



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

2006 asp 10

## PART 1

### POLICE

#### CHAPTER 1

##### THE SCOTTISH POLICE SERVICES AUTHORITY

###### *The Scottish Police Services Authority*

#### **1 Establishment of the Scottish Police Services Authority**

- (1) There is established a body corporate to be known as the Scottish Police Services Authority (“the Authority”).
- (2) Schedule 1 (which makes provision about the constitution, members and staff of the Authority and other matters relating to it) has effect.

#### **2 Duty to establish and maintain the Agency**

- (1) The Authority is to establish and maintain a body to be known as the Scottish Crime and Drug Enforcement Agency (“the Agency”).
- (2) The Agency has the functions of—
  - (a) preventing and detecting serious organised crime;
  - (b) contributing to the reduction of such crime in other ways and to the mitigation of its consequences; and
  - (c) gathering, storing and analysing information relevant to—
    - (i) the prevention, detection, investigation or prosecution of offences; or
    - (ii) the reduction of crime in other ways or the mitigation of its consequences.

---

*Status: This is the original version (as it was originally enacted).*

---

- (3) The Agency may disseminate such information to—
- (a) police forces;
  - (b) police forces maintained under section 2 of the Police Act 1996 (c. 16);
  - (c) the metropolitan police force;
  - (d) the City of London police force;
  - (e) the Police Service of Northern Ireland;
  - (f) the States of Jersey Police Force;
  - (g) the salaried police force of the Island of Guernsey;
  - (h) the Isle of Man Constabulary;
  - (i) the Ministry of Defence Police;
  - (j) the British Transport Police Force;
  - (k) the Civil Nuclear Constabulary;
  - (l) the Commissioners for Her Majesty’s Revenue and Customs and any other government department;
  - (m) the Serious Organised Crime Agency;
  - (n) the Scottish Administration;
  - (o) any other person who is charged with the duty of investigating offences or charging offenders;
  - (p) any other person who is engaged outwith the United Kingdom in the carrying on of activities similar to any carried on by the Agency or a police force.

### **3 Duty to provide the police support services**

- (1) The Authority must provide the police support services.
- (2) The police support services are—
- (a) the development, provision, procurement and delivery of training and education to—
    - (i) police forces; and
    - (ii) such other persons or organisations as the Authority thinks fit;
  - (b) the development, provision, procurement, maintenance, management, support and oversight, as appropriate, of—
    - (i) national data systems;
    - (ii) information technology systems and equipment; and
    - (iii) records;
  - (c) the development, provision and maintenance of a national system for the collection, identification and verification of—
    - (i) such physical data, samples, and other things; and
    - (ii) such information derived from those data, samples and other things, as are, or may be, used to identify a person;
  - (d) the carrying out of any functions of the Scottish Ministers under Part V of the Police Act 1997 (c. 50) (certificates of criminal records etc.) which are delegated to the Authority by virtue of section 121 of that Act;
  - (e) the development and maintenance of a strategy for the acquisition and use of information technology systems by police forces; and
  - (f) the development and provision of a national forensic science service.
- (3) The Authority may—

- (a) establish and maintain institutions and organisations in connection with the provision of the police support services;
  - (b) do anything which is incidental or ancillary to providing the police support services.
- (4) The Authority, or any institution or organisation established by virtue of subsection (3) (a), may provide the police support service mentioned in subsection (2)(a) in conjunction with another person.
- (5) The Authority must carry out its functions under this section in a way calculated to promote the efficiency and effectiveness of the police.
- (6) In providing the police support services, the Authority must have regard to the effect of such provision on the efficiency and effectiveness of the criminal justice system.
- (7) In this section, “information technology systems” means systems which utilise a computer or other technology by means of which information or other matter may be recorded or communicated without being reduced to documentary form.
- (8) In section 121 of the Police Act 1997 (c. 50) (performance by constables on central service of functions under Part V of that Act)—
- (a) after “Scotland” where it first occurs there is inserted—
    - “(a) the Scottish Police Services Authority;”;
  - (b) the words “a constable engaged on central service (within the meaning of section 38 of the Police (Scotland) Act 1967)” become paragraph (b) of that section; and
  - (c) for “any constable performing” there is substituted “that Authority’s or any constable’s performance of”.

