

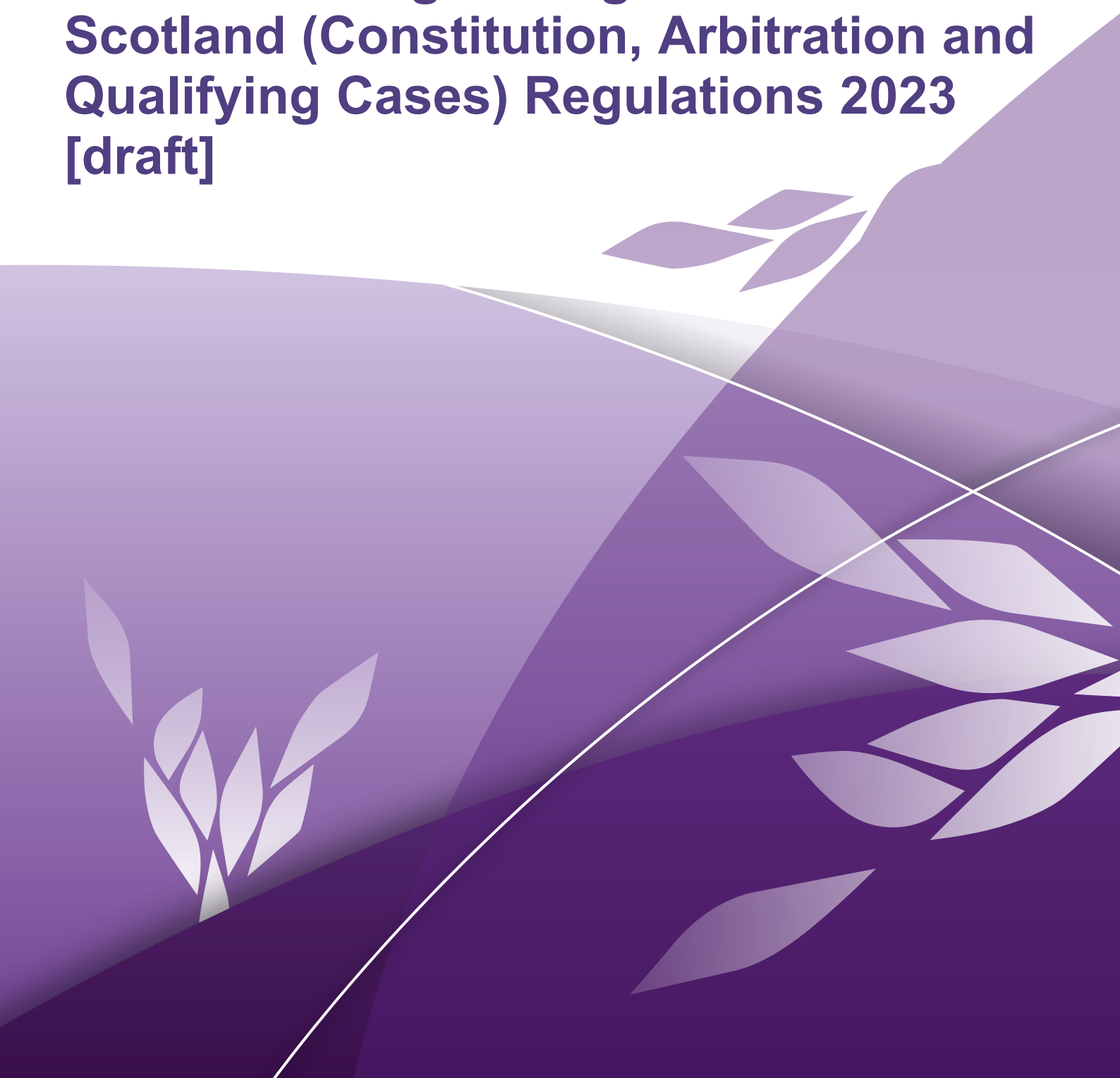


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Criminal Justice Committee

The Police Negotiating Board for Scotland (Constitution, Arbitration and Qualifying Cases) Regulations 2023 [draft]



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Criminal Justice Committee

To consider and report on matters relating to criminal justice falling within the responsibility of the Cabinet Secretary for Justice and Veterans, and functions of the Lord Advocate other than as head of the systems of criminal prosecution and investigation of deaths in Scotland.



