

# CRIME AND COURTS ACT 2013

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 1: The National Crime Agency**

##### *Schedule 3: Relationships between NCA and other agencies*

#### **Part 1: Co-operation**

132. *Paragraph 1* places a duty on NCA officers to co-operate with specified persons in order to assist them in their activities to combat crime. It also places a reciprocal duty on members of the armed forces, coastguard and those specified persons to co-operate with NCA officers in the discharge of NCA functions.
133. *Paragraph 2* enables the NCA to enter into co-operation arrangements with other persons for the purposes of discharging any of its functions, such as Police Collaboration Agreements under the Police Act 1996

#### **Part 2: Exchange of information**

134. *Paragraph 3* creates a duty on chief officers of UK police forces (as defined in section 16(1)) to keep the NCA informed about certain information and when requested to disclose that information to the NCA. *Sub-paragraph (1)* creates a duty on police forces to inform the Director General of the NCA about any information held by them which is considered by the chief officer to be relevant to the exercise by the NCA of any of its core functions (namely, the crime-reduction function, the criminal intelligence function or functions under the Proceeds of Crime Act 2002). This duty applies to chief officers of police forces in England and Wales, Northern Ireland and Scotland, the British Transport Police, Ministry of Defence Police and Civil Nuclear Constabulary. *Sub-paragraph (2)* creates a duty on the chief officer to then disclose that information to the NCA if the Director General makes a request for it. *Sub-paragraph (3)* provides that paragraph 3(1) does not require a chief officer to keep the Director General informed of information that appears to the chief officer to be information obtained from the NCA.
135. *Paragraph 4* imposes a duty on the Director General of the NCA to keep chief officers of UK police forces (as defined in section 16(1)) informed about certain information and is reciprocal in nature to the duty in paragraph 3(1). *Sub-paragraph (1)* creates a duty on the Director General to notify chief officers of any information that the NCA possesses which is considered by the Director General to be relevant to the exercise of a function of the chief officer or any other member of that police force. This duty applies to the Director General in respect of chief officers of police forces in England and Wales, Northern Ireland and Scotland, the British Transport Police, Ministry of Defence Police and Civil Nuclear Constabulary. *Sub-paragraph (2)* provides that the duty imposed by paragraph 4(1) does not require the Director General to keep the chief officer informed of information which appears to the Director General to be information obtained from chief officer or any other member of that police force.

136. *Paragraphs 5 to 7* make like provision to that in paragraphs 3 and 4 in respect of other specified bodies, (as defined in paragraph 7) namely the Serious Fraud Office, Border Force and the Director of Border Revenue. By virtue of *paragraph 34* the Secretary of State may by order (subject to the affirmative procedure) amend paragraph 7 so as to add further persons to the list of Government bodies who will be subject to the duty to keep the NCA informed of information.

### **Part 3: Assistance within the UK**

137. *Paragraph 8* allows for the Director General of the NCA to provide assistance (in the form of officers and other such support) to operate under the direction and control of a UK police force, a UK law enforcement agency, an Island police force or an Island law enforcement agency if they make a specified request for assistance. If a request is made the Director General of the NCA may provide such assistance as the Director General of the NCA considers appropriate.
138. *Paragraph 9* enables a UK police force or a UK law enforcement agency to provide assistance (whether in the form of officers to operate under the direction and control of the NCA or other support) if the Director General of the NCA makes a request for assistance. The person providing the assistance may provide such assistance as they consider appropriate.
139. *Paragraph 10* enables the Home Secretary to direct the Director General of the NCA to provide specified assistance to an England and Wales police force and other listed persons if it appears to the Home Secretary that it is appropriate for directed assistance to be given by the Director General of the NCA.
140. *Paragraph 11* enables the Director General of the NCA to direct a listed person in sub-paragraph (1) to provide specified assistance to the NCA. Such directions may only be given if the Director General of the NCA considers it appropriate for the NCA to receive directed assistance and is subject to the prior consent of the relevant minister as specified in *paragraph 11(3)*.
141. *Paragraphs 12 and 13* concern directed assistance to and from the NCA in relation to Scotland. These enable Scottish Ministers to direct the Director General of the NCA to provide specified assistance to the Police Service of Scotland if Scottish Ministers consider it appropriate for the Police Service of Scotland to receive directed assistance from the NCA and the Home Secretary consents. Scottish Ministers will also have the power to direct the Police Service of Scotland to provide specified assistance to the NCA if Scottish Ministers consider it appropriate for the NCA to receive directed assistance from the Police Service of Scotland.
142. *Paragraphs 14 and 15* make corresponding provision in relation to Northern Ireland. This enables the Department of Justice in Northern Ireland to direct the Director General of the NCA to provide specified assistance to the Police Service of Northern Ireland, if the Department of Justice in Northern Ireland considers it appropriate for the Police Service of Northern Ireland to receive such directed assistance and the Home Secretary consents. It also provides the Department of Justice in Northern Ireland with the power to direct the Police Service of Northern Ireland to provide specified assistance to the NCA, subject to the Department of Justice in Northern Ireland considering it appropriate for the NCA to receive such directed assistance and subject to consultation with the Northern Ireland Policing Board and other persons that the Department of Justice in Northern Ireland considers appropriate to consult.
143. *Paragraph 16* provides that directed assistance powers can only be used where there is a special need for assistance and where it is expedient for the directed party to provide it. It must also be the case that voluntary arrangements cannot be made, or cannot be made in time.