#### **4 Strategic priorities of the Authority**

- (1) The Scottish Ministers may determine strategic priorities in relation to the carrying out of the functions of the Authority.
- (2) Before making a determination under subsection (1) the Scottish Ministers must consult—
- (a) the Authority;
  - (b) the Director General of the Agency;
  - (c) persons whom the Scottish Ministers consider represent the interests of chief constables of police forces; and
  - (d) persons whom the Scottish Ministers consider represent the interests of police bodies.
- (3) The Scottish Ministers must arrange for any determination under subsection (1) to be published in such manner as they consider appropriate.

#### **5 Objectives of the Authority**

- (1) The Authority must from time to time determine its objectives.
- (2) The Authority—
- (a) must keep its objectives under review; and
  - (b) may modify them.

- (3) The Authority’s objectives must be consistent with any strategic priorities determined under section 4.

## **6 Annual plans of the Authority**

- (1) At least 3 months before the beginning of each financial year, the Authority must—
- (a) prepare; and
  - (b) submit to the Scottish Ministers,
- a plan setting out the proposed arrangements for the carrying out by the Authority of its functions during the year (the “annual plan”).
- (2) The annual plan must specify—
- (a) any strategic priorities determined under section 4(1);
  - (b) the objectives determined under section 5 for the financial year to which the plan relates;
  - (c) any directions such as are mentioned in section 30(1);
  - (d) the funding expected to be available to the Authority for the financial year to which the plan relates; and
  - (e) how the Authority proposes to allocate the funding.
- (3) The annual plan must state, in relation to each objective included in the plan by virtue of subsection (2)(b), how the Authority proposes to meet the objective.
- (4) In preparing the annual plan, the Authority must consult—
- (a) persons whom the Authority considers represent the interests of chief constables of police forces;
  - (b) persons whom the Authority considers represent the interests of police bodies; and
  - (c) such other persons as the Authority considers appropriate.
- (5) The Scottish Ministers must, no later than 2 months from the date on which the annual plan is submitted to them—
- (a) approve the plan as submitted; or
  - (b) approve the plan subject to such modifications as they consider appropriate.
- (6) On the annual plan being approved by the Scottish Ministers, the Authority must—
- (a) publish it in such manner as the Authority considers appropriate; and
  - (b) send a copy of it to the persons specified in subsection (7).
- (7) Those persons are—
- (a) chief constables of police forces;
  - (b) police bodies; and
  - (c) such other persons as the Authority considers appropriate.

## **7 Annual reports of the Authority**

- (1) As soon as practicable after the end of each financial year, the Authority must—
- (a) prepare; and
  - (b) publish in such manner as it considers appropriate,

a report on the carrying out of the Authority's functions during the year (the "annual report").

- (2) The annual report must include an assessment of the extent to which the annual plan has been implemented.
- (3) If after publication of the annual plan the Authority modifies, by virtue of subsection (2) of section 5, the objectives determined under that section, the Authority must include in the annual report—
  - (a) a statement of the modified objectives; and
  - (b) an assessment of the extent to which those modified objectives have been implemented.
- (4) The Authority must send a copy of the annual report to the Scottish Ministers and to each of the persons mentioned in section 6(7)(a) to (c).
- (5) The Scottish Ministers must lay a copy of any report sent to them by virtue of subsection (4) before the Scottish Parliament.
- (6) In this section, references, in relation to the annual report, to the annual plan are to the annual plan published by virtue of section 6 for the year to which the annual report relates.

## **8 Provision of information to the Scottish Ministers**

The Authority must comply with any reasonable request from the Scottish Ministers to provide them with any information on the Authority's activities.

## **9 Liability for wrongful acts of certain persons seconded to the Authority**

- (1) The Authority is liable in reparation in respect of any wrongful act or omission on the part of any person to whom subsection (2) applies in the performance or purported performance of the person's functions in the same manner as an employer is liable in respect of a wrongful act or omission on the part of the employer's employee in the course of the employee's employment.
- (2) This subsection applies to any—
  - (a) constable to whom by virtue of sub-paragraph (5) of paragraph 10 of schedule 1, sub-paragraph (6) of that paragraph applies;
  - (b) person to whom by virtue of sub-paragraph (7) of that paragraph of that schedule, sub-paragraph (8) of that paragraph applies.

## **10 Grants**

- (1) The Scottish Ministers may make grants to the Authority.
- (2) Where the Scottish Ministers make a grant under subsection (1), they must specify the amount, or proportion, of the grant which is to be used for the purposes of carrying out the Authority's duty under section 2(1).
- (3) A grant under subsection (1) may be made subject to such terms and conditions as the Scottish Ministers consider appropriate.

