

# Statutory Guidance for Police Collaboration



Home Office

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This Statutory Guidance was developed by the Home Office in close consultation with policing partners. It has been endorsed by the National Police Protective Services Board, whose member organisations include the Home Office, the Association of Chief Police Officers, the Association of Police Authorities, the Association of Police Authority Chief Executives, Her Majesty's Inspectorate of Constabulary and the National Policing Improvement Agency. It has also been approved by the Police Advisory Board of England and Wales. All of the above organisations, as well as the many other contributors, are thanked for their valuable input.

**Through this Statutory Guidance document the Secretary of State is exercising her power under section 23F of the Police Act 1996 to provide guidance about collaboration agreements or related matters. In discharging their functions, chief officers and policing bodies must take the Guidance into account in considering whether or not to enter a collaboration agreement and in planning and making collaboration agreements. The duty to have regard to the Guidance does not absolutely require that the Guidance is followed in every case. What it requires is that those taking relevant decisions give appropriate weight to the Guidance. Chief officers and policing bodies may not act contrary to the Guidance unless there are cogent reasons (which must be recorded) for doing so. The content of the Guidance must be drawn to the attention of relevant decision makers.**

# 1: Introduction

1. This Statutory Guidance for Police Collaboration is published to assist chief officers and policing bodies when considering and implementing collaborative working as a means to achieving more efficient and effective delivery of policing services. It includes clarification of the relevant legislation that governs collaboration in the police service, in particular of sections 22A to 23I of the Police Act 1996 (referred to as “the Act” for the remainder of this document) which set out the provisions under which collaboration agreements may be made by police forces and policing bodies. These legal provisions were amended and expanded by the Policing and Crime Act 2009 and the Police Reform and Social Responsibility Act 2011.
2. The guidance provided in this document does not supersede the obligation for police officers and policing bodies to comply with existing legal requirements, including the requirements of employment law and police regulations where applicable, as for all other police work.
3. To ensure this Guidance is relevant, practical, based on real expertise and meets the needs of forces and policing bodies, the Home Office has consulted with a wide range of stakeholders from across the service, including those who have experienced collaboration directly themselves. This Guidance will be updated from time to time, following consultation with policing partners. Any recommendations for updates should be forwarded to Public Order Unit, Crime and Policing Group, Home Office, 2 Marsham Street, London SW1P 4DF. This guidance and future revisions can be found on the **Home Office** website and on **POLKA**.
4. **Further detailed guidance for collaboration practitioners is available in the Toolkit for Police Collaboration, which is available through POLKA.**

## NOTE ON DIRECTION AND CONTROL

5. The ability of police force collaboration agreements to specify arrangements for the transfer of direction and control is an important aspect of collaborative working. The appropriate assignment of direction and control is clearly important to the effective running of policing services under collaborative arrangements, where some police officers and police staff may be working outside their home force area under a different command structure, and this also carries with it significant additional implications: liabilities, primary responsibility for health and safety and the responsibility for dealing with public complaints are associated and transferred with direction and control, although disciplinary matters arising from public complaints remain with the chief officer of the home force. Chief officers and policing bodies will need to consider carefully the implications for these issues when drafting collaboration agreements and should set out clearly within those agreements specific arrangements for the transfer of responsibilities, including indemnities where agreed. In particular, vicarious liability for any unlawful acts of police officers will follow direction and control and it is important that collaboration agreements should make it clear that this is also transferred. These areas are addressed in the sections which follow.

## 2: Legal framework for policing

6. The **Police Act 1996** sets out the legal framework for policing in England and Wales. All statutory references in this Guidance refer to that Act unless indicated otherwise. This Guidance uses the term ‘policing bodies’ to refer to Police and Crime Commissioners, the Mayor’s Office for Policing and Crime, and the Common Council for the City of London (in its capacity as a police authority). In respect of the collaboration provisions in the Act, the term also includes the police authorities for British Transport Police and the Civil Nuclear Constabulary.

### POLICE AND CRIME COMMISSIONERS

7. The **Police Reform and Social Responsibility Act 2011** established police and crime commissioners within each police force area in England and Wales, with the exception of those in London. The 2011 Act gives PCCs responsibility for the totality of policing within their force area. It further requires them to hold their force’s Chief Constable to account for the operational delivery of policing, including in relation to the Strategic Policing Requirement published by the Home Secretary.
8. The 2011 Act does not impinge on the common law legal authority of the office of constable, or the duty of constables to maintain the Queen’s Peace without fear or favour. It is the will of Parliament and Government that the office of constable shall not be open to political interference.
9. Each PCC and their respective Chief Constable are established in law as corporations sole within the 2011 Act. In doing so, both the PCC and the Chief Constable are enabled by law to employ staff and to hold funds. Chief Constables are charged with the impartial direction and control of all constables and staff within the police force that they lead. The staff of the PCC is accountable to the directly-elected holder of that office to enable the PCC to exercise their functions.
10. The public accountability for the delivery and performance of the police service is placed into the hands of the PCC on behalf of their electorate. The PCC draws on their mandate to set and shape the strategic objectives of their force area in consultation with the Chief Constable. PCCs are accountable to their electorate; the Chief Constable is accountable to their PCC. The Police and Crime Panel within each force area is empowered to maintain a regular check and balance on the performance of the PCC in that context.
11. The PCC is the recipient of all funding, including the government grant and precept and other sources of income, related to policing and crime reduction, and all funding for a force must come via the PCC. How this money is allocated is a matter for the PCC in consultation with the Chief Constable, in accordance with the Financial Management Code of Practice and any grant terms. The Chief Constable will provide professional advice and recommendations.
12. The Chief Constable is accountable to the law for the exercise of police powers, and to the PCC for the delivery of efficient and effective policing, management of resources and expenditure by the police force. At all times the Chief Constable, their constables and staff, remain operationally independent in the service of their communities.

## THE SECRETARY OF STATE

13. The references in the following paragraph are to the Secretary of State for the Home Department. The Minister with responsibility for the BTP is the Secretary of State for Transport and the Minister with responsibility for the CNC is the Secretary of State for Energy and Climate Change. The powers described below and the powers and directions described in the section on Legal requirements for collaboration, are the responsibility of the relevant Secretary of State of these two departments.
14. The Secretary of State does not generally intervene in operational policing matters but has specific powers set out in statute. The most relevant powers are referred to in the following analysis. Exceptions to that are set out in statute and the relevant powers are referred to in the section on Legal requirements for collaboration. In exercising the powers under much of the Act, he or she must act in a manner best calculated to promote the efficiency and effectiveness of the police (section 36). The Secretary of State does not fund chief officers and forces directly; rather the Secretary of State funds the relevant policing body (sections 46 to 48). He or she will issue a Strategic Policing Requirement setting out the national policing capabilities needed to counter specified national threats (section 37A). He or she may, if he or she considers it to be necessary for the purposes of promoting the efficiency and effectiveness generally of police forces in England and Wales, issue codes of practice relating to the discharge of their functions by chief officers (section 39A). The Secretary of State also has the power to give directions to policing bodies to take specified measures where any function of the relevant police force or policing body is not being discharged in an effective manner (sections 40 and 40A). The provisions in sections 23FA and 23G of the Act reinforce the role of the Secretary of State to give statutory directions, on which there must be consultation, on specific collaboration issues.

## POLICE POWERS AND FORCE AREAS

15. A constable will be under the direction and control of his/her chief officer unless direction and control is transferred to another chief officer as is permitted under sections 22A or 24 of the Act. Ultimately it is envisaged that, in police areas other than the City of London, police staff employed solely to assist the force will be employed by the chief officer, and will be under the chief officer's direction and control by virtue of their employment relationship. Initially these staff will be employed by the PCC, but will be placed under the chief officer's direction and control under paragraph 7 of Schedule 15 to the Police Reform and Social Responsibility Act 2011. In the City of London police staff employed solely to assist the force will continue to be employed by the Common Council in its capacity as a police authority and to come under the direction and control of the Commissioner of the City of London Police under section 15(2) of the Police Act 1996. In each case direction and control may be transferred to another chief officer under sections 22A or 24 of the Act. A constable must abide by lawful orders (regulation 20 of the Police Regulations 2003, and see the Standards of Professional Behaviour set out in the Schedule to the Police (Conduct) Regulations 2008, S.I. 2008/2864). A constable has jurisdiction throughout England and Wales (and the adjacent territorial waters) (section 30). He/she may therefore exercise his/her powers in a police area other than the one in which his/her force generally operates. It is common practice for a constable to enter a police area other than the area of his/her force for purposes relating to the policing of his/her own force area. In some cases (and where practicable), notification will be given to the chief officer of the host police force. In some cases there will be bilateral protocols between neighbouring forces as to how specific issues will be dealt with. However, advice from Her Majesty's Inspector of Constabulary (HMIC) is that the consent of the chief officer of the host police force is not required but is obtained where possible as a matter of courtesy and good practice, and in practice it is always obtained in cases involving the use of firearms, the potential use of lethal force and the use of RIPAs.
16. Section 23AA of the Act provides for a collaboration agreement to allow police staff who are designated as having police powers to exercise those powers in the force area of a collaboration partner (see Legal requirements for collaboration).

## DIRECTION AND CONTROL

17. A police force is under the direction and control of the chief officer for that force. This does not mean that the chief officer must give every order: the delegation of appropriate powers to suitable people (both police officers and police staff) is permitted, by which the chief officer remains ultimately responsible for actions carried out by others under his/her authority (*R (Chief Constable of the West Midlands Police) v. Birmingham Justices* [2002] EWHC 1087 (Admin)). Section 88 of the Act makes specific provision for vicarious liability (see also Legal duties and liability for breach).
18. Where the chief officer and those giving and receiving the order are all members of the same force, it is clear that responsibility rests with the chief officer.



19. A chief officer (“the first chief officer”) may authorise the passing of direction and control of police officers or members of police staff to the chief officer of another force (“the second chief officer”) under the terms of a collaboration agreement, or direction and control may pass by virtue of the officers or staff being provided under mutual aid arrangements. The police officers or members of police staff will thus be required to take orders on a day to day basis from the second chief officer (or from an officer or member of police staff of the second force lawfully delegated by him to exercise command and control). Where the direction and control passes under the terms of a collaboration agreement or under mutual aid, the second chief officer will be ultimately responsible for those police officers and members of police staff, and will be liable for any unlawful conduct by them in the performance or purported performance of their functions as if the second chief officer was their employer (section 88).
20. Where a senior police officer is appointed with special responsibility for collaboration, for example on behalf of a policing region, his/her position in terms of direction and control should be clarified within collaboration agreements.

## **ASSISTANCE BETWEEN FORCES THROUGH THE PROVISION OF MUTUAL AID**

21. Section 24 of the Act provides for one chief officer to provide “constables or other assistance” to another chief officer on request, which is envisaged as a short term measure. Such assistance can be provided “for the purpose of enabling the other force to meet any special demand on its resources”. Any constable or member of police staff provided under section 24 will be under the direction and control of the chief officer of the receiving force (section 24(3) and (3A)). In this way, section 24 provides a mechanism whereby direction and control can pass from one chief officer to another. The Secretary of State can direct a force to provide assistance to another force under section 24 for the purposes of meeting a special demand on the recipient’s resources where he/she is satisfied that arrangements cannot be made, or cannot be made in time, between forces for that purpose (section 24(2)).
22. Where assistance is provided under section 24, the policing body of the receiving force will pay to the policing body of the donor force “such contribution as may be agreed upon” between those two policing bodies or, in the absence of such agreement, under any agreement between all policing bodies generally or, in the absence of such agreement, as may be determined by the Secretary of State (section 24(4)). Section 24 is a method of temporarily moving police resources (in the form of officers) from one force to another to meet special demands and is therefore a clear statutory exception to the basic principle that a chief officer should use his other officers to police his other own area or to deal with crime related to his other own area. A comparison between the provisions of section 22A and section 24 can be found in the section on Models of collaboration.

