



# Police, Public Order and Criminal Justice (Scotland) Act 2006

2006 asp 10

## PART 1 **S**

### POLICE

## CHAPTER 2 **S**

### COMPLAINTS AND MISCONDUCT

#### *Other functions*

#### <sup>F1</sup>42 **General functions of the Commissioner **S****

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##### Textual Amendments

- F1** S. 42 repealed (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), **Sch. 8 Pt. 1**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)

#### <sup>F2</sup>42A **Complaints against the Commissioner **S****

- (1) The Commissioner must maintain suitable arrangements for the handling of any complaint made to the Commissioner expressing dissatisfaction about an act or omission by the Commissioner or by any member of the Commissioner's staff.
- (2) Before making such arrangements, the Commissioner must seek the views of others as to what those arrangements should be.]

*Changes to legislation: Police, Public Order and Criminal Justice (Scotland) Act 2006, Cross Heading: Other functions is up to date with all changes known to be in force on or before 29 December 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

### Textual Amendments

- F2** S. 42A inserted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), ss. 69, 129(2) (with s. 100); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121, arts. 1(1), 11)

## 43 Reports to the Scottish Ministers **S**

- (1) As soon as practicable after the end of each financial year, the Commissioner must make a report to the Scottish Ministers on the carrying out of the Commissioner's functions during that year.
- (2) The Commissioner must also make such reports to the Scottish Ministers about matters relating generally to the carrying out of the Commissioner's functions as they may, from time to time, require.
- (3) The Commissioner may, from time to time, make such other reports to the Scottish Ministers as the Commissioner considers appropriate for drawing their attention to matters which—
  - (a) have come to the Commissioner's notice; and
  - (b) are matters which the Commissioner considers should be drawn to their attention by reason of their gravity or of other exceptional circumstances.
- (4) The Commissioner must prepare such reports containing advice and recommendations as the Commissioner considers appropriate for the purpose of carrying out the function under section <sup>[F3]</sup>40A(2).
- (5) The Scottish Ministers must lay before the Parliament and arrange publication of—
  - (a) every annual report under subsection (1) received by them; and
  - (b) every other report under this section received by them (but only if and to the extent that the Scottish Ministers consider it appropriate to do so).
- (6) The Commissioner must—
  - (a) send copies of every annual report under subsection (1) to <sup>[F4]</sup>the Authority, the chief constable and the inspectors of constabulary appointed under section 71 of the [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#)];
  - (b) send copies of every report under subsection (4) to <sup>[F5]</sup>the Authority, the chief constable and] the Scottish Ministers.
- (7) The Commissioner may send a copy of any report made under this section to any person the Commissioner thinks fit.
- <sup>[F6]</sup>(8) Nothing in this section requires or authorises the Commissioner to report on the carrying out of a particular investigation carried out on the direction of the appropriate prosecutor in pursuance of paragraph (b) of section 33A.]

### Textual Amendments

- F3** Word in s. 43(4) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [Sch. 7 para. 33\(7\)\(a\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)

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- F4** Words in s. 43(6)(a) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [Sch. 7 para. 33\(7\)\(b\)\(i\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F5** Words in s. 43(6)(b) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [Sch. 7 para. 33\(7\)\(b\)\(ii\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F6** S. 43(8) inserted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [Sch. 7 para. 33\(7\)\(c\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)

#### 44 Provision of information to the Commissioner **S**

- (1) [<sup>F7</sup>The Authority and the chief constable] must, at such times, in such circumstances and in accordance with such requirements as may be set out in regulations made by the Scottish Ministers, provide the Commissioner with all such information and documents as may be specified or described in regulations so made.
- (2) [<sup>F8</sup>The Authority and the chief constable] must—
- (a) provide the Commissioner with all such other information and documents specified or described in a notification given by the Commissioner to [<sup>F9</sup>the Authority or, as the case may be, the chief constable]; and
  - (b) produce to the Commissioner all such evidence and other things so specified or described,
- as appear to the Commissioner to be required by the Commissioner for the purposes of the carrying out of any of the Commissioner's functions.
- (3) Anything falling to be provided or produced by [<sup>F10</sup>the Authority or the chief constable] in pursuance of a requirement imposed under subsection (2) must be provided or produced in such form, in such manner and within such period as may be specified in—
- (a) the notification imposing the requirement; or
  - (b) in any subsequent notification given by the Commissioner to that person for the purposes of this subsection.
- (4) Nothing in this section requires [<sup>F11</sup>the Authority or the chief constable] to provide the Commissioner with any information or document, or to produce any other thing, before the earliest time at which it is practicable for [<sup>F12</sup>the Authority or, as the case may be, the chief constable] to do so.
- (5) A requirement imposed by any notification or regulations under this section may authorise or require information or documents to which it relates to be provided to the Commissioner electronically.