---

*Status: This is the original version (as it was originally enacted).*

---

- (4) The Scottish Ministers may not impose terms and conditions under subsection (3) which would, or might, affect—
- (a) particular operations being, or to be, carried out by the Agency; or
  - (b) the way in which such operations are being, or are to be, carried out.
- (5) Terms or conditions under subsection (3) may, in particular, relate to—
- (a) the purposes for which the grant, or a specified amount, or proportion, of the grant, is to be used;
  - (b) recovery of overpayments of grant;
  - (c) recovery of sums equivalent to grant used otherwise than in accordance with—
    - (i) subsection (2); or
    - (ii) terms or conditions imposed under subsection (3).
- (6) The Authority may, subject to subsection (2) and any terms and conditions imposed under subsection (3), use the grant in such manner as it considers appropriate for the purposes of—
- (a) providing the police support services under subsection (1) of section 3;
  - (b) establishing and maintaining institutions and organisations in connection with the provision of the police support services under subsection (3)(a) of that section; and
  - (c) doing anything which is incidental or ancillary to providing the police support services.
- (7) Before making a grant under subsection (1) the Scottish Ministers must consult—
- (a) the Authority;
  - (b) the Director General of the Agency;
  - (c) persons whom the Scottish Ministers consider represent the interests of chief constables of police forces; and
  - (d) persons whom the Scottish Ministers consider represent the interests of police bodies.

## **11 Charges by the Authority and other receipts**

- (1) The Authority may make charges in respect of any goods or services which it or the Agency provides to any person.
- (2) Any charges made under subsection (1) may include amounts calculated by reference to expenditure incurred, or expected to be incurred, by the Authority or the Agency otherwise than directly in connection with the provision of the goods or services concerned.
- (3) With the exception of—
- (a) grants made under section 10; and
  - (b) any sums borrowed by the Authority by virtue of paragraph 15 of schedule 1, all sums received by the Authority in the course of, or in connection with, the carrying out of its functions must be paid to the Scottish Ministers.
- (4) Subsection (3) does not apply where the Scottish Ministers so direct.

### *The Scottish Crime and Drug Enforcement Agency*

## **12 Members of the Agency**

- (1) The Agency is to consist of—
  - (a) a Director General appointed in accordance with paragraph 1 of schedule 2;
  - (b) a Deputy Director General appointed in accordance with paragraph 2 of that schedule;
  - (c) police members appointed in accordance with paragraph 7 of that schedule; and
  - (d) support staff members appointed in accordance with paragraph 8 of that schedule.
- (2) Schedule 2 (which contains provisions about the membership of the Agency) has effect.

## **13 Strategic priorities of the Agency**

- (1) The Scottish Ministers may determine strategic priorities in relation to the carrying out of the functions of the Agency.
- (2) In making a determination under subsection (1), the Scottish Ministers must not do anything which would, or might, affect decisions of the Agency about which particular operations are to be carried out by it in compliance with those priorities and how they are to be so carried out.
- (3) Before making a determination under subsection (1) the Scottish Ministers must consult—
  - (a) the Authority;
  - (b) the Director General of the Agency;
  - (c) persons whom the Scottish Ministers consider represent the interests of chief constables of police forces; and
  - (d) persons whom the Scottish Ministers consider represent the interests of police bodies.
- (4) The Scottish Ministers must arrange for any determination under subsection (1) to be published in such manner as they consider appropriate.

## **14 Annual plans of the Agency**

- (1) At least 3 months before the beginning of each financial year, the Director General of the Agency must—
  - (a) prepare; and
  - (b) submit to the Authority,a plan setting out the proposed arrangements for the carrying out by the Agency of its functions during the year (the “annual plan”).
- (2) The annual plan must specify—
  - (a) any strategic priorities determined under section 13(1);
  - (b) any directions such as are mentioned in section 30(2);
  - (c) the funding expected to be available to the Agency for the financial year to which the plan relates; and

---

*Status: This is the original version (as it was originally enacted).*

---

- (d) how the Director General proposes to allocate the funding.
- (3) The Authority must, no later than 2 months from the date on which the annual plan is submitted to it—
  - (a) approve the plan as submitted; or
  - (b) approve the plan subject to such modifications as the Authority considers appropriate.
- (4) The Authority must not, in pursuance of subsection (3)(b), make any modifications which would, or might, affect decisions of the Agency about which particular operations are to be carried out by it or how they are to be carried out.
- (5) On the annual plan being approved by the Authority, the Director General must—
  - (a) publish it in such manner as the Director General considers appropriate; and
  - (b) send a copy of it to the persons specified in subsection (6).
- (6) Those persons are—
  - (a) the Scottish Ministers;
  - (b) chief constables of police forces;
  - (c) police bodies; and
  - (d) such other persons as the Director General considers appropriate.