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Introduction

1. At its meeting on Wednesday 7 June 2023, the Criminal Justice Committee considered the [Police Negotiating Board for Scotland \(Constitution, Arbitration and Qualifying Cases\) Regulations 2023 \[draft\]](#).
2. The instrument was laid before the Parliament on 2 May 2023 and is subject to the affirmative procedure.
3. The Regulations allow for the preparation and publication of the constitution of the Police Negotiating Board for Scotland (PNBS); the disapplication of mandatory statutory arbitration rules; and sets out those ‘qualifying cases’ that may form representations referred to arbitration.
4. The Scottish Government indicated that the [constitution](#) of the Police Negotiating Board for Scotland had been published.

Correspondence received

5. The Committee received a written submission from the Scottish Police Federation in relation to the instrument. A copy of the letter can be found in the **Annex**.

Consideration by the Delegated Powers and Law Reform Committee

6. The Delegated Powers and Law Reform Committee ("the DPLR Committee") considered the instrument at its meeting on 9 May 2023.
7. The DPLR Committee agreed that it did not need to draw it to the attention of the Parliament on any grounds within its remit.

Consideration by the Criminal Justice Committee

8. Motion S6M-08783 was lodged proposing that the Committee recommends approval of the instrument. At its meeting on Wednesday 7 June 2023, the Committee took oral evidence from the Cabinet Secretary for Justice and Home Affairs, Angela Constance MSP ("the Cabinet Secretary"), Peter Jamieson, Police Division and Louise Miller, Legal Directorate, Scottish Government.
9. During the evidence session, the Cabinet Secretary outlined the purpose of the Regulations to the Committee.
10. Members went on to raise various points in relation to the comments made by the Scottish Police Federation in their written submission to the Committee regarding arbitration and the proposed constitution of the PNBS .
11. These included questions as to whether the Scottish Government were able to respond to the comments of the Scottish Police Federation in their written submission and their suggestions for changes to the constitution of the Police Negotiating Board for Scotland.
12. It should be noted that, as an instrument subject to the affirmative procedure, the Regulations themselves, which include the constitution, are not able to be amended during their passage through the Parliament.
13. In response to the questions from the members, the Cabinet Secretary and Scottish Government official Peter Jamieson advised that many of the practical issues raised by the SPF will be covered by the day to day operating guide for the Police Negotiating Board for Scotland which is currently being developed.
14. Following the evidence session, the Cabinet Secretary moved the motion:
 - S6M-08783—That the Criminal Justice Committee recommends that the Police Negotiating Board for Scotland (Constitution, Arbitration and Qualifying Cases) Regulations 2023 [draft] be approved.
15. Motion S6M-08783 was agreed to without debate or dissent.

16. **The Criminal Justice Committee recommends to the Scottish Parliament that it approve the Police Negotiating Board for Scotland (Constitution, Arbitration and Qualifying Cases) Regulations 2023 [draft].**

Annex

24 May 2023

Dear Committee Member

Police Negotiating Board for Scotland (PNBS)

Thank you for the opportunity to submit evidence on this subject. I hope what follows is of use to you in your deliberations. I also hope it does not read too much like a history lesson but I feel some background information is important to explain why the Police Negotiating Board, fair pay, and fair pay arrangements, are so vital to the police and police officers.

