



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

2006 asp 10

PART 1

POLICE

CHAPTER 2

COMPLAINTS AND MISCONDUCT

Modifications etc. (not altering text)

- C1 Pt. 1 Ch. 2 modified (1.4.2013) by [The Police and Fire Reform \(Scotland\) Act 2012 \(Supplementary, Transitional, Transitory and Saving Provisions\) Order 2013 \(S.S.I. 2013/121\)](#), arts. 1(1), 16

[^{F1}The Police Investigations and Review Commissioner]

Textual Amendments

- F1 S. 33 heading substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), ss. 61(2)(a), 129(2) (with s. 100); [S.S.I. 2013/51](#), art. 2 (with transitional provisions and savings in [S.S.I. 2013/121](#))

33 [^{F2}The Police Investigations and Review Commissioner]

- (1) There is to be an officer known as the [^{F3}Police Investigations and Review Commissioner] (“the Commissioner”).
- (2) The Commissioner is to be an individual appointed by the Scottish Ministers.
- (3) Schedule 4 (which makes further provision about the Commissioner) has effect.

Changes to legislation: There are currently no known outstanding effects for the Police, Public Order and Criminal Justice (Scotland) Act 2006, Chapter 2. (See end of Document for details)

Textual Amendments

- F2** S. 33 provision heading substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), **ss. 61(2)(b)**, 129(2) (with s. 100); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F3** Words in s. 33(1) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), **ss. 61(2)(c)**, 129(2) (with s. 100); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)

[^{F4}33A] **General functions of the Commissioner**

The Commissioner's general functions are—

- (a) to maintain, and to secure the maintenance by the Authority and the chief constable of, suitable arrangements for—
 - (i) the handling of relevant complaints; and
 - (ii) the examination of the handling of relevant complaints and the reconsideration of such complaints in accordance with sections 34 to 41;
- (b) where directed to do so by the appropriate prosecutor—
 - (i) to investigate any circumstances in which there is an indication that a person serving with the police may have committed an offence;
 - (ii) to investigate, on behalf of the relevant procurator fiscal, the circumstances of any death involving a person serving with the police which that procurator fiscal is required to investigate under section 1 of the [^{F5}Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016];
- (c) where requested to do so by the Authority or the chief constable, to investigate and report on certain serious incidents involving the police (see section 41B); and
- (d) to investigate other matters relating to the Authority or the Police Service where the Commissioner considers that it would be in the public interest to do so (see section 41C).]

Textual Amendments

- F4** S. 33A inserted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), **ss. 62**, 129(2) (with s. 100); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121, arts. 1(1), 11)
- F5** Words in s. 33A(b)(ii) substituted (15.6.2017) by [Inquiries into Fatal Accidents and Sudden Deaths etc. \(Scotland\) Act 2016 \(asp 2\)](#), s. 42(2), **sch. 2 para. 11(2)**; S.S.I. 2017/155, reg. 2 (with regs. 4(2)5)

Supervision of complaints

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

- (1) In this Chapter, “relevant complaint” means a complaint which is [^{F6}made,] given or sent by any of the persons mentioned in subsection (6) to the appropriate authority in relation to the complaint.

Changes to legislation: There are currently no known outstanding effects for the Police, Public Order and Criminal Justice (Scotland) Act 2006, Chapter 2. (See end of Document for details)

(2) In subsection (1), “complaint” means a [^{F7}statement (whether oral, written or electronic)] expressing dissatisfaction about an act or omission—

- [^{F8}(a) by the Authority;
- (b) by the Police Service; or]
- (f) by a person who, at the time of the act or omission, was a person serving with the police.

[^{F9}(2A) A “complaint” may relate to—

- (a) any action taken, or failed to be taken, by or on behalf of the subject of the complaint;
- (b) the standard of any service which the subject of the complaint has provided or failed to provide.]

(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
- (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).

