

Changes to legislation: There are currently no known outstanding effects for the Police, Public Order and Criminal Justice (Scotland) Act 2006, SCHEDULE 4. (See end of Document for details)

SCHEDULE 4

(introduced by section 33(3))

[^{F1}THE POLICE INVESTIGATIONS AND REVIEW COMMISSIONER]

Textual Amendments

- F1** Sch. 4 heading substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [Sch. 7 para. 33\(16\)](#); [S.S.I. 2013/51](#), art. 2 (with transitional provisions and savings in [S.S.I. 2013/121](#))

Status

- 1 (1) The Commissioner—
- (a) is not a servant or agent of the Crown; and
 - (b) has no status, immunity or privilege of the Crown.
- (2) The Commissioner's property is not property of, or property held on behalf of, the Crown.

Limitations on appointment

- 2 (1) A person is disqualified for appointment to the office of Commissioner if the person—
- (a) is or has been a member of—
 - (i) the House of Lords;
 - (ii) the House of Commons;
 - (iii) the Scottish Parliament;
 - (iv) the European Parliament; or
 - (v) a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39);
 - (b) is or has been a constable of [^{F2}the Police Service (or of a police force previously maintained under the Police (Scotland) Act 1967 (c.77))];
 - (c) is or has been a member of—
 - (i) a police force maintained under section 2 of the Police Act 1996 (c. 16);
 - (ii) the metropolitan police force or of the City of London police force;
 - (iii) the Police Service of Northern Ireland;
 - (iv) the Ministry of Defence Police appointed on the nomination of the Secretary of State under section 1 of the Ministry of Defence Police Act 1987 (c. 4);
 - (v) the British Transport Police Force;
 - (vi) the Civil Nuclear Constabulary;
 - (vii) the States of Jersey Police Force;
 - (viii) the salaried police force of the Island of Guernsey; or
 - (ix) the Isle of Man Constabulary;
 - (d) is or has been—
 - (i) a special constable appointed under section 27 of the Police Act 1996 (c. 16);
 - (ii) a member of the Police Service of Northern Ireland Reserve;

Changes to legislation: There are currently no known outstanding effects for the Police, Public Order and Criminal Justice (Scotland) Act 2006, SCHEDULE 4. (See end of Document for details)

- (iii) a member of the Ministry of Defence Police by virtue of section 1(1)(b) of the Ministry of Defence Police Act 1987 (c. 4);
 - (iv) a special constable of the British Transport Police Force; or
 - (v) a member of any force of special constables established for the States of Jersey, the Island of Guernsey or the Isle of Man;
 - [^{F3}(da) is or has been a member of the Authority;]
 - (e) is or has been a member of staff of the Authority [^{F4}or has been a member of staff of the body which was known as the Scottish Police Services Authority];
 - ^{F5}(f)
 - (g) is or has been [^{F6}employed as a member of police staff or as a member of the Authority's staff or has been] employed, by virtue of section 9 of the 1967 Act (employees other than constables) by a police authority or a joint police board;
 - (h) has been a member of—
 - (i) the National Criminal Intelligence Service or;
 - (ii) the National Crime Squad; ^{F7}...
 - (i) ^{F8}... has been a member of the Serious Organised Crime Agency [^{F9}or]
 - [^{F10}(j) is or has been a National Crime Agency officer.]
- (2) The disqualification under sub-paragraph (1)(a) does not extend to any membership ending more than 3 years before the person is appointed to the office of Commissioner.
- (3) A person who has previously been appointed to the office of Commissioner is not eligible to be appointed again, except in accordance with sub-paragraph (4).
- (4) A person holding office as Commissioner may be reappointed on the expiry of the person's period of appointment, but only if—
- (a) the person has not previously been reappointed to the office; and
 - (b) the Scottish Ministers consider that, by reason of special circumstances, it is desirable in the public interest.