## AD HOC ASSISTANCE ARRANGEMENTS

23. It is not uncommon for ad hoc assistance arrangements to be made between forces whereby assistance is provided to another force without direction and control passing. Such ad hoc arrangements do not rely on the existence of a special demand on resources (eg, they could cover regular training) or the approval of the relevant policing bodies. Where officers from several different forces work together under such arrangements they remain under the direction and control of their chief officers but take their day to day operational instructions from (ie, work under the command and control of) the lead officer within the team (who may be from any participating force) and work on behalf of the recipient force. Such arrangements give rise to a co-operation network from which all forces benefit. Due to the fact that a particular force may hold particular expertise or resources, the mutual aid arrangements improve the overall efficiency and effectiveness of policing. HMIC is regularly involved in identifying the relevant expertise and resources and liaising with the chief officers in question. It could be argued that appropriate use of sections 22A or 24 should be used over such ad hoc arrangements. However, ad hoc arrangements are a very well established practice and provide an important means of ensuring that assistance can be provided where there is no special demand on a force's resources and that direction and control (and liability) does not transfer with such assistance. Where forces assist each other on an ad hoc basis payment arrangements vary. Such assistance is often given for mutual benefit with only additional costs (such as overtime and subsistence) being recovered.
24. The provisions in the Act do not specify any minimal qualification for arrangements requiring section 22A collaboration agreements but this does not imply that less formal ad hoc arrangements are not permitted. The police forces and policing bodies planning to work together will need to agree on the extent to which the issues covered by this Guidance come into play and require the protection and security of a more formal, written agreement. Such issues might include the complexity of the arrangement, risks, funding, whether there would be advantages in transferring direction and control under the arrangement (including more appropriate assignment of responsibilities and liabilities) and whether the distribution of costs and/or benefits require formal agreements. Ad hoc arrangements would also be expected to be of a more short-term nature than collaborations that require a formal agreement.

## COLLABORATION BETWEEN FORCES

25. Sections 22A, 23 and 23A provide for joint working between police forces and/or policing bodies and/or other parties where, in the opinion of the chief officer or policing body, the collaboration delivers greater efficiency or effectiveness to at least one of the participating forces or policing bodies. The section on Legal requirements for collaboration presents a detailed account of these provisions.

## REGULATIONS ABOUT STANDARDS OF POLICE EQUIPMENT

26. Section 53 enables the Secretary of State to make regulations as to standards of police equipment, including IT software and hardware, on the grounds of efficiency and effectiveness for one or more police forces in England and Wales. Section 53 also enables the Secretary of State to make regulations about the arrangements for the provision of equipment for police purposes. Before making any regulations under this section, the Secretary of State shall consult policing partners.

## **REGULATIONS ABOUT SPECIFIED PROCEDURES AND PRACTICES**

27. Section 53A enables the Secretary of State to make regulations for one or more police forces in England and Wales to adopt certain procedures or practices if HMIC is satisfied that they are necessary for the adoption of the procedure or practice and that the procedure or practice is itself necessary in order to facilitate the carrying out by members of two or more police forces of joint or co-ordinated operations or is in the national interest and to promote efficiency and effectiveness (section 53A(7)). Regulations under section 53A may make different provision for different cases and circumstances (section 53A(8)). Regulations made under this section would involve consultation with policing partners.

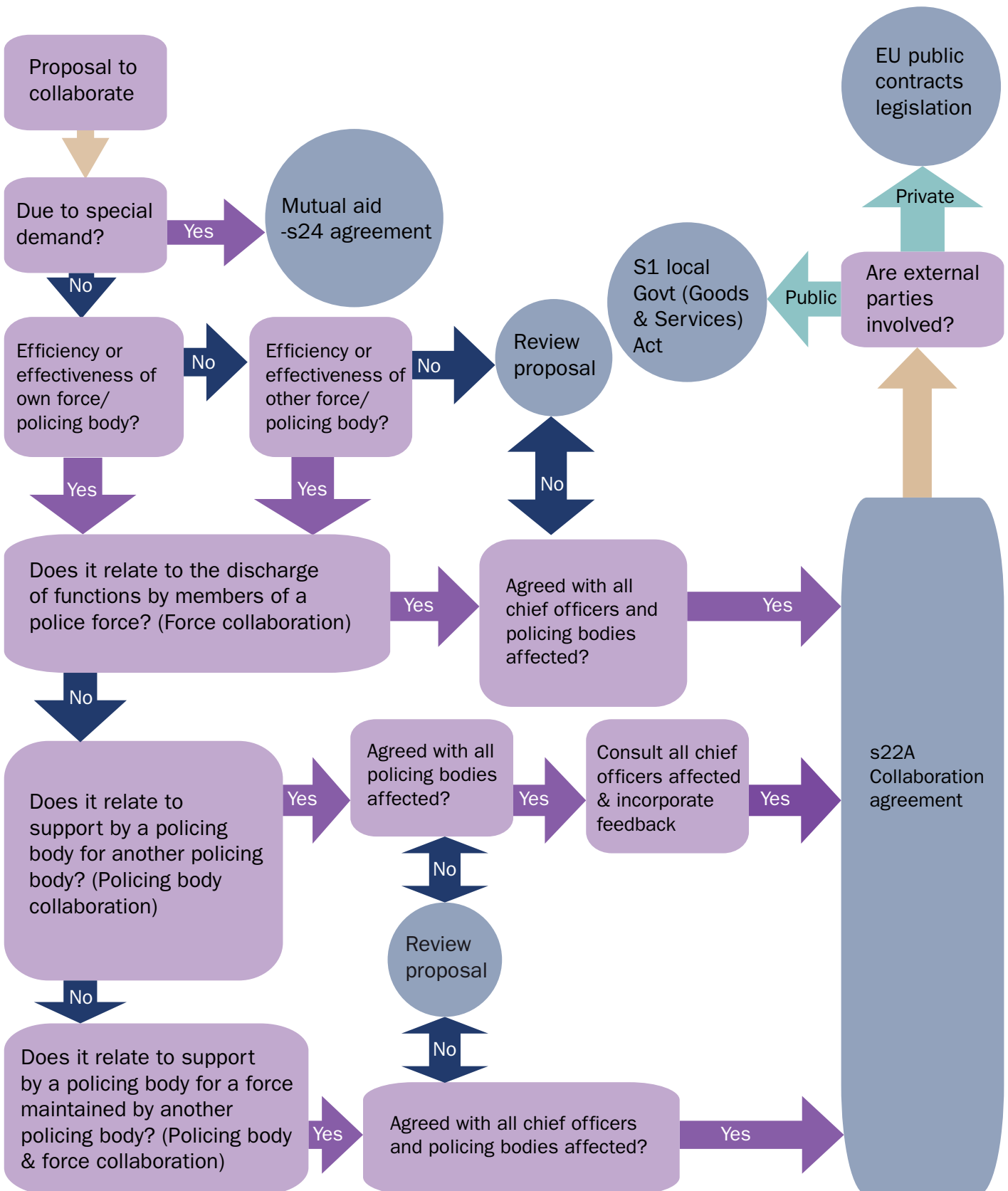
## **REGULATIONS ABOUT SPECIFIED FACILITIES AND SERVICES**

28. Section 57(3) allows the Secretary of State to make regulations requiring one or more police forces in England and Wales to use specified facilities and services. Such regulations cannot be made unless the Secretary of State considers it necessary to do so for the purpose of promoting efficiency and effectiveness of the police. The facilities or services in question may, but need not, be those provided or maintained by the Secretary of State under section 57(1). Before making regulations under this section the Secretary of State shall consult policing partners.

## **STRATEGIC POLICING REQUIREMENT**

29. The Strategic Policing Requirement is a statement of the collective capabilities that police forces across England and Wales are expected to have in place in order to protect the public from cross-boundary threats such as terrorism, civil emergencies, public disorder and organised crime. The SPR supports policing bodies in effectively balancing local and national priorities, and driving improvements in their force's response to serious and cross-boundary criminality, harms and threats. Chief officers must have regard to the SPR when exercising their functions as chief officers. This places them under a strong duty to comply with the SPR unless there is a particular imperative as to why they should not (and, in which case, they might be expected to have to explain why they chose to do so). Policing bodies have to take account of the SPR when setting their local crime and policing plans, and they have to hold chief officers to account for their compliance with the SPR when exercising their functions.
30. The SPR does not cover everything the police do, from anti-social behaviour to counter-terrorism. Instead, it focuses on those areas where government has a responsibility for ensuring that sufficient capabilities are in place to respond to serious and cross-boundary criminality and in support of the work of national agencies such as, in future, the National Crime Agency. The cross-boundary nature of the threats covered by the SPR mean that collaboration will be an important and effective tool for chief officers and policing bodies to meet their responsibilities under the SPR.

# 3: Decision process for collaboration



# 4: Legal requirements for collaboration

31. The legal requirements for police collaboration can be found in sections 22A to 23I of the **Police Act 1996**, as amended by the **Policing and Crime Act 2009** and the **Police Reform and Social Responsibility Act 2011**.

## DUTY TO COLLABORATE

32. The 2011 Act inserted sections 22B and 22C into the 1996 Act, which place new duties on chief officers and policing bodies to keep collaboration opportunities under review and to collaborate where it is in the interests of the efficiency or effectiveness of their own and other police force areas. This is a stronger duty than the previous one for police authorities, who were required only to support collaboration by their own forces. The new duties require chief officers and policing bodies to work together to review opportunities to collaborate, to engage with their prospective collaboration partners and to make a judgement as to whether those opportunities present the best option available. Where collaboration is judged to be the best option, they must collaborate. Another key difference from the previous arrangements is that where collaboration would provide the best outcome for another police force or group of forces, then a chief officer or policing body should pursue it – even if they do not expect their own force to benefit directly itself. This is designed to ensure that collaboration takes place wherever it is in the wider public's best interest.
33. Section 22B requires chief officers to keep under consideration the opportunities for using collaboration to improve the efficiency or effectiveness of their own police force or one or more other police forces. Where a chief officer identifies such an opportunity for collaboration, he/she must notify the proposed partners to the collaboration, and they must all consider whether to give effect to it. In considering whether to do so, the chief officer and the proposed partners must consider whether the proposed collaboration would be in the interests of the efficiency or effectiveness of one or more police forces. Where the chief officer and at least one of the proposed partners are of that view, the agreeing parties must give effect to the collaboration or give effect to it so far as it relates to them.
34. Section 22C sets out the same duty and process for policing bodies in respect of the efficiency or effectiveness of:
- the policing body concerned, the police force maintained by that policing body, or that body and that force, and
  - one or more other policing bodies and police forces.

## ASSESSING THE CASE FOR COLLABORATION

35. It should be noted that policing bodies have the overriding authority in determining questions of the relative efficiency or effectiveness of individual collaboration options.
36. Section 23 states that it is a pre-condition of entering into a force collaboration agreement that the chief officers who are parties to that agreement each think that the agreement is in the interests of the efficiency or effectiveness of one or more police forces.

