

This draft Order supersedes the draft of the same title which was laid before the Scottish Parliament on 15th November 2017 and published on 16th November 2017 (ISBN 978-0-11-103730-0). It is being issued free of charge to all known recipients of that draft Order.

Draft Order 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.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2017 No.

POLICE

The Police Investigations and Review Commissioner (Application and Modification of the Criminal Justice (Scotland) Act 2016) Order 2017

Made - - - - 2017

Coming into force - - 25th January 2018

The Scottish Ministers make the following Order in exercise of the powers conferred by paragraph 7B(4) of schedule 4 of the Police, Public Order and Criminal Justice (Scotland) Act 2006⁽¹⁾ and all other powers enabling them to do so.

In accordance with section 103(4)(a) of that Act⁽²⁾, a draft of this Order has been laid before, and approved by resolution of, the Scottish Parliament.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Police Investigations and Review Commissioner (Application and Modification of the Criminal Justice (Scotland) Act 2016) Order 2017 and comes into force on 25th January 2018.

(2) In this Order—

“2006 Act” means the Police, Public Order and Criminal Justice (Scotland) Act 2006;

“2016 Act” means the Criminal Justice (Scotland) Act 2016⁽³⁾;

“investigations staff” means members of the Commissioner’s staff designated under paragraph 7B(1) of schedule 4 of the 2006 Act—

(1) [2006 asp 10](#). Paragraph 7B of schedule 4 was inserted by the Police and Fire Reform (Scotland) Act 2012 ([asp 8](#)), schedule 7, paragraph 33.
(2) Section 103(4)(a) was amended by the Police and Fire Reform (Scotland) Act 2012 ([asp 8](#)), schedule 7, paragraph 33.
(3) [2016 asp 1](#).

- (a) to take charge of any investigation on behalf of the Commissioner; or
 - (b) to assist a member of the Commissioner’s staff designated to take charge of such an investigation,
- (and “member of the investigations staff” is to be construed accordingly).

Application of the 2016 Act to investigations staff

2.—(1) Where a member of the investigations staff exercises any power or privilege of a constable in relation to an investigation carried out in pursuance of paragraph (b)(i) of section 33A of the 2006 Act, Chapters 1 to 6 of Part 1 and sections 54, 55, 57, 57B, 57C, 63, 64, 65, 66 and 68 of the 2016 Act apply in relation to the exercise as though the power or privilege were exercised by a constable of the Police Service of Scotland, subject to the modifications in paragraph (2) and articles 3 and 4.

(2) For the purposes of paragraph (1), the reference in section 64 of the 2016 Act to a person arrested by a constable is to be read as including a person arrested by a member of the investigations staff.

General modifications

3. In the provisions of the 2016 Act mentioned in article 2, references in column 1 of the table are, subject to the specific modifications in article 4, to be read in accordance with column 2—

<i>1. Reference in the 2016 Act</i>	<i>2. How reference is to be read</i>
a constable	a member of the investigations staff
the rank of sergeant	the grade of deputy senior investigator
the rank of inspector	the grade of senior investigator
the rank of chief inspector	the grade of head of investigations

Specific modifications

4. Sections 33 (consent to interview without solicitor) and 42 (support for vulnerable persons) of the 2016 Act are to be read as if the references to “the police” included references to members of the investigations staff.

St Andrew’s House,
Edinburgh
Date

Name
A member of the Scottish Government

EXPLANATORY NOTE

(This note is not part of the Order)

This Order applies a number of provisions of the Criminal Justice (Scotland) Act 2016 (“the 2016 Act”) to cases where a member of staff of the Police Investigations and Review Commissioner (“PIRC”) is exercising the powers and privileges of a constable in pursuit of a criminal investigation under section 33A(b)(i) of the Police, Public Order and Criminal Justice (Scotland) Act 2006. The provisions of the 2016 Act applied (“the relevant provisions”) are set out in article 2(1). The relevant provisions set out a framework for arrest and custody in relation to criminal investigations carried out by constables, and the application of those provisions to PIRC investigators ensures that the same rules apply where those investigators take suspects into custody as where constables of the Police Service of Scotland take suspects into custody. This general application is given effect by article 2(1).

The Order also modifies certain of the relevant provisions in their application to PIRC staff as set out in articles 2(2), 3 and 4. These modifications mainly ensure that where 2016 Act functions rely on the rank structure of the Police Service of Scotland, the different hierarchical structure of PIRC is taken into account when PIRC investigators are exercising those functions.

Of the relevant provisions applied by this Order, section 42 of the 2016 Act is not in force. The modification of that provision by this Order will accordingly have no effect until that provision is in force.