



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

2006 asp 10

PART 1

POLICE

CHAPTER 2

COMPLAINTS AND MISCONDUCT

Supervision of complaints

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^{F1}; and

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- (c) if the Commissioner considers it appropriate to do so, publish the report drawn up under paragraph (b) in such manner as the Commissioner considers appropriate.]
- (4) Those persons are—
- (a) the complainer; and
 - (b) where the complaint is in respect of an act or omission by a person mentioned in section 34(2)(f) and identifies the person who is the subject of it, that person.
- (5) The duties imposed by subsection (3)(a) are subject to such exceptions as may be prescribed by regulations made by the Scottish Ministers; but they are to make regulations under this subsection only to the extent that they consider it necessary for the purpose of any of the following—
- (a) preventing the premature or inappropriate disclosure of information that is relevant to, or may be used in, any criminal proceedings or prospective criminal proceedings;
 - (b) preventing the disclosure of information in any circumstances in which it has been determined in accordance with the regulations that its non-disclosure—
 - (i) is in the interests of national security;
 - (ii) is for the purposes of the prevention or detection of crime or the apprehension or prosecution of offenders;
 - (iii) is justified on proportionality grounds; or
 - (iv) is otherwise necessary in the public interest.
- (6) The non-disclosure of information is justified on proportionality grounds only if its disclosure would cause, directly or indirectly, an adverse effect which would be disproportionate to the benefits arising from its disclosure.
- (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 [F2the Authority where the appropriate authority is the chief constable],
- (the person to whom the direction is given being “the reconsidering authority”).
- (9) A reconsideration direction given under subsection (8)(b) must be accompanied by a copy of the report sent to the appropriate authority in relation to the complaint under subsection (3)(b).
- (10) A reconsideration direction may be given as respects so much of the complaint as has been, or is, the subject of [F3procedures made by regulations made under section 48 of the Police and Fire Reform (Scotland) Act 2012 (asp 8) for dealing with constables whose standard of behaviour or performance is unsatisfactory] only in so far as it relates to the extent of compliance with the procedures established by virtue of that provision.
- (11) A reconsideration direction may (either or both)—
- (a) instruct that the reconsideration of the complaint is to have regard to such further information as may have become available (whether or not as a result of the complaint handling review) after the complaint was dealt with;

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- (b) contain a requirement that reconsideration of the complaint is to take place under the supervision of the Commissioner (a “supervision requirement”).
- (12) In deciding whether a reconsideration direction should contain a supervision requirement, the Commissioner must have regard to—
- (a) the seriousness of the case; and
 - (b) the public interest.
- (13) The Commissioner may at any time issue a direction varying a reconsideration direction by inserting or, as the case may be, deleting a supervision requirement.
- (14) Where a reconsideration direction is varied under subsection (13), the Commissioner may give—
- (a) the reconsidering authority; or
 - (b) any person previously appointed to carry out the reconsideration,
- such directions as the Commissioner considers appropriate for the purpose of giving effect to the variation.

Textual Amendments

- F1** S. 35(3)(c) and word inserted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [Sch. 7 para. 33\(3\)\(a\)](#); S.S.I. 2013/51, [art. 2](#) (with transitional provisions and savings in S.S.I. 2013/121)
- F2** Words in s. 35(8)(b) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [Sch. 7 para. 33\(3\)\(b\)](#); S.S.I. 2013/51, [art. 2](#) (with transitional provisions and savings in S.S.I. 2013/121)
- F3** Words in s. 35(10) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [Sch. 7 para. 33\(3\)\(c\)](#); S.S.I. 2013/51, [art. 2](#) (with transitional provisions and savings in S.S.I. 2013/121)

Commencement Information

- I1** S. 35 wholly in force at 1.4.2007; s. 35 not in force at Royal Assent see s. 104; s. 35 in force at 1.1.2007 for specific purposes by [S.S.I. 2006/607](#), [art. 3](#), [Sch.](#); s. 35 in force so far as not already in force at 1.4.2007 by [S.S.I. 2007/84](#), [art. 3\(3\)](#)

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 47A inserted by [2023 c. 41 s. 45\(3\)](#)