37. Section 23A states that it is a pre-condition of entering into a policing body collaboration or a policing body and force collaboration that the policing bodies who are parties to that agreement each think that the agreement is in the interests of the efficiency or effectiveness of one or more policing bodies or police forces.
38. Chief officers and policing bodies who are party to collaboration agreements do not necessarily have to consider that the agreement is in the interests of the efficiency or effectiveness of his/her own police force or policing body, provided other participating forces or policing bodies benefit. It should be noted that the test is a subjective one. For example, it is sufficient that the chief officer actually does think the agreement is in the interests of the efficiency or effectiveness of a police force. The chief officer must nevertheless have (and be able to show) reasonable grounds for reaching that view and the policing body may base its approval or otherwise of the proposal for a force collaboration agreement on such supporting reasons or demonstrable benefits. Police forces and policing bodies are strongly advised to work together from the earliest stages of formulating collaboration plans to ensure that the potential for disagreements as to the merits or details of those plans is minimised.
39. In deciding whether an existing or proposed collaboration agreement is, or would be, in the interests of the efficiency or effectiveness of one or more police forces, section 23HA requires that chief officers and policing bodies must, in particular, consider:
- existing collaboration agreements, and other arrangements for co-operation, to which the police forces concerned are parties
  - the desirability of police forces taking a consistent approach in making such agreements and other arrangements, and
  - opportunities available to the police forces concerned to make such agreements and other arrangements.

## **THE BASIS OF A COLLABORATION AGREEMENT**

40. Section 22A provides for chief officers and policing bodies to enter into collaboration agreements about one or more of the following:
- the discharge of functions by members of a police force (force collaboration). This can comprise all and any of the powers and duties of police forces. This type of agreement is focused on providing collaborative operational services (eg, firearms or investigation officers) or operational support (eg, dog training, control room or forensic services)
  - the support by a policing body for another policing body (policing body collaboration)
  - the support by a policing body for a police force maintained by another policing body (policing body and force collaboration).
41. These last two types of agreement are focused on support functions that explicitly include premises, equipment, police staff, services and facilities, but this list is not exhaustive and agreements may extend to other areas within a policing body's responsibilities.

## THE SCOPE OF A COLLABORATION AGREEMENT

42. Under section 23 a force collaboration agreement can, in particular, allow:
- the joint discharge of functions by officers and staff of police forces
  - officers and staff of a police force to discharge functions in another force's area
  - officers and staff of a police force to be provided to another police force.
43. Under section 23A an agreement in respect of policing body collaboration or policing body and force collaboration can, in particular, allow:
- support to be provided jointly by two or more policing bodies
  - support to be provided for two or more policing bodies or forces jointly
  - a policing body to provide support to another policing body or to a force maintained by another policing body
  - two or more policing bodies to combine in buying in support.
44. The functions or support must be specified in the agreement. However, they may be identified generically. For example, forces might agree to collaborate in the provision and deployment of firearms officers, a self contained specialist function, but equally they might choose to collaborate in response to a particular group of crimes (eg, those with a regional element, or an overseas connection).
45. A policing body may provide support to another policing body or to a police force maintained by that policing body. This would involve the provision of goods and services by one policing body to another policing body or bodies, or to a police force or forces maintained by those other policing bodies.

## COLLABORATION WITH NON-POLICE BODIES

46. Section 22A(6) allows bodies other than police forces and policing bodies to join a collaboration agreement. This allows the police service to take advantage of the opportunities available for collaborating with others in the public and private sector. It is thought the most likely partners will be other public sector organisations involved in a shared service (such as another emergency service body or a local authority sharing business support services with the police) or other law enforcement organisations such as the National Crime Agency, once established. While partners could include the private sector, it is more likely that police forces and policing bodies collaborating on support services involving a private sector supplier will want to use a collaboration agreement to establish their arrangements with each other as joint customers of a service (such as agreeing the distribution of costs and benefits) while a conventional commercial contract would be used with the supplier.

## NON-HOME OFFICE POLICE FORCES – SECTION 23I

47. The Act explicitly includes the British Transport Police (BTP), the Civil Nuclear Constabulary (CNC), their chief constables, officers and police staff and their police authorities within the scope of section 22A collaboration agreements.

48. When BTP officers are placed under the direction and control of a Home Office force through a collaboration agreement, they will have all the powers and privileges of a member of the Home Office force, including the extension of their jurisdictional powers (section 30). The same provision does not apply to CNC officers; their jurisdictional powers are not affected by a collaboration.
49. The jurisdiction of police officers from Home Office forces is not extended to match those of BTP or CNC in relation to being able to police in Scotland. So, for example, a collaboration agreement under the direction and control of the chief officer of BTP involving the policing of railway property within Scotland would mean that police officers from Home Office forces involved in that agreement could not operate in Scotland.

## **CONSIDERATION OF DIRECTION AND CONTROL IN COLLABORATION AGREEMENTS**

50. The Police Act 1996, as amended, provides for collaboration agreements to make arrangements for the transfer of direction and control in accordance with the terms of those agreements. Section s23(4) can allow for officers or police staff of one force to be under the direction and control of the chief officer of another force if both forces are part of a section 22A agreement.
51. Sections 2 and 4 of the 2011 Act provide that the chief officer of a force has the direction and control of all members of that force. Section 88 of the 1996 Act states that the chief officer is liable in respect of torts (civil wrongs) committed by police officers under his/her direction and control. However, provision may be made in a force collaboration agreement for another chief officer to exercise direction and control. It is important that the section 22A agreement makes provision as to which chief officer is to exercise direction and control of any members of a force who are to discharge functions in the area of another force. This may be a different chief officer for different situations depending on local priorities or resources and the section 22A agreement must account for this.

## **POLICE POWERS FOR POLICE STAFF**

52. Section 23AA provides for the exercise of police powers by police staff under collaboration agreements. It enables a chief officer who is party to a collaboration agreement to allow his or her police staff who are designated as having police powers, to exercise those powers in the force area of a collaboration partner. The effect is to allow the range of police functions which can be provided under collaboration agreements to include those performed by designated police staff (Community Support Officers, Investigating Officers, Detention Officers and Escort Officers).
53. Section 23AA requires a collaboration agreement that is to provide for such arrangements to specify the functions that designated police staff will be permitted to discharge and any restrictions or conditions that may apply.



54. Sections 38B and 38C of the Police Reform Act 2002 provide a procedure for making a collaboration designation in respect of police staff. The chief officer of a force to be assisted through these arrangements can designate a person who is:
- a police staff member of another police force in the collaboration (the ‘assisting force’)
  - designated under section 38 of the 2002 Act, and
  - permitted under the relevant collaboration agreement to discharge their designated powers for the purposes of the assisted force.
55. The collaboration designation must be consistent with the provision in the collaboration agreement.

## **PAYMENTS – SECTION 23B**

56. A collaboration agreement may provide for payments between relevant policing bodies or chief officers for the functions or support services that are part of the collaboration. This can include, but not be limited to, police staff and officers, buildings (and associated costs such as heat, light and power), vehicles (and associated costs such as fuel and servicing), training etc.
57. Any collaboration agreement should make provision for the sharing of costs and of benefits. It is important for collaborating parties to agree the manner in which costs and benefits are to be calculated and shared, including accounting presumptions. See also the later section on Funding.
58. There are clear HM Treasury rules that require public sector bodies providing goods or services to other public sector bodies to do so on a cost neutral basis so as not to make a profit, although it is recognised that it is possible to generate incidental profits and losses. The manner in which incidental profits are distributed is likely to be based upon the method agreed for distributing benefits and underspends. For separate legal entities, parties can agree in advance whether to reinvest any profit into the delivery of future services or to again return it to the collaborating organisations based upon the agreed distribution method.
59. Collaboration agreements should specify the policing bodies or chief officers by which and to which a payment is to be made, or if that cannot be done at least set out the manner in which those policing bodies or chief officers are to be determined. They should also specify the amount of any payment, or the manner in which the amount is to be calculated.
60. The collaboration agreement should specify the date by which any agreed payments should be made, and a mechanism to resolve any dispute as to the amount of the payments to be made. A policing body or chief officer is required to make the payments as specified.

## **AGREEMENT AND CONSULTATION**

61. Section 22A(3) states that a force collaboration agreement (ie, one which contains provision about the discharge of functions by members of a police force) must include as parties to the agreement the policing body and chief officer of each police force involved.

62. Section 22A(4) states that a policing body collaboration agreement (ie, one which contains provision about support by a policing body for another policing body) must include as parties to the agreement each policing body to which the collaboration applies.
63. Section 22A(5) states that a policing body and force collaboration agreement (ie, one which contains provision about support by a policing body for the police force which another policing body is responsible for maintaining) must include as parties to the agreement each policing body to which the collaboration applies, the chief officer of each police force to which the collaboration applies, and the policing body responsible for maintaining each such police force.
64. Section 23A requires a policing body to consult the chief officer of the police force it maintains before making any collaboration agreement, unless that chief officer is a party to the agreement.
65. Given the policing body's governance role over its police force and the need for it to approve a force collaboration agreement by being a party to it, all policing bodies should be fully engaged in a collaboration project from the outset and be given the opportunity to comment on proposals for agreements at a formative stage in order to minimise the risk of approval unexpectedly being withheld. In seeking the approval of the relevant policing bodies, the chief officers who are parties to the proposed force collaboration agreement should set out the basis for thinking that the proposed agreement is in the interests of the efficiency or effectiveness of one or more forces.
66. Where a policing body proposes a collaboration agreement which includes provisions which affect the discharge of functions of police staff under a chief officer's direction and control, his/her approval must be obtained since he/she must be a party to the agreement. The chief officer's approval or otherwise should, however, relate to his/her consideration of those elements of the agreement that relate specifically to those police staff under his/her direction and control and should be confined to his/her judgement of the impact of the planned agreement on the work of those staff. This requirement further emphasises the need for collaboration agreements of all kinds to be planned and completed jointly.
67. Should a collaboration agreement combine provisions relating to police staff in a policing body with provisions relating to police staff in a police force, the chief officer will have to consent to the whole agreement, rather than to just those parts described in the preceding paragraph.
68. Most collaborations will have an effect on the workforce: the police staff associations and trade unions must be involved in the consideration, development and implementation of workforce arrangements and consulted where any changes to these are considered.

## **A PROPOSED APPROACH FOR POLICING BODIES TO CONSULT WITH CHIEF OFFICER – SECTION 23A**

69. A statutory duty to consult requires that there must be adequate consultation. The basic requirements of consultation are that:
  - the consultation must be at a time when proposals are still at a formative stage (ie, during the development of the business case)
  - the proposer must give sufficient detail to allow for the proposal to be intelligently considered

- adequate time (ie, what is adequate and reasonable in the circumstances) must be given for consideration and response, and
  - the product of consultation must be conscientiously taken into account in finalising any proposals.
70. In practice the consultation undertaken should be proportionate to the significance and extent of the proposal under consultation. Although consultation is always required for collaboration agreements that impact on the functions carried out by the force, proposals having little or no impact on the chief officer's force would require less formal consultation than proposals which might have a substantial impact. It would be reasonable to provide less detail, or to allow for a shorter period for reply, in such cases.
71. A requirement to consult is a lesser requirement than obtaining approval, and a policing body may legally enter into a policing body collaboration even if its chief officer objects, provided the objections are properly considered and the reasons for discounting them can be articulated. There is no statutory right of appeal.

## **GAINING POLICING BODY AGREEMENT**

72. The Act does not set out any grounds on which a policing body should, or should not, refuse to become a party to a force collaboration agreement, so this decision is limited only by general public law. As a minimum, any refusal should be reasonable in the circumstances, and as a matter of good practice the reasons for the refusal should be articulated. An outright policy of never agreeing to force collaboration agreements would be unlawful, and policing bodies must not use the ability to give or withhold approval to 'second guess' aspects of a force collaboration which are properly within the chief officer's professional expertise. Likewise, an outright policy by a chief officer of never agreeing policing body and force collaboration agreements involving police staff under his/her direction and control would also be unlawful. The usual boundaries between the roles of the policing body and its chief officer must continue to be respected.