Textual Amendments

- F2** Words in Sch. 4 para. 2(1)(b) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [Sch. 7 para. 33\(17\)\(a\)\(i\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F3** Sch. 4 para. 2(1)(da) inserted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [Sch. 7 para. 33\(17\)\(a\)\(ii\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F4** Words in Sch. 4 para. 2(1)(e) inserted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [Sch. 7 para. 33\(17\)\(a\)\(iii\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F5** Sch. 4 para. 2(1)(f) 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)
- F6** Words in Sch. 4 para. 2(1)(g) inserted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [Sch. 7 para. 33\(17\)\(a\)\(iv\)](#); 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, SCHEDULE 4. (See end of Document for details)

- F7** Word in Sch. 4 para. 2(1)(h)(ii) omitted (7.10.2013) by virtue of Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 172(a)**; S.I. 2013/1682, art. 3(v)
- F8** Words in Sch. 4 para. 2(1)(i) omitted (7.10.2013) by virtue of Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 172(b)(i)**; S.I. 2013/1682, art. 3(v)
- F9** Word in Sch. 4 para. 2(1)(i) inserted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 172(b)(ii)**; S.I. 2013/1682, art. 3(v)
- F10** Sch. 4 para. 2(1)(j) inserted (7.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(2), **Sch. 8 para. 172(c)**; S.I. 2013/1682, art. 3(v)

Tenure and removal from office

- 3 (1) Subject to this paragraph and paragraph 4, a person holds office as Commissioner on such terms and conditions as the Scottish Ministers may determine.
- (2) The period of a person's appointment as Commissioner is—
- (a) in the case of a first appointment, [^{F11}5] years; and
 - (b) in the case of a reappointment, [^{F12}3] years.
- (3) A person holding office as Commissioner may, by written notice to the Scottish Ministers, resign at any time.
- (4) The Scottish Ministers may remove a person from the office of Commissioner if satisfied that any of the grounds mentioned in sub-paragraph (5) is the case.
- (5) Those grounds are—
- (a) the person has failed without reasonable excuse to carry out the functions of the office for a continuous period of 3 months;
 - (b) the person falls within one or more of the sub-sub-paragraphs of paragraph 2(1);
 - (c) the person has, since appointment, been convicted of a criminal offence;
 - (d) the person's estate has been sequestrated or the person has been adjudged bankrupt, has made an arrangement with creditors or has granted a trust deed for creditors or a composition contract;
 - (e) the person is subject to a disqualification order under the Company Directors Disqualification Act 1986 (c. 46) or under [^{F13}the Company Directors Disqualification (Northern Ireland) Order 2002];
 - (f) the person has acted improperly in relation to the person's duties;
 - (g) the person is otherwise unable or unfit to perform the person's duties.

Textual Amendments

- F11** Figure in Sch. 4 para. 3(2)(a) substituted (1.4.2013) by Police and Fire Reform (Scotland) Act 2012 (asp 8), s. 129(2), **Sch. 7 para. 33(17)(b)(i)**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F12** Figure in Sch. 4 para. 3(2)(b) substituted (1.4.2013) by Police and Fire Reform (Scotland) Act 2012 (asp 8), s. 129(2), **Sch. 7 para. 33(17)(b)(ii)**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F13** Words in Sch. 4 para. 3(5)(e) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 2(1), **Sch. 1 para. 261(3)** (with art. 10)

Changes to legislation: There are currently no known outstanding effects for the Police, Public Order and Criminal Justice (Scotland) Act 2006, SCHEDULE 4. (See end of Document for details)

Remuneration

- 4 The Commissioner is entitled to—
- (a) a salary of such amount; and
 - (b) such allowances
- as the Scottish Ministers determine.

Pensions etc.

- 5 (1) The Scottish Ministers may pay or make arrangements for the payment of pensions, allowances or gratuities to, or in respect of, any person who has ceased to hold office as the Commissioner.
- (2) The reference in sub-paragraph (1) to pensions, allowances and gratuities includes pensions, allowances and gratuities by way of compensation for loss of office.
- (3) The arrangements mentioned in sub-paragraph (1) may include—
- (a) the making of contributions or payments towards provision for pensions, allowances or gratuities mentioned there; and
 - (b) the establishment and administration of pension schemes.

