

# **POLICE, PUBLIC ORDER AND CRIMINAL JUSTICE (SCOTLAND) ACT 2006 (ASP 10)**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 1: Police**

#### ***Chapter 2: Complaints and Misconduct***

#### **The Police Complaints Commissioner for Scotland**

#### ***Section 33 – The Police Complaints Commissioner for Scotland***

57. This section establishes a Police Complaints Commissioner for Scotland, to be appointed by the Scottish Ministers. More detail on the position of Commissioner is laid out at schedule 4.

#### **Supervision of complaints**

#### ***Section 34 – “Relevant complaint” and “person serving with the police”***

58. This section provides a definition of the kind of complaints that the Commissioner will be able to consider for review. A person can make a general complaint about one of the bodies listed in subsection (2) or about an act or omission by a person who is serving with the police. Subsection (7) sets out what is meant by serving with the police.
59. Subsection (6) sets out who can make a complaint which may be reviewed by the Commissioner. The section further provides that a complaint need not identify an individual police officer who is the subject of it, in order to be eligible for review by the Commissioner. Subsection (3) specifically provides that the Commissioner will not have jurisdiction to deal with complaints made against the police which contain allegations of criminal behaviour. Overseeing the investigation of criminal complaints will continue to be the responsibility of the area procurator fiscal. The Commissioner will also not review complaints about any matter which is related to a person’s employment or service with the police force, even if that person is no longer serving with the police. On the other hand, subsection (4) provides that the Commissioner will be able to review complaints made about off-duty behaviour of any person serving with the police.

#### ***Section 35 – Examination of manner of handling of complaint***

60. This section outlines the manner in which the Commissioner can review the way in which a complaint against the police has been handled. Such a review can be requested either by the complainer (for example, if dissatisfied with the way their complaint has been handled) or by the police organisation concerned (for example, if it believes it has gone as far as it can to resolve the complaint and considers there is merit in the Commissioner looking at the matter). The Commissioner may only carry out a review

requested by a police organisation if satisfied that the organisation has already taken reasonable steps to deal with the complaint itself.

61. Subsection (3) places the Commissioner under a duty to inform the complainer and any person who is serving with the police who may be the subject of a complaint, about the outcome of a review and what action the Commissioner proposes to take. The Commissioner is also required to produce a report of the complaint handling review and send this to the appropriate authority in relation to the complaint (as defined in section 41). Subsection (5) enables the Scottish Ministers to make regulations which set out exceptions to this duty but only in certain circumstances.
62. The section goes on to lay out the process through which, following a review, the Commissioner can direct that a complaint be reconsidered. The Commissioner can direct either the appropriate authority in relation to the complaint, or another relevant authority (as defined in section 47) to reconsider the complaint. The authority which reconsiders the complaint is known as the reconsidering authority. There may be occasions when the Commissioner decides, in light of the circumstances of the complaint, that it is more appropriate that a different police force or another relevant authority considers how that complaint was handled, rather than the force or authority which initially received the complaint.
63. Subsection (10) provides that where a relevant complaint has led to police disciplinary procedures being invoked (as set out in any regulations made under section 26(2A)(a) of the Police (Scotland) Act 1967), the Commissioner's power to intervene and issue a reconsideration direction is limited to the application of those disciplinary procedures. This means that if the Commissioner considers that these procedures have not been adhered to following a complaint made by a member of the public, he or she can issue a direction for the appropriate authority in relation to the complaint to reconsider the application of those procedures; but he or she cannot direct that appropriate authority to reach a different disciplinary conclusion or outcome.
64. Subsection (11)(b) allows the Commissioner directly to supervise any reconsideration process should he or she choose to do so.

### ***Section 36 – Duty of Commissioner not to proceed with certain complaint handling reviews***

65. This section places a duty on the Commissioner to discontinue, or not proceed with, a complaint handling review under certain circumstances. There will be circumstances where it will not be appropriate for a review of a complaint to be pursued by the Commissioner, for example if a complainer has made complaints of a vexatious nature or if allegations of a criminal nature come to light. Subsection (3) provides that these circumstances will be specified in regulations made by the Scottish Ministers and subject to negative resolution procedure. Subsection (4) outlines the process that must be followed by the Commissioner should a complaint handling review be discontinued or not proceeded with.