^{F10}(7)

Textual Amendments

- F6** Word in s. 34(1) inserted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#) , s. 129(2) , [Sch. 7 para. 33\(2\)\(a\)](#) ; S.S.I. 2013/51 , art. 2 (with transitional provisions and savings in S.S.I. 2013/121, arts. 1(1), 11)
- F7** Words in s. 34(2) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#) , s. 129(2) , [Sch. 7 para. 33\(2\)\(b\)\(i\)](#) ; S.S.I. 2013/51 , art. 2 (with transitional provisions and savings in S.S.I. 2013/121, arts. 1(1), 11)
- F8** S. 34(2)(a)(b) substituted for s. 34(2)(a)-(e) (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#) , s. 129(2) , [Sch. 7 para. 33\(2\)\(b\)\(ii\)](#) ; S.S.I. 2013/51 , art. 2 (with transitional provisions and savings in S.S.I. 2013/121, arts. 1(1), 11)
- F9** S. 34(2A) inserted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#) , s. 129(2) , [Sch. 7 para. 33\(2\)\(c\)](#) ; S.S.I. 2013/51 , art. 2 (with transitional provisions and savings in S.S.I. 2013/121, arts. 1(1), 11)

Changes to legislation: There are currently no known outstanding effects for the Police, Public Order and Criminal Justice (Scotland) Act 2006, Chapter 2. (See end of Document for details)

F10 S. 34(7) repealed (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [Sch. 8 Pt. 1](#); [S.S.I. 2013/51](#), art. 2 (with transitional provisions and savings in [S.S.I. 2013/121](#), arts. 1(1), 11)

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^{F11}; and
 - (c) if the Commissioner considers it appropriate to do so, publish the report drawn up under paragraph (b) in such manner as the Commissioner considers appropriate.]
- (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.
- (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.

Changes to legislation: There are currently no known outstanding effects for the Police, Public Order and Criminal Justice (Scotland) Act 2006, Chapter 2. (See end of Document for details)

- (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 [^{F12}the Authority where the appropriate authority is the chief constable],
- (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 [^{F13}procedures made by regulations made under section 48 of the Police and Fire Reform (Scotland) Act 2012 (asp 8) for dealing with constables whose standard of behaviour or performance is unsatisfactory] 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.
- (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.

Textual Amendments

- F11** S. 35(3)(c) and word inserted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [Sch. 7 para. 33\(3\)\(a\)](#); S.S.I. 2013/51, [art. 2](#) (with transitional provisions and savings in S.S.I. 2013/121)
- F12** Words in s. 35(8)(b) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [Sch. 7 para. 33\(3\)\(b\)](#); S.S.I. 2013/51, [art. 2](#) (with transitional provisions and savings in S.S.I. 2013/121)

Changes to legislation: There are currently no known outstanding effects for the Police, Public Order and Criminal Justice (Scotland) Act 2006, Chapter 2. (See end of Document for details)

F13 Words in s. 35(10) substituted (1.4.2013) by Police and Fire Reform (Scotland) Act 2012 (asp 8), s. 129(2), Sch. 7 para. 33(3)(c); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)

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 [F14(1A) or] (2) applies, the Commissioner must discontinue or, as the case may be, not proceed with the review.

[F15(1A) This subsection applies to a complaint handling review if—

- (a) it relates or, if it took place, would relate to a relevant complaint in respect of which the appropriate authority in relation to the complaint—
 - (i) has concluded its consideration of the complaint; and
 - (ii) has communicated its findings to the complainer;
- (b) a period of 3 months or longer has elapsed between the date on which those findings were so communicated and the date on which the Commissioner was requested to carry out the complaint handling review; and
- (c) the Commissioner is not satisfied that there are exceptional circumstances which justified the delay in requesting 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.

Changes to legislation: There are currently no known outstanding effects for the Police, Public Order and Criminal Justice (Scotland) Act 2006, Chapter 2. (See end of Document for details)

Textual Amendments

- F14** Words in s. 36(1) inserted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [Sch. 7 para. 33\(4\)\(a\)](#); S.S.I. 2013/51, [art. 2](#) (with transitional provisions and savings in S.S.I. 2013/121)
- F15** S. 36(1A) inserted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [Sch. 7 para. 33\(4\)\(b\)](#); S.S.I. 2013/51, [art. 2](#) (with transitional provisions and savings in S.S.I. 2013/121)

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\(3\)](#)

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.

Changes to legislation: There are currently no known outstanding effects for the Police, Public Order and Criminal Justice (Scotland) Act 2006, Chapter 2. (See end of Document for details)

- (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.

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\(3\)](#)

Changes to legislation: There are currently no known outstanding effects for the Police, Public Order and Criminal Justice (Scotland) Act 2006, Chapter 2. (See end of Document for details)

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.
- (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.

