Status: *Point in time view as at 01/01/2007. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Police, Public Order and Criminal Justice (Scotland) Act 2006 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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

2006 asp 10

The Bill for this Act of the Scottish Parliament was passed by the Parliament on 25th May 2006 and received Royal Assent on the fourth day of July said year

An Act of the Scottish Parliament to make further provision about the police; to make further provision about public order and safety; to make further provision about criminal justice; and for connected purposes.

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.

Commencement Information

I1 S. 1 wholly in force at 1.4.2007; s. 1 not in force at Royal Assent see s. 104; s. 1(1) fully in force and s. 1(2) in force for specified purposes at 1.1.2007 by S.S.I. 2006/607, **art. 3**, Sch; s. 1 in force so far as not already in force at 1.4.2007 by S.S.I. 2007/84, **art. 3(3)**

Status: *Point in time view as at 01/01/2007. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Police, Public Order and Criminal Justice (Scotland) Act 2006 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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.

(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.

Commencement Information

I2 S. 2 wholly in force at 1.4.2007; s. 2 not in force at Royal Assent see s. 104; s. 2(1) in force at 1.1.2007 by S.S.I. 2006/607, **art. 3**, Sch; s. 2 in force so far as not already in force at 1.4.2007 by S.S.I. 2007/84, **art. 3(3)**

VALID FROM 01/04/2007

3 Duty to provide the police support services

(1) The Authority must provide the police support services.

(2) The police support services are—

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(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 ”.

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Commencement Information

I3 S. 3 in force (so far as not subsequently repealed) at 1.4.2007; s. 3 not in force at Royal Assent see s. 104; s. 3(1)(2)(a)-(c)(e)(f)(3)-(7) in force at 1.4.2007 by S.S.I. 2007/84, **art. 3(3)**

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.

VALID FROM 01/04/2007

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.

VALID FROM 01/04/2007

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);

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(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.

VALID FROM 01/04/2007

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.

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(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.

VALID FROM 01/04/2007

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.

(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;

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(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.

VALID FROM 01/04/2007

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;

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(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.

Commencement Information

I4 S. 12 wholly in force at 1.4.2007; s. 12 not in force at Royal Assent see s. 104; s. 12(1)(a)(b)(d) fully in force and s. 12(2) in force for specified purposes at 1.1.2007 by S.S.I. 2006/607, **art. 3**, Sch; s. 12 in force so far as not already in force at 1.4.2007 by S.S.I. 2007/84, **art. 3(3)**

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.

VALID FROM 01/04/2007

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—

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(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
(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.

VALID FROM 01/04/2007

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.

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(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.

Commencement Information

I5 S. 16 wholly in force at 1.4.2007; s. 16 not in force at Royal Assent see s. 104; s. 16(1) in force at 1.1.2007 by S.S.I. 2006/607, **art. 3**, Sch; s. 16 in force so far as not already in force at 1.4.2007 by S.S.I. 2007/84, **art. 3(3)**

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.

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VALID FROM 01/04/2007

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;

(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.

VALID FROM 01/04/2007

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

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(b) any other restriction on the disclosure of information (however imposed).

VALID FROM 01/04/2007

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.

VALID FROM 01/04/2007

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 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.

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(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;
  (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

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(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.

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(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).

VALID FROM 01/04/2007

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).

(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

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(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;

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(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.

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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 —

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(a) the person who made the complaint ("the complainer"); or
(b) the appropriate authority in relation to the complaint,

examine the manner in which a relevant complaint has been dealt with (such an examination being a "complaint handling review").

(2) The Commissioner may carry out a complaint handling review under subsection (1)(b) only if satisfied that the appropriate authority in relation to the complaint has taken reasonable steps to deal with the complaint.

(3) On completion of a complaint handling review, the Commissioner must—
(a) inform the persons mentioned in subsection (4) about—
(i) the conclusions the Commissioner has drawn from the complaint handling review and the reasons for them;
(ii) what action (if any) the Commissioner proposes to take in consequence of those conclusions;
(b) draw up a report of the complaint handling review and the conclusions, reasons and proposed action referred to in paragraph (a) and send it to the appropriate authority in relation to the complaint.

(4) Those persons are—
(a) the complainer; and
(b) where the complaint is in respect of an act or omission by a person mentioned in section 34(2)(f) and identifies the person who is the subject of it, that person.

(5) The duties imposed by subsection (3)(a) are subject to such exceptions as may be prescribed by regulations made by the Scottish Ministers; but they are to make regulations under this subsection only to the extent that they consider it necessary for the purpose of any of the following—
(a) preventing the premature or inappropriate disclosure of information that is relevant to, or may be used in, any criminal proceedings or prospective criminal proceedings;
(b) preventing the disclosure of information in any circumstances in which it has been determined in accordance with the regulations that its non-disclosure—
(i) is in the interests of national security;
(ii) is for the purposes of the prevention or detection of crime or the apprehension or prosecution of offenders;
(iii) is justified on proportionality grounds; or
(iv) is otherwise necessary in the public interest.

(6) The non-disclosure of information is justified on proportionality grounds only if its disclosure would cause, directly or indirectly, an adverse effect which would be disproportionate to the benefits arising from its disclosure.

(7) If, having completed a complaint handling review, the Commissioner is of the opinion that the complaint should be reconsidered, the Commissioner may give a direction requiring the reconsideration of the complaint (a "reconsideration direction").

(8) A reconsideration direction may be given—
(a) to the appropriate authority in relation to the complaint; or
(b) if the Commissioner thinks it more appropriate to do so, to any other person who is a relevant authority,

(the person to whom the direction is given being "the reconsidering authority").

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(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.

Commencement Information

I6 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)**

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—

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(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.

Commencement Information

I7 S. 36 wholly in force at 1.4.2007; s. 36 not in force at Royal Assent see s. 104; s. 36 in force at 1.1.2007 for specific purposes by S.S.I. 2006/607, **art. 3**, Sch; s. 36 in force so far as not already in force at 1.4.2007 by S.S.I. 2007/84, **art. 3(3)**

VALID FROM 01/04/2007

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—

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(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.

Commencement Information

I8 S. 38 wholly in force at 1.4.2007; s. 38 not in force at Royal Assent see s. 104; s. 38(4) in force at 1.1.2007 by S.S.I. 2006/607, **art. 3**, Sch; s. 38 in force so far as not already in force at 1.4.2007 by S.S.I. 2007/84, **art. 3(3)**

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

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(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.

Commencement Information

I9 S. 39 wholly in force at 1.4.2007; s. 39 not in force at Royal Assent see s. 104; s. 39 in force at 1.1.2007 for specific purposes by S.S.I. 2006/607, **art. 3**, Sch; s. 39 in force so far as not already in force at 1.4.2007 by S.S.I. 2007/84, **art. 3(3)**

VALID FROM 01/04/2007

40 Final reports on reconsideration

(1) On the completion of the person's reconsideration, a person appointed under section 37 must—

(a) submit a report on it to the Commissioner; and

(b) send a copy of the report to—

(i) the reconsidering authority; and

(ii) where different, the appropriate authority in relation to the complaint.

(2) A person submitting a report under this section is not prevented by any obligation of secrecy imposed by any rule of law or otherwise from including all such matters as the person thinks fit in the person's report.

41 Appropriate authority in relation to a complaint

(1) For the purposes of sections 34 to 40, the appropriate authority in relation to a complaint is—

(a) where the complaint is in respect of an act or omission of a police authority, the authority;

(b) where the complaint is in respect of an act or omission of a joint police board, the board;

(c) where the complaint is in respect of an act or omission of a police force, the chief constable of the force;

(d) where the complaint is in respect of an act or omission of the Authority, the Authority;

(e) where the complaint is in respect of an act or omission of the Agency, the Director General of the Agency;

(f) where the complaint is in respect of an act or omission of a person at a time when the person was a constable of a police force—

(i) where the person was of a senior rank, the maintaining authority in relation to the force;

(ii) where the person was not of such rank, the chief constable of the force;

(g) where the complaint is in respect of an act or omission of a person at a time when the person was employed or appointed by virtue of section 9 of the 1967 Act by a police authority or a joint police board, the authority or board;

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(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

VALID FROM 01/04/2007

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.

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VALID FROM 01/04/2007

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,

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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.

Commencement Information

I10 S. 44 wholly in force at 1.4.2007; s. 44 not in force at Royal Assent see s. 104; s. 44 in force at 1.1.2007 for specified purposes by S.S.I. 2006/607, **art. 3**, Sch; s. 44 in force so far as not already in force at 1.4.2007 by S.S.I. 2007/84, **art. 3(3)**

VALID FROM 01/04/2007

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.

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VALID FROM 01/04/2007

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;

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(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.

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(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.

(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.".

PART 2

PUBLIC ORDER ETC.

CHAPTER 1

FOOTBALL BANNING ORDERS

Making and content of orders

51 Making of order on conviction of a football-related offence

(1) This section applies where—
- (a) a person is convicted of an offence; and
- (b) the person was aged 16 or over at the time the offence was committed.

(2) Instead of or in addition to any sentence which it could impose, the court which deals with the person in respect of the offence may, if satisfied as to the matters mentioned in subsection (3), make a football banning order against the person.

(3) Those matters are—
- (a) that the offence was one to which subsection (4) applies; and
- (b) that there are reasonable grounds to believe that making the football banning order would help to prevent violence or disorder at or in connection with any football matches.

(4) This subsection applies to an offence if—
- (a) the offence involved the person who committed it engaging in violence or disorder; and
- (b) the offence related to a football match.

(5) Where the court does not make a football banning order, but is nevertheless satisfied that the offence was one to which subsection (4) applies, it may declare that to be the case.

(6) For the purpose of subsection (4)(b), an offence relates to a football match if it is committed—
- (a) at a football match or while the person committing it is entering or leaving (or trying to enter or leave) the ground;
- (b) on a journey to or from a football match; or
- (c) otherwise, where it appears to the court from all the circumstances that the offence is motivated (wholly or partly) by a football match.

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(7) The references in subsection (6)(a) and (b) to a football match include a reference to any place (other than domestic premises) at which a football match is being televised; and, in the case of such a place, the reference in subsection (6)(a) to the ground is to be taken to be a reference to that place.

(8) For the purpose of subsection (6)(b)—
- (a) a person may be regarded as having been on a journey to or from a football match whether or not the person attended or intended to attend the match; and
- (b) a person's journey includes breaks (including overnight breaks).

(9) On making a football banning order, or a declaration, under this section, a court must explain to the person in ordinary language the effect of the order or declaration.

(10) But failure to comply with subsection (9) does not affect the order's (or declaration's) validity.

52 Making of order on application to the sheriff

(1) The chief constable of a police force may apply for a football banning order against any person—
- (a) who resides in the area of the police force; or
- (b) who the chief constable believes is in or intends to come to the area of the police force.

(2) An application under subsection (1) may be made to any sheriff—
- (a) in whose sheriffdom the person against whom the order is sought resides;
- (b) in whose sheriffdom that person is believed by the applicant to be; or
- (c) to whose sheriffdom that person is believed by the applicant to be intending to come.

(3) An application under subsection (1) is to be made by summary application.

(4) A sheriff may make a football banning order if satisfied that—
- (a) the person against whom the order is sought has at any time contributed to any violence or disorder in the United Kingdom or elsewhere; and
- (b) there are reasonable grounds to believe that making the order would help to prevent violence or disorder at or in connection with any football matches.

(5) Subsections (6) and (8) apply where a sheriff is determining whether to make a football banning order against a person.

(6) The sheriff may take into account the matters mentioned in subsection (7) (amongst others), so far as considering it appropriate to do so.

(7) Those matters are—
- (a) any decision of a court or tribunal outside the United Kingdom in respect of the person;
- (b) the person's deportation or exclusion from a country or territory outside the United Kingdom;
- (c) the person's removal or exclusion from premises used for playing football matches, whether in the United Kingdom or elsewhere;
- (d) the person's conduct recorded on video or by any other means.

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(8) The sheriff may not take into account anything done by the person before the beginning of the relevant period, except circumstances ancillary to a conviction.

(9) In subsection (8)—

"the relevant period" means the period of 10 years ending with the day on which the application for the order was made; and

"circumstances ancillary to a conviction" has the same meaning as it has for the purposes of section 4 of the Rehabilitation of Offenders Act 1974 (c. 53).

(10) Subsection (8) does not prejudice anything in the Rehabilitation of Offenders Act 1974 (c. 53).

(11) On making a football banning order, the sheriff must explain to the person (if present in court) in ordinary language the effect of the order.

(12) But failure to comply with subsection (11) does not affect the order's validity.

53 Content of order

(1) A football banning order is an order which—

(a) prohibits the person against whom it is made from entering any premises for the purposes of attending any regulated football matches in the United Kingdom; and

(b) requires the person against whom it is made to report at a police station in accordance with this Chapter, in connection with regulated football matches outside the United Kingdom.

(2) A football banning order must require the person against whom it is made—

(a) to report initially at a police station in Scotland specified in the order within 5 days beginning with the day on which the order is made; and

(b) where a relevant event occurs, to notify the football banning orders authority of the prescribed information in relation to the event within 7 days beginning with the day on which the event occurs.

(3) A football banning order must, unless it appears to the court making it that there are exceptional circumstances, impose a requirement as to the surrender in accordance with this Chapter, in connection with regulated football matches outside the United Kingdom, of the person's passport.

(4) A football banning order may, if the court making it considers it would help to prevent violence or disorder at or in connection with any football matches, impose on the person additional requirements.

(5) Such requirements may include prohibiting the person from entering any premises (including premises to be entered for the purposes of attending football matches which are not regulated football matches).

(6) A football banning order must specify the period for which it is to have effect.

(7) That period is not to exceed—

(a) 10 years, in the case of an order made under section 51 made in addition to a sentence of imprisonment;

(b) 5 years, in the case of an order made under section 51 other than one mentioned in paragraph (a);

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(c) 3 years, in the case of an order made under section 52.

54 Section 53: supplementary

(1) Schedule 5, which specifies the relevant events referred to in section 53(2)(b) and defines the prescribed information in relation to each such event, has effect.

(2) The period specified in a football banning order by virtue of section 53(6) begins on the day on which the order is made.

(3) In section 53(7)(a), "imprisonment" includes any form of detention.

55 "Football matches" and "regulated football matches"

(1) In this Chapter, references to football matches—
- (a) are to association football matches; and
- (b) are to matches played or intended to be played.

(2) For the purposes of this Chapter, the following are regulated football matches—
- (a) football matches within subsection (3); and
- (b) such other football matches, anywhere in the world, as may be prescribed by order made by the Scottish Ministers.

(3) The football matches within this subsection are—
- (a) football matches anywhere in the United Kingdom where one or both of the participating teams—
  - (i) represents a country or territory;
  - (ii) represents a club which is for the time being a member of the Scottish Premier League or the Scottish Football League;
  - (iii) represents a club which is for the time being a member (whether a full or associate member) of the Football League, the Football Association Premier League, the Football Conference or the League of Wales;
- (b) football matches outside the United Kingdom involving—
  - (i) a national team appointed to represent Scotland, England or Wales by, respectively, the Scottish Football Association, the Football Association or the Football Association of Wales;
  - (ii) a team representing a club mentioned in paragraph (a)(ii) or (iii).

(4) The Scottish Ministers may by order modify subsection (3) so as to—
- (a) add a description of football matches, anywhere in the world;
- (b) remove such a description;
- (c) amend such a description.

56 "Violence" and "disorder"

(1) This section applies for the purposes of this Chapter.

(2) "Violence" means violence against persons or intentional damage to property and includes—
- (a) threatening violence; and
- (b) doing anything which endangers the life of a person.

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(3) "Disorder" includes—

(a) stirring up hatred against a group of persons based on their membership (or presumed membership) of a group defined by reference to a thing mentioned in subsection (5), or against an individual as a member of such a group;

(b) using threatening, abusive or insulting words or behaviour or disorderly behaviour;

(c) displaying any writing or other thing which is threatening, abusive or insulting.

(4) In subsection (3)(a), "presumed" means presumed by the person doing the stirring up.

(5) The things referred to in subsection (3)(a) are—

(a) colour;

(b) race;

(c) nationality (including citizenship);

(d) ethnic or national origins;

(e) membership of a religious group or of a social or cultural group with a perceived religious affiliation;

(f) sexual orientation;

(g) transgender identity;

(h) disability.

(6) In subsection (5)—

"disability" means physical or mental impairment of any kind;

"religious group" has the meaning given by section 74(7) of the Criminal Justice (Scotland) Act 2003 (asp 7);

"transgender identity" means any of the following—

(a) transvestism;

(b) transsexualism;

(c) intersexuality;

(d) having, by virtue of the Gender Recognition Act 2004 (c. 7), changed gender.

Variation, termination, information and appeals

57 Variation of certain requirements of order

(1) The appropriate court may, on the application of a person mentioned in subsection (3), make an order varying a football banning order by—

(a) subject to subsection (2), omitting or imposing a requirement such as is mentioned in section 53(3);

(b) imposing, replacing or omitting a requirement such as is mentioned in section 53(4).

(2) An order may not be varied so as to omit a requirement such as is mentioned in section 53(3) unless it appears to the court that there are exceptional circumstances.

(3) The persons referred to in subsection (1) are—

(a) the person subject to the order;

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(b) the chief constable of the police force in the area of which the person subject to the order resides;

(c) a chief constable who believes that that person is in or is intending to come to the area of the chief constable's police force;

(d) where the order was made under section 52, the chief constable on whose application the order was made.

(4) In subsection (1), "the appropriate court" means—

(a) where the football banning order was made under section 51, the court which made the order;

(b) where the football banning order was made under section 52, an appropriate sheriff.

(5) In subsection (4), "an appropriate sheriff" means—

(a) a sheriff sitting in the original sheriff court district; or

(b) where such a sheriff remits the application to another sheriff court district, a sheriff sitting in that other district.

(6) In subsection (5), "the original sheriff court district" means the sheriff court district which the sheriff who made the football banning order was sitting in when the order was made.

