

# **POLICE AND FIRE REFORM (SCOTLAND) ACT 2012**

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## **EXPLANATORY NOTES**

### **THE ACT – SECTION BY SECTION**

#### **Part 1 – Police Reform**

##### ***Chapter 10 – Complaints and Investigations***

67. This Chapter amends Part 1, Chapter 2 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (the 2006 Act) to rename the Police Complaints Commissioner for Scotland as the Police Investigations and Review Commissioner (PIRC) and to extend the PIRC's remit. **Section 60** places a number of requirements on the SPA and the chief constable in terms of dealing with relevant complaints, whose definition is the same as in the 2006 Act. Those requirements are as follows:
- the SPA and chief constable must maintain suitable arrangements for the handling of relevant complaints, and must seek the views of others on what those arrangements should be;
  - the SPA must keep itself informed about how the chief constable is dealing with relevant complaints in order to satisfy itself that those arrangements are suitable; and
  - the chief constable must provide the SPA with whatever information about relevant complaints it reasonably requires, and must seek to ensure that sufficient information is kept for that purpose.
68. **Section 61** renames the Police Complaints Commissioner for Scotland as the Police Investigations and Review Commissioner (PIRC).
69. **Section 62** inserts section 33A into the 2006 Act, setting out the general functions of the PIRC. The PIRC is required to:
- ensure that the SPA and the chief constable make and maintain suitable arrangements for the handling and examination of complaints about police constables and staff and the reconsideration of such complaints as set out in sections 34 to 41 of the 2006 Act (section 33A(1)(a));
  - when directed by a prosecutor to do so, investigate any circumstances in which there is an indication that a person serving with the police may have committed an offence and the circumstances of any death involving a person serving with the police which that procurator fiscal is required to investigate under section 1 of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 (section 33A(1)(b));
  - where requested by the SPA or chief constable, investigate and report on deaths, serious injuries or firearms incidents where constables and police staff are involved (section 33A(1)(c)); and

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- investigate other matters relating to the Police Service or SPA that it considers are in the public interest (section 33A(1)(d)).
70. **Sections 63 to 68** insert new sections 41A to 41F into the 2006 Act which describe in more detail the PIRC's powers, duties and functions. **Section 63** inserts new section 41A of the 2006 Act which requires the Commissioner to comply with any lawful instruction given by the prosecutor in relation to investigating and reporting alleged criminal offences or fatal accidents involving a person serving with the police. Amendments to the Regulation of Investigatory Powers (Scotland) Act 2000 to provide for the investigatory powers which the PIRC will have are set out in **paragraph 15 of schedule 7**
71. **Sections 64 and 65** insert new sections 41B and 41C of the 2006 Act which explain further the definition of deaths or serious injuries, incidents involving firearms and other weapons, and other matters in the public interest which the Commissioner may investigate using powers in new sections 33A(1)(c) and (d) of the 2006 Act. Section 41B provides that the "serious incidents" that the PIRC may investigate include deaths and serious injuries when the person was detained by and had contact with the police and that contact may have caused or contributed to their death or injury, and incidents where a person serving with the police has used a firearm or other prescribed weapon. The Scottish Ministers may by regulation prescribe other circumstances which constitute a "serious incident". Such regulations would be subject to the negative procedure. Provision is made in subsection (2) about matters which are not serious incidents. Section 41C outlines that the PIRC may investigate matters where there is an indication that the SPA, Police Service or a person serving with the police has been involved, and the PIRC believes it is in the public interest to do so. However, the PIRC cannot use these powers to investigate: cases which the Commissioner is investigating in pursuance of paragraph (b)(i) of section 33A(1); where criminal proceedings have been brought following an investigation by the Commissioner; or a matter which is being, or has been, investigated by the Commissioner in pursuance of paragraph (b)(ii) or (c) of section 33A(1) or by someone else under section 1 of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976.
72. **Section 66** inserts section 41D which gives the Scottish Ministers powers to make, by regulations, further provisions about PIRC investigations under sections 33A(1)(c) or (d) of the 2006 Act. The Scottish Ministers must consult the PIRC, the SPA, the chief constable, persons appearing to be representatives of senior officers, persons appearing to be representatives of superintendents (including chief superintendents), the joint central committee of the Police Federation for Scotland and any other relevant people before making such regulations, which are subject to the affirmative procedure. The regulations may make provision about: the form, procedure, restrictions and time limits for investigations; the circumstances in which an investigation may be discontinued; requirements on the SPA and chief constable to refer matters to the Commissioner and to assist and co-operate with investigations; and the delegation of functions to PIRC.
73. **Section 67** inserts new section 41E of the 2006 Act which requires the Commissioner to provide a report following an investigation under paragraph (c) or (d) of new section 33A(1). That report should not enable the identity of any person other than the SPA and Police Service to be revealed unless the PIRC considers that it is necessary to do so on the grounds of public interest. The PIRC must provide a copy of it to the person who requested the investigation, the SPA and any other person the PIRC considers appropriate. If it considers it appropriate to do so, the PIRC must publish the report in such a manner as it considers appropriate.
74. **Section 68** inserts new section 41F into the 2006 Act allowing the Court of Session to investigate whether an individual, who is obstructing the PIRC in carrying out a complaint handling review or investigation, should be treated as though they are a person who has committed a contempt of court in relation to the Court of Session.

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75. **Section 69** inserts new section 42A into the 2006 Act to put in place arrangements for the handling of complaints against the PIRC and to seek the views of others as to what those arrangements should be. **Section 70** also inserts new section 46A into the 2006 Act so that certain statements made by the PIRC have absolute privilege from defamation, as defined in the Defamation Act 1996. Statements made to the PIRC, in relation to an investigation, also have absolute privilege and statements made to the PIRC in relation to a complaint or complaint handling review are privileged unless made with malice.