial.

The Impact Assessment attached as Appendix A sets out the options and assumptions made in this matter.

EXPLANATION OF PROPOSALS IN THE DRAFT ORDER

CUSTODY SUITE

It is not immediately envisaged the accommodation functions relating to the detention of persons in police custody will be contracted-out. However, it is a matter the Department may consider further at a later date if to do so would allow the Constabulary, notwithstanding continuing budgetary pressures, to maintain a realistic policing model that meets public expectations and performs essential functions, or at least reduces the necessity to discontinue other frontline services staffed by police officers.

It is important to note that if services were to be contracted-out contracted persons would only be concerned with ensuring that persons to be accommodated in police custody are, for the duration of their stay, securely and safely detained. The duties of contracted staff would include record keeping; ensuring cells and the custody suite are kept clean; supplying detainees with appropriate clothing, adequate food and liquid; and providing for any other essential needs of detainees.

POLICE COMPLAINTS INVESTIGATORS

When the Police (Amendment) Act 2016 was being prepared and then promoted through the House of Keys and the Legislative Council it was recognised there were some practical difficulties to obtaining assistance from elsewhere for the investigation of complaints or referrals. The proposed draft Order would provide the Department, the Constabulary and the Police Complaints Commissioner with a wider range of options than is currently the case.

The proposal here is to enter into a contract for the purposes of facilitating the investigation of complaints against senior officers, complaints "self-referred" by the Constabulary in relation to cases of death or serious injury following contact with the police and other grave matters and to fulfil the role of investigator appointed under regulation 14 of the Police (Conduct) Regulations 2015 with regard to an allegation of conduct that, if proven, would amount to misconduct or gross misconduct under those regulations. With regard to the independent investigation of complaints and self-referrals, the Police Complaints Commissioner will retain the power to approve, or otherwise, the appointment of the contracted independent investigator as the Commissioner would for the appointment of any investigator.

FEEDBACK TO THE CONSULTATION

The draft of the Order has been prepared for the purposes of consultation. Further refinement of the draft Order may be undertaken in the light of the responses to the consultation.

If you have any views or observations, or there is some point of clarification you would like to receive, you are invited to respond either by writing to —

Tom Bateman, Legislation Manager
Department of Home Affairs
Headquarters Building, Tromode Road
Douglas, IM2 5PA

or by emailing dhaconsultation@gov.im

The closing date for the receipt of comments is **5th September 2017**.

Unless specifically requested otherwise, any responses received may be published either in part or in their entirety, together with the name of the person or body which submitted the response. If you are responding on behalf of a group it would be helpful to make your position clear. To ensure that the process is open and honest responses can only be accepted if you provide your name with your response.

The purpose of consultation is not to be a referendum but an information, views and evidence gathering exercise from which to take an informed decision on the content of proposed legislation or policy. In any consultation exercise the responses received do not guarantee changes will be made to what has been proposed.

APPENDIX A

Impact Assessment

IMPACT ASSESSMENT OF: Police Powers and Procedures (Contracted Staff) (No. 2) Order 2017

DEPARTMENT: Home Affairs

DATE: 12/06/2017

VERSION NUMBER: 03

Responsible Officer: Tom Bateman, Legislation Manager

E-mail Address: tom.bateman@gov.im

Telephone number: 694305

SUMMARY: INTERVENTION AND OPTIONS

What is the draft Order intended to do: The draft Order is intended to provide the Department with the legal powers to enable the Department to contract-out certain functions currently performed by members of the police force in order to free those officers to undertake key frontline policing tasks in terms of protecting the public and combatting crime. The Order is also intended to enable the Department to contract the independent investigation of certain complaints.

Nature of problem: The Department recognises budgets are necessarily limited and has had to consider alternative means of fulfilling its statutory obligations under section 1(1) and (2)(e) of the Police Act 1993. In addition, having provided for the investigation of matters relating to police conduct or performance raised other than by a complaint made by or on behalf of a member of the public it is necessary to source appropriate investigators.