58 Termination of order

(1) The appropriate court may, on the application of a person subject to a football banning order, make an order terminating it as from a specified date.

(2) An application under subsection (1) may not be made unless the order has had effect for at least two-thirds of the period specified in the order.

(3) In exercising its power under subsection (1), a court must have regard to—

(a) the character of the person against whom the order was made;

(b) the conduct of the person against whom the order was made since it was made;

(c) the nature of the offence or conduct which led to it; and

(d) any other circumstances which appear to the court to be relevant.

(4) Where an application under subsection (1) is refused, no further application under that subsection in respect of the same order may be made within the period of 6 months beginning with the day of the refusal.

(5) In subsection (1), "the appropriate court" has the same meaning as in section 57.

59 Information about making, varying or terminating order etc.

(1) Where a court makes a football banning order, it must cause a copy of the order to be—

(a) served on the person against whom the order is made;

(b) sent to the football banning orders authority and to any person prescribed by order by the Scottish Ministers as soon as is reasonably practicable;

(c) sent to the police station at which the person against whom the order is made is to report initially (addressed to the constable responsible for the police station) as soon as is reasonably practicable; and

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(d) in a case where the person against whom the order is made is detained in legal custody, sent to the person in whose custody that person is detained as soon as is reasonably practicable.

(2) Where a court terminates or varies a football banning order, it must cause a copy of the terminating or varying order to be—
- (a) served on the person against whom the football banning order was made;
- (b) sent to the football banning orders authority as soon as is reasonably practicable; and
- (c) in a case where the person against whom the order was made is detained in legal custody, sent to the person in whose custody that person is detained as soon as is reasonably practicable.

(3) Where a person subject to a football banning order ("the subject") is released from custody, the person in whose custody the subject is must give notice of the subject's release to the football banning orders authority as soon as is reasonably practicable.

(4) Subsection (3) applies only if the subject is released more than 5 days before the expiry of the football banning order.

60 Appeals

(1) The following are to be taken to be a sentence for the purpose of an appeal—
- (a) a football banning order made under section 51;
- (b) a declaration made under section 51;
- (c) any variation of such an order under section 57;
- (d) the termination of such an order under section 58.

(2) Subsection (3) applies where a football banning order made under section 51 is quashed on appeal.

(3) Where the High Court of Justiciary does not specify, as a reason for quashing the order, that the court which made the order erred in holding that the offence in respect of which the order was made was one to which section 51(4) applied, the High Court may, in addition to any other order which it makes, make a declaration that the offence was one to which that section applied.

(4) The following decisions may be appealed to the sheriff principal—
- (a) a decision to make a football banning order under section 52;
- (b) a decision to make an order under section 57 varying such a football banning order;
- (c) a decision to make an order under section 58 terminating such a football banning order;
- (d) a decision not to make an order such as is mentioned in paragraph (a), (b) or (c).

(5) An appeal under subsection (4) must be made within the period of 14 days beginning with the date on which the decision was made.

(6) The decision of the sheriff principal on an appeal under subsection (4) may be appealed to the Court of Session.

(7) An appeal under subsection (6) may be made only with the leave of the sheriff principal.

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(8) An application for leave to appeal under subsection (6) must be made within the period of 7 days beginning with the date of the sheriff principal's decision; and an appeal under that subsection must be made within the period of 7 days beginning with the date on which leave to appeal the sheriff principal's decision was given.

Enforcement of order in relation to foreign matches

61 Foreign matches: reporting and other requirements

(1) The constable responsible for the police station at which a person subject to a football banning order reports initially may make such requirements of the person as are determined by the football banning orders authority to be necessary or expedient for giving effect to the football banning order, so far as relating to regulated football matches outside the United Kingdom.

(2) Subject to section 64, if, in connection with any regulated football match outside the United Kingdom, the football banning orders authority is of the opinion mentioned in subsection (3) in relation to a person subject to a football banning order, the authority must cause the person to be served with a notice in writing under subsection (4).

(3) That opinion is that requiring the person to report in accordance with a notice under subsection (4) is necessary or expedient in order to reduce the likelihood of violence or disorder at or in connection with the match.

(4) A notice under this subsection is a notice requiring the person—
- (a) to report at a specified police station at the time, or between the times, specified; and
- (b) if the order imposes a requirement as to the surrender of the person's passport, to attend at a specified police station at the time, or between the times, specified and—
  - (i) if the person has a passport, to surrender it; or
  - (ii) if the person does not have a passport, to make a declaration to that effect.

(5) In subsection (4), "specified" means specified in the notice.

(6) The football banning orders authority may establish criteria for determining whether a notice under subsection (4) ought to be imposed on any person or on persons of a particular description.

62 Notices under section 61(4): further provision

(1) A notice under section 61(4) may not require the person subject to the order to report or surrender the person's passport except in the control period in relation to—
- (a) a regulated football match outside the United Kingdom; or
- (b) a designated external tournament which includes such matches.

(2) In subsection (1)—

"control period" in relation to a regulated football match outside the United Kingdom means the period—
- (a) beginning 5 days before the day of the match; and
- (b) ending when the match is finished or cancelled;

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"control period" in relation to a designated external tournament means the period—

(a) beginning 5 days before the day of the first football match outside the United Kingdom which is included in the tournament;

(b) ending when the last football match outside the United Kingdom which is included in the tournament is finished or cancelled;

(but, for the purposes of paragraph (a), any football match included in the qualifying or pre-qualifying stages of the tournament is to be left out of account);

"designated" means designated by the Scottish Ministers by order; and

"external tournament" means a football competition which includes regulated football matches outside the United Kingdom.

(3) Where a notice under section 61(4) requires the person subject to the order to surrender the person's passport, the passport must be returned to the person as soon as reasonably practicable after the control period in question.

63 Sections 61 and 62: guidance

(1) The football banning orders authority must, in carrying out its functions under sections 61 and 62, have regard to any guidance issued by the Scottish Ministers about—

(a) the carrying out of those functions; and

(b) matters arising in connection with the carrying out of those functions.

(2) The Scottish Ministers shall make such arrangements as they consider appropriate for publishing the guidance issued from time to time for the purpose of subsection (1).

64 Exemption from notice served under section 61(4)

(1) A person who is subject to a football banning order may—

(a) as respects a particular regulated football match; or

(b) as respects regulated football matches played during a period,

apply for an order disapplying any notice under section 61(4) served on the person in relation to the match or matches.

(2) Subject to subsection (3), an application under subsection (1) is to be made to the football banning orders authority.

(3) If the application is made during the control period in relation to any match to which it relates, the application may instead be made to the constable responsible for any police station.

(4) In subsection (3), "control period" is to be construed in accordance with section 62(2).

(5) An order under this section is to be made only if the applicant shows to the satisfaction of the person to whom the application for the order is made—

(a) that there are circumstances which justify the making of the order; and

(b) that, because of those circumstances, the applicant would not attend the match or matches.

(6) Except where subsection (7) applies, a constable is not to make an order under this section without referring the question of whether to do so to the football banning orders authority.

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(7) This subsection applies where it is not reasonably practicable for the constable to refer the question to the authority.

(8) Where a constable makes an order under this section without referring the question of whether to do so to the football banning orders authority, the constable must give notice in writing of that fact to the football banning orders authority as soon as is reasonably practicable.

65 Section 64: supplementary

(1) The football banning orders authority or a constable is, in making decisions under section 64, to have regard to any guidance in that respect issued by the Scottish Ministers.

(2) The Scottish Ministers shall make such arrangements as they consider appropriate for publishing the guidance issued from time to time for the purpose of subsection (1).

(3) A person who is aggrieved by the refusal of the football banning orders authority or a constable to make an order under section 64 in the person's favour may appeal that refusal to the sheriff.

(4) An appeal under subsection (3) may be made only after the aggrieved person has given notice in writing of the intention to do so to—
   (a) in the case of an appeal against a refusal by the football banning orders authority, that authority;
   (b) in the case of an appeal against a refusal by a constable, the constable and the football banning orders authority.

(5) An appeal under subsection (3) is to be made by summary application.

(6) On an appeal under subsection (3) the sheriff may make such order as the sheriff thinks fit.

(7) The sheriff's decision on an appeal under subsection (3) is final.

66 Suspension of reporting requirements

(1) Any requirements imposed on the person subject to a football banning order ("the subject") by a notice under section 61(4) are suspended during any period in which the subject does not reside in Scotland.

(2) The requirements mentioned in subsection (3) are suspended during any period in which the subject is detained in legal custody.

(3) Those requirements are—
   (a) the requirement under the order to report initially at a police station; and
   (b) any requirements imposed on the subject in a notice under section 61(4).

(4) Subsection (5) applies if—
   (a) the subject is released from custody more than 5 days before the expiry of the period for which the order has effect; and
   (b) the subject was precluded by being in custody from reporting initially.

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(5) Where this subsection applies, the order is to have effect as if it required the subject to report initially at the police station specified in the order within the period of 5 days beginning with the date of the subject's release.

Miscellaneous and general

67 Service of documents

(1) A document required by this Chapter to be served on a person is served on the person if—
  (a) given to the person; or
  (b) sent to the person by registered post or a recorded delivery service.

(2) A certificate of posting of a letter sent under subsection (1)(b) issued by the postal operator concerned is sufficient evidence of the sending of the letter on the day specified in the certificate.

(3) In subsection (2), "postal operator" has the meaning given by section 125(1) of the Postal Services Act 2000 (c. 26).

68 Offences under this Chapter

(1) A person who fails to comply with any requirement imposed on the person—
  (a) by a football banning order;
  (b) under section 61(1); or
  (c) by a notice under section 61(4),
  commits an offence.

(2) It is a defence for a person charged with an offence under subsection (1) to prove that the person had a reasonable excuse for failing to comply with the requirement.

(3) A person who commits an offence under subsection (1)(a) or (c) is liable on summary conviction to—
  (a) imprisonment for a term not exceeding 6 months;
  (b) a fine not exceeding level 5 on the standard scale; or
  (c) both such imprisonment and such a fine.

(4) A person who commits an offence under subsection (1)(b) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(5) A person who, in connection with an application under section 64 to be exempted from a notice under section 61(4)—
  (a) knowingly or recklessly makes a statement which is false or misleading in a material particular; or
  (b) knowingly or recklessly produces, furnishes, signs or otherwise makes use of a document which is false or misleading in a material particular,
  commits an offence.

(6) A person who commits an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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Modifications etc. (not altering text)

C1 S. 68(1)(2)(5) extended to E. W. and N.I. (1.4.2010) by Policing and Crime Act 2009 (c. 26), ss. 106(1)(a), 116(1); S.I. 2010/507, **art. 5(o)** (with art. 6)

69 Interpretation of Chapter 1

(1) In this Chapter—

"the football banning orders authority" means the chief constable of the police force maintained for the Strathclyde combined police area; and

"passport" means a United Kingdom passport within the meaning of the Immigration Act 1971 (c. 77).

(2) The Scottish Ministers may by order modify the definition of "the football banning orders authority" in subsection (1).

VALID FROM 01/04/2007

CHAPTER 2

PUBLIC PROCESSIONS

70 Notification of public processions

(1) Section 62 of the Civic Government (Scotland) Act 1982 (c. 45) (giving notice of proposal to hold public processions) ("the 1982 Act") is amended in accordance with subsections (2) to (8).

(2) In subsection (2)—

(a) in paragraph (a), for "7" there is substituted " 28 ";

(b) in paragraph (b), for "7" there is substituted " 28 ".

(3) In subsection (4), for "7" there is substituted " 28 ".

(4) In subsection (5), for "specify" to "above", where secondly occurring, there is substituted—

"(a) set out the reason why notice of the proposal was not given in accordance with subsections (1) and (2) above; and

(b) specify the matters mentioned in subsection (3) above,".

(5) Subsections (6), (7) and (8) are repealed.

(6) In subsection (9), the words "or making, varying or revoking an order under subsection (6) or (7) above" are repealed.

(7) Subsection (11) is repealed.

(8) After subsection (11) there is inserted—

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"(11A) A local authority shall, as soon as possible after making an order under subsection (4) above, publicise that fact in such manner as they think fit and send a copy of the order to the applicant.

(11B) This section does not apply to a procession—

(a) which is a funeral procession organised by a funeral director acting in the ordinary course of his business; or

(b) which is specified in, or is within a description specified in, an order made by the Scottish Ministers.

(11C) In subsection (11B) above, a "funeral director" is a person whose business consists of or includes the arrangement and conduct of funerals.

(11D) An order made for the purposes of subsection (11B)(b) above shall be made by statutory instrument subject to annulment in pursuance of a resolution of the Scottish Parliament.".

Commencement Information

I11 S. 70 wholly in force at 1.4.2007; s. 70 not in force at Royal Assent see s. 104; s. 70 in force at 1.4.2007 insofar as not already in force by S.S.I. 2007/48, **art. 3(3)** (with arts. 5, 6)

71 Powers and duties of local authorities

(1) Section 63 of the 1982 Act (councils' functions in relation to processions) is amended as follows.

(2) Subsection (2) (which specifies some kinds of conditions which may be imposed on the holding of a procession) is repealed.

(3) At the end there are inserted the following subsections—

"(5) The local authority may, after consulting the chief constable and (where section 62(1)(aa) of this Act applies) the National Parks Authority, make an order—

(a) imposing conditions on the holding of a procession to which paragraph (a) of subsection (11B) of section 62 of this Act relates;

(b) prohibiting or imposing conditions on the holding of a procession to which paragraph (b) of that subsection relates.

(6) Subsections (1A), (3) and (4) above apply in relation to an order made under subsection (5) above and to a decision not to make an order under that subsection as they apply to an order under subsection (1) above and to a decision not to make an order under that subsection respectively, but with the modifications set out in subsection (7) below.

(7) Those modifications are—

(a) the references to notice having been or falling to be treated as having been given shall be ignored;

(b) the reference to the person who gave the notice shall be treated as a reference to the person appearing to the local authority to be the person who is to hold the procession; and

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(c) the words "not to make an order under subsection (1) above or" in subsection (3)(a)(ii) shall be ignored.

(8) The considerations to which the local authority shall have regard when deciding whether to prohibit the holding of a procession or impose conditions on it under this section shall include—

(a) the likely effect of the holding of the procession in relation to—

(i) public safety;

(ii) public order;

(iii) damage to property;

(iv) disruption of the life of the community;

(b) the extent to which the containment of risks arising from the procession would (whether by itself or in combination with any other circumstances) place an excessive burden on the police;

(c) where the person proposing to hold the procession has previously held one in the area of the authority or the persons likely to take part in the procession, or some of them, are the same persons as took part in one previously held in that area, or some of them—

(i) whether the previous procession was held in breach of a prohibition under this section on its being held or of a condition so imposed on the holding of it;

(ii) whether any guidance or code of conduct issued by the authority as to the holding of the previous procession or as to the holding of processions generally was followed; and

(iii) the effect of the previous procession in relation to the matters mentioned in sub-paragraphs (i) to (iv) of paragraph (a) above and in paragraph (b) above.

(9) The local authority shall compile, maintain and make available to the public, free of charge, a list containing information about—

(a) processions which have, after the coming into force of this subsection, been held in their area;

(b) proposed processions which they have, after that time, prohibited under this section.

(10) A local authority shall make sufficient arrangements to secure that any person, body or other grouping resident in or otherwise present in their area who makes a request for the purposes of this subsection is enabled to receive information about processions which are to or might be held in that area or in any part of it specified in the request.".

Commencement Information

I12 S. 71 wholly in force at 1.4.2007; s. 71 not in force at Royal Assent see s. 104; s. 71 in force at 1.4.2007 insofar as not already in force by S.S.I. 2007/48, **art. 3(3)** (with arts. 5, 6)

72 Minor amendments of 1982 Act

(1) In section 64(6)(a)(ii) of the 1982 Act (sheriff's powers on appeal against order under section 63)—

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(a) for "vary" there is substituted " quash ";
(b) after "appeal" there is inserted " , vary it "; and
(c) after "make" there is inserted " in substitution for the order ".

(2) In section 65 of that Act (offences and enforcement)—
(a) in subsection (1), in paragraph (a)—
(i) for "without" there is substituted " not "; and
(ii) sub-paragraph (ii) and the word "and" immediately preceding it are repealed;
(b) in subsection (2), paragraph (a)(ii) and the word "and" immediately preceding it are repealed;
(c) for subsection (3), there is substituted—

"(3) This section applies to a procession of the description set out in section 62(11B)(a) of this Act (funeral processions) only to the extent that the procession has been held otherwise than in accordance with conditions imposed under this Part of this Act.

(3A) This section applies to a procession which is within section 62(11B)(b) of this Act (processions specified by order) only if and to the extent that it has been prohibited or conditions imposed on it under this Part of this Act.".

(3) After that section there is inserted—

"**65A Guidance to local authorities**

The local authority shall, in carrying out functions under this Part of this Act, have regard to any guidance in that respect issued by the Scottish Ministers.".

Commencement Information
I13 S. 72 wholly in force at 1.4.2007; s. 72 not in force at Royal Assent see s. 104; s. 72 in force at 1.4.2007 insofar as not already in force by S.S.I. 2007/48, **art. 3(3)** (with arts. 5, 6)

CHAPTER 3

OTHER PROVISIONS

Offensive weapons

73 Increase in maximum term of imprisonment for certain offences

(1) The Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39) is amended as follows.

(2) In section 49(1)(a) (penalty on summary conviction for offence of possessing an article with a blade or point in a public place) for "six" there is substituted " twelve ".

(3) In section 49(1)(b) (penalty on indictment for offence of possessing an article with a blade or point in a public place), for "two" there is substituted " four ".

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(4) In section 49A(5)(a)(i) (penalty on summary conviction for offence of possessing an article with a blade or point on school premises) for "six" there is substituted " twelve ".

(5) In section 49A(5)(a)(ii) (penalty on indictment for offence of possessing an article with a blade or point on school premises), for "two" there is substituted " four ".