## **15 Annual reports of the Agency**

- (1) As soon as practicable after the end of each financial year, the Director General of the Agency must—
  - (a) prepare; and
  - (b) publish in such manner as the Director General considers appropriate, a report on the carrying out of the Agency’s functions during the year (the “annual report”).
- (2) The annual report must include an assessment of the extent to which the annual plan published by virtue of section 14 for the year to which the report relates has been implemented.
- (3) The Director General must send a copy of the annual report to the Authority and to each of the persons mentioned in section 14(6)(a) to (d).
- (4) The Scottish Ministers must lay a copy of any report sent to them by virtue of subsection (3) before the Scottish Parliament.

## **16 General functions of Director General of the Agency**

- (1) The Agency is to be under the direction and control of the Director General.
- (2) In carrying out the functions of the Director General, the Director General must have regard to the annual plan published by virtue of section 14.

## **17 Powers of the Agency**

- (1) The Agency may—
  - (a) at the request of the chief constable of a police force, act in support of any activities of that force;



- (b) at the request of any of the bodies mentioned in section 17(b) to (q), act in support of any activities of the body;
  - (c) enter into other arrangements for co-operating with persons (in the United Kingdom or elsewhere) whom it considers appropriate in connection with the carrying out of any of the functions conferred on the Agency by section 2(2).
- (2) Despite the references to serious organised crime in subsection (2) of section 2, the Agency may carry on activities in relation to other crime if they are carried on for the purposes of any of the functions conferred on the Agency by that section.
- (3) The Agency may furnish such assistance as it considers appropriate in response to requests made by any government or other body carrying out functions of a public nature in any country or territory outwith the United Kingdom.
- (4) Subsection (3) does not apply to any request for assistance which could be made under section 13 of the Crime (International Co-operation) Act 2003 (c. 32) (requests by overseas authorities to obtain evidence).

## **18 Scottish Ministers' power to modify section 17**

- (1) The Scottish Ministers may by order modify section 17 so as to—
- (a) confer additional powers on the Agency;
  - (b) remove powers from the Agency;
  - (c) amend powers of the Agency.
- (2) Before making an order under subsection (1) the Scottish Ministers must consult—
- (a) the Authority;
  - (b) the Director General of the Agency;
  - (c) persons whom the Scottish Ministers consider represent the interests of chief constables of police forces; and
  - (d) persons whom the Scottish Ministers consider represent the interests of police bodies.

## **19 Disclosure of information by the Agency**

- (1) Information obtained by the Agency in connection with any of its functions may be disclosed by it if the disclosure is for any permitted purposes.
- (2) “Permitted purposes” means the purposes of any of the following—
- (a) the prevention, detection, investigation or prosecution of criminal offences, whether in the United Kingdom or elsewhere;
  - (b) the prevention, detection or investigation of conduct for which penalties other than criminal penalties are provided under the law of any part of the United Kingdom or of any country or territory outside the United Kingdom;
  - (c) the exercise of any function conferred on the Agency by section 2 or 17 (so far as not falling within paragraph (a) or (b));
  - (d) the exercise of any functions of any intelligence service within the meaning of the Regulation of Investigatory Powers Act 2000 (c. 23);
  - (e) the exercise of any functions under Chapter 1 of Part 2 of this Act or Part 2 of the Football Spectators Act 1989 (c. 37), or of any similar functions under the law of any part of the United Kingdom other than Scotland or England and Wales or of any country or territory outside the United Kingdom;

---

*Status: This is the original version (as it was originally enacted).*

---

- (f) the exercise of any function which appears to the Scottish Ministers to be a function of a public nature and which they designate by order.
- (3) 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).
- (4) Information disclosed by the Agency under this section to any person or body must not be further disclosed except—
  - (a) for a purpose connected with any function of that person or body for the purposes of which the information was disclosed by the Agency, or otherwise for any permitted purposes; and
  - (b) with the consent of the Agency.
- (5) Consent under subsection (4) 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.

