



# Police, Public Order and Criminal Justice (Scotland) Act 2006

2006 asp 10

## PART 1

### POLICE

#### CHAPTER 2

##### COMPLAINTS AND MISCONDUCT

###### *Supervision of complaints*

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

- (1) In this Chapter, “relevant complaint” means a complaint which is given or sent by any of the persons mentioned in subsection (6) to the appropriate authority in relation to the complaint.
- (2) In subsection (1), “complaint” means a written statement expressing dissatisfaction about an act or omission—
  - (a) by a police authority;
  - (b) by a joint police board;
  - (c) by a police force;
  - (d) by the Authority;
  - (e) by the Agency; or
  - (f) by a person who, at the time of the act or omission, was a person serving with the police.
- (3) But “complaint” does not include—
  - (a) any statement made by a person serving with, or who has served with, the police, about the terms and conditions of that person's service with the police; or

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*Status: Point in time view as at 01/04/2007.*

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- (b) a statement which consists of or includes an allegation of an act or omission which constitutes a crime.
- (4) An act or omission need not be one occurring in the course of a person's duty, employment or appointment (as the case may be) in order to fall within subsection (2)(f).
- (5) A complaint need not identify a person serving with the police who is the subject of the complaint in order to fall within subsection (2)(f).
- (6) The persons referred to in subsection (1) are—
- (a) a member of the public who claims to be the person in relation to whom the act or omission took place;
  - (b) a member of the public not falling within paragraph (a) who claims to have been adversely affected by the act or omission;
  - (c) a member of the public who claims to have witnessed the act or omission;
  - (d) a person acting on behalf of a person falling within any of paragraphs (a) to (c).
- (7) For the purposes of this section, a person is serving with the police if the person—
- (a) is a constable of a police force;
  - (b) is employed or appointed by virtue of section 9 of the 1967 Act (employment otherwise than as a constable) by a police authority or a joint police board;
  - (c) is a member of the staff of the Authority; or
  - (d) is a member of the Agency,
- and related expressions are to be construed accordingly.

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

- (1) The Commissioner may, at the request of —
- (a) the person who made the complaint (“the complainer”); or
  - (b) the appropriate authority in relation to the complaint,
- examine the manner in which a relevant complaint has been dealt with (such an examination being a “complaint handling review”).
- (2) The Commissioner may carry out a complaint handling review under subsection (1)(b) only if satisfied that the appropriate authority in relation to the complaint has taken reasonable steps to deal with the complaint.
- (3) On completion of a complaint handling review, the Commissioner must—
- (a) inform the persons mentioned in subsection (4) about—
    - (i) the conclusions the Commissioner has drawn from the complaint handling review and the reasons for them;
    - (ii) what action (if any) the Commissioner proposes to take in consequence of those conclusions;
  - (b) draw up a report of the complaint handling review and the conclusions, reasons and proposed action referred to in paragraph (a) and send it to the appropriate authority in relation to the complaint.
- (4) Those persons are—
- (a) the complainer; and
  - (b) where the complaint is in respect of an act or omission by a person mentioned in section 34(2)(f) and identifies the person who is the subject of it, that person.

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- (5) The duties imposed by subsection (3)(a) are subject to such exceptions as may be prescribed by regulations made by the Scottish Ministers; but they are to make regulations under this subsection only to the extent that they consider it necessary for the purpose of any of the following—
- (a) preventing the premature or inappropriate disclosure of information that is relevant to, or may be used in, any criminal proceedings or prospective criminal proceedings;
  - (b) preventing the disclosure of information in any circumstances in which it has been determined in accordance with the regulations that its non-disclosure—
    - (i) is in the interests of national security;
    - (ii) is for the purposes of the prevention or detection of crime or the apprehension or prosecution of offenders;
    - (iii) is justified on proportionality grounds; or
    - (iv) is otherwise necessary in the public interest.
- (6) The non-disclosure of information is justified on proportionality grounds only if its disclosure would cause, directly or indirectly, an adverse effect which would be disproportionate to the benefits arising from its disclosure.
- (7) If, having completed a complaint handling review, the Commissioner is of the opinion that the complaint should be reconsidered, the Commissioner may give a direction requiring the reconsideration of the complaint (a “reconsideration direction”).
- (8) A reconsideration direction may be given—
- (a) to the appropriate authority in relation to the complaint; or
  - (b) if the Commissioner thinks it more appropriate to do so, to any other person who is a relevant authority,
- (the person to whom the direction is given being “the reconsidering authority”).
- (9) A reconsideration direction given under subsection (8)(b) must be accompanied by a copy of the report sent to the appropriate authority in relation to the complaint under subsection (3)(b).
- (10) A reconsideration direction may be given as respects so much of the complaint as has been, or is, the subject of proceedings by virtue of section 26(2A)(a) of the 1967 Act (police disciplinary procedures) only in so far as it relates to the extent of compliance with the procedures established by virtue of that provision.
- (11) A reconsideration direction may (either or both)—
- (a) instruct that the reconsideration of the complaint is to have regard to such further information as may have become available (whether or not as a result of the complaint handling review) after the complaint was dealt with;
  - (b) contain a requirement that reconsideration of the complaint is to take place under the supervision of the Commissioner (a “supervision requirement”).
- (12) In deciding whether a reconsideration direction should contain a supervision requirement, the Commissioner must have regard to—
- (a) the seriousness of the case; and
  - (b) the public interest.
- (13) The Commissioner may at any time issue a direction varying a reconsideration direction by inserting or, as the case may be, deleting a supervision requirement.