Purpose of Proposal: The purpose of the proposal is to make provision for the independent investigation of grave or serious matters or where death or serious injury has occurred following contact with the police and to provide an enabling power to enable the Department to act in the event the contracting-out of police functions within the custody suite is seen to be the best way to make the most of limited resources.

Means by which it is to be achieved

Option 1: The draft Order is not made and progressed to Tynwald for approval (or is made but not approved by Tynwald).

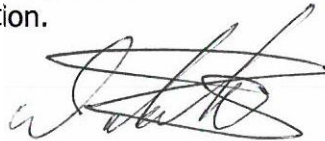
If the matter is not progressed or Tynwald does not approve the Order then resources will not be able to be deployed flexibly and there is a risk there will be fewer police officers on the beat or otherwise combatting crime. It will not be possible to have certain serious complaints or matters of police conduct or performance investigated by independent persons in the manner envisaged and in compliance with international obligations and the

European Convention on Human Rights.

Option 2: (preferred option): The Order is made as drafted, submitted to Tynwald and approved.

In the event this Option is successfully fulfilled the Department will work with the Constabulary to secure contracts that enable the Chief Constable to ensure serious complaints and those matters referred by him for investigation including incidents where death or serious injury has occurred following contact with the police are independently investigated. The Department will keep under review the question as to whether or not to contract-out the custody suite operation.

Ministerial sign off for Options stage I have read the Impact Assessment and I am satisfied that given the available information, it represents a reasonable view of the likely costs/benefits and impact of the preferred option.



Hon. Bill Malarkey, MHK
Minister for Home Affairs
12th June 2017

SUMMARY: ANALYSIS AND EVIDENCE

IMPACT OF PROPOSAL

Resource Issues - Financial (including personnel):

Statement: The Order is not expected to result in any increase in costs to, or personnel employed by, Government.

Likely Financial Benefits One Off: None.

Estimated Average Annual savings (excluding one off):

Civilianisation of certain custody suite functions

In the event the draft Order is made, approved by Tynwald, and has come into operation the Department will keep this matter under review. In the event real efficiencies are identified these functions may be contracted-out.

Contracting-out serious complaints investigations

The benefits will be set out below. There will be no savings in financial terms though actual expenditure is only incurred in the event a serious performance or conduct matter has arisen that needs independent investigation.

Are there any costs or benefits that are not financial i.e. social:

The proposals to provide for the investigation of serious complaints (including those relating to death or serious injury following contact with the police) are concerned with providing certainty and independence. In respect of the investigation of complaints there is a particular need to ensure incidents involving the police where a person dies or sustains

serious injuries or where the matter is grave or serious is investigated by persons independent¹ of the Isle of Man Constabulary.

Has Treasury Concurrence been given for the preferred option? The draft Order would not be intended to increase or decrease the revenue of Government, and consequently concurrence has not been sought.

Key Assumptions:

Key assumptions are —

1. the work the Isle of Man Constabulary undertakes in terms of combatting crime, serving and protecting the Island is valued by the public;
2. costs will continue to rise whilst budgetary constraints remain constant;
3. the public wish to see members of the police force engaged in front line policing rather than the day to day care of detainees within the custody suite; and
4. there will be wide support for arrangements to ensure serious complaints and matters of concern relating to police activity can be investigated by independent persons.

Approximate date for legislation to be implemented if known:

Subject to public consultation and review, the Department would like to make the Order and submit it for approval by Tynwald by the end of 2017.

Programme For Government: Financially responsible government.

Department Aims and Objectives: Ensure the delivery of the Department of Home Affairs' mandate to provide for an efficient and effective police force in compliance with the expectations of the community and the Island's international obligations.

SUMMARY: CONSULTATION

Consultation in line with Government standard consultation process: The matters being consulted upon are not urgent and it is considered appropriate to consult over the summer period closing on 5th September 2017.

Date:

Statement:

¹The European Court of Human Rights has held in *Jordan v UK* [2003] 37 EHRR 2 and *Edwards v UK* (2002) 35 EHRR 487 that the investigation must:

- be on the State's own initiative (e.g., not civil proceedings);
- be independent, both institutionally and in practice;
- be capable of leading to a determination of whether the force used was justified in the circumstances, and to the identification and punishment of those responsible;
- be prompt;
- allow for sufficient public scrutiny to ensure accountability;
- allow the next of kin to participate.

