

Draft Order laid before Parliament under section 115(1) of, and paragraphs 1, 2 and 3 of Schedule 7 to, the Scotland Act 1998 for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2007 No.

CONSTITUTIONAL LAW
DEVOLUTION, SCOTLAND
POLICE
CRIMINAL LAW

**The Police, Public Order and Criminal Justice (Scotland) Act
2006 (Consequential Provisions and Modifications) Order 2007**

Made - - - - *2007*

Coming into force in accordance with Article 1

The Secretary of State makes the following Order in exercise of the powers conferred by sections 104, 112(1) and 113(2), (3) and (4) of the Scotland Act 1998(a).

In accordance with section 115(1) of, and paragraphs 1, 2 and 3 of Schedule 7 to, that Act, a draft of this Order was laid before Parliament and approved by a resolution of each House of Parliament.

Citation, commencement and extent

1.—(1) This Order may be cited as the Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007.

(2) Subject to paragraph (3), this Order shall come into force on the day after the day on which it is made.

(3) Articles 2(b), (c) and (d), 3, 4 and 6 and the Schedule shall come into force on 1st April 2007.

(4) Subject to paragraphs (5), (6) (7) and (8), the provisions of this Order extend to the whole of the United Kingdom.

(5) Article 5 extends to England and Wales and Northern Ireland only.

(6) Subject to paragraphs (7) and (8), the modifications specified in the Schedule have the same extent as the provisions being modified.

(7) The modification specified in paragraph 4(16) of the Schedule extends to Scotland only.

(a) 1998 c.46.

(8) The modifications specified in paragraphs 4(17) and 6 of the Schedule extend to England and Wales and Northern Ireland only.

Interpretation

2. In this Order—

- (a) “the Act” means the Police, Public Order and Criminal Justice (Scotland) Act 2006^(a);
- (b) “the Agency” means the Scottish Crime and Drug Enforcement Agency;
- (c) “the Commissioner” means the Police Complaints Commissioner for Scotland;
- (d) “SOCA” means the Serious Organised Crime Agency.

Disclosure of information

3.—(1) Any person may disclose information to the Agency or the Commissioner if the disclosure is made for the purposes of the exercise or carrying out by the Agency or the Commissioner of any of their functions within the meaning of the Act.

(2) Any person who, without the consent of the Commissioners for Her Majesty’s Revenue and Customs, discloses information to another person which those Commissioners have disclosed under paragraph (1) commits an offence.

(3) It is a defence for a person charged with an offence under paragraph (2) to prove that he reasonably believed that—

- (a) the disclosure was lawful; or
- (b) the information had already and lawfully been made available to the public.

(4) A person who commits an offence under paragraph (2) is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine, or both; or
- (b) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale, or to both.

(5) Information disclosed by the Agency under section 19 of the Act to any person or body must not be further disclosed except—

- (a) for a purpose connected with any function of that person or body for the purposes of which the information was disclosed by the Agency, or otherwise for any of the permitted purposes specified in section 19(2) of the Act; and
- (b) with the consent of the Agency.

(6) Information disclosed by the Commissioner under section 46 of the Act to any public body or office-holder must not be further disclosed except—

- (a) for a purpose connected with any function of that public body or office-holder; and
- (b) with the consent of the Commissioner.

(7) Consent under paragraphs (2), (5) and (6) 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.

(8) A disclosure under this article 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).

(9) But nothing in this article authorises—

- (a) a disclosure, in contravention of any provisions of the Data Protection Act 1998^(b), of personal data which are not exempt from those provisions; or

(a) 2006 asp 10.
(b) 1998 c.29.

(b) a disclosure which is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000(a).

(10) Paragraph (1) does not apply to any person who may disclose information under section 20(1) or 46(4) of the Act.

(11) Paragraphs (5) and (6) do not apply to further disclosure by any person, body or office holder to whom section 19(4) or 46(2) of the Act applies.

Agreements to establish complaints procedures

4.—(1) The Commissioner and the British Transport Police Authority may enter into an agreement to establish and maintain procedures which correspond to or are similar to those contained in Chapter 2 of Part 1 of the Act in relation to complaints made about the acts or omissions of the British Transport Police Force, a constable of that Force and any other persons specified in the agreement who serve with that Force or who are employed by the British Transport Police Authority.

(2) The Commissioner and the Civil Nuclear Police Authority may enter into an agreement to establish and maintain procedures which correspond to or are similar to those contained in Chapter 2 of Part 1 of the Act in relation to complaints made about the acts or omissions of the Civil Nuclear Constabulary, a member of that Constabulary and any other persons specified in the agreement who are serving with that Constabulary or who are employed by the Civil Nuclear Police Authority.

(3) The Commissioner and the Secretary of State may enter into an agreement to establish and maintain procedures which correspond to or are similar to those contained in Chapter 2 of Part 1 of the Act in relation to complaints made about the acts or omissions of the Ministry of Defence Police, a member of the Ministry of Defence Police and any other persons specified in the agreement who serve with the Ministry of Defence Police.