144. *Paragraph 17* describes the form that assistance may take, including (but not limited to) the loan of persons or equipment.
145. *Paragraph 18* provides that individuals who are provided under the assistance provisions will fall under the direction and control of the assisted person.

#### **Part 4: Use of police facilities etc by NCA**

146. It is not expected that the NCA will maintain its own custody facilities. Accordingly Part 4 of Schedule 3 enables the NCA to use premises, equipment, facilities or services of police forces, and immigration and customs facilities in accordance with an agreement made between the NCA and such bodies.
147. *Paragraph 19* provides for voluntary arrangements to be made between the Director General and police and crime commissioners, or the chief constable of police forces listed in Schedule 1 to the Police Act 1996 (police forces in England and Wales outside London), for the NCA to make use of their police facilities.
148. *Paragraph 20* enables the Director General to make voluntary arrangements for the NCA to use the facilities made available by the Metropolitan Police Force.
149. *Paragraph 21* enables the Director General to make voluntary arrangements for the NCA to use the facilities made available by the City of London Police Force.
150. *Paragraph 22* enables the Director General to make voluntary arrangements for the NCA to use immigration or customs facilities.
151. *Paragraph 23* provides that the Secretary of State may direct a police force in England & Wales to make arrangements for the use of facilities under *paragraph 19, 20 or 21* of this Schedule, in the absence of satisfactory voluntary arrangement made under those paragraphs.
152. *Paragraph 24* enables the Director General of the NCA to make voluntary arrangements for the NCA to use facilities made available to the Police Service of Northern Ireland. In the absence of a satisfactory voluntary arrangement, under *paragraph 24, paragraph 25* enables the Department of Justice in Northern Ireland, with the consent of the Secretary of State, to direct the Director General and the Northern Ireland Policing Board to make arrangements for the NCA to use the facilities made available by the Police Service of Northern Ireland.
153. *Paragraph 26* provides that facility-sharing arrangements must specify or describe the facilities that are the subject of such arrangements (*sub-paragraph (1)*), and may be varied or terminated by the parties (*sub-paragraph (2)*) unless it was made in compliance with a direction, in which case consent must be obtained from the person who gave the direction (*sub-paragraph (3)*).
154. *Paragraph 27* provides that before a person ('D') gives a direction under this Part of the Schedule to a person ('P'), D must notify P of the proposal, and consider representations from P.
155. *Paragraph 28* provides that facilities means premises, equipment and other material, facilities and services.

#### **Part 5: Payment for tasks, assistance or facilities**

156. *Paragraphs 29 to 31* make provision for the NCA, police fundholding bodies and law enforcement agencies to pay for tasks, assistance or facilities. However, the parties involved may decide that there should be no such charging.
157. *Paragraph 32* defines the 'appropriate amount' that should be paid as an amount agreed by both parties or, in the absence of such agreement, an amount determined by the

Secretary of State. If responsibility for either of the parties is devolved, the Secretary of State must consult with the appropriate devolved administration.

## **Part 6: General**

158. *Paragraph 33* provides an order-making power (subject to the affirmative resolution procedure) by which the Secretary of State may amend the list of partners subject to directed tasking and assistance arrangements (at section 5 or *paragraph 11* of Schedule 3). The Secretary of State may, in particular, add or remove persons (who were added). But none of the following may be added: the Commissioners for Her Majesty's Revenue and Customs, the Chief Constable for the Police Service of Scotland, any person operating only in Scotland, the Chief Constable of the Police Service of Northern Ireland, and any person operating only in Northern Ireland. The Secretary of State may also amend the requirements for the Director General to seek prior consent from agencies or bodies before issuing directions. Before using this power, the Secretary of State must consult the affected person.
159. *Paragraph 35* places a duty on a person given a direction to comply with it (*sub-paragraph (1)*) and limits the extent of a direction by ensuring that it must not relate to any prosecution function (*sub-paragraph(2)*).