Vacancy in office of Commissioner

- 6 (1) The Scottish Ministers may appoint a person (who may be a member of the Commissioner's staff) to carry out the functions of the Commissioner during a period in which the office is vacant (an “acting Commissioner”).
- (2) A person who is disqualified for appointment to the office of Commissioner is also disqualified for appointment as an acting Commissioner.
- (3) A person appointed to be acting Commissioner—
- (a) may, by written notice to the Scottish Ministers, resign at any time;
 - (b) may be dismissed by the Scottish Ministers at any time;
 - (c) in other respects, holds appointment on such terms and conditions as the Scottish Ministers may determine.
- (4) While holding appointment as acting Commissioner, a person is to be treated as the Commissioner for all purposes other than those of paragraphs 3, 4 and 5.

Staff

- 7 (1) The Commissioner may appoint such staff as the Commissioner considers appropriate.
- (2) Members of staff are to be appointed on such terms and conditions as the Commissioner determines.
- (3) The Commissioner must pay to members of the Commissioner's staff such remuneration, allowances and expenses as the Commissioner determines.
- (4) The Commissioner may pay or make arrangements for the payment of pensions, allowances or gratuities to, or in respect of, any person who has ceased to be a member of staff.

Changes to legislation: There are currently no known outstanding effects for the Police, Public Order and Criminal Justice (Scotland) Act 2006, SCHEDULE 4. (See end of Document for details)

- (5) The reference in sub-paragraph (4) to pensions, allowances and gratuities includes pensions, allowances and gratuities by way of compensation for loss of employment.
- (6) The arrangements mentioned in sub-paragraph (4) may include—
 - (a) the making of contributions or payments towards provision for pensions, allowances or gratuities mentioned there; and
 - (b) the establishment and administration of pension schemes.
- (7) The Commissioner may make such other arrangements for staffing as the Commissioner thinks fit.
- (8) Paragraph 1(1) applies to staff appointed under this paragraph as it applies to the Commissioner.

[^{F14}Staff officers

Textual Amendments

F14 Sch. 4 paras. 7A, 7B and cross-headings inserted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [Sch. 7 para. 33\(17\)\(c\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)

- 7A
- (1) The Commissioner may make arrangements for constables of the Police Service to be appointed to serve as members of the Commissioner's staff.
 - (2) The Commissioner may make arrangements for a person falling within sub-paragraph (3) to be appointed to serve as a member of the Commissioner's staff.
 - (3) A person falls within this sub-paragraph if the person is a member of—
 - (a) a police force maintained under section 2 of the Police Act 1996 (c.16);
 - (b) the metropolitan police force;
 - (c) the City of London police force;
 - (d) the Police Service of Northern Ireland;
 - (e) the Ministry of Defence Police appointed on the nomination of the Secretary of State under section 1 of the Ministry of Defence Police Act 1987 (c.4);
 - (f) the British Transport Police Force;
 - (g) the Civil Nuclear Constabulary;
 - (h) the States of Jersey Police Force;
 - (i) the salaried police force of the Island of Guernsey; or
 - (j) the Isle of Man Constabulary.
 - (4) A constable or other person appointed under arrangements made under sub-paragraph (1) or (2) is to be appointed on such terms and conditions (including as regards remuneration, allowances and expenses) as the Commissioner determines.
 - (5) The Commissioner's determination under sub-paragraph (4) may be made by reference to provision made by regulations made under section 48 of the Police and Fire Reform (Scotland) Act 2012 (asp 8).
 - (6) A constable or other person appointed under arrangements made under sub-paragraph (1) or (2)—
 - (a) has all the powers and privileges of a constable throughout Scotland; and

Changes to legislation: There are currently no known outstanding effects for the Police, Public Order and Criminal Justice (Scotland) Act 2006, SCHEDULE 4. (See end of Document for details)

(b) is subject to the direction and control of the Commissioner.