(4) The Commissioner and SOCA may enter into an agreement to establish and maintain procedures which correspond to or are similar to those contained in Chapter 2 of Part 1 of the Act in relation to complaints made about the acts or omissions of SOCA and members of the staff of SOCA.

(5) The Commissioner and Her Majesty's Revenue and Customs may enter into an agreement to establish and maintain procedures which correspond to or are similar to those contained in Chapter 2 of Part 1 of the Act in relation to complaints made about the acts or omissions of Her Majesty's Revenue and Customs, the Commissioners for Revenue and Customs, an officer of Revenue and Customs and any other persons specified in the agreement who are authorised to act for or on behalf of Her Majesty's Revenue and Customs.

(6) The Commissioner and the Secretary of State may enter into an agreement to establish and maintain procedures which correspond to or are similar to those contained in Chapter 2 of Part 1 of the Act in relation to complaints made about—

- (a) the exercise by an immigration officer of specified enforcement functions;
- (b) the exercise by officials of the Secretary of State of specified enforcement functions relating to asylum or immigration.

(7) But “complaint” for the purposes of an agreement made under this article, does not include—

- (a) a statement which consists of or includes an allegation of an act or omission which constitutes a crime;
- (b) any statement made by a person who is serving with, or who has served with—
 - (i) the British Transport Police Force;
 - (ii) the Civil Nuclear Constabulary;
 - (iii) the Ministry of Defence Police;
 - (iv) SOCA;

(a) 2000 c.23.

- about the terms and conditions of their service;
- (c) any statement made by a person who is employed by, or has been employed by–
 - (i) the British Transport Police Authority;
 - (ii) the Civil Nuclear Police Authority;
 - (iii) SOCA;
 about the terms and conditions of their employment;
- (d) any statement made by any person who is serving with, or has served with, or who is or has been authorised to act on behalf of, Her Majesty’s Revenue and Customs about the terms and conditions of their service; and
- (e) any statement made by a person who is serving as, or who has served as–
 - (i) an immigration officer who exercises, or who has exercised, specified enforcement functions; or
 - (ii) an official of the Secretary of State who exercises, or who has exercised, specified enforcement functions relating to asylum or immigration;
 about the terms and conditions of their service.

(8) An agreement made under this article shall not be made, varied or terminated without the approval of the Secretary of State and the Scottish Ministers.

(9) Complaints procedures established and maintained in accordance with any agreement under this article shall have no effect in relation to anything done outside Scotland by any person or body in relation to whom complaints procedures are so established and maintained.

(10) An agreement made under paragraph (6) of this article shall not establish and maintain procedures in relation to complaints about the exercise by any person of a function conferred on him by or under Part 8 of the Immigration and Asylum Act 1999^(a).

(11) Information obtained by the Commissioner in connection with any of the Commissioner’s functions under an agreement which may be entered into under paragraph (5) or (6) of this article may be disclosed by the Commissioner to the Parliamentary Commissioner for Administration–

- (a) for any purpose connected with the carrying out of the Commissioner’s functions under an agreement which may be entered into under paragraph (5) or (6) of this article; or
- (b) for the purpose of enabling or assisting the Parliamentary Commissioner for Administration to carry out any function under the Parliamentary Commissioner Act 1967^(b).

(12) The Parliamentary Commissioner for Administration may disclose information to the Commissioner if the disclosure is made–

- (a) for any purpose connected with the carrying out of any of the Commissioner’s functions under an agreement which may be entered into under paragraph (5) or (6) of this article; or
- (b) for the purpose of enabling or assisting the Parliamentary Commissioner for Administration to carry out any function under the Parliamentary Commissioner Act 1967.

(13) An agreement made under this article may–

- (a) specify types of complaints in relation to which procedures may not be established and maintained;
- (b) include provision for payment to the Commissioner for any function which he may exercise under it;

(a) 1999 c.33, Part 8 consists of sections 147 to 159; section 147 was amended by the Nationality, Immigration and Asylum Act 2002 (c.41) (“the NIA Act 2002”), sections 62, 66 and Schedule 9; sections 148, 150 to 153, 155, 158 and 159 were amended by the NIA Act 2002, section 66; section 149 was amended by the NIA Act 2002, section 66 and the Agricultural Holdings (Scotland) Act 2003 (asp 11), schedule 1, paragraph 52; section 154 was amended by the NIA Act 2002, section 65 and section 156 was amended by S.I. 2005/2078, Schedule 1, paragraph 5. There have been further amendments to Part 8 but these are not relevant.

(b) 1967 c.13.

(c) make different provision for different purposes or circumstances.