74 Amendment of requirements for exercise of certain powers of arrest

(1) The Criminal Law (Consolidation) (Scotland) Act 1995 (c. 39) is amended as follows.

(2) In section 47(3) (power of constable to arrest without warrant person suspected of possessing an offensive weapon in a public place)—
  (a) after "believe" where first occurring there is inserted " to have committed or "; and
  (b) the words from "if" to the end are repealed.

(3) In section 48(3) (power of constable to arrest without warrant person suspected of obstructing search for offensive weapon), after "committed" there is inserted " or is committing ".

(4) In section 50(3) (power of constable to arrest without warrant person suspected of contravening section 49(1) or 49A(1) or (2)), the following provisions are repealed—
  (a) paragraph (a) and the words "and the constable" immediately preceding it; and
  (b) paragraph (b).

75 Sale of knives and articles with blade or point to young persons

(1) Section 141A of the Criminal Justice Act 1988 (c. 33) (sale of knives etc. to persons under 16) is amended as follows.

(2) In subsection (1)—
  (a) at the beginning there is inserted " Subject to subsection (3A) below "; and
  (b) for "sixteen" there is substituted " eighteen ".

(3) In subsection (2)—
  (a) the word "and" immediately following paragraph (b) is repealed; and
  (b) after that paragraph there is inserted—
    "(ba) any sword; and".

(4) After subsection (3) there is inserted—

"(3A) It is not an offence under subsection (1) to sell a knife or knife blade to a person if—
  (a) the person is aged 16 or over; and
  (b) the knife or blade is designed for domestic use.".

(5) The side note to that section becomes " "Sale of knives and certain articles with blade or point to persons under eighteen ".

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Fireworks

76 Possession of prohibited fireworks: powers of search and arrest

After section 11 of the Fireworks Act 2003 (c. 22) there is inserted—

"**11A Prohibitions on possession of fireworks – power of search: Scotland**

(1) A constable may search a person without warrant if the constable has reasonable grounds for suspecting that the person possesses a firework in contravention of a prohibition imposed by fireworks regulations.

(2) A constable may detain a person for such time as is reasonably required to permit a search of the person under subsection (1) to be carried out.

(3) A constable who detains a person under subsection (2) must inform the person of the reason for the detention.

(4) If in the course of a search under this section, a constable discovers a firework which the constable has reasonable grounds for suspecting is being possessed by the person in contravention of a prohibition imposed by fireworks regulations, the constable may seize it.

(5) A person who—
  (a) intentionally obstructs a constable in the exercise of the constable's power under subsection (1) or (2); or
  (b) conceals from a constable acting in the exercise of the constable's power under subsection (1) any firework whose possession contravenes a prohibition imposed by fireworks regulations,

commits an offence.

(6) A constable may arrest a person without warrant if the constable has reasonable cause to believe the person has committed or is committing an offence under subsection (5).

(7) A person who commits an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

11B Prohibitions on possession of fireworks – arrest without warrant: Scotland

(1) A constable may arrest a person without warrant if—
  (a) the constable has reasonable cause to believe that the person has committed or is committing an offence under section 11(1) in respect of a contravention of a prohibition on possession of a firework; and
  (b) either of the two conditions mentioned in subsection (2) is met.

(2) The conditions are that—
  (a) having asked the person to give the person's name or address (or both), the constable—
    (i) is not given the information asked for; or
    (ii) is not satisfied that such information as is given is correct;

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(b) the constable has reasonable cause to believe it is necessary to arrest the person in order to prevent the person committing any other offence in the course of whose commission there might be used a firework whose possession is prohibited by fireworks regulations.”.

Control of sex offenders

77 Powers to take data and samples from persons subject to notification requirements

(1) The 1995 Act is amended in accordance with subsections (2) to (5).

(2) After section 19A there is inserted—

“**19AA Samples etc. from sex offenders**

(1) This section applies where a person is subject to—
(a) the notification requirements of Part 2 of the 2003 Act;
(b) an order under section 2 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9) (a risk of sexual harm order); or
(c) an order under section 123 of the 2003 Act (which makes provision for England and Wales and Northern Ireland corresponding to section 2 of that Act of 2005).

(2) This section applies regardless of whether the person became subject to those requirements or that order before or after the commencement of this section.

(3) Subject to subsections (4) to (8) below, where this section applies a constable may—
(a) take from the person or require the person to provide him with such relevant physical data as the constable considers reasonably appropriate;
(b) with the authority of an officer of a rank no lower than inspector, take from the person any sample mentioned in any of paragraphs (a) to (c) of subsection (6) of section 18 of this Act by the means specified in that paragraph in relation to that sample;
(c) take, or direct a police custody and security officer to take, from the person any sample mentioned in subsection (6A) of that section by the means specified in that subsection.

(4) Where this section applies by virtue of subsection (1)(c) above, the power conferred by subsection (3) shall not be exercised unless the constable reasonably believes that the person's sole or main residence is in Scotland.

(5) The power conferred by subsection (3) above shall not be exercised where the person has previously had taken from him or been required to provide relevant physical data or any sample under section 19(2) or 19A(2) of this Act unless the data so taken or required have been or, as the case may be, the sample so taken has been, lost or destroyed.

(6) The power conferred by subsection (3) above shall not be exercised where the person has previously had taken from him or been required to provide relevant

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physical data or any sample under that subsection unless the data so taken or required or, as the case may be, the sample so taken—

(a) have or has been lost or destroyed; or

(b) were or was not suitable for the particular means of analysis or, though suitable, were or was insufficient (either in quantity or quality) to enable information to be obtained by that means of analysis.

(7) The power conferred by subsection (3) above may be exercised only—

(a) in a police station; or

(b) where the person is in legal custody by virtue of section 295 of this Act, in the place where the person is for the time being.

(8) The power conferred by subsection (3) above may be exercised in a police station only—

(a) where the person is present in the police station in pursuance of a requirement made by a constable to attend for the purpose of the exercise of the power; or

(b) while the person is in custody in the police station following his arrest or detention under section 14(1) of this Act in connection with any offence.

(9) A requirement under subsection (8)(a) above—

(a) shall give the person at least seven days' notice of the date on which he is required to attend;

(b) may direct him to attend at a specified time of day or between specified times of day; and

(c) where this section applies by virtue of subsection (1)(b) or (c) above, shall warn the person that failure, without reasonable excuse, to comply with the requirement or, as the case may be, to allow the taking of or to provide any relevant physical data, or to provide any sample, under the power, constitutes an offence.

(10) A requirement under subsection (8)(a) above in a case where the person has previously had taken from him or been required to provide relevant physical data or any sample under subsection (3) above shall contain intimation that the relevant physical data were or the sample was unsuitable or, as the case may be, insufficient, as mentioned in subsection (6)(b) above.

(11) Before exercising the power conferred by subsection (3) above in a case to which subsection (8)(b) above applies, a constable shall inform the person of that fact.

(12) Any constable may arrest without warrant a person who fails to comply with a requirement under subsection (8)(a) above.

(13) This section does not prejudice the generality of section 18 of this Act.

(14) In this section, “the 2003 Act” means the Sexual Offences Act 2003 (c. 42).”.

19AB Section 19AA: supplementary provision in risk of sexual harm order cases

(1) This section applies where section 19AA of this Act applies by virtue of subsection (1)(b) or (c) of that section.

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(2) A person who fails without reasonable excuse—

(a) to comply with a requirement made of him under section 19AA(8)(a) of this Act; or

(b) to allow relevant physical data to be taken from him, to provide relevant physical data, or to allow a sample to be taken from him, under section 19AA(3) of this Act,

shall be guilty of an offence.

(3) A person guilty of an offence under subsection (2) above shall be liable on summary conviction to the following penalties—

(a) a fine not exceeding level 4 on the standard scale;

(b) imprisonment for a period—

(i) where the conviction is in the district court, not exceeding 60 days; or

(ii) where the conviction is in the sheriff court, not exceeding 3 months; or

(c) both such fine and such imprisonment.

(4) Subject to subsection (6) below, all record of any relevant physical data taken from or provided by a person under section 19AA(3) of this Act, all samples taken from a person under that subsection and all information derived from such samples shall be destroyed as soon as possible following the person ceasing to be a person subject to any risk of sexual harm orders.

(5) For the purpose of subsection (4) above, a person does not cease to be subject to a risk of sexual harm order where the person would be subject to such an order but for an order under section 6(2) of the 2005 Act or any corresponding power of a court in England and Wales or in Northern Ireland.

(6) Subsection (4) above does not apply if before the duty to destroy imposed by that subsection would apply, the person—

(a) is convicted of an offence; or

(b) becomes subject to the notification requirements of Part 2 of the 2003 Act.

(7) In this section—

"risk of sexual harm order" means an order under—

(a) section 2 of the 2005 Act; or

(b) section 123 of the 2003 Act;

"the 2005 Act" means the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9);

"the 2003 Act" has the meaning given by section 19AA(14) of this Act; and

"convicted" shall be construed in accordance with section 19A(6) of this Act.".

(3) In section 19 (further powers to take samples etc.), in subsection (1)(b)(i), for "or 19A" there is substituted " , 19A or 19AA ".

(4) In section 19A (power to take samples etc. from sexual and violent offenders), in subsection (3), for "or under this section" there is substituted " , under this section or under section 19AA(3) of this Act ".

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(5) Section 19B (power of constable in obtaining samples etc.) is amended as follows—

(a) in subsection (1)—

(i) in paragraph (a), after "Act" there is inserted " , or under subsection (3)(a) of section 19AA of this Act where that section applies by virtue of subsection (1)(a) of that section "; and

(ii) in paragraph (b), after "Act" there is inserted " , or under subsection (3)(b) of section 19AA of this Act where that section applies by virtue of subsection (1)(a) of that section "; and

(b) in subsection (2), after "Act" there is inserted " , or under subsection (3)(c) of section 19AA of this Act where that section applies by virtue of subsection (1)(a) of that section ".

(6) The Sexual Offences Act 2003 ("the 2003 Act") is amended in accordance with subsections (7) to (9).

(7) For sections 87(4) and (5) (power to take fingerprints etc. to verify person's identity), there is substituted—

"(5A) Where a notification is given in Scotland under section 83(1), 84(1) or 85(1), the relevant offender must, if requested to do so by the police officer or person referred to in subsection (1)(b), do one or more of the following—

(a) allow the officer or person to photograph any part of the offender,

(b) allow the officer or person to take from the offender, or provide to the officer or person, such relevant physical data as the officer or person considers appropriate,

(c) allow the officer or person to take from the offender any sample mentioned in any of paragraphs (a) to (c) of subsection (6) of section 18 of the Criminal Procedure (Scotland) Act 1995 by the means specified in that paragraph in relation to that sample,

(d) allow the officer or person to take from the offender any sample mentioned in subsection (6A) of that section by the means specified in that subsection.".

(8) In section 88 (interpretation of section 87), after subsection (2) there is inserted—

"(2A) "Relevant physical data" has the meaning given by section 18(7A) of the Criminal Procedure (Scotland) Act 1995.".

(9) In section 91(1)(a) (offence of failing to complying with certain provisions of Part 2, including section 87(4)) for "87(4)" there is substituted " 87(5A) ".

78 Sex offender notification requirements

(1) Section 83 of the 2003 Act (which requires certain offenders to make an initial notification of certain information) is amended in accordance with subsections (2) and (3).

(2) In subsection (5), after paragraph (g) there is inserted—

"(h) whether he has any passports and, in relation to each passport he has, the details set out in subsection (5A);

(i) such other information, about him or his personal affairs, as the Scottish Ministers may prescribe in regulations.

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(5A) The details are—

(a) the issuing authority;

(b) the number;

(c) the dates of issue and expiry;

(d) the name and date of birth given as being those of the passport holder.”.

(3) After subsection (7), there is inserted—

“(8) In this section, “passport” means—

(a) a United Kingdom passport within the meaning of the Immigration Act 1971 (c. 77);

(b) a passport issued by or on behalf of the authorities of a country outside the United Kingdom, or by or on behalf of an international organisation;

(c) a document that can be used (in some or all circumstances) instead of a passport.”.

(4) Section 84 of the 2003 Act (which requires certain changes to notified information to be notified within 3 days) is amended in accordance with subsections (5) and (6).

(5) In subsection (1)—

(a) the word “or” immediately after paragraph (c) is repealed;

(b) after paragraph (d) there is inserted—

“(e) his losing or ceasing to have a passport notified to the police under section 83(1) or this subsection,

(f) his receiving a passport which has not been notified to the police under section 83(1) or this subsection, or

(g) the occurrence, in relation to information required to be notified by virtue of regulations made under section 83(5)(i), of an event prescribed by the Scottish Ministers in regulations,”; and

(c) for “(as the case may be) the fact that he has been released” there is substituted “ the fact that he has been released, the fact that he has lost or ceased to have the passport, the details set out in section 83(5A) in relation to the passport or (as the case may be) such information as the Scottish Ministers prescribe in regulations ”.

(6) After subsection (1), there is inserted—

“(1A) In subsection (1), “passport” has the same meaning as in section 83.”.

(7) In section 87 of the 2003 Act (method of notification and related matters), after subsection (5A) (as inserted by section 77) there is inserted—

“(5B) Where a notification is given in Scotland under section 83(1), 84(1) or 85(1), the relevant offender must, if requested to do so by the police officer or person referred to in subsection (1)(b), produce each passport he has to that officer or person, for inspection by that officer or person.

(5C) In subsection (5B), “passport” has the same meaning as in section 83.”.

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(8) In section 91(1)(a) of the 2003 Act (offences of failing to comply with certain provisions), after "(5A)" (as inserted by section 77) there is inserted " or (5B) ".

(9) In section 138 of the 2003 Act (orders and regulations), in subsection (2), after "21," there is inserted " 83, 84, ".

79 Information about release: power to require giving of specified information

(1) Section 96 of the 2003 Act (information about release or transfer) is amended in accordance with subsections (2) and (3).

(2) After subsection (2) there is inserted—

"(2A) The regulations may make provision requiring the person who is responsible for an offender, in giving notice under the regulations, to provide—

(a) any information about the offender, or

(b) a photograph of any part of the offender.

(2B) In subsection (2A), "photograph" is to be construed in accordance with section 88(2).".

(3) After subsection (3) there is inserted—

"(4) The regulations may make different provision for different purposes."

80 Police powers of entry to and examination of relevant offender's home address

After section 96 of the 2003 Act there is inserted—

"**96A Entry and examination of home address**

Police powers of entry to and examination of relevant offender's home address

(1) A sheriff may, if satisfied on the application of a senior police officer of the relevant force as to the matters mentioned in subsection (2), grant a warrant authorising any constable of the relevant force to enter premises in the sheriffdom (if necessary using reasonable force) and to examine and search them, and the things in them, for the purpose mentioned in subsection (3).

(2) Those matters are—

(a) that the premises are either—

(i) premises whose address has been notified by a relevant offender as his home address in his most recent notification of a home address under this Part; or

(ii) premises whose address has been notified by a relevant offender as the address of any other premises at which he regularly resides or stays, in his most recent notification under section 83(1) or 85(1) or in any notification under section 84(1) given by him since that notification;

(b) that the offender is not one to whom subsection (4) applies;

(c) that it would assist the carrying out of the purpose mentioned in subsection (3), for a constable of the relevant force to examine and search the premises and the things in them; and

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(d) that on more than one occasion, a constable of the relevant force has attempted to examine and search the premises and the things in them for the purpose mentioned in subsection (3) and has been unable (whether by not being able to search and examine the premises and the things in them, or by not being able to obtain entry to the premises) to do so.

(3) That purpose is assessing the risk of the offender committing a sexual offence.

(4) This subsection applies to the relevant offender if he is—

(a) remanded in or committed to custody by an order of a court;

(b) serving a sentence of imprisonment or a term of service detention;

(c) detained in a hospital; or

(d) outside the United Kingdom.

(5) A sheriff is to determine an application for a warrant under subsection (1) without hearing from the relevant offender or any other person who has an interest in the premises.

(6) A warrant under subsection (1) does not confer power to seize anything in the premises to which it relates.

(7) A warrant under subsection (1) must be executed at a reasonable hour.

(8) A warrant under subsection (1) continues in force until the expiry of the period of one month beginning with the date of the warrant's grant.

(9) A warrant under subsection (1) authorises entry on one occasion only.

(10) This section does not prejudice any other power of entry, examination, search or seizure.

(11) In this section—

"the relevant force" means the police force maintained for the area in which the premises are situated;

"senior police officer" means a constable of the rank of superintendent or above; and

"sexual offence" means—

(a) an offence within any of paragraphs 36 to 59C of Schedule 3; or

(b) any other offence in circumstances in which it would be likely that a determination such as is mentioned in paragraph 60 of that Schedule would be made in relation to the offence.".

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PART 3

CRIMINAL JUSTICE

Powers in relation to suspects and witnesses

81 Power to require giving of certain information in addition to name and address

(1) Section 13 of the Criminal Procedure (Scotland) Act 1995 (c. 46) ("the 1995 Act") (which gives police constables certain powers in relation to suspects and witnesses) is amended in accordance with subsections (2) to (5).

(2) In subsection (1), in each of paragraphs (a) and (b), for "his name and address" there is substituted " the information mentioned in subsection (1A) below ".

(3) After subsection (1), there is inserted—

"(1A) That information is—

(a) the person's name;
(b) the person's address;
(c) the person's date of birth;
(d) the person's place of birth (in such detail as the constable considers necessary or expedient for the purpose of establishing the person's identity); and
(e) the person's nationality.".

(4) In subsection (2)(a), for "name and address" there is substituted " information mentioned in subsection (1A) above ".

(5) In subsection (6), in each of paragraphs (a)(i) and (b), for "his name and address" there is substituted " the information mentioned in subsection (1A) above ".

