

*Draft Regulations laid before the Scottish Parliament under section 103(4)(a) of the Police, Public Order and Criminal Justice (Scotland) Act 2006, for approval by resolution of the Scottish Parliament.*

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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2013 No.**

**POLICE**

**The Police Investigations and Review Commissioner  
(Investigations Procedure, Serious Incidents and Specified  
Weapons) Regulations 2013**

*Made* - - - - 2013

*Laid before the Scottish Parliament* 2013

*Coming into force* - - 1st April 2013

The Scottish Ministers make the following regulations in exercise of the powers conferred by sections 41B(1)(b)(ii) and (c) and 41D of the Police, Public Order and Criminal Justice (Scotland) Act 2006(a) and all other powers enabling them to do so.

In accordance with section 41D(3) of that Act, they have consulted with the persons mentioned in paragraphs (a) to (g) of that subsection.

In accordance with section 103(4)(a) of that Act(b), a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

**Citation and commencement**

1. These regulations may be cited as the Police Investigations and Review Commissioner (Investigations Procedure, Serious Incidents and Specified Weapons) Regulations 2013 and come into force on 1st April 2013.

**Interpretation**

2. In these regulations “the 2006 Act” means the Police, Public Order and Criminal Justice (Scotland) Act 2006(c).

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(a) 2006 asp 10. Section 41B was inserted by section 64 of the Police and Fire Reform (Scotland) Act 2012 (asp 8). Section 41D was inserted by section 66 of that Act, as modified by S.S.I. 2012/253.  
(b) Section 103(4)(a) is modified by paragraph 33(15) of schedule 7 to the Police and Fire Reform (Scotland) Act 2012 (asp 8) and by paragraph 5 of schedule 3 to the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10).  
(c) 2006 asp 10.

### **Duty to refer to the Commissioner**

3.—(1) The chief constable must request the Commissioner to investigate any serious incident involving the police which is a circumstance involving—

- (a) a constable; or
- (b) a member of the police staff.

(2) The Authority must request the Commissioner to investigate any serious incident involving the police which is a circumstance involving a member of the Authority's staff.

(3) This regulation does not apply to—

- (a) a circumstance mentioned in regulation 6; or
- (b) a circumstance in or in consequence of which a person serving with the police has used a weapon specified in regulation 7.

### **Investigation of serious incidents**

4.—(1) Where the Commissioner receives a request from the Authority or the chief constable to investigate a serious incident involving the police (whether in pursuance of regulation 3 or otherwise) the Commissioner must—

- (a) decide whether to carry out an investigation; and
- (b) inform the Authority or (as the case may be) the chief constable of that decision.

(2) The Commissioner need not carry out an investigation of any serious incident involving the police unless—

- (a) it is a circumstance in or in consequence of which a person has died where—
  - (i) the person, at or before the time of death, had contact (directly or indirectly) with a person serving with the police acting in the execution of that person's duties; and
  - (ii) there is an indication that the contact may have caused (directly or indirectly) or contributed to the death; or
- (b) the Commissioner otherwise decides that such an investigation is necessary.

(3) Where the Commissioner decides not to carry out an investigation the Commissioner may refer the matter back to the person who requested the investigation with such recommendations as are considered appropriate.

### **Co-operation and assistance**

5.—(1) A relevant person must, where required to do so by the Commissioner for the purposes of an investigation under section 33A(c) or (d) of the 2006 Act<sup>(a)</sup>—

- (a) produce, in a form acceptable to the Commissioner, any document, record or other information the Commissioner may require;
- (b) permit the Commissioner or a member of the investigation staff to—
  - (i) enter any premises which are used by the Authority or the Police Service;
  - (ii) inspect those premises and anything on those premises which the Commissioner or, as the case may be, member of the investigation staff considers to be relevant to the investigation; and
  - (iii) remove from those premises anything which the Commissioner or, as the case may be, member of the investigation staff considers to be relevant to the investigation; and
- (c) provide such other assistance as the Commissioner may reasonably require.

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(a) Section 33A is inserted by section 62 of the Police and Fire Reform (Scotland) Act 2012 (asp 8).

(2) In this regulation—

(a) “relevant person” means—

- (i) the Authority;
- (ii) any member of the Authority’s staff;
- (iii) any constable; and
- (iv) any member of the police staff; and

(b) “member of the investigation staff” means a member of the staff of the Commissioner designated under paragraph 7B(1) of schedule 4 to the 2006 Act<sup>(a)</sup>.

**Circumstance which is a serious incident**

6. Any circumstance in which a person serving with the police has, acting in the execution of that person’s duties, used any item to—

- (a) attempt to cause a member of the public a serious injury; or
- (b) cause or attempt to cause a member of the public an injury which is not serious,

is specified for the purposes of section 41B(1)(c) of the 2006 Act.

**Specified weapon**

7. A straight, side-handled or friction lock truncheon (sometimes known as a baton) is a weapon for the purposes of section 41B(1)(b)(ii) of the 2006 Act.

St Andrew’s House,  
Edinburgh  
Date

*Name*  
A member of the Scottish Government

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(a) Paragraph 7B(1) is inserted by paragraph 33(17) of schedule 7 to the Police and Fire Reform (Scotland) Act 2012 (asp 8).

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision about investigations which may be carried out by the Police Investigations and Review Commissioner (“the Commissioner”) under Chapter 2 of Part 1 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (“the 2006 Act”) as amended by Chapter 10 of Part 1 of the Police and Fire Reform (Scotland) Act 2012.

Regulation 3 places a duty on the chief constable of the Police Service of Scotland (“the chief constable”) and the Scottish Police Authority (“the Authority”) to request the Commissioner to investigate incidents involving constables or staff under their control where those are “serious incidents” within the meaning given by the 2006 Act (subject to certain exceptions).

Regulation 4 establishes what the Commissioner must do on receipt of a request from the Authority or the chief constable to carry out a serious incident investigation, whether that request has been made in exercise of the duty in regulation 3 or not. In particular, this regulation grants the Commissioner discretion not to carry out an investigation following a reference from the Authority or chief constable, unless the incident referred involves the death of an individual following contact with a person serving with the police (in which case the Commissioner must investigate).

Regulation 5 places duties on the Authority and the Police Service to co-operate with and assist the Commissioner in specified ways.

Regulation 6 specifies a category of “serious incident” for the purposes of section 41B(1)(c) the 2006 Act.

Regulation 7 specifies a police baton as a weapon for the purposes of section 41B(1)(b)(ii) of the 2006 Act with the effect that use of such a baton is a serious incident which may be investigated by the Commissioner.

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