[^{F16}40A Arrangements for handling relevant complaints

- (1) The Commissioner must—
 - (a) keep under review all arrangements maintained by the Commissioner, the Authority and the chief constable for the handling of relevant complaints; and
 - (b) seek to secure that those arrangements—
 - (i) are efficient and effective;
 - (ii) contain and manifest an appropriate degree of independence; and
 - (iii) are adhered to.
- (2) The Commissioner may make such recommendations, or give such advice, for the modification of—
 - (a) the arrangements mentioned in subsection (1); or
 - (b) the practice of the Authority or the chief constable in relation to other matters, as appear from the carrying out of the Commissioner's other functions to be necessary or desirable.”.]

Textual Amendments

F16 S. 40A inserted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [Sch. 7 para. 33\(5\)](#); [S.S.I. 2013/51](#), art. 2 (with transitional provisions and savings in [S.S.I. 2013/121](#), arts. 1(1), 11)

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—
 - [^{F17}(a) the Authority in cases where the complaint is about an act or omission by—
 - (i) the Authority;
 - (ii) a senior officer of the Police Service; or
 - (iii) a member of the Authority's staff; and
 - (b) the chief constable in cases where the complaint is about an act or omission by—
 - (i) the Police Service;
 - (ii) a constable of the Police Service who is not a senior officer; or
 - (iii) a member of the police staff.]

Changes to legislation: There are currently no known outstanding effects for the Police, Public Order and Criminal Justice (Scotland) Act 2006, Chapter 2. (See end of Document for details)

- F18(2)
- F18(3)
- F18(4)
- F18(5)

Textual Amendments

- F17** S. 41(1)(a)(b) substituted for s. 41(1)(a)-(j) (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [Sch. 7 para. 33\(6\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121, arts. 1(1), 11)
- F18** S. 41(2)-(5) repealed (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [Sch. 8 Pt. 1](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121, arts. 1(1), 11)

[^{F19}Investigations

Textual Amendments

- F19** S. 41A and cross-heading inserted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), [ss. 63, 129\(2\)](#) (with s. 100); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121, arts. 1(1), 11)

41A Investigations under supervision of Lord Advocate or procurator fiscal

The Commissioner, when carrying out an investigation in pursuance of a direction issued under paragraph (b) of section 33A, must comply with—

- (a) any lawful instruction given by the appropriate prosecutor who issued the direction; and
- (b) in the case of an investigation carried out in pursuance of a direction issued under sub-paragraph (i) of that paragraph, any instruction issued by the Lord Advocate in relation to the reporting, for consideration of the question of prosecution, of alleged offences.]

[^{F20}41B Serious incidents involving the police

- (1) A “serious incident involving the police” which the Commissioner may investigate in pursuance of paragraph (c) of section 33A is—
 - (a) a circumstance in or in consequence of which a person has died or has sustained serious injury where—
 - (i) the person, at or before the time of death or serious injury, had contact (directly or indirectly) with a person serving with the police acting in the execution of that person's duties; and
 - (ii) there is an indication that the contact may have caused (directly or indirectly) or contributed to the death or serious injury;
 - (b) any other circumstance in or in consequence of which—

Changes to legislation: There are currently no known outstanding effects for the Police, Public Order and Criminal Justice (Scotland) Act 2006, Chapter 2. (See end of Document for details)

- (i) a person has otherwise sustained a serious injury at a time when the person was being detained or kept in custody by a person serving with the police; or
 - (ii) a person serving with the police has used a firearm or any other weapon of such description as the Scottish Ministers may by regulations specify; or
 - (c) any other circumstance involving the Authority, the Police Service or a person serving with the police as may be specified in regulations made by the Scottish Ministers.
- (2) But a matter is not a “serious incident involving the police” if it is—
- (a) a matter—
 - (i) which the Commissioner is investigating in pursuance of paragraph (b)(i) of section 33A; or
 - (ii) in respect of which criminal proceedings have been brought following such an investigation by the Commissioner; or
 - (b) a matter which is being, or has been, investigated—
 - (i) by the Commissioner in pursuance of paragraph (b)(ii) of section 33A; or
 - (ii) by any other person under section 1 of the [F21]Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016[.]

Textual Amendments

F20 S. 41B inserted (1.10.2012) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), ss. 64, 129(2) (with s. 100); S.S.I. 2012/253, art. 2, sch.