(6) Section 14 of the 1995 Act (detention and questioning at a police station) is amended as follows—

(a) in subsection (9), for "his name and address" there is substituted " the information mentioned in subsection (10) below "; and
(b) after that subsection, there is inserted—

"(10) That information is—

(a) the person's name;
(b) the person's address;
(c) the person's date of birth;
(d) the person's place of birth (in such detail as a constable considers necessary or expedient for the purpose of establishing the person's identity); and
(e) the person's nationality.".

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PROSPECTIVE

82 Power to take fingerprints to establish identity of suspect

(1) Section 13 of the 1995 Act (which gives police constables certain powers in relation to suspects and witnesses) is amended as follows.

(2) After subsection (1A) (as inserted by section 81) there is inserted—

"(1B) The constable may, if the person mentioned in paragraph (a) of subsection (1) gives a name and address, require the person to provide—

(a) the person's fingerprints; or

(b) a record, created by a device approved by the Scottish Ministers, of the skin on the person's fingers.

(1C) Fingerprints or a record provided by a person under a requirement under subsection (1B) above may be used only for the following purposes—

(a) verifying the name and address given by the person;

(b) establishing whether the person may be a person who is suspected of having committed any other offence,

and all record of such fingerprints or record shall be destroyed as soon as possible after they have fulfilled those purposes.".

(3) In subsection (2)—

(a) for "(either or both)" there is substituted " (any or all) "; and

(b) after paragraph (a) there is inserted—

"(aa) subject to subsection (3A) below, establishes whether the person may be a person who is suspected of having committed any other offence;".

(4) After subsection (3), there is inserted—

"(3A) The constable shall exercise the power under paragraph (aa) of subsection (2) above only where—

(a) the person mentioned in paragraph (a) of subsection (1) above has given a name and address; and

(b) it appears to the constable that establishing the matter mentioned in paragraph (aa) of subsection (2) can be achieved quickly.".

(5) In subsection (5)—

(a) after paragraph (b) there is inserted—

"(ba) subsection (1B) above, of the existence of the power to make the requirement and why he proposes to exercise it in the person's case;"; and

(b) in paragraph (d), for "either" there is substituted " any ".

(6) In subsection (6)—

(a) the word "or" immediately after paragraph (a)(i) is repealed;

(b) after paragraph (a)(ii) there is inserted "; or

(iii) under subsection (1B) above to provide the person's fingerprints or a record such as is mentioned in that subsection,".

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(7) After subsection (7) there is inserted—

"(8) The Scottish Ministers by order made by statutory instrument may approve a device for the purpose of creating records of the sort mentioned in subsection (1B)(b) above.".

Retention of samples etc.: prosecutions for sexual and violent offences

83 Retention of samples etc.: prosecutions for sexual and violent offences

(1) In section 18(3) of the 1995 Act (prints, samples etc. in criminal investigations), after "below" where it first occurs there is inserted " and section 18A of this Act ".

(2) After section 18 of that Act there is inserted—

"**18A Retention of samples etc.: prosecutions for sexual and violent offences**

(1) This section applies to any sample, or any information derived from a sample, taken under subsection (6) or (6A) of section 18 of this Act, where the condition in subsection (2) below is satisfied.

(2) That condition is that criminal proceedings in respect of a relevant sexual offence or a relevant violent offence were instituted against the person from whom the sample was taken but those proceedings concluded otherwise than with a conviction or an order under section 246(3) of this Act.

(3) Subject to subsections (9) and (10) below, the sample or information shall be destroyed no later than the destruction date.

(4) The destruction date is—
   (a) the date of expiry of the period of 3 years following the conclusion of the proceedings; or
   (b) such later date as an order under subsection (5) below may specify.

(5) On a summary application made by the relevant chief constable within the period of 3 months before the destruction date the sheriff may, if satisfied that there are reasonable grounds for doing so, make an order amending, or further amending, the destruction date.

(6) An application under subsection (5) above may be made to any sheriff—
   (a) in whose sheriffdom the person referred to in subsection (2) above resides;
   (b) in whose sheriffdom that person is believed by the applicant to be; or
   (c) to whose sheriffdom the person is believed by the applicant to be intending to come.

(7) An order under subsection (5) above shall not specify a destruction date more than 2 years later than the previous destruction date.

(8) The decision of the sheriff on an application under subsection (5) above may be appealed to the sheriff principal within 21 days of the decision; and the sheriff principal's decision on any such appeal is final.

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(9) Subsection (3) above does not apply where—

(a) an application under subsection (5) above has been made but has not been determined;

(b) the period within which an appeal may be brought under subsection (8) above against a decision to refuse an application has not elapsed; or

(c) such an appeal has been brought but has not been withdrawn or finally determined.

(10) Where—

(a) the period within which an appeal referred to in subsection (9)(b) above may be brought has elapsed without such an appeal being brought;

(b) such an appeal is brought and is withdrawn or finally determined against the appellant; or

(c) an appeal brought under subsection (8) above against a decision to grant an application is determined in favour of the appellant,

the sample or information shall be destroyed as soon as possible thereafter.

(11) In this section—

"the relevant chief constable" means—

(a) the chief constable of the police force of which the constable who took or directed the taking of the sample was a member;

(b) the chief constable of the police force in the area of which the person referred to in subsection (2) above resides; or

(c) a chief constable who believes that that person is or is intending to come to the area of the chief constable's police force; and

"relevant sexual offence" and "relevant violent offence" have the same meanings as in section 19A(6) of this Act and include any attempt, conspiracy or incitement to commit such an offence.".

Arrested persons: drug testing and reference for assessment

84 Testing of arrested persons for Class A drugs

After section 20 of the 1995 Act there is inserted—

"Testing for Class A drugs

20A Arrested persons: testing for certain Class A drugs

(1) Subject to subsection (2) below, where subsection (3) below applies an appropriate officer may—

(a) require a person who has been arrested and is in custody in a police station to provide him with a sample of urine; or

(b) take from the inside of the mouth of such a person, by means of swabbing, a sample of saliva or other material,

which the officer may subject to analysis intended to reveal whether there is any relevant Class A drug in the person's body.

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(2) The power conferred by subsection (1) above shall not be exercised where the person has previously been required to provide or had taken from him a sample under that subsection in the same period in custody.

(3) This subsection applies where—
- (a) the person is of 16 years of age or more;
- (b) the period in custody in the police station has not exceeded 6 hours;
- (c) the police station is situated in an area prescribed by order made by statutory instrument by the Scottish Ministers; and
- (d) either—
  - (i) the person's arrest was on suspicion of committing or having committed a relevant offence; or
  - (ii) a senior police officer who has appropriate grounds has authorised the making of the requirement to provide or the taking of the sample.

(4) Before exercising the power conferred by subsection (1) above, an appropriate officer shall—
- (a) warn the person in respect of whom it is to be exercised that failure, without reasonable excuse, to comply with the requirement or, as the case may be, allow the sample to be taken constitutes an offence; and
- (b) in a case within subsection (3)(d)(ii) above, inform the person of the giving of the authorisation and the grounds for the suspicion.

(5) Where—
- (a) a person has been required to provide or has had taken a sample under subsection (1) above;
- (b) any of the following is the case—
  - (i) the sample was not suitable for the means of analysis to be used to reveal whether there was any relevant Class A drug in the person's body;
  - (ii) though suitable, the sample was insufficient (either in quantity or quality) to enable information to be obtained by that means of analysis; or
  - (iii) the sample was destroyed during analysis and the means of analysis failed to produce reliable information; and
- (c) the person remains in custody in the police station (whether or not the period of custody has exceeded 6 hours),

an appropriate officer may require the person to provide or as the case may be take another sample of the same kind by the same method.

(6) Before exercising the power conferred by subsection (5) above, an appropriate officer shall warn the person in respect of whom it is to be exercised that failure, without reasonable excuse, to comply with the requirement or, as the case may be, allow the sample to be taken constitutes an offence.

(7) A person who fails without reasonable excuse—
- (a) to comply with a requirement made of him under subsection (1)(a) or (5) above; or
- (b) to allow a sample to be taken from him under subsection (1)(b) or (5) above,

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shall be guilty of an offence.

(8) In this section—

"appropriate grounds" means reasonable grounds for suspecting that the misuse by the person of any relevant Class A drug caused or contributed to the offence on suspicion of which the person was arrested;

"appropriate officer" means—

(a) a constable; or

(b) a police custody and security officer acting on the direction of a constable;

"misuse" has the same meaning as in the Misuse of Drugs Act 1971 (c. 38);

"relevant Class A drug" means any of the following substances, preparations and products—

(a) cocaine or its salts;

(b) any preparation or other product containing cocaine or its salts;

(c) diamorphine or its salts;

(d) any preparation or other product containing diamorphine or its salts;

"relevant offence" means any of the following offences—

(a) theft;

(b) assault;

(c) robbery;

(d) fraud;

(e) reset;

(f) uttering a forged document;

(g) embezzlement;

(h) an attempt, conspiracy or incitement to commit an offence mentioned in paragraphs (a) to (g);

(i) an offence under section 4 of the Misuse of Drugs Act 1971 (c. 38) (restriction on production and supply of controlled drugs) committed in respect of a relevant Class A drug;

(j) an offence under section 5(2) of that Act of 1971 (possession of controlled drug) committed in respect of a relevant Class A drug;

(k) an offence under section 5(3) of that Act of 1971 (possession of controlled drug with intent to supply) committed in respect of a relevant Class A drug;

"senior police officer" means a police officer of a rank no lower than inspector.

20B Section 20A: supplementary

(1) Section 20A of this Act does not prejudice the generality of section 18 of this Act.

(2) Each person carrying out a function under section 20A of this Act must have regard to any guidance issued by the Scottish Ministers—

(a) about the carrying out of the function; or

(b) about matters connected to the carrying out of the function.

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(3) An order under section 20A(3)(c) shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.

(4) An authorisation for the purposes of section 20A of this Act may be given orally or in writing but, if given orally, the person giving it shall confirm it in writing as soon as is reasonably practicable.

(5) If a sample is provided or taken under section 20A of this Act by virtue of an authorisation, the authorisation and the grounds for the suspicion are to be recorded in writing as soon as is reasonably practicable after the sample is provided or taken.

(6) A person guilty of an offence under section 20A of this Act shall be liable on summary conviction to the following penalties—
- (a) a fine not exceeding level 4 on the standard scale;
- (b) imprisonment for a period—
  - (i) where conviction is in the district court, not exceeding 60 days; or
  - (ii) where conviction is in the sheriff court, not exceeding 3 months; or
- (c) both such fine and imprisonment.

(7) Subject to subsection (8) below, a sample provided or taken under section 20A of this Act shall be destroyed as soon as possible following its analysis for the purpose for which it was taken.

(8) Where an analysis of the sample reveals that a relevant Class A drug is present in the person's body, the sample may be retained so that it can be used, and supplied to others, for the purpose of any proceedings against the person for an offence under section 88 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10); but—
- (a) the sample may not be used, or supplied, for any other purpose; and
- (b) the sample shall be destroyed as soon as possible once it is no longer capable of being used for that purpose.

(9) Information derived from a sample provided by or taken from a person under section 20A of this Act may be used and disclosed only for the following purposes—
- (a) for the purpose of proceedings against the person for an offence under section 88 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10);
- (b) for the purpose of informing any decision about granting bail in any criminal proceedings to the person;
- (c) for the purpose of informing any decision of a children's hearing arranged to consider the person's case;
- (d) where the person is convicted of an offence, for the purpose of informing any decision about the appropriate sentence to be passed by a court and any decision about the person's supervision or release;
- (e) for the purpose of ensuring that appropriate advice and treatment is made available to the person.

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(10) Subject to subsection (11) below, the Scottish Ministers may by order made by statutory instrument modify section 20A(8) of this Act for either of the following purposes—

(a) for the purpose of adding an offence to or removing an offence from those for the time being listed in the definition of "relevant offence";

(b) for the purpose of adding a substance, preparation or product to or removing a substance, preparation or product from those for the time being listed in the definition of "relevant Class A drug".

(11) An order under subsection (10)(b) may add a substance, preparation or product only if it is a Class A drug (that expression having the same meaning as in the Misuse of Drugs Act 1971 (c. 38)).

(12) An order under subsection (10) above shall not be made unless a draft of the statutory instrument containing it has been laid before and approved by resolution of the Scottish Parliament.".

Commencement Information

I14 S. 84 wholly in force at 12.6.2007; s. 84 not in force at Royal Assent see s. 104; s. 84 in force at 1.1.2007 for specified purposes by S.S.I. 2006/607, **art. 3**, Sch; s. 84 in force at 25.2.2007 for specified purposes by S.S.I. 2007/84, **art 3(1)(a)**; S. 84 in force so far as not already in force at 12.6.2007 by S.S.I. 2007/84. {art. 3(4)(a)}

85 Assessment following positive test under section 20A of the 1995 Act

(1) This section applies where—

(a) a sample is provided or taken under section 20A of the 1995 Act by or from a person in custody in a police station; and

(b) an analysis of the sample reveals that a relevant Class A drug is present in the person's body.

(2) A constable must require the person to attend, and remain for the duration of, a drugs assessment.

(3) A drugs assessment is an appointment with a suitably qualified person ("a drugs assessor")—

(a) for the purpose of establishing whether the person is dependent on, or has a propensity to misuse, any relevant Class A drug;

(b) if the drugs assessor thinks that the person has such a dependency or propensity, for the purpose of establishing whether the person might benefit from assistance or treatment (or both) in connection with the dependency or propensity; and

(c) if the drugs assessor thinks that the person might benefit from such assistance or treatment (or both), for the purpose of drawing up a document which sets out the nature of assistance or treatment (or both) which may be most appropriate for the person in connection with any dependency on, or propensity to misuse, a relevant Class A drug which the drugs assessor thinks the person has.

Status: *Point in time view as at 01/01/2007. This version of this Act contains provisions that are not valid for this point in time.*
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Commencement Information

I15 S. 85 wholly in force at 12.6.2007; s. 85 not in force at Royal Assent see s. 104; s. 85(3) in force at 1.1.2007 by S.S.I. 2006/607, **art. 3**, Sch; s. 85(1)(2) in force at 12.6.2007 by S.S.I. 2007/84, **art. 3(4)(b)**

VALID FROM 12/06/2007

86 Requirements under section 85: supplementary

(1) This section applies where by virtue of section 85(2) a person is required by a constable to attend and remain for the duration of a drugs assessment.

(2) The constable must—

(a) inform the person of the place at which the drugs assessment is to take place; and

(b) require the person, for the purpose of being given details of the date and time of the assessment, to report at that place on such date, or on one of such dates, as the constable specifies (such date or dates falling within the period of 7 days beginning with the date on which the requirement is made), at such time, or between such times, as the constable specifies;

and the constable must explain that these matters will be confirmed in writing.

(3) The constable must warn the person that the person is liable to prosecution if the person fails without reasonable excuse—

(a) to attend and remain for the duration of the drugs assessment; or

(b) to comply with the requirement imposed under subsection (2)(b).

(4) The constable must give the person notice in writing which—

(a) confirms the requirement to attend and remain for the duration of a drugs assessment;

(b) confirms the information given in pursuance of subsection (2)(a);

(c) confirms the requirement imposed under subsection (2)(b); and

(d) repeats the warning given in pursuance of subsection (3).

(5) The duties imposed by subsections (2) to (4) must be carried out before the person is released from custody at the police station.

(6) As soon as reasonably practicable following the carrying out of those duties, the constable must inform the drugs assessor who is to carry out the drugs assessment—

(a) of the making of the requirement to attend and remain for the duration of the assessment; and

(b) of the requirement imposed under subsection (2)(b).

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VALID FROM 12/06/2007

87 Date, time and place of assessment

(1) Subsection (2) applies where, in accordance with a requirement imposed by virtue of section 86(2), a person reports at the place where the person's drugs assessment is to take place.

(2) The drugs assessor who is to carry out the drugs assessment or a person acting on the drugs assessor's behalf must give the person a notice in writing which—
- (a) informs the person of the date and time of the drugs assessment;
- (b) confirms the place of the drugs assessment; and
- (c) warns the person that the person is liable to prosecution if the person fails without good cause to attend and remain for the duration of the drugs assessment.

(3) Where a person is given a notice in pursuance of subsection (2), the drugs assessor who is to carry out the drugs assessment or a person acting on the drugs assessor's behalf may change the date, time or place of the assessment by serving on the person a further notice in writing which—
- (a) informs the person of the change; and
- (b) repeats the warning mentioned in subsection (2)(c).

(4) For the purpose of subsection (3), a notice is served on a person if—
- (a) given to the person; or
- (b) sent to the person by registered post or a recorded delivery service.

(5) A certificate of posting of a notice sent under subsection (4)(b) issued by the postal operator concerned is sufficient evidence of the sending of the notice on the day specified in the certificate.

(6) In subsection (5), “postal operator” has the meaning given by section 125(1) of the Postal Services Act 2000 (c. 26).

VALID FROM 12/06/2007

88 Failure to comply with requirements under sections 85 and 86

(1) The drugs assessor must inform a constable if a person who, by virtue of section 85(2), is required to attend and remain for the duration of a drugs assessment—
- (a) fails to comply with the requirement imposed by virtue of section 86(2)(b);
- (b) fails to attend the assessment on the specified date and at the specified time and place; or
- (c) attends the assessment on the specified date and at the specified time and place but fails to remain for its duration.

(2) A person who, by virtue of section 85(2), is required to attend and remain for the duration of a drugs assessment commits an offence if without reasonable excuse the person—

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(a) fails to comply with the requirement imposed by virtue of section 86(2)(b);
(b) fails to attend the assessment on the specified date and at the specified time and place; or
(c) attends the assessment on the specified date and at the specified time or place but fails to remain for its duration.

(3) A person who commits an offence under subsection (2) is liable on summary conviction to—
(a) imprisonment for a period not exceeding 3 months;
(b) a fine not exceeding level 4 on the standard scale; or
(c) both.