These principles were approved by the House of Lords in the case of *R (ex parte Amin) v Secretary of State for the Home Department* [2003] UKHL 51 (the *Zahid Mubarek* case).

The requirements under Article 2 of the ECHR are relevant and can extend to any situation in which death or serious injury occurs during a police operation.

Statutory Document No. XX/20XX



Police Powers and Procedures Act 1998

POLICE POWERS AND PROCEDURES (CONTRACTED STAFF) (NO.2) ORDER 2017

Approved by Tynwald:

Coming into Operation:

[insert date]

After having consulted with the persons and bodies specified in section 77B(9) of the Police Powers and Procedures Act 1998 the Department of Home Affairs makes the following Order under section 77B of the Police Powers and Procedures Act 1998.

PART 1

GENERAL

1 Title

This Order is the Police Powers and Procedures (Contracted Staff) (No.2) Order 2017.

2 Commencement

If approved by Tynwald, this Order comes into operation on [insert date].²

3 For the purposes of this Order

“**the Act**” means the *Police Powers and Procedures Act 1998*;

“**code of practice**” means any code of practice that may be made by the Department of Home Affairs from time to time under sections 75 (codes of practice) and 76 (codes of practice – supplementary) of the Act;

“**commissioner**” means the Police Complaints Commissioner appointed under paragraph 2(1) (the commissioner) of Schedule 1 (complaints against the police) to the Police Act 1993;

² Tynwald approval required under section 77B(10) of the Police Powers and Procedures Act 1998.

“contracted staff” means any person employed by a contractor in connection with the contract entered into between the Department and the contractor, for the supply of services;

“contractor” means a person with whom the Department has entered into a contract to provide services under section 77B (police powers for contracted staff) of the Act;

“custody officer” means a police officer appointed to that role under section 39 (custody officers at police stations) of the Act; and

“police officer” means a person appointed under section 5 (appointment of constables) of the Police Act 1993.

PART 2

POLICE DETENTION

4 Application of this Part

This Part specifies the functions of police officers that may be designated to contracted staff pursuant to a contract between the Department and the contractor for the provision of services in relation to persons held in police detention in accordance with Part IV of the Act.

5 Titles of contracted staff

The title of contracted staff performing any of the functions specified in this part is either “Contracted Custody Support Officer” or “CCSO”.

6 Functions that may be assigned to a designated CCSO

- (1) The Chief Constable may designate a CCSO to undertake any of the functions that may be normally undertaken by a police officer within the police custody suite that relate to —
 - (a) the welfare of arrested persons;
 - (b) assisting the custody officer; and
 - (c) the administration of the police custody suite.
- (2) A CCSO must have regard to the applicable code of practice.
- (3) In exercising any such function a CCSO has the same powers and duties as a police officer exercising that function.
- (4) The following functions are reserved for police officers —
 - (a) the responsibilities and duties of an officer or a custody officer as specified in —
 - (i) section 40 (duties of custody officer before charge) of the Act;;

-
- (ii) section 41 (duties of custody officer after charge) of the Act;
 - (iii) paragraphs (2) and (3) of section 42 (responsibilities in relation to persons detained);
 - (iv) section 43 (review of police detention);
 - (v) section 47 (extension of warrants of further detention);
 - (vi) section 50 (bail after arrest);
 - (vii) section 57 (searches of detained persons);
 - (viii) section 57A (searches and examination to ascertain identity) and
 - (ix) section 58 (intimate searches); and
- (b) the questioning of the arrested person or the taking of statements from the arrested person.

7 Complaints against a CCSO – Modifications to Schedule 1 to the Police Act 1993

- (1) Complaints against a CCSO submitted by a member of the public must be considered in accordance with Schedule 1 (complaints against the police) to the *Police Act 1993* subject to the modifications in paragraph (2).
- (2) For the purpose of considering the complaint, the terms “police officer” and “member of the police force” with regard to the person who is the subject of the complaint, means the “CCSO”.