In the early 1900's, police officers in Scotland were suffering poverty and debt. There were 62 police forces in Scotland, all on differing rates of pay roughly equivalent to that for agricultural and unskilled labourers. Discipline in the service was harsh with regular sackings without notice or reasons given. Officers were writing to newspapers drawing attention to their plight. They achieved public sympathy but no official recognition of their situation and certainly no financial improvement.

In 1913, a National Union of Police and Prison Officers was formed. Membership was also open to members of Dock and Railway Police. The mottoes on the membership card were, "Tyranny is not Discipline." "Quit Ye Like Men. Be Strong." "Unity is Strength." The authorities were unhappy to say the least that police officers were members of the Union and membership carried the threat of instant dismissal but by 1916 the Union was affiliated to the TUC.

By the late summer of 1918 there was a real threat of a police strike. Poor pay was still the major issue but long hours of duty and strain of war-time; depleted officer numbers and the rising cost of living all contributed to this sorry situation. The Union demanded improvements and official recognition. On 28th August 1918, the Union gave the Government a 24 hour deadline to meet demands or face a police strike. The Prime Minister, Lloyd George, refused. On 30th and 31st August 1918, large numbers of police officers failed to report for duty. The Government deployed 8,000 special constables and 300 Guardsmen. There were no major incidents and no widespread civil unrest but the Government clearly recognised the seriousness of the situation.

Lloyd George met Union leaders and a significant pay rise was awarded. Constables' pay was increased from £2.00 to £2.13 shillings (£2.65) a week. He said he could not 'recognise' the Union during wartime but seemed to indicate that it would be recognised when hostilities ceased.

In March 1919, Government announced the creation of the Desborough Committee. It also said that in no circumstances would the Union be officially recognised. When it reported on 1st July 1919, the Desborough Committee promised a Bill which would introduce reforms to place the police on a better footing with regard to pay and conditions. The Bill also brought about The Police Act, 1919. It outlawed police membership of unions and created the Scottish Police Federation. It stated:

'For the purposes of enabling the members of the Police Forces to consider and bring to the notice of the police authorities and the Secretary of State all matters affecting their welfare and efficiency ... there shall be established in accordance with the Schedule to this

Act an organisation to be called the Police Federation....'

The Act also brought about the forerunners of the Police Negotiating Board, the Police Council for Scotland and the Police Council for England and Wales. They sat independently but pay and the vast majority of other arrangements were identical north and south of the border.

In 1953 a Police Council for Great Britain was established to deal with negotiable matters and separate Police Advisory Boards for Scotland and England and Wales were created to deal with non-negotiable matters.

In 1978, the Edmund-Davies Committee recommended a new negotiating body. The Official Side and Staff Side arrangement would be carried over from the Police Council but the "cornerstone" of the new body would be an independent chairman and an independent secretariat. The new Police Negotiating Board for the United Kingdom held its first meeting on 16 August 1979. In 1980 statutory effect was given to the Police Negotiating Board for the United Kingdom under the Police Negotiating Board Act 1980.

In 2014, PNB became a Scotland only body.

The Scottish Police Federation (SPF) has been asked to comment on the creation of the Police Negotiating Board for Scotland (PNBS) and its powers. A Police Negotiating Board has been in place for 44 years and has been fully supported by the SPF over that time. In the history of police industrial relations since the 1900's, this has been a period of unparalleled harmony and co-operation where the vast majority of problems were resolved without significant difficulty. It is also worth noting that the PNB has never reached an agreement which is outside Government pay policy.

Successive Commissions and Committees of Inquiry have concluded that the lack of the right to strike or join a trade union justifies the existence of the SPF as opposed to a trade union, a pay negotiating body and fair pay. Beyond anything else, SPF seeks fairness in pay and how it is set.

We make the following comments on the draft Police Negotiating Board for Scotland (Constitution, Arbitration and Qualifying Cases) Regulations 2023, and the proposed Constitution.