(4) In this section—
(a) the specified date, in relation to a drugs assessment, is the date specified in the notice given to the person who is required to attend the assessment in pursuance of subsection (2) of section 87 or, if a further notice specifying a different date has been given to the person in pursuance of subsection (3) of that section, the date specified in that notice;
(b) the specified time, in relation to a drugs assessment, is the time specified in the notice given to the person who is required to attend the assessment in pursuance of subsection (2) of section 87 or, if a further notice specifying a different time has been given to the person in pursuance of subsection (3) of that section, the time specified in that notice; and
(c) the specified place, in relation to a drugs assessment, is the place specified in the notice given to the person who is required to attend the assessment in pursuance of section 86(2) or, if a further notice specifying a different place has been given to the person in pursuance of section 87(3), the place specified in that notice.

VALID FROM 01/04/2007

89 Guidance for the purposes of sections 85 to 88

In carrying out a function under any of sections 85 to 88, a constable or a drugs assessor must have regard to any guidance issued by the Scottish Ministers—
(a) about the carrying out of the function; or
(b) about matters connected to the carrying out of the function.

90 Interpretation of sections 85 to 88

In sections 85 to 88—

"misuse" has the same meaning as in the Misuse of Drugs Act 1971 (c. 38);

"drugs assessment" and "drugs assessor" must be construed in accordance with section 85(3);

"relevant Class A drug" has the meaning given by section 20A(8) of the 1995 Act;

"suitably qualified person" means a person who has such qualifications or experience as are prescribed by regulations made by the Scottish Ministers.

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Commencement Information

I16 S. 90 wholly in force at 25.2.2007; s. 90 not in force at Royal Assent see s. 104; s. 90 in force at 1.1.2007 for specified purposes by S.S.I. 2006/607, **art. 3**, Sch; s. 90 in force at 25.2.2007 insofar as not already in force by S.S.I. 2007/84, **art. 3(1)(b)**

VALID FROM 01/03/2007

Offenders assisting investigations and prosecutions

91 Assistance by offender: reduction in sentence

(1) This section applies if a person (the "offender")—
- (a) is, following a plea of guilty, convicted on indictment of an offence; and
- (b) has, pursuant to a written agreement made with a prosecutor (an "assistance agreement"), assisted or offered to assist the prosecutor of that or any other offence in relation to its investigation or prosecution.

(2) In determining what sentence to pass on the offender, the court must take into account the extent and nature of the assistance given or offered by the offender.

(3) If the court passes a sentence which is less than it would have passed but for the assistance given or offered, it must state in open court—
- (a) that it has, for that reason, passed that lesser sentence; and
- (b) what the greater sentence would have been.

(4) If the court passes a sentence which is not less than it would have passed but for the assistance given or offered, it must state in open court its reasons for doing so.

(5) Subsection (3) does not apply if the court thinks that it would not be in the public interest to disclose that the sentence has, for the reason referred to in that subsection, been discounted; but in such a case the court must give written notice of the matters specified in paragraphs (a) and (b) of that subsection to the prosecutor and the offender.

(6) Subsection (4) does not apply if the court thinks that it would not be in the public interest to disclose that the case was one in which the court had a duty under subsection (2); but in such a case the court must give written notice of its reasons for not passing a discounted sentence to the prosecutor and the offender.

(7) Nothing in any enactment which—
- (a) requires that a minimum sentence is passed in respect of any offence or an offence of any description or because of the circumstances of any offender (whether or not the enactment also permits the court to pass a lesser sentence in particular circumstances); or
- (b) in the case of a sentence which is fixed by law, requires the court to take into account certain matters for the purposes of making an order which determines or has the effect of determining the minimum period of imprisonment which the offender must serve (whether or not the enactment also permits the court to fix a lesser period in particular circumstances),

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prevents, or restricts, the court, in fulfilment of its duty under subsection (2), from passing on the offender the sentence it considers appropriate.

(8) Subsection (2) does not prevent the court, in determining what sentence to pass on the offender, from also taking into account any other matter which, by virtue of any other enactment or rule of law it may take into account for the purpose of determining—

(a) the sentence;

(b) in the case of a life sentence for murder or for any other offence for which that sentence is the sentence fixed by law, the punishment part (construed in accordance with section 2 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c. 9)); and

(c) in the case of any other sentence which is fixed by law, any minimum period of imprisonment which an offender must serve.

(9) In this section—

(a) the reference, in subsection (1), to a written agreement includes a reference to an agreement made by, or partly by, electronic communication (within the meaning given by section 15(1) of the Electronic Communications Act 2000 (c. 7)) the contents of which are kept or recorded so that they can be conveniently consulted later by the sender and the recipient;

(b) the reference, in subsection (5), to written notice includes a reference to a notice given by such a communication;

(c) a reference to a sentence—

(i) includes, in the case of a sentence of a kind referred to in paragraph (b) or (c) of subsection (8), a reference to the punishment part (construed as mentioned in that subsection) or, as the case may be, the minimum period an offender is required to serve (and a reference to a lesser sentence is to be construed accordingly);

(ii) includes a reference to a community disposal and a fine;

(iii) does not include an order for committal in default of payment of any sum of money or for contempt of court;

(d) the reference, in subsection (7)(b), to imprisonment includes a reference to detention imposed under section 205(2), and detention in a young offenders institution imposed under section 205(3), 205A(2)(b) or 207 of the 1995 Act;

(e) the reference, in subsection (8)(c), to imprisonment includes a reference to detention in a young offenders institution imposed under section 207 of the 1995 Act.

92 Assistance by offender: review of sentence

(1) This section applies where—

(a) a court has passed sentence on a person convicted on indictment of an offence (the "offender"); and

(b) the offender falls within subsection (2).

(2) An offender falls within this subsection if the offender—

(a) receives a discounted sentence in consequence of having offered, in pursuance of an assistance agreement, to give assistance to the prosecutor of any offence in relation to its investigation or prosecution but knowingly fails to any extent to give assistance in accordance with the agreement;

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(b) receives a discounted sentence in consequence of having offered, in pursuance of an assistance agreement, to give assistance to the prosecutor of an offence in relation to its investigation or prosecution and, having given such assistance in accordance with the agreement, in pursuance of another assistance agreement, gives or offers to give further assistance; or

(c) receives a sentence which is not discounted in consequence of the considerations referred to in paragraphs (a) and (b) but, in pursuance of an assistance agreement, subsequently gives or offers to give assistance to the prosecutor of an offence in relation to its investigation or prosecution.

(3) An offender who was sentenced for an offence for which the sentence is fixed by law and did not plead guilty to the offence does not, however, fall within subsection (2).

(4) Any prosecutor may, at any time, for the purposes of this section, refer a case in which sentence has been passed back to the court which passed it or, where sentence has been passed on appeal, back to the court of first instance, if—

(a) the offender is still serving the sentence; and

(b) the prosecutor thinks that it is in the interests of justice to do so.

(5) For the purposes of subsection (4)(a), an offender sentenced to a term of imprisonment who is released (whether on licence or unconditionally) under Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c. 9) before the date on which the offender would (but for the release) have served the sentence in full is to be treated as still serving the sentence until that date.

(6) A case so referred is, if possible, to be considered by the judge who passed the sentence or, where sentence has been passed on appeal, the judge who presided at first instance.

(7) In the case of an offender falling within subsection (2)(a), the court may, on such a referral, substitute for the sentence passed on the offender such greater sentence (not exceeding that which it would have passed but for the assistance agreement) as it thinks appropriate.

(8) A court of first instance shall, for the purposes of subsection (7), regard the sentence which the appeal court would have passed but for the agreement as the sentence which it would have passed but for the agreement.

(9) In the case of an offender falling within subsection (2)(b) or (c), the court may, on such a referral and taking into account the extent and nature of the assistance given or offered, substitute for the sentence passed on the offender such lesser sentence as it thinks appropriate.

(10) Any part of the sentence to which a referral relates and which the offender has already served is to be taken into account in determining when a greater sentence imposed under subsection (7) or a lesser one imposed under subsection (9) has been served.

(11) The offender (with the leave of a judge of the High Court of Justiciary) or a prosecutor may appeal to that court against a decision of a court under subsection (7) or (9).

(12) Where, under subsection (9) or on an appeal under subsection (11), the court substitutes a lesser sentence for the sentence which has been passed, it must state in open court that it has done so in consequence of the further assistance or, as the case may be, the assistance given or offered.

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(13) Subsection (12) does not apply if the court thinks that it would not be in the public interest to disclose that the sentence has been discounted; but in such a case the court must give written notice (construed as in section 91) of the fact that the sentence has been discounted for the reason referred to in subsection (12) to the prosecutor and the offender in respect of whom the referral was made.

(14) Subsections (7) to (9) of section 91 apply for the purposes of this section as they apply for the purposes of that section, the references in those subsections to subsection (2) of that section being construed as references to subsection (9) of this section.

(15) In the application of this section in relation to a sentence consisting of a fine—
- (a) an offender is to be taken as still serving the sentence if the fine has not been paid in full; and
- (b) references to part of a sentence having been served are to be read as references to the fine having been partly paid.

93 Proceedings under section 92: exclusion of public

(1) This section applies to—
- (a) proceedings relating to a referral made under section 92(4); and
- (b) any other proceedings arising in consequence of those proceedings.

(2) The court in which those proceedings will be or are taking place may make such order as it thinks appropriate—
- (a) to exclude from the proceedings any person—
  - (i) who does not fall within subsection (4); or
  - (ii) who does not, in the opinion of the court, have a sufficiently direct interest in the proceedings to justify that person's presence during them;
- (b) to prohibit the publication of any matter relating to the proceedings (including the fact that the referral has been made).

(3) Such an order is to be made only to the extent that the court thinks—
- (a) that it is necessary to protect the safety of any person; and
- (b) that it is in the interests of justice.

(4) The following persons fall within this subsection—
- (a) the judge;
- (b) an officer of the court;
- (c) the prosecutor;
- (d) the other party to the proceedings;
- (e) counsel or a solicitor for the other party.

(5) This section does not affect any other power which the court has by virtue of any rule of law or other enactment—
- (a) to exclude any person from proceedings; or
- (b) to prohibit or restrict the publication of any matter to which the proceedings relate;

or any rule of law or enactment consisting of such an exclusion, prohibition or restriction.

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94 Section 92: further provision

(1) The Scottish Ministers may, by order, provide further as to the procedure to be followed under section 92 or otherwise so as to give full effect to that section.

(2) An order under subsection (1) may, in particular—
- (a) apply, with modifications, provisions of Part VIII of the 1995 Act (appeals from solemn proceedings);
- (b) modify that Part of that Act.

(3) The Scottish Ministers may, by order, make provision as to how—
- (a) any period in custody served under a sentence for which another sentence is substituted under section 92(7), (9) or (11);
- (b) any period during which a person was on release on licence or unconditionally under Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c. 9) in respect of such a sentence before the date on which the person would (but for the release) have served the sentence in full,

is to be taken into account, for the purposes of the later sentence, in the calculation of periods of time under Part 1 of that Act.

(4) An order under subsection (3) may, in particular, modify that Act.

95 Sentencing: consideration of undisclosed information

(1) This section applies where a person (the "offender")—
- (a) has been convicted and is to be sentenced for an offence; and
- (b) has, otherwise than in pursuance of an assistance agreement, assisted in relation to the investigation or prosecution of any other offence.

(2) Where this section applies, the court may, in passing sentence and if it considers it to be in the interests of justice to do so, take into account any information which is in a report in writing by a relevant officer about that assistance and which is, with the agreement of the offender, made available—
- (a) only to the offender and the court; or
- (b) only to the offender, the offender's counsel or solicitor and the court,

by the prosecutor.

(3) Where, under subsection (2) a court takes information about assistance into account, it must not disclose the information, the existence of the report containing it or whether the sentence it passes is less than the sentence it would have passed but for the assistance given.

(4) Subsection (3) does not prevent disclosure by the court or the clerk of court to the High Court or the Clerk of Justiciary in connection with proceedings to which section 96 applies.

(5) In subsection (2), a "relevant officer is a constable or any other officer of an organisation having functions which are conferred by or under an enactment or rule of law and which consist of or include the investigation of offences.

(6) The reference in subsection (2) to a report in writing includes a reference to a report made by means of an electronic communication (within the meaning given by section 15(1) of the Electronic Communications Act 2000 (c. 7)) the contents of

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which are kept or recorded so that they can be conveniently consulted later by the maker of the report and those to whom it was made available.

96 Appeals etc.: undisclosed information

(1) This section applies to any proceedings in the High Court in relation to—
- (a) an appeal under section 106(1), 108, 108A or 175(2) to (4) of the 1995 Act;
- (b) an appeal by way of bill of suspension or advocation;
- (c) a reference by the Lord Advocate under section 123 of that Act;
- (d) a reference by the Scottish Criminal Cases Review Commission under section 194B of that Act; or
- (e) a petition to the nobile officium.

(2) In subsection (1) the reference to proceedings in the High Court includes consideration by a judge of the High Court whether to grant leave to appeal under section 107, 180 or 187 of the 1995 Act.

(3) If, under subsection (2) of section 95, the lower court in passing sentence on the offender took into account information contained in a report mentioned in that subsection, the High Court and the Clerk of Justiciary—
- (a) must not disclose the information or the existence of the report to any person other than the prosecutor, the offender and, with the offender's agreement, the offender's counsel or solicitor; and
- (b) must not disclose to any person whether the sentence passed by the lower court is less than it would have passed but for the assistance given by the offender.

(4) If, in a case not falling within subsection (3), the High Court or the Clerk of Justiciary becomes aware of information contained in a report mentioned in subsection (2) of section 95 or that a court in passing sentence has, under that subsection, taken that information into account, the High Court or the Clerk of Justiciary must not disclose to any person the information, the existence of the report or whether the sentence passed by the lower court on the person to whom the report relates is less than the sentence it would have passed but for the assistance given by that person.

(5) Sections 107(10), 113(2), 179(8), 180(10), 186(4)(b), 187(9) and 298(2) of the 1995 Act do not apply in a case falling within subsection (3) or (4) to the extent that they require a disclosure which, if made by the High Court or the Clerk of Justiciary, would contravene the subsection in question.

(6) Subsection (5) does not, however, operate so as to prevent any disclosure to the Crown Agent or the Scottish Criminal Cases Review Commission; but subsection (3) or, as the case may be, subsection (4) applies to the Crown Agent and the Commission in relation to any such disclosure as it applies to the High Court and the Clerk of Justiciary in relation to a case falling within that subsection (but not so as to prevent disclosure by the Crown Agent or the Commission to the High Court).

(7) Subsections (2) to (5) of section 93 apply to proceedings referred to in subsection (1) of this section as they apply to proceedings referred to in subsection (1) of that section.

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(8) The Scottish Ministers may, by order, make further provision for the purpose of giving full effect to the preceding provisions of this section, including provision modifying the 1995 Act.

VALID FROM 01/03/2007

Conditional immunity from prosecution

97 Investigation and prosecution of crime: conditional immunity from prosecution

(1) A prosecutor, if of the opinion that for the purposes of the investigation or prosecution of any offence it is appropriate to give any person immunity from prosecution, may, in accordance with subsection (11), give the person a written notice under this section (a "conditional immunity notice").

(2) Subject to subsection (3), no proceedings for—
(a) the offence; or
(b) any offence of a description,
specified in a conditional immunity notice may be brought against the person to whom the notice is given and any such proceedings continuing when the notice is given must be discontinued.

(3) A conditional immunity notice—
(a) must specify the conditions to which its application is subject; and
(b) may specify the circumstances to which it applies or the circumstances to which it does not apply,
and has effect and ceases to have effect accordingly.

(4) Where a conditional immunity notice has ceased to have effect, a prosecutor must, in accordance with subsection (12), give to the person to whom the notice was given a further written notice stating when and the reason why the notice ceased to have effect (a "cessation notice").

(5) Where—
(a) a person accused of an offence is given a conditional immunity notice relating to the offence after the person's first appearance on petition in respect of the offence; and
(b) a cessation notice is given to the person in respect of the conditional immunity notice,
the person is, for the purposes of section 65(1) of the 1995 Act (time limit for commencement of trial on indictment), to be regarded as not having first appeared on petition; accordingly, the time limit specified in that provision begins with the first appearance of the accused person on petition after the giving of the cessation notice.

(6) Where—
(a) a person who may have committed an offence is given a conditional immunity notice relating to the offence within any other time limit stipulated by any enactment for the commencement of proceedings in respect of the offence; and

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(b) a cessation notice is given to the person in respect of the conditional immunity notice,

the person is, for the purposes of that enactment, to be regarded as having contravened or, in the case of a continuing offence, having last contravened the provision creating the offence on the date of the giving of the cessation notice.

(7) Where—

(a) proceedings against a person for an offence, having been timeously commenced, are discontinued under subsection (2); and

(b) a cessation notice is given to the person in respect of the conditional immunity notice,

the person is, for the purposes of any time limit stipulated by an enactment for the commencement of proceedings in respect of the offence, to be regarded as having committed the offence or, in the case of a continuing offence, having last committed the offence on the date of the giving of the cessation notice.

(8) Where—

(a) a conditional immunity notice has ceased to have effect; and

(b) proceedings are brought against the person to whom the notice was given in respect of any offence specified in the notice,

the fact that, before the notice ceased to have effect, communications took place between the prosecutor or anyone else and the person to whom the notice was given which would not or might not have taken place but for the notice is not a ground for the court to determine that the proceedings should not have been brought, or should not be continued, against that person.

(9) Where a person to whom a conditional immunity notice has been given notifies the specified prosecutor in writing that the person's address for the purposes of giving a cessation notice is changed to an address set out in the notification, then that address is to be treated as the address specified for those purposes in the conditional immunity notice.

(10) In subsection (9), the "specified prosecutoris the prosecutor specified in a conditional immunity notice for the purposes of receiving notification under that subsection.