(14) For the purposes of this article—

- (a) an “immigration officer” means a person appointed under paragraph 1 of Schedule 2 to the Immigration Act 1971^(a);
- (b) the reference to enforcement functions includes, in particular, reference to—
 - (i) powers of entry;
 - (ii) power to search persons or property;
 - (iii) power to seize or detain property;
 - (iv) power to arrest persons;
 - (v) power to detain persons;
 - (vi) powers to examine persons or otherwise to obtain information (including powers to take fingerprints or to acquire other personal data); and
 - (vii) powers in connection with the removal of persons from the United Kingdom.

Football Banning Orders

5.—(1) A person who fails to comply with any requirement imposed on the person by a football banning order made under section 51 or 52 of the Act commits an offence.

(2) It is a defence for a person charged with an offence under paragraph (1) to prove that the person had a reasonable excuse for failing to comply with the requirement.

(3) A person who commits an offence under paragraph (1) is liable on summary conviction to imprisonment for a term not exceeding 3 months, or to a fine not exceeding level 5 on the standard scale, or to both.

Modifications of enactments

6. The modifications specified in the Schedule shall have effect.

Parliamentary Under Secretary of State
Scotland Office
Department for Constitutional Affairs

Dover House,
London
[]

(a) 1971 c.77.

PART 1

MODIFICATIONS OF PUBLIC GENERAL ACTS

Police (Scotland) Act 1967 (c.77)

1. In section 38A(8)(a) (constables engaged on service outside their force) of the Police (Scotland) Act 1967 for “59 and 60” there is substituted “59, 60 and 64”.

Police Pensions Act 1976 (c.35)

2.—(1) The Police Pensions Act 1976(b) is modified as follows.

(2) In section 7(2)(c) (persons eligible for police pensions), after paragraph (cf) there is inserted—

“(cg) a constable seconded to the Scottish Police Services Authority by virtue of paragraph 10(2) of schedule 1 to the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10) (“the 2006 Act”) but not appointed as a police member of the Scottish Crime and Drug Enforcement Agency by virtue of paragraph 7 of schedule 2 to the 2006 Act;

(ch) a person who—

(i) is seconded to the Scottish Police Services Authority by virtue of paragraph 10(3) of schedule 1 to the 2006 Act;

(ii) is not appointed as mentioned in paragraph (cg); and

(iii) immediately before such secondment, is or is eligible to be a member of a pension scheme provided for under section 1 above;

(ci) a police member of the Scottish Crime and Drug Enforcement Agency appointed by virtue of paragraph 7(2)(a) or (c) of schedule 2 to the 2006 Act;

(cj) a police member of the Scottish Crime and Drug Enforcement Agency appointed by virtue of paragraph 7(2)(b) of schedule 2 to the 2006 Act and who, immediately before such appointment, is or is eligible to be a member of a pension scheme provided for under section 1 above;

(ck) the Director General or Deputy Director General of the Scottish Crime and Drug Enforcement Agency;”.

(3) In section 11 (interpretation)—

(a) in subsection (1)(d) (references to membership of a police force etc), after paragraph (bf) there is inserted—

(a) Section 38A(8) was inserted by section 50(2)(b) of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10) and commenced by S.S.I. 2006/432.

(b) The functions of the Secretary of State in sections 1-8A were transferred to the Scottish Ministers by S.I. 1999/1750, Schedule 1 as amended by the Police and Firemen’s Pensions Act 1997 (c.52), section 2.

(c) Section 7(2) was amended by the Police and Magistrates’ Courts Act 1994 (c.29) (“the 1994 Act”), Schedule 5, paragraph 19; the Police Act 1996 (c.16) (“the 1996 Act”), Schedule 7, paragraph 29; the Police (Northern Ireland) Act 2000 (c.32), section 78(2)(f); the Criminal Justice and Police Act 2001 (c.16) (“the 2001 Act”), section 126(1) and Schedule 4, paragraph 6(2); the International Development Act 2002 (c.1), Schedule 3, paragraph 6(1); the Serious Organised Crime and Police Act 2005 (c.15) (“the 2005 Act”), Schedule 4, paragraph 30; and the Police and Justice Act 2006 (c.48), Schedule 1, paragraph 58 and Schedule 15, Part 1.

(d) Section 11(1) was amended by the 1994 Act, Schedule 5, paragraph 20(2); the 1996 Act, Schedule 7, paragraph 30(2); the Police (Northern Ireland) Act 2000 (c.32), section 78(2)(f); the 2001 Act, section 126(2), Schedule 4, paragraph 6(3); the International Development Act 2002, Schedule 3, paragraph 6(2); the 2005 Act, Schedule 4, paragraph 31(2); and the Police and Justice Act 2006 (c.48), Schedule 1, paragraph 59(2) and Schedule 15, Part 1.