PART 3

POLICE COMPLAINTS

8 Application of this Part

This Part specifies the functions of police officers that may be designated by the Chief Constable to contracted staff pursuant to a contract between the Department and the contractor for the provision of services in relation to the investigation of –

- (a) a complaint or conduct matter submitted under Schedule 1 to the Police Act 1993; or
 - (b) allegations of conduct that, if proved, would amount to misconduct or gross misconduct under the Police (Conduct) Regulations 2015³,
- or both.

³ SD 2015/0093.

9 Titles of contracted staff

The title of contracted staff designated to perform any of the functions specified in this Part is “Investigating Officer” or “IO”.

10 Restrictions on designating an IO for investigation of complaints and conduct matters submitted under Schedule 1 to the Police Act 1993

In relation to an investigation of complaints or conduct matters submitted under Schedule 1 (complaints against the police) to the Police Act 1993 an IO must not be designated unless –

- (a) the Chief Constable, or the contractor, has notified the commissioner as to the person proposed to be contracted; and
- (b) the commissioner has given notice to the Chief Constable and the contractor that the commissioner approves the award of the contract to that person.

11 Functions that may be assigned to an IO

- (1) Subject to articles 10 and 12, the Chief Constable may designate an IO to undertake any of the functions normally undertaken by a police officer who has been required –
 - (a) to investigate a complaint or conduct matter submitted under Schedule 1 to the Police Act 1993;
 - (b) to fulfil the role of investigator appointed under regulation 14 (the investigator) of the Police (Conduct) Regulations 2015⁴ with regard to allegation of conduct that, if proven, would amount to misconduct or gross misconduct under those regulations.
- (2) In exercising any such function an IO has the same powers and duties as a police officer exercising that function.

12 Capability and training requirements for an IO

- (1) An IO must have the appropriate level of knowledge, skills and experience to plan and manage the investigation.
- (2) An IO must not be appointed if he or she is an interested party.
- (3) For the purposes of this article, “interested party” means a person whose appointment could reasonably give rise to a concern as to whether he or she could act impartially.

⁴ SD 2015/0093.

13 Complaints against an IO – Modifications to Schedule 1 to the Police Act 1993

- (1) Complaints against an IO submitted by a member of the public must be considered in accordance with Schedule 1 (complaints against the police) to the *Police Act 1993* subject to the modifications in paragraph (2).
- (2) For the purpose of considering the complaint, the terms “police officer” and “member of the police force” with regard to the person who is the subject of the complaint, means the “IO”.

MADE

W M MALARKEY
Minister for Home Affairs

EXPLANATORY NOTE

(This note is not part of the Order)

This Order empowers the Department to enter into contracts for the provision of support services by contracted staff to –

- support operation of the police custody suite;
- investigate complaints or conduct matters submitted under Schedule 1 to the Police Act 1993; and
- investigate allegations of conduct that, if proved, would amount to misconduct or gross misconduct under the Police (Conduct) Regulations 2015.

APPENDIX C

Consultation Criteria

The Six Consultation Criteria

1. Consult widely throughout the process, allowing a minimum of 6 weeks for a minimum of one written consultation at least once during the development of the legislation or policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your Department's effectiveness at consultation.
6. Ensure your consultation follows best practice, including carrying out an Impact Assessment if appropriate.

APPENDIX D

Police Powers and Procedures (Contracted Staff) (No. 2) Order 2017

LIST OF PERSONS OR BODIES CONSULTED REGARDING THIS DRAFT ORDER

- Members of Tynwald
- The Attorney General
- Clerk of Tynwald
- Chief Officers of Government Departments, Offices and Statutory Boards
- Local Authorities
- Chamber of Commerce
- Isle of Man Employers Federation
- Isle of Man Law Society
- Isle of Man Constabulary
- Isle of Man Police Federation
- the Police Complaints Commissioner
- the Independent Monitoring Board
- the Parole Committee
- Victim Support
- Isle of Man Trades Council
- Positive Action Group
- Manx Labour Party
- Liberal Vannin
- Mec Vannin



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A large print version can be supplied on request.

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