(11) A conditional immunity notice is given in accordance with this subsection if—

(a) it is given so as to be received personally by the person to whom it relates;

(b) it is sent—

(i) by first class recorded delivery post to the person's house or place of business; or

(ii) in the case of a person who is on bail, by first class recorded delivery post to his proper domicile of citation (within the meaning of section 25 of the 1995 Act (bail conditions)); or

(c) it is—

(i) given, so as to be received personally; or

(ii) sent by first class recorded delivery post,

to a solicitor who has, under section 72F of that Act, notified the prosecutor that the solicitor is engaged by the person and who has not, under that section, informed the prosecutor that the solicitor has been dismissed or has withdrawn,

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and, where by virtue of subsection (13) the notice is given by way of an electronic communication, the person to whom it relates has agreed to its being so given and has notified the prosecutor of the appropriate number or address of the kind used for receiving electronic communications.

(12) A cessation notice is given in accordance with this subsection if—

(a) it is given so as to be received personally by the person to whom the conditional immunity notice relates; or

(b) it is sent to the person by first class recorded delivery post at the address specified in the conditional immunity notice for the purposes of the giving of a cessation notice,

and, where by virtue of subsection (13) the notice is given by way of an electronic communication, the person to whom the conditional immunity notice relates has agreed to the cessation notice's being so given and has notified the prosecutor (whether under subsection (9) or otherwise) of the appropriate number or address of the kind used for receiving electronic communications.

(13) The references in subsections (11) and (12) to the giving or sending of notice in a specified way include references to its being given by electronic communication (within the meaning given by section 15(1) of the Electronic Communications Act 2000 (c. 7)) the contents of which are kept or recorded so that they can be conveniently consulted later by the sender and the recipient.

Enforcement of Sea Fisheries (Shellfish) Act 1967

98 Enforcement of Sea Fisheries (Shellfish) Act 1967

(1) After section 4 of the Sea Fisheries (Shellfish) Act 1967 (c. 83) there is inserted—

"**4A Powers of sea-fishery officers in relation to fishing boats to enforce regulated fishery**

(1) For the purpose of enforcing restrictions imposed by, or regulations made by, an order under section 1 conferring a right of regulating a fishery, a British sea-fishery officer may exercise the powers conferred by subsections (2) to (7) in relation to—

(a) a Scottish fishing boat wherever it may be;

(b) any other fishing boat in the Scottish zone.

(2) The officer may go on board the boat, with or without persons assigned to assist in the duties of that officer, and may, for that purpose or for the purpose of disembarking from the boat, require the boat to stop, and anything else to be done which will facilitate the boarding of, or as the case may be, disembarking from, the boat.

(3) The officer may require the attendance of the master and any other person on board the boat and may make any examination and inquiry which appears to the officer to be necessary for the purpose of enforcing such restrictions or regulations.

(4) In particular under subsection (3) the officer may—

(a) search the boat for shellfish or fishing gear;

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(b) examine any shellfish on the boat and the equipment (including the fishing gear) of the boat, and require persons on board the boat to do any thing which appears to the officer to be necessary for facilitating the examination;

(c) require any person on the boat to produce any relevant document in the person's custody or possession;

(d) for the purpose of ascertaining whether an offence under section 3(3) has been committed, search the boat for any relevant document and may require any person on board the boat to do anything which appears to the officer to be necessary for facilitating the search;

(e) inspect, take copies of and retain possession of, while any search, examination or inspection provided for under this subsection is being carried out, any relevant document produced to the officer or found on board;

(f) require the master or any person for the time being in charge of the boat to render any relevant document on a computer system into visible and legible form and to produce it in a form in which it may be taken away; and

(g) where the boat is one in relation to which the officer has reason to suspect that an offence under section 3(3) has been committed, seize and detain any relevant document produced to the officer or found on board, for the purpose of enabling the document to be used as evidence in proceedings for the offence.

(5) But subsection (4)(g) does not permit any document required by law to be carried on a boat to be seized and detained except while the boat is detained in a port.

(6) In subsection (4), "relevant document" means a document relating to—

(a) the boat; or

(b) the catching, landing, transportation, transhipment, sale or disposal of shellfish.

(7) Where it appears to a British sea-fishery officer that an offence under section 3(3) has at any time been committed the officer—

(a) may take, or require the master of any boat in relation to which the offence took place to take, the boat and its crew to the port which appears to the officer to be the nearest convenient port; and

(b) may detain, or require the master to detain, the boat in the port.

(8) Where a British sea-fishery officer detains or requires the detention of a boat under subsection (7)(b), the officer must serve notice in writing on the master stating that the boat is or, as the case may be, is required to, be detained until the time mentioned in subsection (9).

(9) That time is when the master is served with a notice in writing signed by a British sea-fishery officer stating that the previous notice ceases to have effect.

4B Powers of sea-fishery officers on land to enforce regulated fishery

(1) For the purpose of enforcing restrictions imposed by, or regulations made by, an order under section 1 conferring a right of regulating a fishery, a British

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sea-fishery officer may exercise the powers conferred by subsections (2) to (11) of this section in relation to—

(a) any premises (other than a dwelling-house) used for—

(i) carrying on any business in connection with the operation of fishing boats;

(ii) an activity connected with or ancillary to the operation of fishing boats; or

(iii) the treatment, storage or sale of shellfish;

(b) any vehicle which the officer has reasonable cause to believe is being used—

(i) to dredge, fish for or take shellfish; or

(ii) to transport shellfish.

(2) The officer may enter and inspect, at any reasonable time, the premises or vehicle (and, in the case of a vehicle, for that purpose require the vehicle to stop or require the operator to take the vehicle to a particular place).

(3) The officer may, in exercising the power conferred by subsection (2), take with the officer such other persons as appear to the officer to be necessary and any equipment or materials.

(4) The officer may examine any shellfish on the premises or vehicle and require persons on the premises or vehicle to do anything which appears to the officer to be necessary for facilitating the examination.

(5) The officer may on the premises or vehicle carry out such other inspections and tests as may reasonably be necessary.

(6) The officer may require any person not to remove or cause to be removed any shellfish from the premises or vehicle for such a period as may be reasonably necessary for the purposes of establishing whether an offence under section 3(3) has at any time been committed.

(7) The officer may require any person on the premises or vehicle to produce any relevant document in the person's custody or possession.

(8) The officer may, for the purpose of establishing whether an offence under section 3(3) has been committed, search the premises or vehicle for any relevant document, and may require any person on the premises or vehicle to do anything which appears to the officer to be necessary for facilitating the search.

(9) The officer may inspect and take copies of any relevant document produced or found on the premises or vehicle.

(10) The officer may require any person to render any relevant document on a computer system into a visible and legible form and to produce it in a form in which it may be taken away.

(11) If the officer has reasonable grounds to suspect that an offence under section 3(3) has been committed, the officer may seize and detain any relevant document produced or found on the premises or vehicle, for the purpose of enabling the document to be used as evidence in proceedings for the offence.

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(12) A sheriff may, if satisfied by evidence on oath as to the matters mentioned in subsection (13), grant a warrant authorising a British sea-fishery officer to enter premises (if necessary using reasonable force), accompanied by such persons as appear to the officer to be necessary.

(13) Those matters are—

(a) that there are reasonable grounds to believe that anything which a British sea-fishery officer has power under this section to examine or inspect is on the premises and that the examination or inspection is likely to disclose evidence of the commission of an offence under section 3(3); and

(b) that any of the following is the case—

(i) admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under subsection (12) has been given to the occupier;

(ii) an application for admission, or the giving of such notice, would defeat the object of entry;

(iii) the premises are unoccupied or the occupier is temporarily absent and it might defeat the object of entry to await the return of the occupier.

(14) A warrant under subsection (12) is valid for the period of one month beginning with the date on which it is granted or for such shorter period as the sheriff may specify.

(15) In this section—

"premises" includes land; and

"relevant document" means a document relating to the catching, landing, transportation, transhipment, sale or disposal of shellfish.

4C Powers of British sea-fishery officers to seize fish and fishing gear

(1) A British sea-fishery officer may seize—

(a) in Scotland or in the Scottish zone; or

(b) on a Scottish fishing boat wherever it may be,

any shellfish and any net or other fishing gear to which subsection (2) applies.

(2) This subsection applies to—

(a) any shellfish in respect of which the officer has reasonable grounds to suspect that an offence under section 3(3) has been committed;

(b) any net or other fishing gear which the officer has reasonable grounds to suspect has been used in the commission of such an offence.

(3) In this section—

(a) "Scotland" has the meaning given by the Scotland Act 1998 (c. 46); and

(b) references to shellfish include any receptacle which contains shellfish.

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4D Sections 4A to 4C: supplementary

(1) A British sea-fishery officer, or a person assisting such an officer by virtue of section 4A(2) or 4B(3) or (12), is not liable in any civil or criminal proceedings for anything done in the purported exercise of a power conferred by section 4A, 4B or 4C if the court is satisfied—

(a) that the act was done in good faith;

(b) that there were reasonable grounds for doing it; and

(c) that it was done with reasonable skill and care.

(2) A person who—

(a) fails without reasonable excuse to comply with any requirement imposed on the person by a British sea-fishery officer under a power conferred by section 4A or 4B;

(b) without reasonable excuse prevents, or attempts to prevent, any other person from complying with such a requirement; or

(c) obstructs such an officer in the exercise of any of those powers or the powers conferred by section 4C,

shall be guilty of an offence.

(3) A person who commits an offence under subsection (2) is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine.".

(2) In section 22 of the Sea Fisheries (Shellfish) Act 1967 (c. 83) (interpretation), after the definition of "sea fishing boat" there is inserted the following definition—

""Scottish fishing boat" means a fishing vessel registered in the register maintained under section 8 of the Merchant Shipping Act 1995 (c. 21) whose entry in the register specifies a port in Scotland as the port to which the vessel is to be treated as belonging;".

(3) In section 15 of the Sea Fisheries Act 1968 (c. 77) (amendment of Sea Fisheries (Shellfish) Act 1967), after subsection (2) there is inserted—

"(2A) The reference in section 3(1) of the Sea Fisheries (Shellfish) Act 1967 to an order under section 1 of that Act conferring on the grantees a right of regulating a fishery which imposes restrictions on, or makes regulations respecting, the dredging, fishing for and taking of shellfish shall be construed as including a reference to an order under section 1 of that Act conferring on the grantees such a right which enables the grantees, with the consent of the appropriate Minister, to impose such restrictions or make such regulations; and the references in sections 3(1)(a), (2) and (3) of that Act to restrictions and regulations shall be construed as including a reference to restrictions so imposed and regulations so made.

(2B) The references in sections 4A(1) and 4B(1) of the Sea Fisheries (Shellfish) Act 1967 to restrictions imposed by, or regulations made by, an order under section 1 of that Act conferring a right of regulating a fishery, shall be construed as including a reference to restrictions imposed by, or regulations made by, the grantees by virtue of an order under section 1 of that Act which

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enables the grantees, with the consent of the appropriate Minister, to impose such restrictions or make such regulations.”.

PART 4

GENERAL

99 Meanings of “the 1967 Act”, “the 1995 Act” and “the 2003 Act”

In this Act—

“the 1967 Act” means the Police (Scotland) Act 1967 (c. 77);

“the 1995 Act” means the Criminal Procedure (Scotland) Act 1995 (c. 46); and

“the 2003 Act” means the Sexual Offences Act 2003 (c. 42).

100 Equal opportunities

(1) A person discharging a function by virtue of this Act shall discharge that function in a manner that encourages equal opportunities and in particular the observance of the equal opportunity requirements.

(2) In subsection (1), “equal opportunities” and “equal opportunity requirements” have the same meanings as in Section L2 of Part II of Schedule 5 to the Scotland Act 1998 (c. 46).

101 Modifications of enactments

Schedule 6 (which contains modifications of enactments) has effect.

Commencement Information

I17 S. 101 wholly in force at 1.4.2007; s. 101 not in force at Royal Assent see s. 104; s. 101 in force at 1.9.2006 for specified purposes by S.S.I. 2006/432, **art. 2(g)**; s. 101 in force at 1.1.2007 for specified purposes by S.S.I. 2006/607, **art. 3**, Sch; s. 101 in force at 1.4.2007 insofar as not already in force by S.S.I. 2007/84, **art. 3(3)**

102 Ancillary provision

(1) The Scottish Ministers may by order make such supplementary, incidental, consequential, transitory, transitional or saving provision as they consider necessary or expedient for the purposes of, in consequence of or for giving full effect to this Act or any provision of it.

(2) An order under subsection (1) may modify any enactment (including this Act).

103 Subordinate legislation

(1) The powers of the Scottish Ministers under this Act to make orders and regulations are exercisable by statutory instrument.

(2) Each of those powers includes power to make—

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(a) different provision for different purposes; and

(b) supplementary, incidental, consequential, transitory, transitional or saving provision.

(3) Subject to subsections (4) and (5), a statutory instrument containing an order or regulations made under this Act is subject to annulment in pursuance of a resolution of the Scottish Parliament.

(4) The following statutory instruments are not to be made unless a draft of the instrument has been laid before, and approved by, the Scottish Parliament—

(a) a statutory instrument containing an order under section 18(1) or 24(1), paragraph 10(10) of schedule 1, or paragraph 9(1) of schedule 2; or

(b) a statutory instrument containing an order under section 102(1) containing provisions which add to, replace or omit any part of the text of an Act.

(5) Subsection (3) does not apply to an order under section 104(1).

104 Commencement

(1) This Act comes into force in accordance with provision made by order by the Scottish Ministers.

(2) Subsection (1) does not apply to this section or section 99, 100, 102, 103 or 105.

Subordinate Legislation Made

P1 S. 104(1) power partly exercised:
1.9.2006 appointed for specified provisions by S.S.I. 2006/432, **art. 2**;
1.1.2007 appointed for specified provisions by S.S.I. 2006/607, **art. 3**, Sch.;
different dates appointed for specified provisions by {S.S.I. 2007/84}, (with saving and transitional provisions in arts. 4-6)

105 Short title

This Act may be cited as the Police, Public Order and Criminal Justice (Scotland) Act 2006.

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SCHEDULE 1

(introduced by section 1(2))

THE SCOTTISH POLICE SERVICES AUTHORITY

Interpretation

1 In this schedule—

"lay member" means a person who is neither a police authority member nor a police force member;

"local authority" means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39);

"police authority member" means a person—

(a) who is a member of a local authority; and

(b) who, whether by election or otherwise, has the function of chairing meetings of any of the police bodies (whether or not referred to in that capacity as "convener"); and

"police force member" means a person who holds the rank of chief constable in a police force.

Status

2 (1) The Authority—

(a) is not a servant or agent of the Crown; and

(b) has no status, immunity or privilege of the Crown.

(2) The Authority's property is not property of, or property held on behalf of, the Crown.

Membership

3 (1) The Scottish Ministers must appoint the members of the Authority.

(2) Each member must fall within one of the categories mentioned in sub-paragraph (3).

(3) Those categories are—

(a) police force members;

(b) police authority members;

(c) lay members.

(4) The Authority is to consist of not more than 10 members and, subject to sub-paragraph (5), must include—

(a) a convener (who must be a lay member); and

(b) at least two members (not including the convener) falling within each of the categories mentioned in sub-paragraph (3).

(5) Sub-paragraph (4)(b) does not apply if, in the opinion of the Scottish Ministers, its application would—

(a) prevent the Authority from operating; or

(b) prevent or impede the effective or efficient operation of the Authority.

(6) A person may be appointed as a police force member of the Authority only if nominated for such appointment by persons whom the Scottish Ministers consider represent the interests of chief constables of police forces.

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(7) A person may be appointed as a police authority member of the Authority only if nominated for such appointment by persons whom the Scottish Ministers consider represent the interests of police bodies.

(8) Sub-paragraph (4)(b) does not apply if—
- (a) the Scottish Ministers request the persons referred to in sub-paragraph (6) or (7) to nominate persons for appointment as a police force member or a police authority member of the Authority; and
- (b) the persons requested fail, within such reasonable time as the Scottish Ministers may specify, to comply with the request.

(9) A person is disqualified from appointment, and from holding office, as a police authority member or a lay member of the Authority if that person is—
- (a) a member of—
  - (i) the House of Lords;
  - (ii) the House of Commons;
  - (iii) the Scottish Parliament;
  - (iv) the European Parliament; or
- (b) disqualified from standing for election as a member of—
  - (i) the House of Commons;
  - (ii) the Scottish Parliament; or
  - (iii) a local authority.

(10) A person is disqualified from appointment, and from holding office, as a lay member of the Authority if that person is—
- (a) a constable of a police force;
- (b) 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;
- (c) a member of the Serious Organised Crime Agency;
- (d) a member of a local authority; or
- (e) a member of staff of the Authority.

(11) The Scottish Ministers may by order amend sub-paragraph (4) by substituting for the maximum number of members for the time being specified there such other number as they think fit.

(12) Before making an order under sub-paragraph (11) the Scottish Ministers must consult—

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(a) the Authority;
(b) persons whom the Scottish Ministers consider represent the interests of chief constables of police forces; and
(c) persons whom the Scottish Ministers consider represent the interests of police bodies.

Deputy convener

4 Members of the Authority must elect, from among their number, a member to chair meetings when the convener is not present (the "deputy convener").

Tenure

5 (1) Subject to this paragraph, each member holds and vacates office on such terms and conditions, and for such period, as the Scottish Ministers may determine.

(2) The Scottish Ministers may, on the expiry of a period of appointment of a member, reappoint the member for a single further period.

(3) Each member may, by written notice to the Scottish Ministers, resign as a member.

(4) A police force member ceases to be a member of the Authority on ceasing to hold the rank of chief constable of a police force.

(5) Subject to sub-paragraphs (6) and (7), a police authority member ceases to be a member of the Authority on ceasing to be a member of a local authority.

(6) Sub-paragraph (7) applies where a member of the Authority ceases to be a member of a local authority by reason only of the member's retirement by virtue of section 5(4) of the Local Government etc. (Scotland) Act 1994 (c. 39) (elections and terms of office of councillors).