- “(bg) service as a member of staff of the Scottish Police Services Authority by virtue of paragraph 10(2) of schedule 1 to the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10) (“the 2006 Act”) other than service while appointed as a police member of the Scottish Crime and Drug Enforcement Agency by virtue of paragraph 7 of schedule 2 to the 2006 Act;
- (bh) service as a member of staff of the Scottish Police Services Authority by a person seconded to that Authority by virtue of paragraph 10(3) of schedule 1 to the 2006 Act (other than while appointed as mentioned in paragraph (bg)) if immediately before such secondment that person is or is eligible to be a member of a pension scheme provided for under section 1 above;
- (bi) service as a police member of the Scottish Crime and Drug Enforcement Agency appointed by virtue of paragraph 7(2)(a) or (c) of schedule 2 to the 2006 Act;
- (bj) service as a police member of the Scottish Crime and Drug Enforcement Agency by a person appointed by virtue of paragraph 7(2)(b) of schedule 2 to the 2006 Act if immediately before such appointment that person is or is eligible to be a member of a pension scheme provided for under section 1 above;
- (bk) service as the Director General or Deputy Director General of the Scottish Crime and Drug Enforcement Agency;”;
- (b) in subsection (2)(a) (meaning of police authority) at the end there is inserted–
 - “(g) in relation to any service such as is mentioned in subsection (1)(bg), (bh), (bi), (bj) or (bk) above, it means the Scottish Police Services Authority.”; and
- (c) in subsection (3)(b) (meaning of police force), in paragraph (b) after “(bf),” there is inserted “(bg), (bh), (bi), (bj), (bk).”.

Police Act 1996 (c.16)

3.—(1) The Police Act 1996 is modified as follows.

(2) After section 64(4D)(c) (membership of trade unions) there is inserted–

“(4E) This section applies to–

- (a) the Director General of the Scottish Crime and Drug Enforcement Agency,
- (b) the Deputy Director General of that Agency, and
- (c) a police member of that Agency appointed by virtue of paragraph 7 of schedule 2 to the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10),

as it applies to a member of a police force, and references to a police force or to service in a police force shall be construed accordingly.

(4F) In its application by virtue of subsection (4E), subsection (2) shall have effect as if the reference to the chief officer of police were a reference to the Director General of the Scottish Crime and Drug Enforcement Agency.”.

-
- (a) Section 11(2) was amended by the 1994 Act, Schedule 5, paragraph 20(3); the 1996 Act, Schedule 7, paragraph 30(3); the Police Act 1997 (c.50) (“the 1997 Act”), Schedule 9, paragraph 33(2); the 2001 Act, section 126(3) and Schedule 4, paragraph 6(4); the Police Reform Act 2002 (c.30) (“the 2002 Act”), Schedule 7, paragraph 7(2); the 2005 Act, Schedule 4, paragraph 31(3) and Schedule 17, Part 2; and the Police and Justice Act 2006 (c.48), Schedule 1, paragraph 59(3) and Schedule 15, Part 1.
 - (b) Section 11(3) was amended by the 1994 Act, Schedule 5, paragraph 20(4); the 1996 Act, Schedule 7, paragraph 30(4); the 2001 Act, section 126(4) and Schedule 4, paragraph 6(5); and the Police and Justice Act 2006 (c.48), Schedule 1, paragraph 59(4) and Schedule 15 Part 1.
 - (c) Section 64 was amended by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001 (S.I. 2001/3649), article 349. Subsections (4C) and (4D) were inserted into section 64 by the Police and Justice Act 2006 (c.48), Schedule 1, paragraph 69. There have been further amendments to section 64, but those amendments have been repealed.

- (3) In section 97 (police officers engaged on service outside their force)—
- (a) in subsection (1)(a) after paragraph (cg) there is inserted—
- “(ch) temporary service with the Scottish Police Services Authority on which a person is engaged with the consent of the appropriate authority;
- (ci) temporary service with the Scottish Crime and Drug Enforcement Agency on which a person is engaged with the consent of the appropriate authority;”;
- (b) in subsections (6)(a)(b) and (8)(c) after “(cg)” there is inserted “, (ch), (ci)”.

Regulation of Investigatory Powers Act 2000 (c.23)

- 4.—(1) The Regulation of Investigatory Powers Act 2000 is modified as follows.
- (2) In section 6(2) (application for issue of an interception warrant) after paragraph (d)(d) there is inserted—
- “(da) the Director General of the Scottish Crime and Drug Enforcement Agency;”.
- (3) In section 17(3) (exclusion of matters from legal proceedings) after paragraph (c)(e) there is inserted—
- “(ca) any member of the Scottish Crime and Drug Enforcement Agency;”.
- (4) In section 19(2)(f) (unauthorised disclosures) after paragraph (c) there is inserted—
- “(ca) every member of the Scottish Crime and Drug Enforcement Agency;”.
- (5) In section 25(1) (interpretation) in the definition of “relevant public authority”, after paragraph (b)(g) there is inserted—
- “(ba) the Scottish Crime and Drug Enforcement Agency;”.
- (6) In section 33 (rules for grant of authorisations)—
- (a) after subsection (1A)(h) there is inserted—
- “(1B) A person who is a designated person for the purposes of section 28 or 29 by reference to his office, rank or position with the Scottish Crime and Drug Enforcement Agency shall not grant an authorisation under that section except on an application made by a police member of the Agency.”; and
- (b) in subsection (5)(a)(i) after “Agency” there is inserted “or a member of the Scottish Crime and Drug Enforcement Agency”.
- (7) In section 45(6)(j) (cancellation of authorisations)—
- (a) at the end of paragraph (b) omit “and”; and
- (b) after paragraph (c) there is inserted “; and