## **20 Disclosure of information to the Agency**

- (1) Any person may disclose information to the Agency if the disclosure is made for the purposes of the exercise by the Agency of any of its functions.
- (2) 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).

## **21 Direction by Director General of the Agency**

- (1) The performance by—
  - (a) the Deputy Director General of the Agency of the Deputy Director General’s functions; and
  - (b) a police member of the Agency of the member’s functions,
 is subject to the direction of the Director General.
- (2) In giving direction under subsection (1) the Director General must comply with any instructions (whether general or special) falling within subsection (3).
- (3) Those instructions are—
  - (a) in relation to the investigation of offences, any instructions given to the Director General by the Lord Advocate or the procurator fiscal; and
  - (b) in relation to the reporting, for consideration of the question of prosecution, of alleged offences, any instructions given to the Director General by the Lord Advocate.

## **22 Liability for wrongful acts of police members of the Agency**

- (1) The Director General of the Agency is liable in reparation in respect of any wrongful act or omission on the part of any police member in the performance or purported performance of the member’s functions in the same manner as an employer is liable

---

*Status: This is the original version (as it was originally enacted).*

---

in respect of a wrongful act or omission on the part of the employer's employee in the course of the employee's employment.

- (2) The Authority is to pay—
  - (a) any damages or expenses awarded against the Director General of the Agency in any proceedings brought against the Director General by virtue of this section and any expenses incurred by the Director General in any proceedings so brought so far as not recovered by the Director General in those proceedings;
  - (b) any sum required in order to enable the Director General of the Agency to settle any claim made against the Director General by virtue of this section, if the settlement is approved by the Authority.
- (3) Any proceedings in respect of a claim made by virtue of this section may be brought only against the Director General of the Agency for the time being or, in the case of a vacancy in that office, against the person for the time being performing the functions of the Director General; and references in this section to the Director General of the Agency are to be construed accordingly.
- (4) The Authority may, in such cases and to such extent as appear to it to be appropriate, pay—
  - (a) any damages or expenses awarded against a police member in proceedings arising from any wrongful act or omission on the part of the member;
  - (b) any expenses incurred and not recovered by such a member in such proceedings; and
  - (c) any sum required in connection with the settlement of any claim that has or might have given rise to such proceedings.
- (5) Any reference in this section to a police member is a reference to a person appointed as a police member of the Agency in accordance with paragraph 7 of schedule 2.

## **23 Regulations relating to the Agency**

- (1) The Scottish Ministers may make regulations as to the government and administration of the Agency and conditions of service with the Agency.
- (2) Regulations under subsection (1) may in particular make provision for or in connection with—
  - (a) the qualifications for appointment by virtue of paragraph 7(2)(c) of schedule 2 of police members of the Agency;
  - (b) periods of service on probation for police members appointed by virtue of that paragraph;
  - (c) the police ranks to be held by police members;
  - (d) the promotion of police members;
  - (e) voluntary retirement of police members;
  - (f) the efficiency and effectiveness of police members;
  - (g) the conduct and discipline of police members;
  - (h) the suspension of police members from membership of the Agency and from the office of constable;
  - (i) the duties which are or are not to be performed by police members;