(7) Where—
(a) the member had the function of chairing meetings of a police authority, the member continues to hold office as a member of the Authority until the date of the first meeting of the local authority following the election in consequence of which that person retired;
(b) the member had the function of chairing meetings of a joint police board, the member continues to hold office as a member of the Authority until the date of the first meeting of the board following the election in consequence of which that person retired.

Removal from office

6 (1) The Scottish Ministers may remove a person from office as a member of the Authority if they consider that any of the grounds mentioned in sub-paragraph (2) is satisfied.

(2) Those grounds are—
(a) the member's estate has been sequestrated or the member has been adjudged bankrupt, has made an arrangement with creditors, or has granted a trust deed for creditors or a composition contract;
(b) the member is incapacitated as a result of physical or mental illness;

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(c) the member has, without reasonable excuse, been absent from meetings of the Authority for a period longer than 4 consecutive months;

(d) the member has, without reasonable excuse, been absent from 3 consecutive meetings of the Authority;

(e) the member has been convicted (whether before or after the member's appointment) of a criminal offence;

(f) the member has failed to comply with the terms of the member's appointment;

(g) the member, being a police force member, has been suspended from duty by virtue of regulations made under section 26 of the 1967 Act;

(h) the member, being a police authority member, has had the member's entitlement to attend meetings suspended under section 19(1)(b) or (c) of the Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7); or

(i) the member is otherwise unfit or unable to carry out the member's functions as convener or member.

Members to ensure Authority is run efficiently and effectively

7 It is the duty of each member to ensure that the Authority is run efficiently and effectively.

Remuneration and pensions of convener and lay members

8 (1) The Authority must pay to the convener and each of the other lay members such remuneration, allowances and expenses as the Scottish Ministers determine.

(2) The Authority must pay or make arrangements for the payment of such pensions, allowances or gratuities to, or in respect of, any person who has ceased to be the convener or a lay member of the Authority as the Scottish Ministers determine.

(3) The reference in sub-paragraph (2) to pensions, allowances and gratuities includes pensions, allowances and gratuities by way of compensation for loss of office.

(4) The arrangements mentioned in sub-paragraph (2) 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.

(5) Sub-paragraph (6) applies where a person ceases to be the convener or a lay member of the Authority and the Scottish Ministers determine that there are special circumstances making it right for the person to receive compensation.

(6) The Scottish Ministers may direct the Authority to pay such amount of compensation to the person as the Scottish Ministers consider appropriate.

(7) Police force members and police authority members are not entitled to remuneration, allowances or expenses from the Authority in respect of their work as members of the Authority.

Chief Executive

9 (1) The Authority is to have a Chief Executive who—

(a) must not be a member of the Authority; and

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(b) reports to the members of the Authority.

(2) The first appointment of the Chief Executive is to be made by the Scottish Ministers after consultation with—

(a) persons whom the Scottish Ministers consider represent the interests of chief constables of police forces;

(b) persons whom the Scottish Ministers consider represent the interests of police bodies; and

(c) if the Scottish Ministers have appointed a person as convener of the Authority, that person.

(3) The first appointment of the Chief Executive is to be made on such terms and conditions as the Scottish Ministers may determine.

(4) The Authority must pay the person appointed under sub-paragraph (3) such remuneration, allowances and expenses as the Scottish Ministers determine.

(5) Subsequent appointments of the Chief Executive are to be made by the Authority with the approval of the Scottish Ministers on such terms and conditions as the Authority may with such approval determine.

(6) The Authority must pay the Chief Executive appointed by the Authority such remuneration, allowances and expenses as the Scottish Ministers determine.

(7) The Authority must pay or make arrangements for the payment of such pensions, allowances or gratuities to, or in respect of, any person who has ceased to be the Chief Executive as the Scottish Ministers determine.

(8) The reference in sub-paragraph (7) to pensions, allowances and gratuities includes pensions, allowances and gratuities by way of compensation for loss of employment.

(9) The arrangements mentioned in sub-paragraph (7) 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.

Staff of the Authority

10 (1) Subject to sub-paragraphs (6)(b) and (8)(a), the Authority may appoint other employees on such terms and conditions as the Authority determines.

(2) The Authority may make arrangements for constables of police forces to be seconded to the Authority to serve as members of its staff.

(3) The Authority may make arrangements for persons falling within sub-paragraph (4) to be seconded to the Authority to serve as members of its staff.

(4) 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 or of the City of London police force;

(c) the Police Service of Northern Ireland;

(d) the Ministry of Defence Police appointed on the nomination of the Secretary of State under section 1 of the Minister of Defence Police Act 1987 (c. 4);

(e) the British Transport Police;

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(f) the Civil Nuclear Constabulary;
(g) the States of Jersey Police Force;
(h) the salaried police force of the Island of Guernsey;
(i) the Isle of Man Constabulary; or
(j) the Serious Organised Crime Agency.

(5) Sub-paragraph (6) applies if—
(a) a constable is seconded to the Authority under sub-paragraph (2); and
(b) the Authority does not appoint the constable to be a police member of the Agency in accordance with paragraph 7 of schedule 2.

(6) The constable—
(a) is engaged with the Authority on a period of relevant service within the meaning of section 38A(1)(bd) of the 1967 Act;
(b) is, subject to sub-paragraph (10), appointed on such terms and conditions as the Authority may, with the approval of the Scottish Ministers, determine; and
(c) is under the direction and control of the Authority.

(7) Sub-paragraph (8) applies if—
(a) a person is seconded to the Authority under sub-paragraph (3); and
(b) the Authority does not appoint the person to be a police member of the Agency in accordance with paragraph 7 of schedule 2.

(8) The person—
(a) is, subject to sub-paragraph (10), appointed on such terms and conditions as the Authority may, with the approval of the Scottish Ministers, determine; and
(b) is under the direction and control of the Authority.

(9) A determination under sub-paragraph (6)(b) or (8)(a) may be made by reference to provision made from time to time by or under regulations under section 26 of the 1967 Act or section 23 of this Act.

(10) The Scottish Ministers may by order apply such provisions of the 1967 Act and subordinate legislation made under it (subject to such modifications as they consider appropriate) to—
(a) constables seconded to the Authority under sub-paragraph (2); or
(b) persons seconded to the Authority under sub-paragraph (3),

who are not appointed to be police members of the Agency in accordance with paragraph 7 of schedule 2.

(11) Before making an order under sub-paragraph (10) other than an order 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.

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Changes to legislation: *Police, Public Order and Criminal Justice (Scotland) Act 2006 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information

I18 Sch. 1 para. 10 wholly in force at 1.4.2007; Sch. 1 para. 10 not in force at Royal Assent see s. 104; Sch. 1 para. 10(1) in force at 1.1.2007 by S.S.I. 2006/607, **art. 3**, Sch; Sch. 1 para. 10 in force so far as not already in force at 1.4.2007 by S.S.I. 2007/84, **art. 3(3)**

Remuneration and pensions of staff

11 (1) Subject to section 23, paragraph 10(10) of this schedule and paragraph 9(1) of schedule 2, the Authority must pay to members of its staff such remuneration, allowances and expenses as the Authority determines.

(2) A determination under sub-paragraph (1) as respects persons within sub-paragraph (3) may be made by reference to provision made from time to time by or under regulations under section 26 of the 1967 Act or section 23 of this Act.

(3) Those persons are—

(a) constables seconded to the Authority under paragraph 10(2); and

(b) persons seconded to the Authority under paragraph 10(3),

who are not appointed to be police members of the Agency in accordance with paragraph 7 of schedule 2.

(4) A determination under sub-paragraph (1) as respects police members of the Agency may be made by reference to provision made from time to time by or under regulations under section 26 of the 1967 Act.

(5) The Authority 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.

(6) The reference in sub-paragraph (5) to pensions, allowances and gratuities includes pensions, allowances and gratuities by way of compensation for loss of employment or, as the case may be, loss of office.

(7) The arrangements mentioned in sub-paragraph (5) 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.

(8) In this paragraph references to members of staff of the Authority do not include the Chief Executive or the Director General or Deputy Director General of the Agency.

Commencement Information

I19 Sch. 1 para. 11 wholly in force at 1.4.2007; Sch. 1 para. 11 not in force at Royal Assent see s. 104; Sch. 1 para. 11(1)(5)-(8) in force at 1.1.2007 by S.S.I. 2006/607, **art. 3**, Sch; Sch. 1 para. 11 in force so far as not already in force at 1.4.2007 by S.S.I. 2007/84, **art. 3(3)**

Committees and sub-committees

12 (1) The Authority may establish committees for any purpose.

(2) Any committee so established may establish sub-committees.

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(3) Any such committee or sub-committee must be chaired by a member of the Authority.

(4) A person who is not a member of the Authority may be appointed to any such committee or sub-committee.

(5) Subject to sub-paragraph (6), the Authority may pay such remuneration, allowances and expenses as it may determine to a member of any such committee or sub-committee who is not—
  (a) a member of the Authority; or
  (b) a member of the Authority's staff.

(6) Sub-paragraph (5) does not apply to a member of a committee or sub-committee who is—
  (a) a constable of, or otherwise employed by, a police force; or
  (b) a member of a local authority.

Procedure

13 (1) Subject to sub-paragraph (2), the Authority may regulate—
  (a) its own procedure (including the number of members required to constitute a quorum); and
  (b) the procedure (including the number of members required to constitute a quorum) of its committees and sub-committees.

(2) Any determination as to the quorum for meetings of the Authority or any of its committees or sub-committees must be made at a meeting of the Authority attended by the convener and at least 4 other members.

Delegation of functions

14 (1) Subject to sub-paragraph (2), the Authority may authorise—
  (a) any of its committees; or
  (b) any of its members of staff,
  to perform on behalf of the Authority such of its functions as it may determine.

(2) The Authority may not authorise any of its committees to perform on its behalf any functions of the Authority under Part V of the Police Act 1997 (c. 50).

(3) A committee of the Authority may authorise—
  (a) any of its sub-committees; or
  (b) any of the Authority's members of staff,
  to perform on behalf of the committee such of its functions as it may determine.

Commencement Information

I20 Sch. 1 para. 14 in force (except so far as subsequently repealed) at 1.1.2007; Sch. 1 para. 14 not in force at Royal Assent see s. 104; Sch. 1 para. 14(1)(3) in force at 1.1.2007 by S.S.I. 2006/607, **art. 3**, Sch.

Status: *Point in time view as at 01/01/2007. This version of this Act contains provisions that are not valid for this point in time.*
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Incidental powers

15 (1) The Authority 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 its functions, including in particular—
(a) entering into contracts;
(b) acquiring and disposing of property (whether heritable or moveable);
(c) borrowing money;
(d) forming or promoting (whether alone or with another) companies (within the meaning of the Companies Act 1985 (c. 6)).

(2) The power conferred by sub-paragraph (1)(b) includes power to accept—
(a) gifts of money; and
(b) gifts or loans of other property
on such terms as the Authority considers appropriate.

(3) The Authority may not exercise the powers conferred by paragraphs (b) to (d) of sub-paragraph (1) without the consent of the Scottish Ministers.

(4) Such consent may be given—
(a) with respect to a particular case or a particular class of cases;
(b) subject to such conditions as the Scottish Ministers consider appropriate.

Accounts

16 (1) The Authority must—
(a) keep proper accounts and proper records in relation to the accounts; and
(b) prepare a statement of accounts in respect of each financial year
in relation to each of the Authority and the Agency.

(2) A statement of accounts under sub-paragraph (1) must be in such form and contain such information as the Scottish Ministers may direct.

(3) The Authority must send a copy of each statement of accounts to the Scottish Ministers.

(4) The Scottish Ministers must send a copy of each statement of accounts to the Auditor General of Scotland for auditing.

SCHEDULE 2

(introduced by section 12(2))

MEMBERSHIP OF THE SCOTTISH CRIME AND DRUG ENFORCEMENT AGENCY

The Director General

1 (1) The first Director General of the Agency is to be the person who, immediately before the coming into force of this paragraph, is the Director of the Scottish Drug Enforcement Agency (“the old Agency”).

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(2) The first Director General holds office as Director General until the term of appointment as Director of the old Agency would have ended.

(3) Each subsequent Director General —
  (a) is to be appointed by the Authority; and
  (b) holds office for a term of 3 years.

(4) The Authority may extend the Director General's term of office by a single period not exceeding 3 years.

(5) A person is disqualified from appointment, and from holding office, as Director General if that person is a member of the Authority.

(6) A person may be appointed as Director General only if the person satisfies any requirements that the Scottish Ministers may specify in regulations and—
  (a) holds the rank of deputy chief constable in a police force; or
  (b) is eligible to apply for a post of that rank.

(7) Despite section 5(3) of the 1967 Act, a person referred to in sub-paragraph (6)(b) who is appointed as Director General is, by virtue of the appointment, promoted to the rank of deputy chief constable.

(8) The Scottish Ministers may by order amend sub-paragraphs (6) and (7) so as to substitute for the rank for the time being specified there another rank.

(9) In sub-paragraph (1), "the Scottish Drug Enforcement Agency" means the organisation known by that name and established under section 36(1)(a)(ii) of the 1967 Act.

The Deputy Director General

2 (1) The first Deputy Director General of the Agency is to be the person who, immediately before the coming into force of this paragraph, is the Deputy Director of the old Agency.

(2) The first Deputy Director General holds office as Deputy Director General until the term of appointment as Deputy Director of the old Agency would have ended.

(3) Each subsequent Deputy Director General—
  (a) is to be appointed by the Authority; and
  (b) holds office for a term of 3 years.

(4) The Authority may extend the Deputy Director General's term of office by a single period not exceeding 3 years.

(5) A person is disqualified from appointment, and from holding office, as Deputy Director General if that person is a member of the Authority.

(6) A person may be appointed as Deputy Director General only if the person satisfies any requirements that the Scottish Ministers may specify in regulations and—
  (a) holds the rank of assistant chief constable in a police force; or
  (b) is eligible to apply for a post of that rank.

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(7) Despite section 5(3) of the 1967 Act, a person referred to in sub-paragraph (6)(b) who is appointed as Deputy Director General is, by virtue of the appointment, promoted to the rank of assistant chief constable.

(8) The Scottish Ministers may by order amend sub-paragraphs (6) and (7) so as to substitute for the rank for the time being specified there another rank.

(9) In sub-paragraphs (1) and (2), "the old Agency" has the meaning given by paragraph 1(1).

Termination or suspension of appointment of Director General and Deputy Director General

3 (1) Where the Authority has complied with sub-paragraphs (2) to (4) in relation to the Director General, it may call on the Director General to retire or to resign from office as Director General—
  (a) in the interests of efficiency or effectiveness; or
  (b) by reason of any misconduct by the Director General.

(2) The Authority must give the Director General—
  (a) an explanation in writing of the grounds on which the Authority proposes to call upon the Director General to retire or resign as mentioned in sub-paragraph (1)(a) or (b); and
  (b) an opportunity to make representations to the Authority (including an opportunity to make them in person).

(3) The Authority must consider any representations made by or on behalf of the Director General.

(4) The Authority must consult the Scottish Ministers.

(5) If the Director General is, under sub-paragraph (1), called upon to retire or resign, the Director General must retire or resign with effect from—
  (a) such date as the Authority may specify; or
  (b) such earlier date as may be agreed between the Director General and the Authority.

(6) If the Authority considers that it is necessary for the maintenance of public confidence in the Agency to do so, the Authority may, after consulting the Scottish Ministers, suspend the Director General from duty.

(7) Nothing in this paragraph affects any power of the Authority to terminate or suspend the Director General's appointment in accordance with the terms and conditions of that appointment.

(8) Sub-paragraphs (1) to (7) apply in relation to the Deputy Director General as they apply in relation to the Director General.

Director General and Deputy Director General: common provisions

4 (1) A person appointed as Director General or Deputy Director General—
  (a) is, subject to paragraph 9(1), appointed on such terms and conditions as the Scottish Ministers may specify;
  (b) is by virtue of the appointment a member of the staff of the Authority;

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(c) is, if immediately before appointment a constable of a police force, engaged with the Agency on a period of relevant service within the meaning of section 38A(1)(bf) of the 1967 Act;

(d) in any other case—

(i) is, on appointment, appointed to the office of constable of the Agency; and

(ii) must on appointment make before a sheriff or a justice of the peace a declaration in such terms as the Scottish Ministers may determine covering the proper discharge of the duties of the office.

(2) Without prejudice to any other enactment conferring powers on constables for particular purposes, where the Director General or Deputy Director General makes a declaration such as is mentioned in sub-paragraph (1)(d)(ii), the Director General or (as the case may be) the Deputy Director General has all the powers and privileges of a constable throughout Scotland and (without prejudice to section 1(2) of the 1967 Act) the adjacent United Kingdom waters.

(3) In sub-paragraph (2)—

"powers" includes powers under any enactment, whenever passed or made;

"United Kingdom waters" means the sea and other waters within the seaward limits of the territorial sea;

and in that sub-paragraph, so far as it relates to powers under any enactment, makes them exercisable throughout the United Kingdom waters whether or not the enactment applies to those waters apart from this provision.

Remuneration and pensions of Director and Deputy Director

5 (1) Subject to paragraph 9(1), the Authority must pay to the Director General and Deputy Director General such remuneration, allowances and expenses as the Scottish Ministers determine.

(2) The Authority must pay or make arrangements for the payment of such pensions, allowances or gratuities to, or in respect of, any person who has ceased to be the Director General or the Deputy Director General as the Scottish Ministers determine.

(3) The reference in sub-paragraph (2) to pensions, allowances and gratuities includes pensions, allowances and gratuities by way of compensation for loss of office.

(4) The arrangements mentioned in sub-paragraph (2) 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.

Delegation of Director General's functions

6 (1) The Deputy Director General may carry out any of the functions of the Director General under this Act or any other enactment—

(a) during any absence, incapacity or suspension from duty of the Director General; or

(b) during any vacancy in the office of Director General.

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(2) Anything authorised or required to be done by the Director General may be done by any other member of the Agency who is authorised for the purpose by the Director General (whether generally or specifically).