## **THE RIGHT OF APPEAL**

73. There is no statutory right of appeal against the decision of a chief officer or policing body to withhold their approval of a collaboration agreement by declining to become a party to it. However the Secretary of State has wide but discretionary powers of direction, although it is intended that those powers should be used sparingly (see section on Powers of the Secretary of State). Furthermore, refusal of approval for a proposed agreement does not mean that it cannot be adjusted to take account of objections, (assuming the other partners to the agreement agree) and to seek approval for a modified agreement.
74. If the chief officer or policing body were to oppose a proposed agreement under these provisions, the proposer should take account of the concerns raised and all parties should seek agreement through negotiation. If a chief officer or policing body wishes to challenge the refusal of such an approval, they may consult the Secretary of State who would seek advice before recommending a course of action (or potentially giving a direction under the powers set out above). HMIC would be consulted for advice in such circumstances, and other policing partners may also be consulted.
75. The Act states that a person to whom a direction is given by the Secretary of State must comply with it.

## **PUBLISHING A COLLABORATION AGREEMENT – SECTION 23E**

76. A collaboration agreement must be in writing. The parties to a collaboration agreement must publish either the agreement itself or the fact that it has been made and such details about the collaboration as are seen to be appropriate. This may, for example, take the form of placing copies or summaries of agreements on the websites of the relevant forces or policing bodies as soon as possible following their agreement.
77. A collaboration agreement should also include provision for matters such as:
- dispute resolution (eg, arbitration and/or mediation)
  - ownership or enforcement of intellectual property rights
  - access to documents and records
  - liabilities to third parties
  - insurance or self insurance
  - warranties
  - indemnities
  - financial controls and regulations
  - audit arrangements
  - complaint handling, and
  - staffing matters.
78. In the case of a force collaboration agreement, publication must include the accountability arrangements agreed with the policing bodies responsible for the forces concerned.

## **REVIEWING AND AMENDING AN AGREEMENT – SECTION 23C**

79. Good practice indicates that as a general principle collaboration agreements should include specific review milestones that allow all parties to consider their ongoing participation. It is recommended that collaboration agreements should be reviewed periodically or where any significant changes to services or circumstances arise.
80. Unless there is a direction from the Secretary of State (see The powers of the Secretary of State) a section 22A agreement may only be varied by a further agreement which satisfies the requirements of the Act. This need not be a bureaucratic procedure, although the relevant requirements set out in this part must be adhered to. That means, in the case of a force collaboration agreement, a chief officer may only make an amending agreement if the policing body responsible for maintaining the chief officer's force is a party to it. To make an agreement amending a policing body collaboration agreement, a policing body must consult the chief officer of the police force maintained by the policing body. In the case of a policing body and force collaboration agreement, where the agreement includes provision about the discharge of functions by police staff under the direction and control of the chief officer, the chief officer must be a party to the amending agreement.
81. Where appropriate, collaboration agreements may be in the form of over-arching or 'umbrella' agreements, for example in the case of programmes covering a range of different collaborative projects involving the same or subsets of the same parties. Such agreements would need to satisfy the legal requirements set out in the Police Act with regard to the arrangements between the parties that apply across the programme

of projects, but the details relating to individual projects or their detailed arrangements may be contained in annexes to the agreement which may be varied as described above without the need to amend the overarching agreement. However, where it is proposed to make significant or extensive changes to an agreement, the clearer and simpler course may be to terminate the original agreement and make a new one.

82. A collaboration agreement should contain provision for the admission of further parties to the agreement and consequential matters. In the absence of agreement by all parties, the Secretary of State has wide powers of direction.
83. Existing collaboration agreements made under previous legislation will automatically be transferred from police authorities to policing bodies by virtue of paragraphs 5 and 21(7) of Schedule 15 to the 2011 Act. Such agreements will not need to be redrafted in the short-term but should be brought into line with current legislation when they are next updated or renewed.

## **NEW PROJECTS**

84. A mature collaboration may wish to build upon its successes and embark upon new projects. New projects could include new services, new partners or (in the situation where, via a collaboration agreement, more than one police force or policing body is acting as a supplier) new clients. In all cases, where changes are made to a collaboration this must be done by mutual agreement as described above. Again, depending on the extent of the changes, it may be best to terminate the original agreement and draw up a new one.

## **EXITING FROM OR TERMINATING AN AGREEMENT – SECTION 23C**

85. It is important before signing up to a collaboration agreement to clearly set out the conditions under which the agreement may end. Termination of a collaboration agreement may be required for a variety of reasons - for example, the collaboration may have successfully completed its objectives and no longer be required or the envisaged benefits may not be being realised and alternative solutions may be required.
86. It is recommended that collaboration agreements should be specified to run for a fixed term in order to plan for and manage significant changes, particularly changes in membership. It is also sensible for provision to be made for one or more parties to withdraw from a collaboration agreement on giving a specified minimum period of notice to that effect and for matters consequential on that party withdrawing from the agreement. However, removal of a party will be an amendment to the agreement, meaning that the relevant requirements set out in this part and the decision process in Section 3 must be adhered to. The points above relating to over-arching agreements are also relevant to this area. The requirements for approval and consultation apply again in such a case as for any other new agreement. So:
  - in the case of a force collaboration agreement, a chief officer may only give such agreement with the approval of the policing body responsible for maintaining the chief officer's force
  - in the case of a policing body collaboration agreement, a policing body must consult the chief officer of the police force maintained by the policing body, or in the case of a policing body and force collaboration agreement, where the agreement includes provision about the discharge of functions by police staff under the direction and control of the chief officer, the policing body of the area whose chief officer has direction and control must obtain the chief officer's approval, before agreeing to the termination of such an agreement.

87. A collaboration agreement should in any event contain provision for its termination including any notice period before termination takes effect (to give time for alternative arrangements to be put in place) and for consequential matters such as agreement of final accounts; return of equipment; vacation of premises; staffing matters and final payments.
88. The final stage of a collaboration arrangement may involve the repatriation or transfer of service delivery responsibilities back to the collaboration partners. The nature of which services remain with a policing body/force and which transfer to the other police forces or policing bodies in the collaboration will be determined by the type of collaboration and the resources that you have contributed to the collaboration.
89. The complexities of exiting a collaboration will vary with the formality of the arrangement and its duration. In the most complex cases, for example where a joint venture operation has been in place for a significant amount of time, potential exits should be planned with the same rigour as initial set-up. Activities to consider in an exit plan may include:
- managing the implications of secondary TUPE and pensions
  - dealing with the impact on tax schemes and the regulatory environment
  - returning assets back to an organisation or another provider
  - supporting the re-absorption of officers and staff by their home forces where applicable
  - ensuring operational continuity during transitions.
90. It should be noted that in practice the effect of the withdrawal of a policing body's approval and of the accompanying accountability arrangements and other support would be expected to precipitate the termination of an existing force collaboration agreement, but such an action is strongly discouraged in favour of negotiation between all parties.

# 5: Accountability

91. Under section 23D, where a chief officer makes a force collaboration agreement, the policing body responsible for maintaining the chief officer's force must hold the chief officer to account for the discharge of functions by anyone who:
- is acting under the terms of the agreement, and
  - while so acting, is under the direction and control of the chief officer.
92. If, therefore, members of one police force are placed under the direction and control of the chief officer of another force under a collaboration agreement, the policing body to which that chief officer reports must hold that chief officer accountable for the discharge of functions under that agreement by members of that other force. Chief officers must ensure that they have the necessary arrangements in place to meet that accountability. This does not affect a policing body's continuing responsibility for the delivery of efficient and effective policing for its own area. Thus, where force A provides a service for both policing body A and policing body B, policing body A must hold the chief officer of force A accountable for the delivery of that service in both policing body areas, while policing body B should ensure that suitable arrangements are in place for it to participate in the joint oversight of its delivery and assure itself that the chief officer is appropriately held to account for the collaborative services being provided to its own area.
93. Before becoming a party to a force collaboration agreement, a policing body must notify its chief officer of the arrangements for holding the chief officer accountable. Any such notification must be in writing. In deciding what arrangements to make, the policing body is required to make such arrangements jointly with another policing body responsible for maintaining a force whose chief officer is a party to the collaboration agreement. The function requiring a policing body to make such appropriate arrangements to secure accountability is additional to any other function of holding the chief officer to account, so this is a specific issue which must be addressed when making a collaboration agreement.
94. In most cases, accountability arrangements of policing bodies could be delivered through a joint oversight committee consisting of PCCs or their representatives. Policing bodies must ensure that joint oversight committees established for this purpose have the necessary delegated powers to exercise their functions in respect of the collaboration agreement. Where this function is delegated to a joint oversight committee, a chief officer will be answerable to this committee whilst also being accountable to his/her own force area's policing body for the discharge of functions by police officers and police staff acting under his/her direction and control in accordance with the collaboration agreement. For further guidance see Governance below.
95. Where a joint oversight committee oversees a collaboration under a chief officer, his/her own force area's policing body will continue to be responsible for dealing with any formal misconduct or unsatisfactory performance issues concerning the chief officer.

## 6: Governance by policing bodies

96. This section of the Guidance sets out the key factors to consider when designing the governance arrangements in support of a collaborative agreement, including the legal constraints.
97. The Act sets out the circumstances in which collaboration agreements may be made, and when they are required. The nature of the collaboration is a key driver as to the type of agreement required.

### DESIGNING GOVERNANCE STRUCTURES

98. When a group of forces and/or policing bodies sets up a collaborative arrangement, appropriate governance structures will be required. These structures will need to ensure that accountabilities, roles and responsibilities are clear.
99. In terms of providing oversight to collaborations, the Act does not provide additional powers to policing bodies, but it ensures that they establish proper accountability arrangements. How policing bodies should go about providing that oversight is for them to agree, taking into account the particular circumstances of the collaboration (such issues as the different resources provided by each of the forces and policing bodies, where services will be provided, how lines of command will work and who will have direction and control over officers and police staff).
100. Under section 23D of the Act, policing bodies must establish arrangements for holding their chief officer to account for a collaboration that include the involvement of the other policing bodies whose forces are party to the agreement. They must agree their arrangements and notify their chief officers before a force collaboration agreement is approved. The notification should be in writing. In deciding what arrangements to make, the policing body is required to make such arrangements jointly with another policing body responsible for maintaining a force whose chief officer is a party to the agreement. The function requiring a policing body to make such appropriate arrangements to secure accountability is additional to any other function of holding the chief officer to account, so this is a specific issue which must be addressed when agreeing a collaboration agreement. Section 23E also specifies that these arrangements must be published alongside the collaboration agreements themselves.
101. Forces and policing bodies may employ a range of governance structures. There is no single structure that should be used for each type of delivery model. However, longer term arrangements where interdependencies are high should have more formal and robust governance arrangements. Legal advice should be sought in these instances.

### JOINT OVERSIGHT COMMITTEES

102. When deciding what governance structures to put in place for collectively holding their chief officers to account for collaboration activity, policing bodies will want to consider the formation of a joint oversight committee consisting of PCCs or their representatives. Although individual chief officers will still be held to account by their own policing body, all of the chief officers concerned could be made answerable to a joint oversight committee for their performance in relation to a collaboration.



103. A joint oversight committee is likely to want the involvement and advice of chief officers taking part in a collaboration, and the terms of reference of a joint oversight committee should be drafted to provide for this. Chief officers cannot be bound operationally by decisions of a joint oversight committee any more than by the decisions of a policing body itself.