### ***Section 37 – Appointment of person to reconsider complaint***

66. This section explains how someone is appointed to carry out the reconsideration of a complaint against the police. This person will be appointed by the reconsidering authority which is charged with reconsidering the complaint, but if the Commissioner is directly supervising the reconsideration process, the appointment would be subject to approval by the Commissioner.

### ***Section 38 – Reconsideration of complaint: duties to keep persons informed***

67. This section places a duty on the reconsidering authority or the Commissioner (if he or she decides to supervise the reconsideration of a complaint), to keep the complainer, the appropriate authority in relation to the complaint, and any person who may be the

subject of a complaint, informed of the progress of any reconsideration. This section also sets out that the reconsidering authority or the Commissioner (as appropriate) must inform these persons of what action may be taken following the reconsideration of the complaint and the outcome of the process. Subsection (5) places a duty on any person charged with carrying out a reconsideration to provide the Commissioner with any information that he or she requires to carry out his or her functions.

### ***Section 39 – Power of Commissioner to discontinue reconsideration***

68. This section gives the Commissioner the power to discontinue the reconsideration of any complaint in certain circumstances. Subsection (2) provides that these circumstances will be specified in regulations made by the Scottish Ministers and subject to negative resolution procedure. Subsection (3) outlines the process that must be followed by the Commissioner should the reconsideration of a complaint be discontinued.

### ***Section 40 – Final reports on reconsideration***

69. This section places a duty on anyone appointed to carry out a reconsideration, upon its completion, to submit a report to the Commissioner. A copy of that report must also be passed to the appropriate authority in relation to the complaint and, where different, the reconsidering authority.

### ***Section 41 – Appropriate authority in relation to a complaint***

70. This section describes which police organisation is the appropriate authority for a complaint, depending on the person or the organisation in respect of whom the complaint is made.

## **Other functions**

### ***Section 42 – General functions of the Commissioner***

71. This section sets out the general functions of the Commissioner, which are mainly to ensure that each relevant authority has in place effective and efficient complaints handling systems. The Commissioner can also provide advice and make recommendations on how those systems and procedures can be improved or modified.

### ***Section 43 – Reports to the Scottish Ministers***

72. This section places a duty on the Commissioner to provide an annual report on the carrying out of his or her functions to the Scottish Ministers, each relevant authority and HMIC. The Commissioner must also provide reports on anything within his or her remit that the Scottish Ministers might require, and can also provide reports to the Scottish Ministers on anything which he or she considers appropriate.
73. Subsection (5) places a duty on the Scottish Ministers to lay before Parliament and publish all annual reports produced by the Commissioner. The Scottish Ministers must also publish and lay before Parliament any other reports which they receive from the Commissioner but only if they think it is appropriate to do so.

### ***Section 44 – Provision of information to the Commissioner***

74. This section places a duty on relevant authorities to provide, at the request of the Commissioner, information and documents required in order to carry out the Commissioner's functions.

***Section 45 – Power of Commissioner to issue guidance***

75. This section allows the Commissioner to issue guidance regarding the handling of complaints or any other matter specified within this Chapter of the Act. Subsection (2) requires the Commissioner to consult relevant persons and organisations before issuing guidance. Subsection (3) places a duty on those issued with guidance by the Commissioner to have regard to the terms of that guidance.

***Section 46 – Disclosure of information by and to the Commissioner***

76. This section enables the Commissioner to pass information to others and receive information from others when such information is necessary either for the Commissioner to fulfil his or her functions or for another public body or office-holder to fulfil their functions.
77. Subsections (2) and (3) place restrictions on the onward disclosure of information which the Commissioner gives to any body or office holder. Any body or office-holder that wants to disclose information which the Commissioner has given them can do so only if they have obtained the consent of the Commissioner, and the disclosure of this information is for a purpose connected with the body's or the office-holder's functions.

**Supplementary**

***Section 47 – Interpretation of Chapter 2***

78. This section provides definitions for various key terms used in this Chapter of the Act.