F21 Words in s. 41B(2)(b)(ii) substituted (15.6.2017) by [Inquiries into Fatal Accidents and Sudden Deaths etc. \(Scotland\) Act 2016 \(asp 2\)](#), s. 42(2), sch. 2 para. 11(3); S.S.I. 2017/155, reg. 2 (with regs. 4(2)5)

[F22]41C Investigation of matters in the public interest

- (1) The Commissioner may investigate any relevant police matter where the Commissioner considers that it would be in the public interest to do so.
- (2) A relevant police matter is any incident in relation to which there is an indication that the Authority, the Police Service or a person serving with the police has been involved other than—
 - (a) a matter—
 - (i) which the Commissioner is investigating in pursuance of paragraph (b)(i) of section 33A; or
 - (ii) in respect of which criminal proceedings have been brought following such an investigation by the Commissioner;
 - (b) a matter which is being, or has been, investigated—
 - (i) by the Commissioner in pursuance of paragraph (b)(ii) of section 33A; or
 - (ii) by any other person under section 1 of the [F23]Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016[; or
 - (c) a matter which is being, or has been, investigated by the Commissioner by virtue of paragraph (c) of section 33A.]

Changes to legislation: There are currently no known outstanding effects for the Police, Public Order and Criminal Justice (Scotland) Act 2006, Chapter 2. (See end of Document for details)

Textual Amendments

- F22** S. 41C inserted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), **ss. 65**, 129(2) (with s. 100); [S.S.I. 2013/51](#), **art. 2** (with transitional provisions and savings in [S.S.I. 2013/121](#), arts. 1(1), 11)
- F23** Words in s. 41C(2)(b)(ii) substituted (15.6.2017) by [Inquiries into Fatal Accidents and Sudden Deaths etc. \(Scotland\) Act 2016 \(asp 2\)](#), s. 42(2), **sch. 2 para. 11(4)**; [S.S.I. 2017/155](#), **reg. 2** (with **regs. 4(2)5**)

[^{F24}41D Investigations: procedure etc.

- (1) The Scottish Ministers may by regulations make such provision about investigations by the Commissioner in pursuance of paragraph (c) or (d) of section 33A as they consider appropriate.
- (2) Regulations may, in particular, make provision—
 - (a) requiring the chief constable or the Authority to refer matters to the Commissioner;
 - (b) about circumstances in which the Commissioner—
 - (i) must, must not or need not carry out an investigation; or
 - (ii) may discontinue an investigation;
 - (c) about the form and procedure of an investigation;
 - (d) imposing restrictions on the extent of any investigation;
 - (e) setting time limits within which matters must be investigated;
 - (f) requiring the chief constable, the Authority or other persons to assist and co-operate with the Commissioner when carrying out an investigation (by providing evidence, attending hearings or otherwise);
 - (g) for the delegation of functions to the Commissioner.
- (3) Before making regulations under this section, the Scottish Ministers must consult—
 - (a) the Commissioner;
 - (b) the Authority;
 - (c) the chief constable;
 - (d) such persons as appear to them to be representatives of senior officers;
 - (e) such persons as appear to them to be representatives of superintendents (including chief superintendents);
 - (f) the joint central committee of the Police Federation for Scotland; and
 - (g) such other persons as they think appropriate.]

Textual Amendments

- F24** S. 41D inserted (1.10.2012) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), **ss. 66**, 129(2) (with s. 100); [S.S.I. 2012/253](#), **art. 2**, **Sch.** (with **art. 6**)

[^{F25}41E Reports on investigations

- (1) The Commissioner must prepare a report of each investigation carried out in pursuance of paragraph (c) or (d) of section 33A.
- (2) The Commissioner must—

Changes to legislation: There are currently no known outstanding effects for the Police, Public Order and Criminal Justice (Scotland) Act 2006, Chapter 2. (See end of Document for details)

- (a) provide a copy of a report prepared under subsection (1) to—
 - (i) the person (if any) who requested the investigation;
 - (ii) the Authority; and
 - (iii) any other person whom the Commissioner considers appropriate; and
 - (b) if the Commissioner considers it appropriate to do so, publish the report in such manner as the Commissioner considers appropriate.
- (3) Apart from identifying the Authority or the Police Service, a report must not—
- (a) mention the name of any person; or
 - (b) contain any particulars which, in the Commissioner's opinion, are likely to identify any person and can be omitted without impairing the effectiveness of the report,
- unless the Commissioner determines that it is necessary to do so (having taken into account the public interest).]