## **OTHER FACTORS TO CONSIDER**

104. Collaborations should consider the following factors when developing governance arrangements. These factors underpin many of the different models:

- getting the right people involved is critical to securing agreement and progress. The members of the joint governance arrangement must have:
  - appropriate knowledge and skills – between them, the members need to be able to exert accountability over all aspects of the collaboration, including financial and operational; a wide range of expertise is required
  - commitment to the collaboration – while challenge is required, it is important that the members are committed to supporting the collaboration
  - the ability to take decisions – the members must be granted the ability to take decisions at the joint governance forum without needing to take all issues to the individual policing body
  - sufficient time – this is likely to be a commitment over and above normal force or policing body roles
- having an appropriate number of members within the collaboration – as the number of members increases the ability to take decisions and secure consensus reduces.
- agreeing the principles of governance up front and including these within the collaboration agreement, for example:
  - the basis for selecting the Chair and Deputy Chair
  - the basis for decision making – it is most likely that unanimity will be required
  - what decisions need to be referred to the governance forum and what decisions can be taken by the operational delivery team
  - how often meetings will take place
- establishing trust and equality between all parties – this is critical for all forms of collaboration; consider the benefit of facilitated sessions to help build a shared view of what the collaboration aims to achieve and how it will work. Treat all members equally irrespective of size or nature of financial contribution
- communicating openly – full and open communication about activity, outputs and outcomes, to participating forces and policing bodies, other partners and wider stakeholders.

# 7: Powers of the Secretary of State

106. It is acknowledged that collaboration is most successful where it is fully voluntary and where all parties have bought into the opportunity to improve policing through new ways of working. This Guidance is focused on such voluntary arrangements. However there are some circumstances under which police forces and policing bodies may be directed to collaborate or to do so in particular ways. The Secretary of State has a range of powers through the Act to make regulations, provide guidance, require consultation or make directions about collaboration, to cover the different circumstances where it is recommended that it should influence the collaborative landscape, including measures short of mandating – such as to require forces and policing bodies to examine an opportunity to collaborate or to modify the way that collaboration is carried out.
107. The Coalition Government has made clear that it is prepared to mandate collaboration where it is deemed necessary. Such a strategic decision to make use of these powers would automatically involve seeking the advice of HMIC and other policing partners, including the police forces and policing bodies who would be the recipients of the direction, and the advice given would be considered before a direction was given.
108. Under section 23F, the Secretary of State may issue guidance about collaboration to which chief officers and policing bodies must have regard. This Guidance is published in accordance with that power (see notice preceding the Introduction). The issuing of guidance which extends to the British Transport Police or Civil Nuclear Constabulary (for example, this Statutory Guidance) will only be made with the approval of their sponsoring Government Departments, ie the Department for Transport and the Department of Energy and Climate Change, respectively.
109. Under section 23G, the Secretary of State may give chief officers or policing bodies directions about collaboration agreements or related matters after consulting them (and in the case of directions intended to be given to a chief officer, consultation would also include the policing body of that chief officer's force). Such directions may be given to one or more chief officers and/or one or more policing bodies. A chief officer or policing body in receipt of a direction from the Secretary of State is under a statutory duty to comply with it. Any direction given to a chief officer would be accompanied by a direction to the policing body of that chief officer's force, whereby the policing body may be directed to make corresponding arrangements in support of the actions to be undertaken by the chief officer in complying with the direction, and to oversee that compliance as part of its responsibility for governance of the force.
110. The Secretary of State may:
- require two or more chief officers or policing bodies to make a collaboration agreement or prohibit chief officers or policing bodies from making a collaboration agreement
  - require parties to a collaboration agreement to vary that agreement or prohibit parties to a collaboration agreement from varying that agreement
  - require chief officers or policing bodies to consider making a collaboration agreement of a specified description, and
  - specify terms to be included, or not to be included, in collaboration agreements.
111. Section 23FA gives the Secretary of State a power to specify, by order, policing functions which must be exercised collaboratively. This power differs from directions made under section 23G as it allows a more strategic approach to be taken to collaboration on functions which support key national priorities and on which a consistent approach is needed.

112. Under section 23H, the Secretary of State also has power to terminate a collaboration agreement by notice to the parties to that agreement - for example, to disband a small collaboration so that a larger collaboration could be formed. The agreement can be terminated with immediate effect or at the end of a specified period. However, before giving a termination notice the Secretary of State must consult the parties to that agreement (and would also consult the policing body of the forces whose chief officers are the parties of a force collaboration agreement intended to be affected by such a notice). A collaboration agreement should contain provision for ascertaining the rights and obligations of the parties on termination. If the Secretary of State terminates the collaboration agreement, he/she may also give consequential directions under section 23G(1).
113. Any directions given to the British Transport Police or Civil Nuclear Constabulary would only be made with the agreement of their sponsoring Government Departments (the Department for Transport and the Department of Energy and Climate Change respectively). For example, a direction requiring collaboration between BTP and one of the Home Office forces would need to be given jointly by the Secretary of State for Transport and the Secretary of State for the Home Department.

## **THE CIRCUMSTANCES OF DIRECTIONS ABOUT COLLABORATION**

114. The Secretary of State may be expected to consider using these powers where, following advice and consultation with HMIC and other policing partners, he/she is persuaded that a police force/policing body should engage in a particular collaboration or change the arrangements under which it is collaborating or cease engaging in an ongoing collaboration, in the interests of greater efficiency or effectiveness of that police force/policing body or of another police force/policing body. Such situations might include mandating that a force join a collaboration in order to deliver greater benefit - for example, where advice indicates that its contribution to an ongoing collaboration with neighbouring forces would lead to more efficient delivery of particular services overall across the participating forces. It will also include situations where the Secretary of State takes a strategic decision to require that a specified policing function must be delivered collaboratively.
115. Regardless of whether collaboration arrangements between police forces or policing bodies are entered into voluntarily or in response to a direction or request or regulation by the Secretary of State, the delivery of policing services must comply with the requirements of the law and policing regulations, and those collaborating should adhere to this guidance.
116. The powers of the Secretary of State to give directions about collaboration are broad but flexible. Directions will not be given without first consulting the recipients of those directions (as well as other policing partners), and the request to explore certain collaborative approaches will be the first stage of that consultation with them.
117. The recipients of such directions or requests may also be asked to propose their own detailed collaboration arrangements, including governance arrangements, in preference to such details being the subject of directions, and those proposals would be assessed by the Government and its policing partners.

118. Although the powers of the Secretary of State may override the individual legal requirement for consultation, such consultation on the details of collaboration agreements should still take place where the collaboration is the subject of a direction or request by the Secretary of State, and any reasons given against granting approval or other objections should be notified to the Secretary of State for consideration. The Secretary of State may in such circumstances ask (or direct) the parties to the proposed agreement to reconsider or change those agreements, or may direct that the agreement should be adopted.
119. The Secretary of State will take account of the cost implications for the policing bodies and forces that receive directions about collaboration (including any costs associated with terminating existing agreements or other arrangements with policing or non-policing partners), as well as projected efficiency gains to be delivered through collaboration, when considering giving directions and whether they may be supported by additional funding and whether such funding might be restricted to set-up costs. Individual collaboration agreements should address the distribution of costs and benefits: it should be expected that the parties receiving a direction to collaborate or to consider collaboration would be asked to come to an agreement under their own terms, which may include determining their own arrangements regarding costs and benefits.

## 8: RIPA and collaborations

120. The Policing and Crime Act 2009 and the Police Reform and Social Responsibility Act 2011 amended the legislation governing the use of covert surveillance, covert human intelligence sources and property interference, to enable their effective use in collaborative operational environments. The agreements must specify the circumstances under which the arrangements apply. Collaboration agreements in respect of RIPA authorisation can be either ‘operation-specific’ or ‘umbrella agreements’ not linked to specific operations. It should also be noted that these provisions are not restricted to operational scenarios involving joint (multi-force) teams.
121. Formerly, the legislative provisions within the **Regulation of Investigatory Powers Act 2000 (RIPA)** and **Part III of the Police Act 1997** restricted the ability of police collaborative units to authorise the use of these techniques: an authorising officer from police force A was unable to grant authorisation for the use of covert surveillance, covert human intelligence sources, property interference or obtaining and disclosing communications data to an officer from police force B (or to an officer or member of police staff from a partner organisation, such as a local authority); an application could only be authorised when made by a member of the authorising officer’s force. Similarly, requests for intrusive surveillance in relation to any residential premises, or for property interference, could only be authorised if the premises or property were in the area of operation of the authorising officer’s force. In addition, the arrangements necessary to manage a covert human intelligence source could not be divided between different police forces unless the source’s activities benefited more than one police force, in which case they could be divided between the forces benefiting.
122. Under the revised legislation, collaboration agreements under section 22A of the Police Act 1996 are able to vary these restrictions. (Collaboration agreements between Scottish forces under section 12 of the Police (Scotland) Act 1967 may also vary these restrictions in respect of operations on reserved matters). Explicitly this means that:
- a designated person may grant an authorisation to obtain and disclose communications data for persons holding offices, ranks or positions with another force provided both are subject to a section 22A collaboration agreement involving the two forces and the collaboration agreement provides for this to happen
  - applications for authorisations for directed surveillance or the use of covert human intelligence sources can now be granted by an authorising officer of one force to a member of another force provided both are subject to a section 22A collaboration agreement involving the two forces and the collaboration agreement provides for this to happen
  - intrusive surveillance authorisations in relation to any residential premises, or property interference authorisations, can now be granted in relation to premises or property in the area of operation of any of the forces subject to a section 22A collaboration agreement, to the extent that the collaboration agreement provides for this to happen. This means that a collaboration agreement should specify whether an authorising officer can authorise intrusive surveillance or property interference in the area of operation of any of the forces subject to the agreement, or only in some or parts of the areas of operation of the forces subject to the agreement, and
  - the arrangements necessary for the management of a covert human intelligence source can be divided between different police forces, provided they are party to a section 22A collaboration agreement which provides for this to happen.

123. These provisions do not permit authorising officers from police forces to grant authorisation on an application from an officer or member of police staff from a partner organisation, such as a local authority.
124. When RIPA is used pursuant to a section 22A collaboration agreement, it is important that lines of accountability are always clear so that both the relevant oversight Commissioners and potential claimants are able to establish which police force is responsible for particular operations. This may be by identifying a police force to be responsible for all uses of RIPA pursuant to a collaboration agreement, or by establishing a mechanism for identifying a police force to be responsible for particular uses of RIPA, for example in relation to particular types of operation. The collaboration agreement should explain which system is being adopted so that the oversight Commissioners and potential complainants know who to contact in connection with RIPA. If necessary, collaborating forces can make contractual provision under the s22A agreement to indemnify each other in respect of claims brought in relation to the unlawful conduct of particular officers or police staff.

# 9: Models of collaboration

## CHOOSING COLLABORATION PARTNERS AND COLLABORATION MODELS

125. There is no legal constraint on the choice of partners within a police collaboration agreement, and those choices will be influenced by a number of factors. Chief officers and policing bodies should consider the impact that making smaller, local collaborations might have on future opportunities for wider collaborative working.
126. Policing bodies may determine the governance arrangements best suited to their individual needs. There are a number of collaborative models that could be (and in some cases are being) applied both to operational functions and support services.

## AVOIDING BUREAUCRACY

127. Any new collaboration agreements should be managed in keeping with the principles of reducing bureaucracy. Greater efficiency should be an underlying objective of any collaboration but police forces and policing bodies should be mindful of any potential administrative and project management requirements of new working arrangements. This is especially the case where they form part of a complex programme of work. They should therefore ensure that they take account of the cumulative effect of those requirements when building the business cases for collaboration plans. Collaborations should equally be treated as opportunities to reduce bureaucracy when designing new ways of working.

