

POLICY NOTE

THE POLICE INVESTIGATIONS AND REVIEW COMMISSIONER (INVESTIGATIONS PROCEDURES, SERIOUS INCIDENTS AND SPECIFIED WEAPONS REGULATIONS 2013

SSI 2013/118

1. The above instrument was made in exercise of the powers conferred by section 41B(1)(b)(ii) and (c) and 41D(1) of the Police, Public Order and Criminal Justice (Scotland) Act 2006 ('the 2006 Act'). These sections were added to the 2006 Act by the Police and Fire Reform (Scotland) Act 2012 ('the 2012 Act').

Policy Objectives

2. The 2006 Act was amended to confer additional functions on the Police Complaints Commissioner for Scotland (PCCS). These functions enable the Commissioner to carry out investigations into:

- Circumstances where there is an indication that an offence may have been committed by a person serving with the police (these investigations will be under the direction of the relevant prosecutor);
- Serious incidents involving a person serving with the police (at the request of the chief constable or the Scottish Police Authority (SPA)); and
- Relevant police matters where an investigation would be in the public interest.

3. Serious incidents are defined in section 41B of the 2006 Act and include, for example, incidents where a person who has had contact with the police has been seriously injured and there is an indication that that contact has caused or contributed to the injury.

4. A person serving with the police is defined in the 2006 Act, as amended by schedule 7 to the 2012 Act, as a constable of the Police Service of Scotland, a member of police staff, or a member of the SPA's staff.

5. To reflect these additional responsibilities PCCS will be renamed the Police Investigations and Review Commissioner (PIRC) with effect from 1 April 2013 when the new functions come into force.

6. The overall policy objective is to ensure that serious incidents involving the police are referred to the PIRC by the chief constable or the SPA and that the PIRC can carry out investigations into serious incidents and in the public interest with the full co-operation of the Police Service of Scotland and the SPA. This instrument makes provisions to reflect these policy objectives.

Provisions

7. Section 41D(1) of the 2006 Act allows Scottish Ministers to make regulations about investigations by the PIRC into serious incidents and in the public interest. The provisions in this instrument therefore apply only to these types of investigation.

8. Regulation 3 places a duty on the chief constable to refer serious incidents involving police officers or police staff to the PIRC and the same obligation on the SPA in relation to its staff. These requirements do not preclude the SPA from referring incidents where the chief constable does not do so, and vice versa, under the provisions in the 2006 Act.

9. Regulation 4 allows the PIRC to decide whether or not to investigate a serious incident. The exception is incidents where a death is involved which the PIRC must investigate. In cases where the PIRC declines to investigate regulation 4(3) allows the Commissioner to refer the matter back with appropriate recommendations. This is to allow PIRC to suggest how investigation of the incident might be taken forward.

10. In order that PIRC can carry out investigations effectively, the Commissioner or investigation staff will require assistance and co-operation from the Police Service and the SPA. Regulation 5 sets out the co-operation and assistance that must be provided and includes allowing PIRC access to police and SPA premises, providing information, records and other documents, and a general requirement to provide such other assistance as the PIRC may reasonably require.

11. Regulation 6 sets out that any circumstances in which a person serving with the police uses any item to cause or attempt to cause injury to a member of the public can be treated as a serious incident. This provision is included to cover circumstances in which, for example, a police officer has used an item to prevent a member of the public being harmed, or to defend themselves. This might happen if an officer were deprived of their safety equipment and had to use whatever was to hand.

12. It is anticipated that the number of these types of incidents will be very low and Regulation 3 excludes them from mandatory referral to the PIRC. However if they do occur and the SPA or chief constable considers that an independent investigation would be appropriate, this regulation allows for referral to the Commissioner.

13. Circumstances in which a person serving with the police uses a firearm are defined as serious incidents in the 2006 Act. Scottish Ministers have power to specify in regulations any other weapons the use of which may be referred to the PIRC as a serious incident. Regulation 7 specifies 'batons' as weapons. Regulation 3 excludes the use of batons from the mandatory referral required in relation to serious incidents. This allows the chief constable or the SPA to decide whether or not to refer their use in any given circumstances for independent investigation.

Consultation

14. The Scottish Government established a stakeholder Reference Group to inform policy development for these Regulations. As required by section 41D(3) of the 2006 Act consultation on proposals for the provisions in the regulations was carried out between 4 December 2012 and 14 January 2013.

Impacts

15. A Business Regulatory Impact Assessment (BRIA) and an Equality Impact Assessment (EQIA) were carried out for the Police and Fire Reform (Scotland) Bill which became the 2012 Act. No BRIA or EQIA is therefore required for these regulations.

Scottish Government
Safer Communities Directorate
14 February 2013