---

*Status: This is the original version (as it was originally enacted).*

---

- (j) the treatment as occasions of police duty of attendance at meetings of Police Federations and any body recognised by the Secretary of State for the purposes of section 64 of the Police Act 1996 (c. 16);
  - (k) the hours of duty, leave, pay and allowances of police members;
  - (l) the maintenance of personal records of police members;
  - (m) the issue, use and return of—
    - (i) personal equipment; and
    - (ii) police clothing.
- (3) Regulations under subsection (1) may authorise the Scottish Ministers, the Authority or the Director General of the Agency to make provision for any purpose specified in the regulations.
- (4) In relation to any matter as to which provision may be made by regulations under subsection (1), the regulations may—
- (a) authorise or require provision to be made by, or confer discretionary powers on, the Scottish Ministers, the Authority, the Director General of the Agency or other persons; or
  - (b) authorise or require the delegation by any person of functions conferred on the person by virtue of the regulations.
- (5) Regulations under subsection (1) must provide for the making of such arrangements as to the hours of duty of police members as shall secure that every such member (not being above such rank as may be specified in the regulations) be allowed at least 52 days in a year on which the member is not required to perform police duty (save on occasions of emergency), such days being distributed throughout the year with the object of securing, so far as practicable, to every such member one day's rest in every 7.
- (6) Regulations under subsection (1) which make provision for or in connection with pay and allowances may be made with retrospective effect to any date specified in the regulations; but nothing in this subsection is to be construed as authorising pay or allowances payable to any person to be reduced retrospectively.
- (7) Regulations under subsection (1) as to conditions of service must secure that appointments for fixed terms are not made except where the person appointed holds the rank of superintendent or a higher rank.
- (8) Subsection (7) does not apply to appointments made by virtue of paragraph 7(2)(a) of schedule 2.
- (9) Any reference in this section (other than subsection (2)(a) and (b)) to a police member is a reference to a person appointed as a police member of the Agency in accordance with paragraph 7 of schedule 2.
- (10) Before making regulations under subsection (1) other than regulations with respect to any of the matters mentioned in section 61(1) of the Police Act 1996 (c. 16), the Scottish Ministers must—
- (a) submit a draft to the Police Advisory Board for Scotland; and
  - (b) consider any representations made by the Board as to the draft.

### *The police support services*

#### **24 The police support services: modification by order**

- (1) The Scottish Ministers may by order modify section 3(2).
- (2) Before making an order under subsection (1) the Scottish Ministers must consult—
  - (a) the Authority;
  - (b) persons whom the Scottish Ministers consider represent the interests of chief constables of police forces;
  - (c) persons whom the Scottish Ministers consider represent the interests of police bodies; and
  - (d) such other persons as the Scottish Ministers consider appropriate.

#### **25 Use of the police support services**

- (1) The Scottish Ministers may by regulations make provision for or in connection with requiring—
  - (a) police forces; or
  - (b) such of them as are specified in the regulations,to use such of the police support services as are so specified.
- (2) The power conferred by subsection (1) may be exercised only if the Scottish Ministers consider that it would be in the interests of the efficiency or effectiveness of the police to do so.
- (3) Before making any regulations under subsection (1), the Scottish Ministers must have regard to the effect the regulations would have on the efficiency and effectiveness of the criminal justice system.
- (4) Before making regulations under subsection (1) the Scottish Ministers must consult the persons mentioned in section 24(2)(a) to (d).

### *Inspections*

#### **26 Inspections of the Authority's services and the Agency**

- (1) The inspectors of constabulary must, from time to time, carry out an inspection of the police support services provided by the Authority for the purpose of ascertaining the efficiency and effectiveness of those services.
- (2) The inspectors of constabulary must, from time to time, carry out an inspection of the Agency for the purpose of ascertaining the efficiency and effectiveness of the Agency.
- (3) The inspectors of constabulary must, in relation to any inspection carried out by virtue of subsection (1) or (2), publish a report on their findings.

#### **27 Inspections of the Authority at request of the Scottish Ministers**

- (1) The Scottish Ministers may require the inspectors of constabulary to carry out an inspection of the Authority (or part of the Authority) for the purpose of ascertaining the efficiency and effectiveness of the Authority (or part).

---

*Status: This is the original version (as it was originally enacted).*

---

- (2) The Scottish Ministers may require the inspectors of constabulary to carry out an inspection of—
  - (a) any of the Authority’s functions or activities for the purpose of ascertaining the efficiency and effectiveness of the Authority in carrying out those functions or, as the case may be, activities;
  - (b) any of the Authority’s services for the purpose of ascertaining the efficiency and effectiveness of the Authority in providing, or securing the provision of, those services.
- (3) The inspectors must, in relation to any inspection carried out by virtue of subsection (1) or (2), publish a report on their findings.

## **28 Reports on inspections: powers of the Scottish Ministers**

- (1) This section applies where a report published under section 27(3) states—
  - (a) that, in the opinion of the person making the report, the whole or any part of the Authority or any of the police support services which it provides is (whether generally or in particular respects) not efficient or effective; or
  - (b) that, in that person’s opinion, the whole or any part of the Authority or any of the police support services which it provides will cease to be efficient or effective (whether generally or in particular respects) unless remedial measures are taken.
- (2) If the Scottish Ministers consider that remedial measures are required in respect of any matters identified by the report, they may direct the Authority to submit to them an action plan within such period (being a period ending at least 4, and not more than 12, weeks after the date on which the direction is given) as is specified in the direction.
- (3) An action plan is a plan setting out the remedial measures which the Authority proposes to take in relation to the matters in respect of which the direction is given.
- (4) If this section applies at a time when there is already an action plan in force—
  - (a) references in this section to an action plan include references to revisions of the existing plan; and
  - (b) the other provisions of this section have effect accordingly.