Textual Amendments

F25 S. 41E inserted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), ss. 67, 129(2) (with s. 100); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121, arts. 1(1), 11)

[^{F26}**41F** **Investigations: obstruction and contempt**

- (1) The Court of Session may, on a petition by the Commissioner, inquire into whether a person—
- (a) without lawful excuse, is obstructing or has obstructed the Commissioner in the carrying out of a complaint handling review or in the carrying out of an investigation in pursuance of paragraph (c) or (d) of section 33A; or
 - (b) is doing or has done any act, or is failing or has failed to take any action, in relation to such a review or investigation which, if it were a proceeding in the Court of Session, would constitute contempt of court.
- (2) After so inquiring (and, in particular, after hearing any witness who may be produced against or on behalf of the person and any statement which may be offered in defence), the Court of Session may deal with the person as if the person had committed a contempt of court in relation to the Court of Session.]

Textual Amendments

F26 S. 41F inserted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), ss. 68, 129(2) (with s. 100); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121, arts. 1(1), 11)

Other functions

^{F27}**42** **General functions of the Commissioner**

.....

Changes to legislation: There are currently no known outstanding effects for the Police, Public Order and Criminal Justice (Scotland) Act 2006, Chapter 2. (See end of Document for details)

Textual Amendments

F27 S. 42 repealed (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), **Sch. 8 Pt. 1**; [S.S.I. 2013/51](#), art. 2 (with transitional provisions and savings in [S.S.I. 2013/121](#))

[^{F28} 42A Complaints against the Commissioner

- (1) The Commissioner must maintain suitable arrangements for the handling of any complaint made to the Commissioner expressing dissatisfaction about an act or omission by the Commissioner or by any member of the Commissioner's staff.
- (2) Before making such arrangements, the Commissioner must seek the views of others as to what those arrangements should be.]

Textual Amendments

F28 S. 42A inserted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), ss. 69, 129(2) (with s. 100); [S.S.I. 2013/51](#), art. 2 (with transitional provisions and savings in [S.S.I. 2013/121](#), arts. 1(1), 11)

43 Reports to the Scottish Ministers

- (1) As soon as practicable after the end of each financial year, the Commissioner must make a report to the Scottish Ministers on the carrying out of the Commissioner's functions during that year.
- (2) The Commissioner must also make such reports to the Scottish Ministers about matters relating generally to the carrying out of the Commissioner's functions as they may, from time to time, require.
- (3) The Commissioner may, from time to time, make such other reports to the Scottish Ministers as the Commissioner considers appropriate for drawing their attention to matters which—
 - (a) have come to the Commissioner's notice; and
 - (b) are matters which the Commissioner considers should be drawn to their attention by reason of their gravity or of other exceptional circumstances.
- (4) The Commissioner must prepare such reports containing advice and recommendations as the Commissioner considers appropriate for the purpose of carrying out the function under section [^{F29}40A(2)].
- (5) The Scottish Ministers must lay before the Parliament and arrange publication of—
 - (a) every annual report under subsection (1) received by them; and
 - (b) every other report under this section received by them (but only if and to the extent that the Scottish Ministers consider it appropriate to do so).
- (6) The Commissioner must—
 - (a) send copies of every annual report under subsection (1) to [^{F30}the Authority, the chief constable and the inspectors of constabulary appointed under section 71 of the Police and Fire Reform (Scotland) Act 2012 (asp 8)];

Changes to legislation: There are currently no known outstanding effects for the Police, Public Order and Criminal Justice (Scotland) Act 2006, Chapter 2. (See end of Document for details)

- (b) send copies of every report under subsection (4) to ^{F31}the Authority, the chief constable and] the Scottish Ministers.
- (7) The Commissioner may send a copy of any report made under this section to any person the Commissioner thinks fit.
- ^{F32}(8) Nothing in this section requires or authorises the Commissioner to report on the carrying out of a particular investigation carried out on the direction of the appropriate prosecutor in pursuance of paragraph (b) of section 33A.]