On 2 October 2008, during a discussion in the Scottish Parliament on the Police Negotiating Board Replacement, John Scott MSP asked, "Given last year's unilateral decision by the Home Secretary to overturn an independently arbitrated police pay award, it is no surprise that serving officers across Scotland and the rest of the UK have no faith in her proposals to review the police negotiating machinery. Scottish police officers must be assured of a fair and transparent system for negotiating their pay, especially in recognition of the special circumstances whereby police officers are unable to take industrial action in pursuit of pay claims. Will the cabinet secretary support the calls from the Scottish Police Federation that an arbitrated pay settlement should be binding—unless in the exceptional circumstances of a vote to the contrary in Parliament?"

Kenny MacAskill MSP, then Cabinet Secretary for Justice replied, "Not only does the member have such an assurance, but he can go on the record of this Government. When the situation arose last year, we did not hesitate to ensure that our police officers—who have served our communities well, often in difficult and dangerous circumstances—received the judgment that had been decided on. We felt that to be an appropriate view then, and I see nothing to change it now. I assure the member that we

meet regularly with the Scottish Police Federation to take on board its concerns. The Government believes that, if someone enters into arbitration, they should accept the result—other than, as the member suggests, in the most exceptional circumstances. That is why we honoured the position for our police officers last year.”

This was our understanding of what would be included in the new arrangements and it was fleshed out in a Paper for noting: Police Negotiating Board for Scotland (PNBS), Qualifying cases, by the Police Division on 13 June 2016 which detailed the arrangements for legally binding (LBA) and Non-Legally Binding (NLBA).

We note that this commitment has been altered and downgraded from arbitration binding on Scottish Ministers to “Scottish Ministers have a duty to take all reasonable steps appearing to them to be necessary for giving effect to those representation” where PNBS makes representations following arbitration in respect of a qualifying case.

We have given long and serious consideration to this change and have concluded that guided by our desire for fair arrangements, this weaker arrangement is still relatively strong in our favour and in the spirit of fairness, acceptable to SPF.

In the Constitution of the Police Negotiating Board for Scotland we comment as follows:

3. The Board – SPF would like to see included, “It may also consider matters affecting its own constitution.”

9. Sub-committee and working groups – SPF would like to see included words to the effect, “Sides may nominate persons who are not representatives to serve on sub-committees and working groups with the permission of the Chairperson.”

37 (a) & (b) There seems to be scope for either of the Sides to prevent such a matter going to arbitration or for the Chairperson to decide not to refer a matter to arbitration and this could lead to a deadlock.

42. It is hard to envisage the Board failing to make recommendations based on an arbitration award. It seems to open the door for either Side to delay or block a PNB agreement based on an arbitration award and this would be highly unsatisfactory.

43-45 This removes previous benefits of binding arbitration promised to the SPF.

For the sake of completeness, SPF would like to bring to the Committee’s attention, its belief that a vital part of PNB arrangements is the process for resolving disputes. We understand this will be the subject of a further consultation but in summary, previous iterations of the PNB Constitution (PNB Circulars 07/2003 & 19/2001) described this as follows:

The Board will provide assistance to parties in dispute locally about the interpretation of agreements reached by the Board or its standing committees or about the application of Police Regulations covering Board matters on request. In cases where negotiations between local parties are in progress and have not been exhausted, enquiries or disputes may be brought to the PNB by the Secretaries of the Staff or Official Side, or through the Independent Secretary to the Board. It will normally be possible for the joint Secretaries to provide authoritative advice on the interpretation or application of PNB agreements.

A form of conciliation was provided for as was referral to the PNB or even arbitration. In recent years, this dispute resolution process has been less effective than it was and SPF

believes this important element of the process should be re-invigorated. It can avoid confusion and delay for individuals and SPA and PSoS staff and avoid costly court cases where the outcome is occasionally less than ideal for all parties.

Again, thank you for the opportunity to explain our views on the PNB and its future arrangements.

Yours sincerely

David Kennedy

General Secretary