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#### Textual Amendments

- F7** Words in s. 44(1) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [Sch. 7 para. 33\(8\)\(a\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F8** Words in s. 44(2) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [Sch. 7 para. 33\(8\)\(b\)\(i\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)

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- F9** Words in s. 44(2)(a) substituted (1.4.2013) by Police and Fire Reform (Scotland) Act 2012 (asp 8), s. 129(2), **Sch. 7 para. 33(8)(b)(ii)**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F10** Words in s. 44(3) substituted (1.4.2013) by Police and Fire Reform (Scotland) Act 2012 (asp 8), s. 129(2), **Sch. 7 para. 33(8)(c)**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F11** Words in s. 44(4) substituted (1.4.2013) by Police and Fire Reform (Scotland) Act 2012 (asp 8), s. 129(2), **Sch. 7 para. 33(8)(d)(i)**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F12** Words in s. 44(4) substituted (1.4.2013) by Police and Fire Reform (Scotland) Act 2012 (asp 8), s. 129(2), **Sch. 7 para. 33(8)(d)(ii)**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)

#### Commencement Information

- I1** S. 44 wholly in force at 1.4.2007; s. 44 not in force at Royal Assent see s. 104; s. 44 in force at 1.1.2007 for specified purposes by S.S.I. 2006/607, **art. 3, Sch**; s. 44 in force so far as not already in force at 1.4.2007 by S.S.I. 2007/84, **art. 3(3)**

## 45 Power of Commissioner to issue guidance **S**

- (1) The Commissioner may issue guidance—
- (a) to [<sup>F13</sup>the Authority or the chief constable];
  - (b) to persons appointed to reconsider complaints,
- about the carrying out by the persons to whom the guidance is issued of any of the functions conferred on them by virtue of this Chapter.
- (2) Before issuing any guidance under this section, the Commissioner must consult—
- [<sup>F14</sup>(a) the Authority and the chief constable;]
  - (b) such other persons as the Commissioner thinks fit.
- (3) A person to whom guidance is issued under subsection (1) must have regard to that guidance in carrying out the functions to which the guidance relates.
- (4) The power conferred by subsection (1) to issue guidance includes power to vary or revoke any such guidance.

#### Textual Amendments

- F13** Words in s. 45(1)(a) substituted (1.4.2013) by Police and Fire Reform (Scotland) Act 2012 (asp 8), s. 129(2), **Sch. 7 para. 33(9)(a)**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F14** S. 45(2)(a) substituted (1.4.2013) by Police and Fire Reform (Scotland) Act 2012 (asp 8), s. 129(2), **Sch. 7 para. 33(9)(b)**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)

## 46 Disclosure of information by and to the Commissioner **S**

- (1) Information obtained by the Commissioner in connection with any of the Commissioner's functions may be disclosed by the Commissioner to any public body or office-holder (in Scotland, in any other part of the United Kingdom or in a country or territory outside the United Kingdom)—

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- (a) for any purpose connected with the carrying out of any of the Commissioner's functions; or
  - (b) for the purpose of enabling or assisting the public body or office-holder to carry out any function.
- (2) Information disclosed by the Commissioner under this section to any body or office-holder must not be further disclosed except—
- (a) for a purpose connected with any function of that body or office-holder; and
  - (b) with the consent of the Commissioner.
- (3) Consent under subsection (2) may be given—
- (a) in relation to a particular disclosure; or
  - (b) in relation to disclosures made in circumstances specified or described in the consent.
- (4) Any person may disclose information to the Commissioner if the disclosure is made for the purposes of the carrying out of any of the Commissioner's functions.
- (5) A disclosure under this section does not breach—
- (a) any obligation of confidence owed by the person making the disclosure; or
  - (b) any other restriction on the disclosure of information (however imposed).
- [<sup>F15</sup>(6) Nothing in this section requires or authorises the disclosure of any information relating to a particular investigation carried out by the Commissioner on the direction of the appropriate prosecutor in pursuance of paragraph (b) of section 33A (unless the appropriate prosecutor consents to such disclosure).]

#### Textual Amendments

**F15** S. 46(6) inserted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [Sch. 7 para. 33\(10\)](#); [S.S.I. 2013/51](#), [art. 2](#) (with transitional provisions and savings in [S.S.I. 2013/121](#))

#### [<sup>F16</sup>46A Protection from actions for defamation **S**

- (1) For the purposes of the law of defamation—
- (a) any statement made by the Commissioner or any of the Commissioner's staff—
    - (i) in carrying out a complaint handling review or in carrying out an investigation in pursuance of paragraph (b), (c) or (d) of section 33A;
    - (ii) in communicating with any person for the purposes of such a review or investigation;
    - (iii) in a report on such a review or investigation; or
    - (iv) in a report made under section 43,
 has absolute privilege;
  - (b) any statement made to the Commissioner or any of the Commissioner's staff in relation to an investigation carried out in pursuance of paragraph (b), (c) or (d) of section 33A has absolute privilege; and
  - (c) any statement made to the Commissioner or any of the Commissioner's staff in relation to a relevant complaint or a complaint handling review is privileged unless the statement is shown to have been made with malice.

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(2) In subsection (1), “ statement ” has the same meaning as in the Defamation Act 1996 (c.31). ]

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#### **Textual Amendments**

**F16** S. 46A inserted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), ss. **70**, 129(2) (with s. 100); [S.S.I. 2013/51](#), art. 2 (with transitional provisions and savings in [S.S.I. 2013/121](#), arts. 1(1), 11)

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 47A inserted by [2023 c. 41 s. 45\(3\)](#)