Textual Amendments

- F29** Word in s. 43(4) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [Sch. 7 para. 33\(7\)\(a\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F30** Words in s. 43(6)(a) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [Sch. 7 para. 33\(7\)\(b\)\(i\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F31** Words in s. 43(6)(b) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [Sch. 7 para. 33\(7\)\(b\)\(ii\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F32** S. 43(8) inserted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [Sch. 7 para. 33\(7\)\(c\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)

44 Provision of information to the Commissioner

- (1) ^{F33}[The Authority and the chief constable] must, at such times, in such circumstances and in accordance with such requirements as may be set out in regulations made by the Scottish Ministers, provide the Commissioner with all such information and documents as may be specified or described in regulations so made.
- (2) ^{F34}[The Authority and the chief constable] must—
- provide the Commissioner with all such other information and documents specified or described in a notification given by the Commissioner to ^{F35}[the Authority or, as the case may be, the chief constable]; and
 - produce to the Commissioner all such evidence and other things so specified or described,
- as appear to the Commissioner to be required by the Commissioner for the purposes of the carrying out of any of the Commissioner's functions.
- (3) Anything falling to be provided or produced by ^{F36}[the Authority or the chief constable] in pursuance of a requirement imposed under subsection (2) must be provided or produced in such form, in such manner and within such period as may be specified in—
- the notification imposing the requirement; or
 - in any subsequent notification given by the Commissioner to that person for the purposes of this subsection.
- (4) Nothing in this section requires ^{F37}[the Authority or the chief constable] to provide the Commissioner with any information or document, or to produce any other thing, before the earliest time at which it is practicable for ^{F38}[the Authority or, as the case may be, the chief constable] to do so.

Changes to legislation: There are currently no known outstanding effects for the Police, Public Order and Criminal Justice (Scotland) Act 2006, Chapter 2. (See end of Document for details)

- (5) A requirement imposed by any notification or regulations under this section may authorise or require information or documents to which it relates to be provided to the Commissioner electronically.

Textual Amendments

- F33** Words in s. 44(1) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [Sch. 7 para. 33\(8\)\(a\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F34** Words in s. 44(2) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [Sch. 7 para. 33\(8\)\(b\)\(i\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F35** Words in s. 44(2)(a) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [Sch. 7 para. 33\(8\)\(b\)\(ii\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F36** Words in s. 44(3) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [Sch. 7 para. 33\(8\)\(c\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F37** Words in s. 44(4) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [Sch. 7 para. 33\(8\)\(d\)\(i\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F38** Words in s. 44(4) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [Sch. 7 para. 33\(8\)\(d\)\(ii\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)

Commencement Information

- I5** S. 44 wholly in force at 1.4.2007; s. 44 not in force at Royal Assent see s. 104; s. 44 in force at 1.1.2007 for specified purposes by [S.S.I. 2006/607](#), [art. 3](#), [Sch.](#); s. 44 in force so far as not already in force at 1.4.2007 by [S.S.I. 2007/84](#), [art. 3\(3\)](#)

45 Power of Commissioner to issue guidance

- (1) The Commissioner may issue guidance—
- (a) to [^{F39}the Authority or the chief constable];
 - (b) to persons appointed to reconsider complaints,
- about the carrying out by the persons to whom the guidance is issued of any of the functions conferred on them by virtue of this Chapter.
- (2) Before issuing any guidance under this section, the Commissioner must consult—
- [^{F40}(a) the Authority and the chief constable;]
 - (b) such other persons as the Commissioner thinks fit.
- (3) A person to whom guidance is issued under subsection (1) must have regard to that guidance in carrying out the functions to which the guidance relates.
- (4) The power conferred by subsection (1) to issue guidance includes power to vary or revoke any such guidance.