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- (14) Where a reconsideration direction is varied under subsection (13), the Commissioner may give—
- (a) the reconsidering authority; or
  - (b) any person previously appointed to carry out the reconsideration,
- such directions as the Commissioner considers appropriate for the purpose of giving effect to the variation.

#### Commencement Information

- II** S. 35 wholly in force at 1.4.2007; s. 35 not in force at Royal Assent see s. 104; s. 35 in force at 1.1.2007 for specific purposes by S.S.I. 2006/607, art. 3, Sch; s. 35 in force so far as not already in force at 1.4.2007 by S.S.I. 2007/84, art. 3(3)

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

- (1) If it appears to the Commissioner (whether on an application by the appropriate authority in relation to the complaint or otherwise) that a complaint handling review is or would, if it took place, be one to which subsection (2) applies, the Commissioner must discontinue or, as the case may be, not proceed with the review.
- (2) This subsection applies to a complaint handling review which relates or, if it took place, would relate to a relevant complaint of a specified description.
- (3) In subsection (2), “specified” means specified in regulations made by the Scottish Ministers.
- (4) Where a complaint handling review is, under this section, discontinued or not proceeded with—
  - (a) the Commissioner must notify the appropriate authority in relation to the complaint and the persons mentioned in section 35(4) of that fact;
  - (b) the Commissioner may give the appropriate authority in relation to the complaint directions to do any such things as the Commissioner is authorised to direct by regulations made by the Scottish Ministers;
  - (c) the Commissioner may himself or herself take any steps of a description specified in regulations so made as the Commissioner considers appropriate for purposes connected with the discontinuance of the complaint handling review or the fact that it is not to take place; and
  - (d) subject to paragraphs (b) and (c), the Commissioner is to take no further action in accordance with this Chapter in relation to the review or the complaint to which it relates.

#### Commencement Information

- I2** S. 36 wholly in force at 1.4.2007; s. 36 not in force at Royal Assent see s. 104; s. 36 in force at 1.1.2007 for specific purposes by S.S.I. 2006/607, art. 3, Sch; s. 36 in force so far as not already in force at 1.4.2007 by S.S.I. 2007/84, art. 3(3)

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

- (1) The reconsidering authority must appoint a person to reconsider the complaint to which the reconsideration direction relates.
- (2) But where the reconsideration direction contains a supervision requirement, the reconsidering authority must not appoint a person unless the Commissioner has given notice to the authority that the Commissioner approves the person whom the authority proposes to appoint.
- (3) Where the reconsidering authority is the appropriate authority in relation to the complaint, the person appointed must be one who was not previously involved in the consideration of the complaint.
- (4) Where the reconsideration of a complaint is subject to a supervision requirement, the person appointed under this section to reconsider the complaint must comply with all such requirements in relation to the carrying out of that reconsideration as may be imposed by the Commissioner in relation to that reconsideration.

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

- (1) This section applies where there is a reconsideration of a complaint in accordance with section 35.
- (2) The reconsidering authority or, where the reconsideration of a complaint is subject to a supervision requirement, the Commissioner must provide the persons mentioned in subsection (3) with all such information as will keep those persons properly informed, while the reconsideration is being carried out and subsequently, of—
  - (a) the action (if any) which is taken in respect of the matters dealt with in any report under section 40; and
  - (b) the outcome of any such action.
- (3) Those persons are—
  - (a) the complainer;
  - (b) the appropriate authority in relation to the complaint (except where that authority is the reconsidering authority); and
  - (c) where the complaint is in respect of an act or omission by a person mentioned in section 34(2)(f) and identifies the person who is the subject of it, that person.
- (4) Subsections (5) and (6) of section 35 apply in relation to the duties imposed by subsection (2) as they apply to the duties imposed by subsection (3)(a) of that section.
- (5) A person appointed under section 37 to reconsider a complaint must provide the Commissioner with all such information as is reasonably required by the Commissioner for the purposes of the Commissioner's functions.
- (6) Where the reconsideration of a complaint is not subject to a supervision requirement the reconsidering authority must comply with any direction or guidance given by the Commissioner as to how the authority is to perform its functions under this section.