## DIFFERENCE BETWEEN MUTUAL AID AND COLLABORATIONS

128. Section 22A of the Act gives more wide ranging power than the power contained in section 24 of the Act, which provides for aid to one police force by another (better known as mutual aid).
129. Mutual aid permits the chief officer of any police force to provide constables or other assistance to the chief officer of any other police force for the purpose of enabling the other police force to meet any ad hoc special demand on its resources.
130. The two clear distinctions between section 22A and section 24 of the Act are:
- section 22A envisages planned collaboration between police forces or policing bodies in the discharge of their functions or provision of support services, in the interests of the efficiency and effectiveness of one or more police forces or policing bodies. Section 24 is available when a situation arises which places a special demand on the resources of a police force, for example public order incidents requiring Police Support Units from forces neighbouring the incident. Section 22A goes further because it can be used to allow collaboration on any routine policing function where special demand is unlikely to occur, or on any support service provided by the policing body.
  - The circumstances of special demand will typically last for a relatively short period of time and once complete the resource will return to the home force. Collaborations can be designed to run for an indefinite period of time.

131. Thus it is possible that police forces might make a section 22A agreement between them which reduces the likelihood of their needing to use mutual aid by establishing arrangements for the joint resourcing of particular services, which might include the co-ordination of resources to respond to urgent demands.
132. Historically there have been cases of collaboration being undertaken through section 24 mutual aid arrangements rather than a section 22A collaboration agreement. The reasons for this are many and varied but include the ability to transfer direction and control to the chief officer of the force receiving mutual aid, which collaboration agreements formerly could not achieve. Section 22A of the Act now directly accounts for this issue. Section 24 agreements should continue to be used, and participation in a section 22A collaboration does not preclude the use of section 24 between the same parties, including in relation to the same business area, but only in the circumstances of special demand described above.



# 10: Funding

133. There is no single model for funding a collaboration. The arrangements will vary according to the particular circumstances of the collaboration and the parties to it. As described earlier, the principle aim of collaboration for police forces and policing bodies will be to increase the efficiency or effectiveness of police operations. This may include non-financial benefits - for example, providing greater resilience or closing the 'gap' in capacity and capability to deliver protective services. Collaboration is commonly pursued in response to financial pressures and accordingly funding can be one of the more difficult barriers (perceived or actual) to collaboration.
134. The Act states that a pre-condition of entering into a collaboration agreement is that the chief officers or policing bodies that are parties to that agreement each think that the agreement is in the interests of the efficiency or effectiveness of one or more policing bodies or police forces, and this is also the criterion for a policing body's decision to approve a force collaboration agreement by becoming a party to it. However, there is no legislative requirement regarding the sharing of costs and benefits in the Act. Accordingly, it is for each police force or policing body to ensure that the funding model (including the sharing of costs and benefits of collaboration) is appropriate.
135. Principles to consider:
- the funding model should be financially sustainable and stable
  - all parties should agree that the proposed share of costs and benefits is appropriate and equitable
  - financial contribution to the collaboration should not necessarily lead to greater control over the governance of the collaboration
  - the parties should recognise that value for money may not be demonstrated by reconfiguration of a single funding model into individual accounting systems: they should not lose sight of the combined benefits that the collaboration brings
  - the funding model should encourage participation in the collaboration
  - the funding model should not stifle innovation
  - the funding model should demonstrate value for money to the member organisations.
136. A common barrier to collaboration is the concept of the "net donor syndrome". This is especially prevalent for operational ventures and describes the perception that the resources committed to collaboration will be deployed away from the home force and into a partnering force's area. For example, a large force may believe that due to its size and investment in specialist areas it is able to manage an effective service delivery in isolation and therefore any collaborative resource will be deployed to improve a smaller partner's service. Conversely, a small force believes that due to the main demand being within a large force any resource they commit will only be deployed to the large force. It is important for all partnering forces to understand that a collaboration may not provide equal benefits in all parts to all participants or in total but is sometimes necessary for the greater, collective good. A policing body would not be acting outside its statutory duty under section 1 of the 2011 Act (to maintain an efficient and effective force for its own area) if its contribution to a collaboration in terms of resources, funding or liability was unequal, provided that the collaboration is considered to be to the benefit of at least one police force or policing body. Section 23A of the 1996 Act also uses the test of efficiency and effectiveness for entry into an agreement in relation to one or more policing bodies or forces.

137. As with any arrangement with a third party organisation it is necessary to define and agree how the costs of setting up and operating the collaboration and the benefits realised through it will be shared. Collaborating forces/policing bodies should also set out the agreed basis for sharing costs within the collaboration agreement, including accounting principles and based on the costs of the new collaborative service. Similarly, where benefits can be quantified and apportioned between partners, the agreed method of apportionment should be set out in the collaboration agreement. Benefits arising from collaboration will not necessarily be equal for all parties; this will particularly be the case where benefits are non-cash releasing. Beneficiaries of operational collaborations may change over time as patterns of crime and priorities change; accordingly it may not always be possible to apportion benefits accurately at the outset of collaboration

# 11: Workforce arrangements

## GENERAL

138. This part of the Guidance provides advice on implementing those aspects of collaboration that relate to the workforce and people management arrangements in forces and policing bodies. It sets out a framework and approach to this and where appropriate refers to other sources of information or guidance that may be helpful.
139. All aspects of terms and conditions, working arrangements and policies must be taken into account as part of developing and implementing collaboration.
140. It is also essential that consideration is given to who will be responsible and accountable for people-related decisions and actions in the collaboration unit and that they are clearly identified (this will be a consideration in managing risks and identifying senior risk owners). For example, line and other management responsibilities including reporting arrangements and performance management, to whom grievances and complaints should be addressed and who has responsibility for actions and decisions that may result.
141. When bringing together police officers and/or police staff from forces into a collaboration unit, consideration needs to be given to how their move to the unit will be implemented.
142. The agreement between the seconded person and their home force should be a requirement of the collaboration agreement but would not form part of the collaboration agreement itself.
143. Under the **Equality Act 2010**'s Public Sector Equality Duty, police forces must give due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations. Proper consideration should be given to eliminating discrimination and promoting equality in all aspects of a collaboration, including for officers or staff who are or may become disabled or pregnant. In line with the public sector duty to promote equality, as part of the development of a collaboration police forces/policing bodies should undertake Equality Impact Assessments in consultation with both internal and external stakeholders, such as representatives from force Diversity Staff Support Groups or Associations and from the police staff associations and trade unions and community representatives who can provide an external perspective.
144. The police staff associations and trade unions must be involved in the consideration, development and implementation of workforce arrangements and consulted where any changes to these are considered.

## ACTIONS

145. The following actions should be taken when considering, developing and implementing collaboration:

- ensure that all terms and conditions, workforce arrangements and policies are identified and assessed
- ensure that all differences in force arrangements are identified and assessed. Forces should then consider whether and how any changes to these could be made to reflect the circumstances in which officers and police staff from different forces are operating together in collaboration
- consult with representatives from the police staff associations and trade unions to discuss whether and how arrangements could be developed
- ensure that all responsibilities and accountabilities for people management, decisions and actions are identified, assessed and clarified
- establish arrangements to ensure regular contact is maintained with officers'/staff's home forces where applicable and that HR records are kept up-to-date (in accordance with regulation 15 of the Police Regulations 2003)
- consider carefully the length of a collaborative arrangement. For example, it may not be in the best interest of the collaboration or of the officers and police staff concerned to make changes if the collaboration is short-term. Conversely, the risks associated with workforce arrangements may be greater in a longer-term collaboration
- identify and reflect the contractual and legal requirements if changes to terms and conditions are proposed, including which are determined nationally and which subject to local agreement
- collaborating parties should ensure that any changes agreed are clear and transparent and communicated effectively to officers and police staff.

## POLICE OFFICERS

146. The pay and terms and conditions of service for police officers are set out in police regulations and determinations. Most of these apply uniformly across England and Wales, but the provisions allow for some local variation. When developing collaboration arrangements forces should ensure that any differences in remuneration arrangements that are locally determined have been considered.

147. Vicarious liability for wrongful actions of police officers and the responsibility for dealing with public complaints, conduct and death or serious injury matters and grievances are associated with direction and control. However it should be noted that the bringing of disciplinary proceedings for misconduct or action under the unsatisfactory performance or attendance procedures remains the responsibility of an officer's home force. It is therefore important that the collaboration agreement makes provision for which chief officer is to exercise direction and control of any police officers who are to discharge functions on behalf of another force. This includes explicitly stating if direction and control is not to change from the home force. Depending upon the terms of the collaboration, direction and control may pass to a different chief officer under different circumstances.

148. In the case of public complaints about the quality of service provided, disciplinary, performance and attendance issues and grievances, consideration needs to be given to the policies and procedures that apply, and to how liability issues are handled and any costs paid, in accordance with statutory requirements. It is important to recognise that all forces and, where appropriate, policing bodies involved may have duties, and that responsibilities for investigation and for implementing any necessary action may not rest with the same force/policing body. The appropriate authority for the purposes of recording complaints against police officers working in a collaboration will be the chief officer who has direction and control over them, except in the case of a chief officer, whose policing body retains that role. See also Legal duties and liability for breach below.
149. In any collaboration it is important that consideration is given to ensuring that all officers taking part should not be disadvantaged in relation to career development and accessing promotion, and that their service in the collaboration project is properly taken into account. The forces involved need to agree clearly and communicate responsibilities, including for acting as promotion authority (normally the Home force) and for reporting and assessment (which may transfer with direction and control). Particularly careful consideration is needed of the feasibility of operating dual promotion pathways in cases where both OSPRE Parts 1 and 2 and the National Police Promotion Framework are in use amongst forces and officers involved in a collaboration. But it is important to recognise that where officers have already started down a promotion pathway they should not be required to change it.
150. Forces must consider the appropriate arrangements for pensions. In the case of officers permanently transferring from one force to another, responsibility for the officer's pension is passed to the receiving force and it should receive from the sending force a certificate of pensionable service for the officer. Where an officer is seconded to another force, the responsibility for the officer's pension remains with his/her home force.
151. Consideration also needs to be given to ensuring all police officers in a collaboration are trained to appropriate common minimum standards.

## **POLICE STAFF**

152. Pay, terms and conditions for police staff are set out in contracts of employment in each force and are a matter for the employing policing body or, eventually, the employing chief constable. In the majority of forces in England and Wales, the Police Staff Council Pay and Conditions of Service handbook is incorporated into contracts of employment. The Handbook sets out the nationally agreed pay spine and terms and conditions of service, which can be varied by local collective agreement. Different contractual arrangements apply in the MPS and some other forces.
153. When bringing together police staff from more than one force, it is possible that terms and conditions and arrangements will vary. It is important that forces consider properly the impact that any difference (including, for example, differences in approach to career development and performance issues) may have on the effectiveness of the collaboration and the police staff within it as well as any legal implications that may arise, such as equal pay. Consideration also needs to be given to ensuring all police staff in a collaboration are trained to appropriate common minimum standards.

154. In the case of police staff transferring to a new service provider, or from one policing body/force to another, particularly if as part of a transfer of functions, consideration must be given to the application of TUPE or of the principles of TUPE (through the application of the **Cabinet Office Statement of Practice on Staff Transfers in the Public Sector**).
155. The Local Government Pension Scheme (LGPS) applies to all police staff in England and Wales, except those working in the MPS. Therefore where police staff other than those in the MPS are transferred between forces they will remain entitled to continued membership of the LGPS. In any transfer of police staff consideration should be given at an early stage to responsibility for the payment of employer pension contributions and the administration of members' pension rights. The relevant pensions administrators should be involved. In the case of bulk transfers prior notification must be provided to the relevant pension fund administrators and actuaries. Particular care must be taken in the case of pensions where police staff transfer to or from the MPS. The **Cabinet Office Statement of Practice on Staff Transfers in the Public Sector and its Annex, A Fair Deal for Staff Pensions**, should be consulted.
156. Where consideration is given to changes to terms and conditions for police staff (which must be agreed between the employer and his/her employee), proper account must be taken of the relevant statutory requirements. Where it is appropriate to make such changes they need to be clearly and appropriately recorded.