-
- (a) Section 97(1) was amended by the 1997 Act, Schedule 9, paragraph 86; the Police (Northern Ireland) Act 1998 (c.32), Schedule 4, paragraph 20(3); the Police (Northern Ireland) Act 2000 (c.32), Schedule 6, paragraph 12; the 2001 Act, Schedule 4, paragraph 7(3)(a); the International Development Act 2002 (c.1), Schedule 3, paragraph 11(2) and Schedule 4; the Proceeds of Crime Act 2002 (c.29), Schedule 11, paragraph 30; the 2002 Act, Schedule 7, paragraph 19(1); the 2005 Act, Schedule 4, paragraph 82(2) and Schedule 17, Part 2; and the Police and Justice Act 2006 (c.48), Schedule 1, paragraph 72(3) and Schedule 15, Part 1.
- (b) Section 97(6)(a) was amended by the 1997 Act, Schedule 9, paragraph 86(3); the 2001 Act, Schedule 4, paragraph 7(3)(b); the International Development Act 2002 (c.1), Schedule 3, paragraph 11(3); the Proceeds of Crime Act 2002 (c.29), Schedule 11, paragraph 30(3); the 2002 Act, Schedule 7, paragraph 19(2); the 2005 Act, Schedule 4, paragraph 82(3); and the Police and Justice Act 2006 (c.48), Schedule 1, paragraph 72(3) and Schedule 15, Part 1.
- (c) Section 97(8) was amended by the 1997 Act, Schedule 9, paragraph 86(4); the 2001 Act, Schedule 4, paragraph 7(3)(b); the Proceeds of Crime Act 2002, Schedule 11, paragraph 30(4); the 2002 Act, Schedule 7, paragraph 19(3); the 2005 Act, Schedule 4, paragraph 82(4); and the Police and Justice Act 2006 (c.48), Schedule 1, paragraph 72(3) and Schedule 15, Part 1.
- (d) Section 6(2)(d) was amended by the 2005 Act, Schedule 4, paragraph 132(2).
- (e) Section 17(3)(c) and (d) as substituted by the 2005 Act, Schedule 4, paragraph 133(1).
- (f) Section 19(2)(c) and (d) as substituted by the 2005 Act, Schedule 4, paragraph 134(1).
- (g) Paragraphs (b) and (c) were substituted by the 2005 Act, Schedule 4, paragraph 135(2).
- (h) Section 33(1A) was inserted by the 2005 Act, Schedule 4, paragraph 137(3).
- (i) Section 33(5)(a) was amended by the Enterprise Act 2002 (c.40), section 199(4); and the 2005 Act, Schedule 4, paragraph 137(6).
- (j) Section 45(6) was amended by the 2005 Act, Schedule 4, paragraph 143.

- (ca) in relation to the Director General of the Scottish Crime and Drug Enforcement Agency, to the Deputy Director General of that Agency;”.
- (8) In section 49(1)(e)(a) (notices requiring disclosure) after “SOCA” (in both places) there is inserted “, SCDEA”.
- (9) In section 51(b) (cases in which key required)–
- (a) in subsection (2)–
- (i) after “SOCA,” there is inserted “SCDEA;” and
- (ii) after paragraph (aa) there is inserted–
- “(ab) in the case of a direction by SCDEA, except by or with the permission of the Director General of the Scottish Crime and Drug Enforcement Agency;”;
- (b) in subsection (3) after “Agency,” there is inserted “the Director General of the Scottish Crime and Drug Enforcement Agency;” and
- (c) in subsection (6) after “Agency,” there is inserted “by the Director General of the Scottish Crime and Drug Enforcement Agency;”.
- (10) In section 54(3)(c) (tipping-off) after “SOCA,” (in both places) there is inserted “SCDEA;”.
- (11) In section 55 (duties of specified authorities)–
- (a) in subsection (1) after paragraph (ba)(d) there is inserted–
- “(bb) the Director General of the Scottish Crime and Drug Enforcement Agency;” and
- (b) after subsection (3A)(e) there is inserted–
- “(3B) Paragraph 6(2) of schedule 2 to the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10) does not apply in relation to the duties of the Director General of the Scottish Crime and Drug Enforcement Agency under this section.”.
- (12) In section 56(1)(f) (interpretation)–
- (a) in paragraph (a) of the definition of “the police” after “Agency” there is inserted “or a constable who is a member of the Scottish Crime and Drug Enforcement Agency;” and
- (b) after the definition of “protected information” there is inserted–
- ““SCDEA” means the Scottish Crime and Drug Enforcement Agency;”.
- (13) In section 58(1)(g) (co-operation with Commissioner) after paragraph (b) there is inserted–
- “(ba) every member of the Scottish Crime and Drug Enforcement Agency;”.
- (14) In section 65(6)(d)(h) (the Tribunal) after “Agency;” there is inserted–
- “(da) the Scottish Crime and Drug Enforcement Agency;”.
- (15) In section 68(7)(i) (disclosure to the Tribunal) after paragraph (b) there is inserted–
- “(ba) every member of the Scottish Crime and Drug Enforcement Agency;”.
- (16) Paragraph (c) of the definition of “United Kingdom officer” in subsection (11) of section 76A (as substituted by paragraph 8 of schedule 6 to the Act) has effect in relation to the reference in subsection (1)(c) of that section to a United Kingdom officer carrying out surveillance in the United Kingdom in accordance with an authorisation under Part 2 as it has effect in relation to the reference in subsection (1)(c) to such an officer carrying out such surveillance in accordance with an authorisation under the Regulation of Investigatory Powers (Scotland) Act 2000.