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#### Commencement Information

- I3** S. 38 wholly in force at 1.4.2007; s. 38 not in force at Royal Assent see s. 104; s. 38(4) in force at 1.1.2007 by S.S.I. 2006/607, art. 3, Sch; s. 38 in force so far as not already in force at 1.4.2007 by S.S.I. 2007/84, art. 3(3)

### 39 Power of Commissioner to discontinue reconsideration

- (1) If it appears to the Commissioner (whether on an application by the reconsidering authority or otherwise) that a relevant complaint which is being reconsidered under section 35 is of a specified description, the Commissioner may by order require the discontinuance of the reconsideration.
- (2) In subsection (1), “specified” means specified in regulations made by the Scottish Ministers.
- (3) Where the reconsideration of a complaint is discontinued in accordance with this section—
  - (a) the Commissioner must notify the persons mentioned in section 38(3) of that fact;
  - (b) the Commissioner must give a copy of the order requiring the discontinuance to the reconsidering authority and the person appointed to reconsider the complaint;
  - (c) the Commissioner may give the reconsidering authority or the person appointed to reconsider the complaint directions to do any such things as the Commissioner is authorised to direct by regulations made by the Scottish Ministers;
  - (d) the Commissioner may himself or herself take any steps of a description specified in regulations so made as the Commissioner considers appropriate for purposes connected with the discontinuance of the reconsideration; and
  - (e) subject to paragraphs (c) and (d), the reconsidering authority, the person appointed to reconsider the complaint and the Commissioner are to take no further action in accordance with this Chapter in relation to that complaint.

#### Commencement Information

- I4** S. 39 wholly in force at 1.4.2007; s. 39 not in force at Royal Assent see s. 104; s. 39 in force at 1.1.2007 for specific purposes by S.S.I. 2006/607, art. 3, Sch; s. 39 in force so far as not already in force at 1.4.2007 by S.S.I. 2007/84, art. 3(3)

### 40 Final reports on reconsideration

- (1) On the completion of the person's reconsideration, a person appointed under section 37 must—
  - (a) submit a report on it to the Commissioner; and
  - (b) send a copy of the report to—
    - (i) the reconsidering authority; and
    - (ii) where different, the appropriate authority in relation to the complaint.

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- (2) A person submitting a report under this section is not prevented by any obligation of secrecy imposed by any rule of law or otherwise from including all such matters as the person thinks fit in the person's report.

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

- (1) For the purposes of sections 34 to 40, the appropriate authority in relation to a complaint is—
- (a) where the complaint is in respect of an act or omission of a police authority, the authority;
  - (b) where the complaint is in respect of an act or omission of a joint police board, the board;
  - (c) where the complaint is in respect of an act or omission of a police force, the chief constable of the force;
  - (d) where the complaint is in respect of an act or omission of the Authority, the Authority;
  - (e) where the complaint is in respect of an act or omission of the Agency, the Director General of the Agency;
  - (f) where the complaint is in respect of an act or omission of a person at a time when the person was a constable of a police force—
    - (i) where the person was of a senior rank, the maintaining authority in relation to the force;
    - (ii) where the person was not of such rank, the chief constable of the force;
  - (g) where the complaint is in respect of an act or omission of a person at a time when the person was employed or appointed by virtue of section 9 of the 1967 Act by a police authority or a joint police board, the authority or board;
  - (h) where the complaint is in respect of an act or omission of a person at a time when the person was a member of staff of the Authority, the Authority;
  - (i) where the complaint is in respect of an act or omission of a person at a time when the person was the Director General of the Agency, the Authority;
  - (j) where the complaint is in respect of an act or omission of a person at a time when the person was the Deputy Director General, a police member or a support staff member of the Agency, the Director General of the Agency.
- (2) The reference in subsection (1)(f) to a constable of a police force does not include a constable who is seconded to the Authority under paragraph 10(2) of schedule 1.
- (3) In subsection (1)(f)(i), “senior rank” means a rank above chief superintendent.
- (4) For the purpose of subsection (1)(f)(i), the maintaining authority in relation to a police force is—
- (a) where the force is for an area which is not combined by virtue of an amalgamation scheme under the 1967 Act, the police authority for that area;
  - (b) where the force is for an area consisting of police areas combined by virtue of such a scheme, the joint police board constituted under the scheme.
- (5) Despite paragraphs 7(3)(b) and (5)(a) and 8(3) of schedule 2, the reference in subsection (1)(h) to a member of staff of the Authority does not include a police member of the Agency or a support staff member of the Agency.

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