- (7) The Commissioner is liable in respect of any unlawful conduct on the part of any constable or other person appointed under arrangements made under sub-paragraph (1) or (2) in the carrying out (or purported carrying out) of that person's functions in the same manner as an employer is liable in respect of any unlawful conduct on the part of an employee in the course of employment.
- (8) The Scottish Ministers may by order apply any provision of the Police and Fire Reform (Scotland) Act 2012 or any other enactment relating to constables (including any such provision or other enactment creating offences against or as regards constables), with such modifications as are considered appropriate, in relation to a person appointed under arrangements made under sub-paragraph (2).]

[^{F14}Staff involved in investigations

- 7B (1) The Commissioner may designate—
- (a) any member of the Commissioner's staff appointed under paragraph 7 or 7A to take charge of any investigation on behalf of the Commissioner; and
 - (b) other members of the Commissioner's staff to assist the member designated to take charge.
- (2) This sub-paragraph applies to a person who is a member of the Commissioner's staff appointed under paragraph 7 and is designated under sub-paragraph (1).
- (3) A person to whom sub-paragraph (2) applies—
- (a) has all the powers and privileges of a constable throughout Scotland; but
 - (b) is not as a result of the designation to be treated as being in police service for the purposes of—
 - (i) section 280 of the Trade Union and Labour Relations (Consolidation) Act 1992 (c.52); or
 - (ii) section 200 of the Employment Rights Act 1996 (c.18).
- (4) The Scottish Ministers may by order apply any enactment relating to the investigation of offences by constables (subject to such modifications as they consider appropriate) in relation to investigations carried out in pursuance of paragraph (b)(i) of section 33A by a member of the Commissioner's staff designated under sub-paragraph (1).]

General powers

- 8 The Commissioner may do anything which appears necessary or expedient for the purpose of, or in connection with, or which appears conducive to, the carrying out of the Commissioner's functions, including—
- (a) entering into contracts; and
 - (b) acquiring and disposing of property.

Financial provision

- 9 (1) The Scottish Ministers are to pay—
- (a) the salary and allowances of the Commissioner; and
 - (b) any sums payable by virtue of paragraph 6(3)(c) to, or in respect of, a person who is appointed, or has ceased to hold office, as acting Commissioner.

Changes to legislation: There are currently no known outstanding effects for the Police, Public Order and Criminal Justice (Scotland) Act 2006, SCHEDULE 4. (See end of Document for details)

- (2) The Scottish Ministers are to pay to the Commissioner such sums as they consider appropriate to enable the Commissioner to fulfil the Commissioner's functions.
- (3) The Commissioner is not to borrow money unless authorised to do so (whether generally or specially) by the Scottish Ministers.

Accounts

- 10 The Commissioner must, in accordance with such directions as the Scottish Ministers may give—
 - (a) keep proper accounting records and accounts;
 - (b) prepare annual accounts for each financial year;
 - (c) send a copy of the annual accounts to the Auditor General for Scotland for auditing.

Provision of information

- 11 ^{F15}(1) The Commissioner must provide the Scottish Ministers with all such information and documents as appear to them to be required for the purposes of satisfying themselves that the Commissioner is carrying out the Commissioner's functions efficiently and effectively.
 - ^{F16}(2) Nothing in this paragraph requires or authorises the provision of any information or document 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 disclosure of the information or document).]

Textual Amendments

- F15** Sch. 4 para. 11(1): Sch. 4 para. 11 renumbered as sch. 4 para. 11(1) (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [Sch. 7 para. 33\(17\)\(d\)\(i\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F16** Sch. 4 para. 11(2) inserted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [Sch. 7 para. 33\(17\)\(d\)\(ii\)](#); 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, SCHEDULE 4.