(a) Section 49(1)(e) was amended by the 2005 Act, Schedule 4, paragraph 145.
 (b) Section 51 was amended by the 2005 Act, Schedule 4, paragraph 146.
 (c) Section 54(3) was amended by the 2005 Act, Schedule 4, paragraph 147.
 (d) Section 55(1)(ba) was inserted by the 2005 Act, Schedule 4, paragraph 148(2).
 (e) Section 55(3A) was inserted by the 2005 Act, Schedule 4, paragraph 148(3).
 (f) Section 56(1) was amended by the 2005 Act, Schedule 4, paragraph 149.
 (g) Section 58(1)(b) and (c) as substituted by the 2005 Act, Schedule 4, paragraph 150.
 (h) Section 65(6)(d) and (e) as substituted by the 2005 Act, Schedule 4, paragraph 151.
 (i) Section 68(7)(b) and (c) as substituted by the 2005 Act, Schedule 4, paragraph 152.

(17) In section 76A(11)(a) (foreign surveillance operations), for paragraph (c) of the definition of “United Kingdom officer” there is substituted—

“(c) a police member of the Scottish Crime and Drug Enforcement Agency appointed by virtue of paragraph 7 of schedule 2 to the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10);”.

(18) In Schedule 1(b) (relevant public authorities) after paragraph 2 there is inserted—

“2A. The Scottish Crime and Drug Enforcement Agency”.

(19) In Schedule 2(c) (persons having appropriate permission)—

(a) in paragraph 2(3) and (5), after “SOCA” there is inserted “, SCDEA”;

(b) in paragraph 4(2)(d) after “SOCA,” (in each place) there is inserted “SCDEA,”;

(c) in paragraph 5(3)(b)(e) after “SOCA” there is inserted “, SCDEA”;

(d) in paragraph 6(f)—

(i) after sub-paragraph (3A) there is inserted—

“(3B) A member of the Scottish Crime and Drug Enforcement Agency does not by virtue of paragraph 1, 4 or 5 have the appropriate permission in relation to any protected information unless—

(a) he is of or above the rank of superintendent; or

(b) permission to give a section 49 notice in relation to that information has been granted by the Director General of that Agency;”;

(ii) in sub-paragraph (6), after “Serious Organised Crime Agency” there is inserted “or a constable who is a member of the Scottish Crime and Drug Enforcement Agency”.

The Prevention of Terrorism Act 2005 (c.2)

5.—(1) The Prevention of Terrorism Act 2005 is modified as follows.

(2) In section 8 (criminal investigations after making of control order)—

(a) in subsection (7)—

(i) for paragraph (e) of the definition of “chief officer” there is substituted—

“(e) in relation to the Scottish Crime and Drug Enforcement Agency, means the Director General of that Agency;”;

(ii) for paragraph (e) of the definition of “police force” there is substituted—

“(e) the Scottish Crime and Drug Enforcement Agency;”;

(b) subsection (9) is repealed.

Serious Organised Crime and Police Act 2005 (c.15)

6.—(1) The Serious Organised Crime and Police Act 2005 is modified as follows.

(2) In section 3(5)(d) (meaning of “special police force”), for “Scottish Drug Enforcement Agency” there is substituted “Scottish Crime and Drug Enforcement Agency”.

(3) In section 23 (mutual assistance between SOCA and law enforcement agencies: voluntary arrangements)—

(a) for subsection (5) there is substituted—

(a) Section 76A was inserted by the Crime (International Co-operation) Act 2003 (c.32), section 83; and amended by the 2005 Act, Schedule 4, paragraph 154.