## 12: Legal duties and liability for breach

157. As an overarching principle it must be noted that a collaboration agreement cannot displace the general law governing the conduct of police forces or policing bodies. So, for example, any agreement must be consistent with the Police Regulations in force from time to time, arrangements for the promotion of officers remain governed by the Police (Promotion) Regulations, pension matters remain subject to the Police Pensions Regulations, and so on.
158. Employment law applies to police staff but not to most police officers who are office holders rather than employees (note that BTP and CNC officers exceptionally have employment contracts as well as holding the office of constable). Police officers are, however, deemed to be employees for the purposes of certain legislation, eg in respect of discrimination and health and safety.
159. The actions of police officers and staff working under a collaboration agreement could give rise to legal action by colleagues or third parties in these areas, and also under the law of tort where, for example a member of the public suffers personal injury or damage to property as a result of an officer's negligence. The liability of police forces or policing bodies for the acts of officers and staff is in this part of the Guidance. Other legal issues to consider when entering into a collaboration agreement, including information management, health and safety, tax, employment and procurement, are also addressed in this part of the Guidance. However, a full analysis of all the legal issues that may arise is outside the scope of this Guidance.

### **VICARIOUS LIABILITY FOR UNLAWFUL ACTS OF POLICE OFFICERS AND STAFF**

160. Under section 88 of the Act a chief officer is vicariously liable for the unlawful conduct of the police officers under his or her direction and control, including officers of another force who are under his or her direction and control as part of a collaboration agreement. There is similar but separate provision in relation to liability for unlawful discrimination, and there are also specific provisions in relation to health and safety at work – these areas are discussed below.
161. Because of the significance of direction and control in determining where liability rests, collaboration agreements should be absolutely clear as to which chief officer has direction and control. Complex arrangements by which different officers in a collaborative team are under the direction and control of different chief officers, or officers are under the direction and control of different chief officers in different circumstances, are best avoided if at all possible.
162. Section 88 and the provisions in discrimination legislation providing for liability on the part of chief officers do not apply to police staff. The policing body or the chief constable that employs them remains vicariously liable for their unlawful conduct, regardless of whether they are operating under the direction and control of the chief officer of another force.
163. Where the operation of the law on vicarious liability could result in unfair consequences for a particular force or policing body, consideration should be given to drafting the collaboration agreement so as to mitigate this. This could be done by providing for one force or policing body to indemnify another in respect of a particular risk in its entirety, or for damages to be shared, possibly according to the apportionment formula used to determine funding. The implications of such indemnity provisions for the parties' insurance cover should be considered, including the need to discuss any proposed provisions with the respective insurers.

164. In agreements involving the sharing or lending of personnel, a collaboration should consider including provisions which relate to the liability for personal injury claims by those personnel. These should include provisions in collaboration agreements with another force or policing body to mitigate against claims by personnel who may be injured during the course of their work during which they are under the direction and control of the chief officer of another force. They may also include positive obligations in respect of the health and safety of shared or transferred personnel and arrangements to monitor compliance with those obligations. Consideration should also be given to arrangements where an officer or a member of police staff working in a collaboration also continues to perform duties for their home force.

## DISCRIMINATION

165. The **Equality Act 2010** contains specific provision on the liability of chief officers and policing bodies. Under sections 42 and 43 a police officer is treated as an employee of the chief officer who has direction and control over him or her, and anything done by the officer in the course of his or her employment is treated as if it had also been done by the chief officer, creating a form of vicarious liability.

## HEALTH AND SAFETY

166. Particular consideration needs to be given to the duties owed in respect of the health and safety of police staff and officers working under a collaboration agreement outside their home force. Any case of a breach of health, safety and welfare duties may involve a range of different responsibilities and liabilities, eg relating to employers' liability or occupiers' liability. Section 51A of the **Health and Safety at Work etc Act 1974** provides that the chief officer responsible for the health, safety and welfare of a police officer or civilian employee working under a collaboration agreement will be the chief officer who has direction and control over that officer (this change was brought about by the 2011 Act).

167. Criminal and civil liabilities may arise for the organisations involved from breaches of health and safety duties and it is therefore important to establish clear areas of responsibility and means of communicating health and safety policies and procedures. Chief officers and policing bodies providing officers or police staff under a collaboration agreement will need to seek assurance that the appropriate health, safety and welfare arrangements are in place for them, therefore among the duties that all parties in a collaboration should consider include compliance with the Health and Safety at Work etc Act 1974 although the collaboration should always seek further advice with regard to individual circumstances.

168. While collaborating forces can make provision in a collaboration agreement to indemnify each other in respect of civil liability that may arise in relation to health and safety matters, they cannot contract out of any criminal liability, whether under the 1974 Act or the **Corporate Manslaughter and Corporate Homicide Act 2007**. Such arrangements may need to take account of circumstances where the duties of officers or police staff are divided between the collaboration and their home force.



## DEALING WITH LITIGATION

169. The collaboration agreement should make provision for handling claims made against multiple forces or policing bodies in relation to the same incident. It is particularly important to try to avoid a situation where more than one force or policing body is involved in actively responding to a liability, as that is likely to lead to duplication of effort and waste of resources, as well as the danger of inconsistent responses between forces or policing bodies.
170. Where split liability is unavoidable, the forces or policing bodies involved must liaise effectively to minimise the extent to which the way that each of them handles the proceedings prejudices the position of the others. This may arise, for example, where a police officer from one force is under the direction and control of the chief officer of another – if he acts in a way that gives rise to liability under health and safety legislation and also in negligence, the chief officer of his home force and the chief officer who has direction and control will each be a party to the different aspects of the claim and should coordinate their responses.

## INFORMATION MANAGEMENT

171. Police forces and policing bodies entering into collaboration agreements need to ensure that all parties are aware of and comply with their information law obligations. In particular, the delivery of services under collaboration agreements needs to comply with the **Data Protection Act 1998** (the DPA) and the agreement itself should facilitate the effective handling of requests made under the **Freedom of Information Act 2000** (the FOIA) and the **Environmental Information Regulations 2004**.
172. Particular issues that may arise include the sharing of personal data between parties to a collaboration agreement, responding to requests under DPA or FOIA where more than one party to the agreement holds the same data/information, and the handling of FOIA requests in relation to the collaboration agreement itself. When considering the implications of a collaboration agreement on information management and the requirements of the DPA and FOIA please refer to your Chief Information Officer (CIO).

## TAXATION

173. The taxes which are mostly likely to be an issue for a collaboration agreement are VAT, stamp duty land tax and PAYE.

## VAT

174. The two most likely supplies which would be the subject of a collaboration agreement are the supply of police staff and a supply of other services most principally in relation to land. Taking these in turn:

## SUPPLIES OF STAFF

175. No VAT is due for non-business activity. Services in the form of the supply of officers or police staff may qualify as non-business activity if there is no possibility that similar services might be supplied by the private sector. The supply of police officers should not qualify in this respect, eg a policing body providing officers to another policing body to provide a firearms capability would not need to consider a private sector market for the service to be provided so there is no competition and no VAT-able supply or business activity.
176. There may be the provision of police staff between police forces as part of a collaboration agreement whereby a member of police staff is seconded. Here the supply could be in competition with the private sector and therefore this could be a business activity. If so, VAT would be chargeable with no minimum threshold. To avoid VAT being an additional cost to the recipient police force, a force is entitled to apply to the Treasury for the recovery of this VAT under section 33 of the **Value Added Tax Act 1994**.
177. This procedure can be avoided if the provision of police staff is done with a view to the providing force not deriving any financial gain, and where the force or policing body receiving the employee moves the secondee onto its own payroll for the duration of the secondment or loan and discharges the providing force's obligations to pay PAYE, pensions and the like. In such circumstances, HM Revenue & Customs' VAT staff hire concession, even after the amendments in April 2009, should still exclude the requirement to charge VAT.

## SUPPLIES OF LAND

178. If, for example, one policing body owns a property and allows another policing body to make partial use of it, the first will often pay all of the overhead costs and recharge a certain proportion to the second policing body. It is likely that HMRC would agree that such a supply was a non-business supply, such that no VAT is due, but VAT could be charged if both parties agreed. To fall within this, the recharge would need to be on the basis of there being no element of profit or return.

## STAMP DUTY LAND TAX

179. There is no absolute exception from stamp duty land tax (SDLT) for police forces or policing bodies taking property interests such as acquiring freeholds or being granted a lease. If and to the extent any consideration is charged between two police forces/policing bodies for an actual transfer of land or a lease, this would ordinarily give rise to SDLT compliance requirements. If, however, the land transaction took place between police forces and was in connection with the re-organisation of the appropriate police forces' or policing bodies' functions, then the specific exemption at section 66 of the Finance Act 2003 should exclude the transaction from charge. The exception where available does not remove the reporting requirements and an SDLT return would still normally need to be submitted and the exemption claimed, subject to certain threshold exceptions.

## PAYE & NATIONAL INSURANCE

180. Responsibility for making PAYE and NI payments to HMRC rests with the organisation which pays the seconded on their payroll. Similarly, that organisation is responsible for ensuring that PAYE and NI are accounted for on taxable expense and that P11ds are issued in respect of benefits in kind. Therefore, if more than one organisation will be making payments to the seconded, either in relation to salary or expenses, it is important that the agreement includes a clause ensuring that the organisation who has payroll responsibility is advised of any taxable payments and benefits in kind paid to the seconded so that the correct tax treatment may be applied.
181. The current rate of employer's NI which is due by all employers both in and outside the public sector is 13.8% of an employee's earnings in excess of certain threshold levels. Any agreement should not overlook whose cost this NI charge will be.

## PROCUREMENT

182. As stated earlier the scope of a policing body collaboration may include one policing body providing "goods and services" to one or more forces or policing bodies. The provision in section 1 of the **Local Authorities (Goods and Services) Act 1970** for policing bodies to purchase goods and services from other local authorities (ie, local councils) is unaffected by section 23A of the Act. However section 18 of the Police Act 1996 (supply of goods and services) prohibits a policing body from entering into an agreement with another policing body under section 1 of the 1970 Act in respect of a matter which could be the subject of a policing body collaboration agreement. Therefore, between policing bodies, the machinery of collaboration agreements essentially replaces section 1 of the 1970 Act.
183. Collaboration agreements are ostensibly covered by EU procurement rules because there is no absolute exemption for public authorities (which may be economic operators). However, they may fall under the Teckal exemption or the Commission v Germany principle. See Procurement below (noting that these apply more generally than the context of shared services and private sector involvement). The applicability of EU procurement rules to the provision of support from one policing body to another, or from one policing body to a police force, under a collaboration agreement would depend on the nature of the support provided and the relationship, and the above exemptions should be considered in such arrangements. It should not be assumed that these exemptions are relevant to arrangements between policing bodies, at least where the proposed contract services are ones for which the private sector might be able to compete. The award of contracts by parties to a policing body collaboration agreement, to a third party for the joint purchase of goods and services and/or the carrying out of works is subject to EU procurement rules and, in particular, to the **Public Contracts Regulations 2006**. There are financial thresholds in the regulations and there is less regulation of procurements which do not exceed the relevant financial threshold. Irrespective of the threshold limit, the parties to a policing body collaboration agreement must act in accordance with the EU principles of transparency and non discrimination in the award of contracts for goods and services.
184. Further details can be found in the section on Procurement.

# 13: Complaints, conduct and performance

185. Where a collaboration agreement involves transferring direction and control over police officers to a different chief officer, this will change the way in which public complaints, conduct matters and death or serious injury (DSI) matters relating to those officers are managed. There are also implications for the way any misconduct or unsatisfactory performance should be dealt with.

