



HM Inspectorate of Constabulary in Scotland

Improving Policing across Scotland

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PRESS RELEASE

HMICS publishes Terms of Reference - strategic review of undercover policing in Scotland

HM Chief Inspector of Constabulary in Scotland has today published his terms of reference for a strategic review of undercover policing in Scotland. This review has been directed by the Cabinet Secretary for Justice and although it is not a public inquiry under the Inquiries Act 2005, it may inform future discussions as to the requirement for an inquiry into undercover policing in Scotland.

This will be the first time that HMICS has scrutinised undercover policing in Scotland and the Cabinet Secretary for Justice has set out the following expectations of the review:

- provide an independent view of the operation, procedures and safeguards in place by Police Scotland in relation to undercover policing, with the objective of providing assurance to Scottish Ministers, the Scottish Parliament and the public. Where relevant, this should include recommendations to address any gaps in the current operation, processes and safeguards or where opportunities to drive improvement are identified.
- examine the extent and scale of undercover policing in Scotland by Scottish policing since introduction of the Regulation of Investigatory Powers (Scotland) Act 2000 and the Regulation of Investigatory Powers Act 2000.
- examine the extent and scale of undercover policing operations carried out in Scotland by the National Public Order Intelligence Unit (NPOIU)ⁱ and the Special Demonstration Squad (SDS)ⁱⁱ in the same period.
- comment on the contribution made by undercover policing operations towards public safety in Scotland.

To meet these expectations, HMICS will focus on the effectiveness and efficiency of the arrangements currently in place by Police Scotland to authorise, deploy, supervise, manage and scrutinise undercover policing operations in Scotland. We will assess compliance with the relevant law and codes of practice and include a review of all undercover policing activity by Police Scotland since its establishment on 1 April 2013.

We will provide an independent analysis of the extent and scale of undercover policing operations carried out in Scotland by legacy Scottish police forces and the Scottish Crime and Drug Enforcement Agency (SCDEA), and will include those undercover policing operations carried out in Scotland by the NPOIU and the SDS.

This analysis will cover the period since the introduction of both Regulation of Investigatory Powers (Scotland) Act 2000 (referred to as 'RIPSA 2000') and the Regulation of Investigatory Powers Act 2000 (referred to as 'RIPA 2000'). In practical terms, our analysis will cover the period from 1 October 2000 until 31 December 2016. This represents the commencement of RIPSA 2000 and was the earliest consideration of covert policing by Scottish Parliament under its devolved responsibility for policing in Scotland.

HMICS will ensure that appropriate stakeholder consultation and engagement is undertaken as part of the review process to understand key issues and concerns.

This strategic review will be led by Derek Penman, HM Chief Inspector of Constabulary in Scotland, who states that *"To maintain public confidence in policing, the tactics employed in undercover operations must be lawful, proportionate and necessary. They must also be subject to appropriate governance and oversight and police officers engaged in this specialist area of policing must comply with the law as well as the associated codes of practice."*

He added that *"Our report will provide assurance on whether undercover police operations are operating effectively and efficiently within Scotland, as well as assessing the contribution they make to public safety. In terms of safeguards, we will balance the requirement for visibility and transparency of undercover policing in Scotland with the need to protect sensitive covert policing techniques and operational deployments."*

Subject to the complexities and external dependencies involved in this review, we will endeavour to provide our final report to Scottish Ministers in sufficient time for it to be laid before the Scottish Parliament on return from the summer recess on 4 September 2017.

The full Terms of Reference can be found at www.hmics.org

Notes to editors

- The Cabinet Secretary for Justice directed HMICS to undertake this strategic review on 22 September 2016. It will be undertaken in terms of Section 74(1) of the Police and Fire Reform (Scotland) Act 2012 and our report will be provided to Scottish Ministers and published in terms of Sections 78 (1) and (2) of the Act.
- The use of this specialist policing tactic has generated widespread public concern that the activities, supervision and governance of undercover police officers (predominately in England) have been ineffective. On 12 March 2015, the Home Secretary established the Undercover Policing Inquiryⁱⁱⁱ in response to concerns raised about the conduct of undercover police officers operating within the National Public Order Intelligence Unit and the Special Demonstration Squad of the Metropolitan Police Service. The purpose of the Undercover Policing Inquiry is to investigate and report on undercover police operations conducted by English and Welsh police forces in England and Wales since 1968. The terms of reference for the Inquiry were published on 26 May 2015.^{iv}
- Concerns around undercover policing in Scotland have been raised in the media and within the Scottish Parliament, where members have debated the need to extend the terms of reference of the Undercover Policing Inquiry to include Scotland or establish a separate public inquiry into undercover policing in Scotland.^v The Scottish Government had requested the Home Secretary to extend the terms of reference for the Undercover Policing Inquiry to consider activity conducted by Metropolitan Police undercover officers deployed in Scotland, however, this request was subsequently declined.

- HM Inspectorate of Constabulary in Scotland (HMICS) is established under the Police and Fire Reform (Scotland) Act 2012 and has wide-ranging powers to look into the 'state, effectiveness and efficiency' of both the Police Service of Scotland and the Scottish Police Authority.
- It has a statutory duty to inquire into the arrangements made by the Chief Constable and the Scottish Police Authority to meet their obligations in terms of best value and continuous improvement. If necessary, it can be directed by Scottish Ministers to look into anything relating to the Scottish Police Authority or Police Scotland as they consider appropriate. HMICS has an established role in providing professional advice and guidance on policing in Scotland.
- This review will be led personally by Mr Derek Penman, HM Chief Inspector of Constabulary in Scotland. He will draw on the experience and expertise of a number of people during this review, including staff from within HMICS and others from outwith who will be independent of policing in Scotland. He will put measures in place to protect the overall integrity of the review and will ensure that all members of the team are deployed appropriately into specific areas where there can be no conflict of interest.
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ⁱ The National Public Order Intelligence Unit (NPOIU) was established in 1999 to gather and co-ordinate intelligence relative to domestic extremism and public order. The NPOIU was governed by the then Association of Chief Police Officers (ACPO) in England and Wales, Home Office and other stakeholders. In January 2011, the NPOIU was subsumed with other units under the National Domestic Extremism Unit (NDEU) within the Metropolitan Police Service.

ⁱⁱ The Special Demonstration Squad (SDS) was an undercover unit within the Metropolitan Police Service operational from 1968 to 2008. The SDS specialised in the long-term undercover deployment of officers into a range of groups that had the potential to cause serious public disorder or other violence or injury.

ⁱⁱⁱ [Undercover Policing Inquiry in England and Wales](#).

^{iv} [UCPI - Terms of Reference](#).

^v Scottish Parliament Members' Business motions in the name of Neil Findlay MSP on the 'Pitchford Inquiry and undercover policing in Scotland' dated [06 January 2016](#) and [30 June 2016](#).