(b) Paragraph 2 of Schedule 1 was substituted by the 2005 Act, Schedule 4, paragraph 155(1).

(c) Paragraph 2 of Schedule 2 was amended by the 2005 Act, Schedule 4, paragraph 156(2).

(d) Paragraph 4(2) of Schedule 2 was amended by the 2005 Act, Schedule 4, paragraph 156(3).

(e) Paragraph 5(3)(b) of Schedule 2 was amended by the 2005 Act, Schedule 4, paragraph 156(4).

(f) Paragraph 6 of Schedule 2 was amended by the 2005 Act, Schedule 4, paragraph 156(5).

- “(5) In subsection (4)(a), “constables or members of staff” in relation to the Scottish Crime and Drug Enforcement Agency means police members or support staff members of that Agency.”;
- (b) in subsection (7), for paragraph (b) there is substituted–
“(b) a police member or support staff member of the Scottish Crime and Drug Enforcement Agency,”;
- (c) in subsection (10)(b) for “Scottish Drug Enforcement Agency” there is substituted “Scottish Crime and Drug Enforcement Agency”; and
- (d) in subsection (11)–
(i) after the definition of “police force” there is inserted–
““police member”, in relation to the Scottish Crime and Drug Enforcement Agency, means a person appointed as such a member in accordance with paragraph 7 of schedule 2 to the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10);”;
- (ii) in paragraph (f) of the definition of “relevant police authority”, for “Scottish Drug Enforcement Agency” there is substituted “Scottish Crime and Drug Enforcement Agency”; and
- (iii) after the definition of “relevant police authority” there is inserted–
““support staff member”, in relation to the Scottish Crime and Drug Enforcement Agency, means a person appointed as such a member in accordance with paragraph 8 of schedule 2 to the Police, Public Order and Criminal Justice (Scotland) Act 2006.”.
- (4) In section 24(2)(b) (bodies to which section 24 applies), for “Scottish Drug Enforcement Agency” there is substituted “Scottish Crime and Drug Enforcement Agency”.
- (5) In section 25 (directed arrangements: Scotland)–
(a) in subsection (2)(b), for “Scottish Drug Enforcement Agency” there is substituted “Scottish Crime and Drug Enforcement Agency”;
- (b) in subsection (3)(b)–
(i) for “Director of the Scottish Drug Enforcement Agency” there is substituted “Director General of the Scottish Crime and Drug Enforcement Agency”; and
(ii) for “constables or other persons” there is substituted “police members or support staff members”;
- (c) in subsection (4), in both paragraphs (a) and (b), for “Scottish Drug Enforcement Agency” there is substituted “Scottish Crime and Drug Enforcement Agency”; and
- (d) after subsection (4), there is inserted–
“(5) In this section, “police member” and “support staff member” have the same meaning as in section 23.”.
- (6) In paragraph (d) of the definition of “relevant authority” in section 31(5), for “Scottish Drug Enforcement Agency, means” there is substituted “Scottish Crime and Drug Enforcement Agency, means the Director General of”.
- (7) In section 42 (interpretation)–
(a) in subsection (1), for paragraph (g) of the definition of “chief officer” there is substituted–
“(g) in relation to the Scottish Crime and Drug Enforcement Agency, the Director General of that Agency;”;
- (b) subsection (2) is repealed.
- (8) In section 47 (person having powers of constable: exercise of such powers in Scotland and Northern Ireland)–
(a) in subsection (3)(a), for “Director of the Scottish Drug Enforcement Agency” there is substituted “Director General of the Scottish Crime and Drug Enforcement Agency”;

- (b) in subsection (4)(a), for “Deputy Director” there is substituted “Deputy Director General”; and
 - (c) in subsection (7), the definitions of “the Scottish Drug Enforcement Agency” and “the Director” are repealed.
- (9) In section 82(5) (persons who are protection providers), for paragraph (f), there is substituted—
- “(f) the Director General of the Scottish Crime and Drug Enforcement Agency;”.
- (10) In section 94 (interpretation of Chapter 4), subsection (9) is repealed.
- (11) Schedule 5 is amended as follows.
- (12) In paragraph 20—
- (a) in sub-paragraph (1)—
 - (i) the words “is or” are repealed; and
 - (ii) for “Scottish Drug Enforcement Agency” there is substituted “organisation known as the Scottish Drug Enforcement Agency and established under section 36(1)(a)(ii) of the Police (Scotland) Act 1967 (c.77), that is to say a person who was engaged on central service (as defined by section 38(5) of that Act) and was appointed by the Scottish Ministers to exercise control in relation to the activities carried out in exercise of that organisation's functions”; and
 - (b) in sub-paragraph (2), the words “is or” are repealed.
- (13) After paragraph 20 there is inserted—
- “20A.—**(1) A person who is or has been the Director General of the Scottish Crime and Drug Enforcement Agency.
- (2) A person who is or has been under the direction and control of the Director General of the Scottish Crime and Drug Enforcement Agency.”.