Changes to legislation: There are currently no known outstanding effects for the Police, Public Order and Criminal Justice (Scotland) Act 2006, Chapter 2. (See end of Document for details)

Textual Amendments

- F39** Words in s. 45(1)(a) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [Sch. 7 para. 33\(9\)\(a\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F40** S. 45(2)(a) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [Sch. 7 para. 33\(9\)\(b\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)

46 Disclosure of information by and to the Commissioner

- (1) Information obtained by the Commissioner in connection with any of the Commissioner's functions may be disclosed by the Commissioner to any public body or office-holder (in Scotland, in any other part of the United Kingdom or in a country or territory outside the United Kingdom)—
 - (a) for any purpose connected with the carrying out of any of the Commissioner's functions; or
 - (b) for the purpose of enabling or assisting the public body or office-holder to carry out any function.
- (2) Information disclosed by the Commissioner under this section to any body or office-holder must not be further disclosed except—
 - (a) for a purpose connected with any function of that body or office-holder; and
 - (b) with the consent of the Commissioner.
- (3) Consent under subsection (2) 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.
- (4) Any person may disclose information to the Commissioner if the disclosure is made for the purposes of the carrying out of any of the Commissioner's functions.
- (5) A disclosure under this section 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).
- [^{F41}(6) Nothing in this section requires or authorises the disclosure of any information relating to a particular investigation carried out by the Commissioner on the direction of the appropriate prosecutor in pursuance of paragraph (b) of section 33A (unless the appropriate prosecutor consents to such disclosure).]

Textual Amendments

- F41** S. 46(6) inserted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [Sch. 7 para. 33\(10\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)

[^{F42}46A Protection from actions for defamation

- (1) For the purposes of the law of defamation—

Changes to legislation: There are currently no known outstanding effects for the Police, Public Order and Criminal Justice (Scotland) Act 2006, Chapter 2. (See end of Document for details)

- (a) any statement made by the Commissioner or any of the Commissioner's staff—
 - (i) in carrying out a complaint handling review or in carrying out an investigation in pursuance of paragraph (b), (c) or (d) of section 33A;
 - (ii) in communicating with any person for the purposes of such a review or investigation;
 - (iii) in a report on such a review or investigation; or
 - (iv) in a report made under section 43,
 has absolute privilege;
- (b) any statement made to the Commissioner or any of the Commissioner's staff in relation to an investigation carried out in pursuance of paragraph (b), (c) or (d) of section 33A has absolute privilege; and
- (c) any statement made to the Commissioner or any of the Commissioner's staff in relation to a relevant complaint or a complaint handling review is privileged unless the statement is shown to have been made with malice.

(2) In subsection (1), “ statement ” has the same meaning as in the Defamation Act 1996 (c.31).]

Textual Amendments

F42 S. 46A inserted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), ss. 70, 129(2) (with s. 100); [S.S.I. 2013/51](#), art. 2 (with transitional provisions and savings in [S.S.I. 2013/121](#), arts. 1(1), 11)

Supplementary

[^{F43} 47 Interpretation of Chapter 2

In this Chapter—

- “ appropriate prosecutor ” means the Lord Advocate or procurator fiscal;
- “ the Authority ” means the Scottish Police Authority;
- “ chief constable ” means the chief constable of the Police Service;
- “ the Commissioner ” means the Police Investigations and Review Commissioner;
- “ constable ” means a constable of the Police Service;
- “ financial year ” means each yearly period ending with 31 March;
- “ firearm ” has the meaning given by section 57(1) of the Firearms Act 1968 (c.27);
- “ member of the Authority's staff ” and “ member of the police staff ” have the same meanings as in the Police and Fire Reform (Scotland) Act 2012 (asp 8);
- “ person serving with the police ” means—
 - (a) a constable of the Police Service;
 - (b) a member of the police staff; or
 - (c) a member of the Authority's staff;
- “ Police Service ” means the Police Service [^{F44}of] Scotland;
- “ relevant complaint ” has the meaning given by section 34;
- “ senior officer ” has the same meaning as in the Police and Fire Reform (Scotland) Act 2012.]

Changes to legislation: There are currently no known outstanding effects for the Police, Public Order and Criminal Justice (Scotland) Act 2006, Chapter 2. (See end of Document for details)

Textual Amendments

- F43** S. 47 substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), **Sch. 7 para. 33(11)**; [S.S.I. 2013/51](#), **art. 2** (with transitional provisions and savings in [S.S.I. 2013/121](#), arts. 1(1), 11)
- F44** Word in s. 47 substituted (1.4.2013) by [The Police and Fire Reform \(Scotland\) Act 2012 \(Consequential Modifications and Savings\) Order 2013 \(S.S.I. 2013/119\)](#), **art. 1**, **Sch. 1 para. 21**

Changes to legislation:

There are currently no known outstanding effects for the Police, Public Order and Criminal Justice (Scotland) Act 2006, Chapter 2.