



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

2006 asp 10

## PART 1

### POLICE

## CHAPTER 2

### COMPLAINTS AND MISCONDUCT

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

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

- (1) There is to be an officer known as the Police Complaints Commissioner for Scotland (“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.

#### *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;

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- (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
  - (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.
- (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.
- (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.

### **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.

### **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.

### **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—

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- (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.

#### **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.

#### **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.

### *Other functions*

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

The Commissioner has the general functions of—

- (a) securing the maintenance by the Commissioner, and by each of the relevant authorities, of suitable arrangements for the handling of relevant complaints;
- (b) keeping under review all arrangements maintained for that matter;
- (c) securing that arrangements maintained for that matter—
  - (i) are efficient and effective;
  - (ii) contain and manifest an appropriate degree of independence; and
  - (iii) are adhered to;
- (d) making such recommendations, and giving such advice, for the modification of—
  - (i) the arrangements maintained for that matter; and
  - (ii) the practice of relevant authorities in relation to other matters,
 as appear from the carrying out of the Commissioner’s other functions, to be necessary or desirable.

## **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.

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- (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 42(d).
- (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 all relevant authorities and to the chief inspector of constabulary appointed under section 33 of the 1967 Act;
  - (b) send copies of every report under subsection (4) to all relevant authorities and to the Scottish Ministers.
- (7) The Commissioner may send a copy of any report made under this section to any person the Commissioner thinks fit.

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

- (1) A relevant authority 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) A relevant authority must—
  - (a) provide the Commissioner with all such other information and documents specified or described in a notification given by the Commissioner to that person; and
  - (b) 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 any person 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—
  - (a) the notification imposing the requirement; or
  - (b) in any subsequent notification given by the Commissioner to that person for the purposes of this subsection.



- (4) Nothing in this section requires a relevant authority 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 the authority to do so.
- (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.

#### **45 Power of Commissioner to issue guidance**

- (1) The Commissioner may issue guidance—
  - (a) to relevant authorities;
  - (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—
  - (a) persons whom the Commissioner considers representative of each of the office holders who and bodies which are relevant authorities; and
  - (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.

#### **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).

### *Supplementary*

## **47 Interpretation of Chapter 2**

In this Chapter—

“the Agency” and “the Authority” have the meanings given by section 32;

“the Commissioner” means the Police Complaints Commissioner for Scotland established by section 33(1);

“financial year” means—

- (a) the period beginning with the date on which the first Commissioner is appointed and ending with 31 March next following that date; and
- (b) each successive period of 12 months ending with 31 March;

“joint police board” means a joint police board constituted under an amalgamation scheme made under the 1967 Act;

the “relevant authorities” are—

- (a) each chief constable;
- (b) each police authority whose area is not combined by virtue of an amalgamation scheme under the 1967 Act with the area of any other police authority;
- (c) each joint police board;
- (d) the Authority; and
- (e) the Director General of the Agency.