PART 2

MODIFICATIONS OF SUBORDINATE LEGISLATION

The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2003

7. In Part 1 of the Schedule (prescriptions for public authorities in Part 1 of Schedule 1 to the Regulation of Investigatory Powers Act 2000 that are relevant authorities for the purposes of sections 28 and 29 of that Act) to the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2003(a) before the entry in relation to the Serious Fraud Office there is inserted—

The Scottish Crime and Drug Enforcement Agency	Superintendent	Inspector	(b)
--	----------------	-----------	-----

The Regulation of Investigatory Powers (Communications Data) Order 2003

8.—(1) The Regulation of Investigatory Powers (Communications Data) Order 2003(b) is modified as follows.

(2) In Schedule 1 (individuals in public authorities within section 25(1) of the Regulation of Investigatory Powers Act 2000) after the entry in relation to the Serious Organised Crime Agency(c) there is inserted—

(a) S.I. 2003/3171 as amended by S.I. 2005/1084, S.I. 2006/594; S.I. 2006/635 and S.I. 2006/1874.

(b) S.I. 2003/3172 as amended by S.I. 2005/1083; S.I. 2006/594 and S.I. 2006/1878.

(c) The entry in relation to the Serious Organised Crime Agency was inserted by paragraph 41 of the Schedule to S.I. 2006/594.

The Scottish Crime and Drug Enforcement Agency	Superintendent or Grade PO7	Inspector	(b)(d)(g)
--	-----------------------------	-----------	-----------

(3) In Part 1 of Schedule 2(a) (individuals in additional public authorities that may acquire all types of communications data within section 21(4) of the Regulation of Investigatory Powers Act 2000) the entry in relation to the Scottish Drug Enforcement Agency is revoked.

(4) An authorisation granted under section 22(3) of the Regulation of Investigatory Powers Act 2000 which—

- (a) is granted by a person designated for the purposes of Chapter 2 of Part 1 of that Act by reference to the Scottish Drug Enforcement Agency, and
- (b) would be in force on 1st April 2007 but for the Scottish Drug Enforcement Agency ceasing to exist,

shall be treated as granted by a member of the Scottish Crime and Drug Enforcement Agency, designated for the purposes of Chapter 2 of Part 1 of that Act by reference to the Scottish Crime and Drug Enforcement Agency on the coming into force of this paragraph.

(a) The entry in relation to the Scottish Drug Enforcement Agency was inserted by article 2 of S.I. 2005/1083.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision and modifications in consequence of the Police, Public Order and Criminal Justice (Scotland) Act 2005 (asp 10) (“the Act”).

Article 3 makes provision to enable persons not covered by the Act to disclose information to the Scottish Crime and Drug Enforcement Agency (“the Agency”) and the Police Complaints Commissioner for Scotland (“the Commissioner”) to enable the Agency and Commissioner to exercise any of their functions under the Act. Article 3 also provides that it will be an offence for any person to disclose information which has been sent to the Agency or the Commissioner by the Commissioners for Her Majesty’s Revenue and Customs, without obtaining their consent. Provision is also made in Article 3 for conditions on the further disclosure of information by a person, public body or office holder where that information has been disclosed to them by the Agency or Commissioner and such further disclosure is not covered by the relevant provisions of the Act.

Article 4 enables agreements to be made to establish and maintain procedures in Scotland for reviewing certain complaints made about the acts and omissions of the British Transport Police, the Civil Nuclear Constabulary, the Ministry of Defence Police, the Serious Organised Crime Agency, Her Majesty’s Revenue and Customs and immigration officers and officials who exercise certain types of enforcement functions which relate to asylum or immigration. The agreements will not be able to establish any procedures for reviewing complaints which may constitute a criminal offence or contain a statement about the terms and conditions of a person’s service or employment. An agreement which is entered into under this article will have no effect on any action carried out any person or body about whom complaints procedures can be established under this article when that person or body is outside Scotland. Article 4 also makes provision about the sharing of certain information between the Commissioner and the Parliamentary Commissioner for Administration.

Article 5 makes it an offence in England, Wales and Northern Ireland to fail to comply with any requirement imposed on a person by a football banning order made under section 51 or 52 of the Act.

Article 6 and the Schedule make modifications of primary and secondary legislation in consequence of the Act.

Draft Order laid before Parliament under section 115(1) of, and paragraphs 1, 2 and 3 of Schedule 7 to, the Scotland Act 1998 for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2007 No.

CONSTITUTIONAL LAW

DEVOLUTION, SCOTLAND

POLICE

CRIMINAL LAW

**The Police, Public Order and Criminal Justice (Scotland) Act
2006 (Consequential Provisions and Modifications) Order 2007**

£3.00

© Crown Copyright 2007

Published and printed in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of Her Majesty's
Stationery Office and Queen's Printer of Acts of Parliament