## **29 Revision of inadequate action plan**

- (1) This section applies where the Scottish Ministers determine that any remedial measures contained in an action plan submitted to them under section 28 are inadequate.
- (2) The Scottish Ministers must notify the Authority of that determination and their reasons for it.
- (3) On receipt of a notification under subsection (2) the Authority must—
  - (a) consider whether to revise the plan in the light of the matters notified to it; and
  - (b) if it does revise the plan, send a copy of the revised plan to the Scottish Ministers.

*Miscellaneous and general***30 Directions**

- (1) The Authority must comply with any direction (whether general or specific) given to it by the Scottish Ministers.
- (2) The Agency must comply with any direction (whether general or specific) given to it by the Scottish Ministers.
- (3) The Scottish Ministers may not give directions to the Agency in respect of—
  - (a) particular operations which the Agency is carrying out (or is to carry out); or
  - (b) the way in which the Agency is carrying out (or is to carry out) such operations.
- (4) Where the Scottish Ministers give a direction to the Authority or the Agency, the Scottish Ministers—
  - (a) must arrange for the direction to be published in such manner as they consider appropriate;
  - (b) may vary or revoke the direction.

**31 Transfer of staff, property etc.**

Schedule 3 (which makes provision about transfers of staff to the Authority and the Agency and transfers of property, rights and liabilities to the Authority) has effect.

**32 Interpretation of Chapter 1**

In this Chapter—

“the Agency” means the Scottish Crime and Drug Enforcement Agency established under section 2(1);

“the Authority” means the Scottish Police Services Authority established by section 1;

“financial year” means—

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

“inspectors of constabulary” means persons appointed under section 33(1) of the Police (Scotland) Act 1967 (“the 1967 Act”);

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

“police bodies” means—

- (a) 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; and
- (b) each joint police board;

“police support services” has the meaning given by section 3(2).

**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;
  - (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

---

*Status: This is the original version (as it was originally enacted).*

---

- (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—
  - (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—

---

*Status: This is the original version (as it was originally enacted).*

---

- (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.
- (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.



## CHAPTER 3

### OTHER PROVISIONS

#### 48 Allowances payable to special constables

In section 3 of the 1967 Act (which defines special constables as constables to whom only allowances are payable), after subsection (2) there is inserted—

“(3) It is declared, for the purposes of subsection (2) above, that the allowances payable to special constables include any periodic payments of the description set out in subsection (4) below.

(4) Payments are of that description if they acknowledge the giving by special constables of their services as such for not less than such aggregate length of time within the period to which each payment relates as the Scottish Ministers may, by or under regulations made under section 26 of this Act, determine.”.

#### 49 Appointments of assistant inspectors of constabulary and staff officers

In section 34 of the 1967 Act (assistant inspectors and staff officers), for subsection (1A) there is substituted—

“(1A) The chief inspector of constabulary may appoint staff officers to inspectors of constabulary.”.

#### 50 Constables engaged on service outside their force

(1) The 1967 Act is modified as follows.

(2) In section 38A (constables engaged on service outside their force)—

- (a) in subsection (3), for “(7)” there is substituted “(8)”; and
- (b) after subsection (7) there is inserted—

“(8) A constable of a police force engaged on relevant service within paragraph (aa), (ab), (b), (bb), (bc), (bd), (bg) or (bh) of subsection (1) of this section shall be treated for the purposes of sections 59 and 60 of the Police Act 1996 (c. 16) as if he were a member of that force.”.

(3) After section 38A there is inserted the following section—

##### “38B Amendment of definition of “relevant service”

(1) The Scottish Ministers may by order amend subsection (1) of section 38A of this Act for the purpose of—

- (a) adding a description of service to those listed there; or
- (b) removing or amending a description of service listed there.

(2) An order under subsection (1) of this section may make such consequential amendments of section 38A of this Act as the Scottish Ministers consider appropriate.

---

*Status: This is the original version (as it was originally enacted).*

---

- (3) An order under subsection (1) of this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.”.