## COMPLAINTS

186. The handling of public complaints, conduct matters and DSI matters under the **Police Reform Act 2002** and associated regulations are dependent upon which chief officer has direction and control of the police officers or staff members involved.

187. In the area of conduct there are three concepts that have particular importance:

- membership of a force
- the appropriate authority, and
- direction and control.

188. Where direction and control is passed from one chief officer to another, as is permitted under a collaboration agreement, there are implications for how public complaints, conduct and DSI matters (as defined in the Police Reform Act 2002) are dealt with. The chief police officer of the force to whom direction and control is passed under a collaboration agreement becomes the ‘appropriate authority’ (as defined in the Police Reform Act 2002) and assumes the duty and responsibility to handle public complaints, conduct matters and DSI matters in the same way as would happen if these related to his or her own force - eg, the responsibility to record complaints or recordable conduct matters and the referral of such matters or DSI matters to the Independent Police Complaints Commission (IPCC). As in their own force, a chief officer may delegate the authority to discharge roles and responsibilities under the Police Reform Act 2002.

## CONDUCT AND PERFORMANCE

189. In relation to police officers, the chief officer of the force to whom direction and control has passed should assess and investigate misconduct and performance matters. If it is determined that there is a case to answer in respect of misconduct but not gross misconduct, then (subject to paragraph 192) disciplinary proceedings should be conducted by an officer from the force whose chief officer has direction and control under the collaboration agreement. The same principle applies if there is a case to answer in respect of unsatisfactory performance or attendance, but not gross incompetence. The chief officer of the force to whom direction and control has passed may also suspend an officer where the statutory conditions are met.

190. If the chief officer of the force with direction and control determines that there is a case to answer in respect of gross misconduct, the matter should be referred to the chief officer of the force of which the officer is a member (the ‘home force’) for disciplinary proceedings. Potential fast track cases should also be referred to the home force, as should cases of gross incompetence.

191. Cases may arise where police officers from different forces are involved in the same incident. The regulations allow disciplinary proceedings to be conducted by officers from another force and therefore, even in cases of gross misconduct, the officers could, if appropriate, have their cases heard in the same set of proceedings.

192. Where officers have a final written warning in force at the date of the assessment of their conduct and there is a case to answer in respect of misconduct, or they are subject to a final written improvement notice and there is a case to answer in respect of unsatisfactory performance or attendance, the case should be referred to the chief officer of their home force. The chief officer of the force to whom direction and control has passed should always check with the home force to establish whether there is a current final written warning or improvement notice on an officer's record prior to proceeding with the disciplinary or unsatisfactory performance procedures beyond the investigation stage.
193. The early involvement of a police friend, as defined within the Police (Conduct) and Police (Performance) Regulations, is fundamental to getting the understanding and co-operation that is necessary for this dimension of collaboration to work effectively.
194. The appropriate authority for a chief officer will remain the Police and Crime Commissioner or Mayor's Office for Policing and Crime in all cases.
195. In relation to members of police staff, forces will need to agree (as part of their collaboration agreement) how performance and conduct matters should be dealt with. This should be agreed with the recognised trade unions. This is because the Police Conduct Regulations and Police Performance Regulations only apply to police officers and, as a result, arrangements for dealing with misconduct and unsatisfactory performance of police staff members varies from force to force.

## WHISTLEBLOWING

196. The **Public Interest Disclosure Act 1998** (PIDA) provides a framework of legal protection for individuals who disclose information so as to expose malpractice and matters of similar concern and protects these individuals (known as "whistleblowers") from victimisation and dismissal.
197. As employees, police staff have been covered by PIDA since its inception; this was not the case for police officers as they are officers of the Crown, not employees. Section 37 of the Police Reform Act 2002 amended the **Employment Rights Act 1996** to allow for police officers (and police cadets) to be regarded as 'employees' for the purpose of giving them the protection afforded by PIDA. The amendments also made 'the relevant officer' the employer for the purposes of PIDA. For a member of a police force that 'relevant officer' is the chief officer of that force.
198. Given the legal structure within which whistleblowing operates, a collaboration will not change the "employee"/"employer" relationship that provides the necessary protection against victimisation and dismissal. Thus even if police staff are under the direction and control of another chief officer it is the chief officer of their home force where they are members who must give the protection. Therefore within a collaboration agreement it is highly recommended to set out that the lines of reporting for police officers or police staff to be able to report "whistleblowing" matters are back to their home force.
199. By clearly stating in collaboration agreements that the reporting lines of police officers and police staff lie with their home force, the risk of uncertainty or confusion may be effectively minimised.

# 14: Procurement

200. Arrangements for collaborative procurement should be agreed and set out in a collaboration agreement. This part aims to provide general considerations only and the individual circumstances of an individual collaboration project should always be taken into account. See *Legal duties and liability for breach* for an outline of the applicability of EU procurement rules to police collaboration in general.
201. Plans for support between policing bodies or police forces under a collaboration agreement should always be considered carefully in terms of whether they might fall within the scope of EU procurement rules since there is a strong likelihood that many of the functions provided by policing bodies may qualify for competition with the private sector.
202. **Important notice:** For complex procurements, for example those involving the appointment of private sector partners, professional procurement and legal advice should be sought. Legal advice should also be sought before relying on any particular exemptions to EU procurement rules.

## FACTORS AFFECTING THE APPLICABILITY OF EU PROCUREMENT LAW

203. Some collaborative arrangements may involve the establishment of a dedicated shared services organisation either within the public sector, or in partnership with the private sector, to provide the services. The extent to which such services must be subjected to competition depends on a number of factors, including but not limited to:
- **whether or not the collaboration is a separate legal entity.** Procurement rules do not apply to arrangements between organisations which are part of the same legal person
  - **if it is a separate entity, whether the ‘in-house’ exception applies.** Exceptions to the rules include arrangements between organisations which, although legally separate, are so closely connected that it would be inappropriate to make their dealings subject to the rules, and are for procurement purposes considered to be indistinguishable. This is the “in-house exception” established in the case of *Teckal* (Case C 107/98). Subsequent cases confirming the principle include *Case C-480/06 Commission v Germany*, which makes clear that *Teckal* applies to mutual aid arrangements so long as the arrangement is “governed solely by considerations and requirements relating to the pursuit of objectives in the public interest”; and there is no differential impact on one private sector entity as opposed to another. This may be the case with respect to arrangements made by forces or policing bodies. *Brent London Borough Council v Risk Management Partners Ltd and London Authorities Mutual Ltd and Harrow London Borough Council* [2009] EWCA Civ 490 were also relevant, and showed that entities owned by multiple contracting authorities could be within the *Teckal* exemption, and that the more independently an entity was free to act, the less likely it was to be within the exemption. *Brent* also established firmly that the exemption would be strictly interpreted and that the onus would be on the contracting authority to establish that the exception applied, therefore this is an area where considerable caution should be exercised. For service contracts, contracting authorities may also wish to take advice on the application of Reg.6(2)(1) - the exemption which applies to award on the basis of an exclusive right pursuant to published law, regulation or administrative provision which is compatible with the EC Treaty
  - **the nature, scope and intention of the process undertaken to appoint or establish the shared services organisation.** For example:

- the scope of the original OJEU notice and contract
- whether this notice envisaged the provision of services to other bodies
- whether a contract to supply such services is being let under a framework agreement or entered into by a Central Purchasing Body.

For example, in the case where a contract has been constructed as a framework agreement, provided that the proposed services, arrangements and beneficiaries all fall within the scope of the original OJEU Notice and the ensuing competitive process which led to the framework being set up, then only the limited competition required by the framework will be necessary.

- **legal advice services across a broadly defined customer community.** Legal advice should be sought on a case by case basis if a shared services organisation is being set up or where the procurement is from an already established organisation.

## **WORKFORCE MATTERS IN PROCUREMENT**

204. Particular consideration should be given to procurement plans which involve the transfer of police staff to the private sector. To encourage and safeguard good employment practice, the Cabinet Office has published a set of voluntary **Principles of Good Employment Practice** that have been developed in discussion with trade unions, suppliers and public service employer organisations. Police forces and policing bodies should also consult the **Cabinet Office Statement of Practice on Staff Transfers in the Public Sector**.

# 15: Glossary

Term	Description
BTP	The British Transport Police.
Chief Officer	The most senior ranking police officer in a police force. This term refers to any of the chief constables of the police forces in England and Wales, the Commissioner of the Metropolis or the Commissioner of the City of London Police. Although some other senior ranking officers may be referred to as being of “chief officer rank”, for the purposes of this Guidance, they are not included under the definition.
CIO	Chief Information Officer.
CNC	The Civil Nuclear Constabulary.
Collaboration agreement	A collaboration agreement completed by a police force or policing body in line with the requirements of section 22A etc of the Act.
DPA	The Data Protection Act 1998.
EU procurement rules	European Union (EU) Procurement Directives, which set out a legal framework for public procurement, the purpose of which is to open up the public procurement market and to ensure free movement of goods and services within the EU. The overriding principles of the European Treaty and to ensure compliance in letting contracts include: Equality of Treatment, Non-discrimination and Transparency.
FOI	Freedom of Information – under the Freedom of Information Act any person making a request for information to a public authority is entitled to be informed in writing by the authority whether it holds information of the description specified in the request and, if that is the case, to have that information communicated to him, unless one of the statutory exemptions applies. A request for information must be answered within 20 working days.
FOIA	The Freedom of Information Act 2000.
HMIC	Her Majesty’s Inspectorate of Constabulary.
HMRC	Her Majesty’s Revenue and Customs.
Home force	The force from which an officer or member of police staff leaves in order to join a collaboration.
ICT	Information and communications technology
IPCC	Independent Police Complaints Commission
Member of a police force	Police officer or special constable of a police force (their “home force”, as contrasted with a force with which they may be working under a collaboration agreement).
MOPC	The Mayor’s Office for Policing and Crime
MPS	Metropolitan Police Service
OJEU	The Official Journal of the European Union (formerly OJEC) - the publication in which all contracts from the public sector which are valued above a certain financial threshold according to EU legislation, must be published.



PABEW	Police Advisory Board for England and Wales
Partner organisation	Any non-police organisation with which the police work on a regular basis, such as local authorities.
PCC	Police and Crime Commissioner
PCP	Police and Crime Panel
PIDA	The Public Interest Disclosure Act 1998.
Police officer	Sworn member of a police force holding the office of “constable” (“constable” is separately used as a rank).
Police staff	Employees of policing bodies or chief constables who are not warranted police officers.
Policing body	“Policing body” refers to police and crime commissioners, the Mayor’s Office for Policing and Crime, and the Common Council for the City of London (in its capacity as a police authority). In respect of the collaboration provisions in the Act, the term also includes the police authorities for British Transport Police and the Civil Nuclear Constabulary.
PSNI	The Police Service of Northern Ireland.
RIPA	The Regulation of Investigatory Powers Act 2000.
Section 22A	Unless dictated by context, “section 22A” may denote sections 22A to 23I of the Police Act 1996, thus “section 22A agreement” may refer either to an agreement involving police forces (section 23) or to one involving policing bodies (section 23A).
Secondment	For the purposes of this Guidance, “secondment” refers to arrangements, such as under a collaboration agreement, where an officer or member of police staff is on loan or posted to a partnership organisation which may include another police force or policing body. This definition is in line with the common usage of the term in the police service for temporary arrangements of this kind. This is not the same as the use of the term in the Police Act, which refers only to services away from the home force under the provision of section 97 of the Act, which specifies that “relevant service” applies to particular receiving organisations set out in that section. A secondment to an organisation other than a police force or policing body would not fall within the terms of a collaboration agreement.
The Act	The Police Act 1996.
TUPE	The Transfer of Undertakings (Protection of Employment) Regulations 2006.



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