(3) Sub-paragraph (2) does not apply to anything authorised or required to be done by the Director General under—
- (a) Part III of the Police Act 1997 (c. 50) (authorisation of action in respect of property); or
- (b) the Regulation of Investigatory Powers (Scotland) Act 2000 (asp 11).

VALID FROM 01/04/2007

Police members

7 (1) The police members of the Agency are to be appointed by the Authority.

(2) A person may be appointed under sub-paragraph (1) only if—
- (a) the person is a constable who is seconded to the Authority under paragraph 10(2) of schedule 1;
- (b) the person is a person who is seconded to the Authority under paragraph 10(3) of schedule 1; or
- (c) the person has any qualifications for appointment as a constable which are specified in regulations under section 23 and the appointment is to a police rank in the Agency.

(3) A police member of the Agency appointed by virtue of sub-paragraph (2)(a)—
- (a) is engaged with the Agency on a period of relevant service within the meaning of section 38A(1)(be) of the 1967 Act;
- (b) does not, by virtue of the appointment, cease to be a member of staff of the Authority.

(4) A police member of the Agency appointed by virtue of sub-paragraph (2)(b)—
- (a) does not, by virtue of the appointment, cease to be a member of staff of the Authority;
- (b) is, on appointment, appointed to the office of constable of the Agency; and
- (c) must on appointment make before a sheriff or a justice of the peace a declaration in such terms as the Scottish Ministers may determine concerning the proper discharge of the duties of that office.

(5) A police member of the Agency appointed by virtue of sub-paragraph (2)(c)—
- (a) becomes, on appointment, a member of staff of the Authority;
- (b) is, on appointment, appointed to the office of constable of the Agency; and
- (c) must on appointment make before a sheriff or a justice of the peace a declaration in such terms as the Scottish Ministers may determine concerning the proper discharge of the duties of that office.

(6) Without prejudice to any other enactment conferring powers on constables for particular purposes, where a police member of the Agency makes a declaration such as is mentioned in sub-paragraph (4)(c) or (5)(c), the member shall have all the powers and privileges of a constable throughout Scotland and (without prejudice to section 1(2) of the 1967 Act) the adjacent United Kingdom waters.

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(7) Subject to section 23 and paragraph 9(1) of this schedule, an appointment in accordance with this paragraph is made on such terms and conditions as the Authority may determine.

(8) A determination under sub-paragraph (7) may be made by reference to provision made from time to time by or under regulations under section 26 of the 1967 Act.

(9) Before making an appointment in accordance with this paragraph, or determining the terms and conditions on which such an appointment is to be made, the Authority must consult the Director General of the Agency.

(10) In sub-paragraph (6)—

"powers" includes powers under any enactment, whenever passed or made;

"United Kingdom waters" means the sea and other waters within the seaward limits of the territorial sea;

and that sub-paragraph, so far as it relates to powers under any enactment, makes them exercisable throughout the United Kingdom waters whether or not the enactment applies to those waters apart from this provision.

Support staff members

8 (1) The Authority may appoint support staff members of the Agency.

(2) A person may be appointed under sub-paragraph (1) only if the person is by virtue of paragraph 10(1) of schedule 1 an employee of the Authority.

(3) A person appointed under sub-paragraph (1) does not, by virtue of that appointment, cease to be a member of staff of the Authority.

Supplementary

9 (1) The Scottish Ministers may by order apply such provisions of the 1967 Act and subordinate legislation made under it as they think fit (subject to such modifications as they consider appropriate) to the Director General, the Deputy Director General and police members of the Agency.

(2) Before making an order under sub-paragraph (1) other than an order 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.

Status: *Point in time view as at 01/01/2007. This version of this Act contains provisions that are not valid for this point in time.*
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SCHEDULE 3

(introduced by section 31)

TRANSFERS OF STAFF AND PROPERTY

PART 1

STAFF TRANSFERS TO THE AUTHORITY AND THE AGENCY

Interpretation

1 In this Part—

"central service" has the meaning given by section 38(5) of the 1967 Act;

"relevant service" means relevant service within the meaning of section 38A(1)(bd) or (be) of that Act; and

"transfer day", in relation to a person, means the day on which a staff transfer order comes into force in relation to the person.

Staff transfer orders

2 (1) The Scottish Ministers may by order (a "staff transfer order") make provision for or in connection with—

(a) the transfer of persons employed, by virtue of section 9 of the 1967 Act (employees other than constables), by police authorities or joint police boards from any such authority or board to the Authority;

(b) the transfer of constables from police forces to relevant service;

(c) the transfer of constables from central service to relevant service.

(2) A staff transfer order may in particular—

(a) prescribe rules by which the transfer of persons, or classes of person, specified in the order can be determined;

(b) provide that persons, or classes of person, so specified are to become members of the Agency.

(3) Where a staff transfer order makes provision such as is mentioned in paragraph (a) of sub-paragraph (1), the order may include provision requiring the police authority or joint police board concerned to make a scheme in relation to the transfer of the staff to whom the order relates.

(4) Where a staff transfer order makes provision such as is mentioned in paragraph (b) of sub-paragraph (1), the order may include provision requiring the maintaining authority for the police force concerned to make a scheme in relation to the transfer of the staff to whom the order relates.

(5) For the purposes of sub-paragraph (4), 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.

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(6) Where a staff transfer order makes provision such as is mentioned in paragraph (c) of sub-paragraph (1), the Scottish Ministers must make a scheme in relation to the transfer of the staff to whom the order relates.

(7) A staff transfer order may include provision requiring a scheme made by virtue of sub-paragraph (4) to include provision as to the terms and conditions which are to have effect in relation to constables who are to be on relevant service.

(8) Terms and conditions such as are mentioned in sub-paragraph (7) may be included in a scheme only with the approval of the Scottish Ministers.

(9) A scheme made under sub-paragraph (6) may include provision—
- (a) for central service to have effect from a time specified in the scheme as relevant service;
- (b) as to the terms and conditions which are to have effect in relation to constables who are to be on relevant service.

Consultation

3 (1) Before making a staff transfer order, the Scottish Ministers must consult—
- (a) the Authority; and
- (b) if the order includes—
  - (i) provision transferring constables to relevant service falling within section 38A(1)(be) of the 1967 Act; or
  - (ii) provision such as is mentioned in paragraph 2(2)(b),

  the Director General of the Agency.

(2) Before making a scheme by virtue of paragraph 2(3), the police authority or joint police board concerned must consult the Authority.

(3) Before making a scheme by virtue of paragraph 2(4), the police authority or joint police board concerned must consult—
- (a) the Authority; and
- (b) if the scheme includes provision for or in connection with the transfer of constables to relevant service within the meaning of section 38A(1)(be) of the 1967 Act, the Director General of the Agency.

Effect on existing contracts of employment

4 (1) This paragraph applies where—
- (a) a person is to be transferred by virtue of a staff transfer order under paragraph 2; and
- (b) immediately before the transfer day, the person has a contract of employment with a police authority or joint police board (the "employer").

(2) On and after the transfer day the contract of employment has effect as if originally made between the person and the Authority.

(3) On the transfer day the rights, powers, duties and liabilities of the employer under or in connection with the contract of employment of the person are transferred to the Authority.

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(4) Anything done before the transfer day by or in relation to the employer in respect of the contract of employment or the person is to be treated on and after that day as having been done by or in relation to the Authority.

(5) If, before the transfer day, the person gives notice to the Authority or the person's employer that the person objects to becoming a member of staff of the Authority—
  (a) the contract of employment with the employer is, on the day immediately preceding the day that would, but for the objection, have been the transfer day, terminated; and
  (b) the person is not to be treated (whether for the purpose of any enactment or otherwise) as having been dismissed by virtue of the giving of such notice.

(6) Nothing in this schedule prejudices any right of the person to terminate the contract of employment if a substantial detrimental change in the person's working conditions is made.

(7) The person has the right to terminate the contract of employment by virtue of the employer's identity changing by virtue of the making of the staff transfer order only if it is shown that, in all the circumstances, the change is—
  (a) significant; and
  (b) detrimental

to the person.

PART 2

TRANSFER OF PROPERTY, RIGHTS AND LIABILITIES TO THE AUTHORITY

Interpretation

5 In this Part, "local authority" means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39).

Transfer of property, rights and liabilities

6 (1) The Scottish Ministers may make a transfer scheme.

(2) A transfer scheme is a scheme making provision for or in connection with the transfer to the Authority of property, rights and liabilities of any of the following—
  (a) a police authority;
  (b) a joint police board;
  (c) a local authority;
  (d) the Scottish Ministers;
  (e) any other person.

(3) A transfer scheme may make provision by virtue of sub-paragraph (2) only in so far as the property, rights or liabilities relate to the functions of the Agency (as specified in section 2(2)) or the police support services.

(4) A transfer scheme must specify a date (the "transfer date") on which the transfer is to take effect; and different dates may be specified in relation to different property, rights or liabilities.

Status: *Point in time view as at 01/01/2007. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Police, Public Order and Criminal Justice (Scotland) Act 2006 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) On the transfer date—
  (a) any property or rights to which a transfer scheme applies transfer to and vest in the Authority; and
  (b) any liabilities to which such a scheme applies become liabilities of the Authority.

(6) A transfer scheme may make provision for the creation of rights, or the imposition of liabilities, in relation to the property, rights or liabilities transferred by virtue of the scheme.

(7) A certificate issued by the Scottish Ministers that any property, right or liability has, or has not, been transferred by virtue of a transfer scheme is conclusive evidence of the transfer or the fact that there has not been a transfer.

(8) A transfer scheme may in particular make provision about the continuation of legal proceedings.

(9) A transfer scheme may make provision for the Authority to make any payment which—
  (a) before a day specified in the scheme could have been made by any of the persons specified in paragraphs (a) to (e) of sub-paragraph (2); but
  (b) is not a liability which can become a liability of the Authority by virtue of a transfer scheme.

(10) A transfer scheme may make provision for the payment by the Authority of compensation in respect of property and rights transferred by virtue of the scheme.

(11) Before making a transfer scheme, the Scottish Ministers must consult—
  (a) the Authority;
  (b) any police authority, joint police board, local authority or other person whose property, rights and liabilities (or any of them) are to be transferred by virtue of the scheme.

SCHEDULE 4

(introduced by section 33(3))

THE POLICE COMPLAINTS COMMISSIONER FOR SCOTLAND

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—

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(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 a police force;

(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;
  (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;

(e) is or has been a member of staff of the Authority;

(f) is a lay member (within the meaning given by paragraph 1 of schedule 1);

(g) is 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; or

(i) is or has been a member of the Serious Organised Crime Agency.

(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

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(b) the Scottish Ministers consider that, by reason of special circumstances, it is desirable in the public interest.

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, 3 years; and
(b) in the case of a reappointment, 2 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 Part 2 of the Companies (Northern Ireland) Order 1989 (S.I. 1989/2404 (N.I. 18));
(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.

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—

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(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.

(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.

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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.

(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 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.

SCHEDULE 5

(introduced by section 54(1))

SECTION 53(2)(B): RELEVANT EVENTS ETC.

1 For the purpose of section 53(2)(b)—

(a) relevant events are the events specified in the left-hand column of the following table; and

(b) the prescribed information, in relation to a relevant event, is the information in the right-hand column of that table opposite the event.

TABLE

Relevant event	***Prescribed information***

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A change of any of the names of the person against whom the football banning order is made	The change of name
The first use by that person, after the making of the order, of a name for himself or herself which was not disclosed by that person at the time of the making of the order	The newly used name
A change of that person's home address	The new home address
The acquisition by that person of a temporary address	The temporary address
A change of that person's temporary address or that person's ceasing to have one	The new temporary address or, as the case may be, the fact that the person has ceased to have a temporary address
The loss of that person's passport	That fact
That person's ceasing to have a passport	That fact
Receipt by that person of a new passport	The details of the passport
An application made by that person under section 57 for variation of the order	That fact
An application made by that person under section 58 for termination of the order	That fact
An appeal made by that person in relation to the order	That fact

2 In the table in paragraph 1—

"details", in relation to a passport, means—

(a) the number of the passport

(b) the dates of issue and expiry of the passport

(c) the name and date of birth given in the passport as being those of the passport holder

"home address", in relation to a person, means the address of the person's sole or main residence

"loss" includes theft or destruction

"new", in relation to a passport, includes replacement

"temporary address", in relation to a person, means the address (other than the person's home address) of a place at which the person intends to reside, or has resided, for a period of at least 4 weeks.

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SCHEDULE 6

(introduced by section 101)

MODIFICATIONS OF ENACTMENTS

PART 1

ACTS

The Police (Scotland) Act 1967 (c. 77)

1 (1) The 1967 Act is modified as follows.

(2) In section 17(8) (section to be without prejudice to other enactments conferring power on constables), the words "to section 18 of this Act, and" are repealed.

(3) Section 26(2C) (requirement of discipline regulations to specify starting point of disciplinary proceedings for purpose of examination by inspectors of constabulary) is repealed.

(4) In section 38 (temporary service outside police force on police duties)—

(a) in subsection (3A)—

(i) for "section 38A(3)" there is substituted " "subsection (3) of section 38A ";

(ii) the words "(ba) or" are repealed; and

(iii) for "the said section 38A(1)" there is substituted " "subsection (1) of that section "; and

(b) after that subsection there is inserted—

"(3AA) Notwithstanding anything in subsection (3) of section 38A of this Act, a person engaged on temporary service such as is mentioned in paragraph (bd) or (be), or service such as is mentioned in paragraph (bf), of subsection (1) of that section—

(a) shall continue to be a constable; and

(b) shall be treated for the purposes of the relevant enactments as if he were a constable of his police force.

(3AB) In subsection (3AA), "the relevant enactments" means sections 17(1), (4), (5) and (7A) and 43 of this Act.".

(5) In section 38A (constable engaged on service outside force)—

(a) in subsection (1)—

(i) in paragraph (b), the words "on which a person is engaged with the consent of the appropriate authority" are repealed;

(ii) after paragraph (bc) there is inserted—

"(bd) temporary service with the Scottish Police Services Authority on which a person is engaged with the consent of the appropriate authority;

(be) temporary service with the Scottish Crime and Drug Enforcement Agency on which a person is engaged with the consent of the appropriate authority;

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(bf) service as Director General or Deputy Director General of the Scottish Crime and Drug Enforcement Agency on which a person is engaged with the consent of the appropriate authority;

(bg) temporary service as an assistant inspector of constabulary under section 56 of the Police Act 1996 (c. 16) on which the person is engaged with the consent of the appropriate authority;";

(iii) in paragraph (d), for "Royal Ulster Constabulary" there is substituted " "Police Service of Northern Ireland "; and

(iv) in paragraph (f), for "2001" there is substituted " "2002 ";

(b) after subsection (5) there is inserted—

"(5A) If, when engaged on relevant service to which subsection (1)(bf) applies, a person is promoted by virtue of paragraph 1(7) or 2(7) of schedule 2 to the Police, Public Order and Criminal Justice (Scotland) Act 2006, paragraphs (a) and (b) of subsection (5) of this section apply as if the person had been promoted in his police force.";

(c) in subsection (6)(a), after "(bc)," there is inserted " "(bd), (be), (bf), (bg) "; and

(d) in subsection (7)(b), for "Royal Ulster Constabulary" there is substituted " "Police Service of Northern Ireland ".

(6) In section 40 (duty of police authorities and inspectors of constabulary to keep informed about the manner of dealing with police complaints), the words "and inspectors of constabulary" are repealed.

(7) Section 40A (which makes provision for the examination by inspectors of constabulary of the handling of complaints against constables) is repealed.

(8) In section 41(1) (assaults on constables etc.), paragraph (i) and, in paragraph (ii), the words "where he has, within the first-mentioned period, been convicted of an offence against this section," are repealed.

Commencement Information

I21 Sch. 6 para. 1 wholly in force at 1.4.2007; Sch. 6 para. 1 not in force at Royal Assent see s. 104; Sch. 6 para. 1(1)(2)(4)(a)(5)(a)(c)(d)(8) in force at 1.9.2006 by S.S.I. 2006/432, **art. 2(h)**; Sch. 6 para. 1 in force at 1.4.2007 insofar as not already in force by S.S.I. 2007/48 {art. 3(3)} (with art. 4)

The Criminal Justice Act 1988 (c. 33)

2 In section 142(3) of the Criminal Justice Act 1988 (power of justice of peace to authorise entry and search of premises for offensive weapons), for "subsection (1)(b)" there is substituted " "subsection (1)(c) ".

The Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c. 40)

3 In Part II of Schedule 2 to the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (increase in certain penalties), the entry relating to section 41(1) of the 1967 Act is repealed.

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The Criminal Procedure (Scotland) Act 1995 (c. 46)

4 (1) The 1995 Act is modified as follows.

(2) In section 18 (prints, samples etc. in criminal investigations), in each of subsections (3) and (4), after "(6)" there is inserted " "or (6A) ".

(3) In section 19A(3) (limitation on exercise of power to take samples etc from persons convicted of sexual and violent offences), for "19(1)(a) of this Act" there is substituted " "subsection (2) of section 19 of this Act in a case where the power conferred by that subsection was exercised by virtue of subsection (1)(a) of that section ".

The Police Act 1996 (c. 16)

5 (1) The Police Act 1996 is modified as follows.

(2) After section 60 (regulations for police federations), there is inserted—

"**60A Sections 59 and 60: special provision for the Scottish Police Services Authority and the Scottish Crime and Drug Enforcement Agency**

(1) For the purposes of sections 59 and 60, persons appointed as police members of the Scottish Crime and Drug Enforcement Agency in accordance with paragraph 7 of schedule 2 to the 2006 Act shall be treated as members of a police force in Scotland, and references in section 59 to police service shall be construed accordingly.

(2) The reference in section 59(2) to regulations made in accordance with section 26(2A) of the Police (Scotland) Act 1967 shall—

(a) in the case of police members of the Scottish Crime and Drug Enforcement Agency, be construed as a reference to regulations made in accordance with either of—

(i) section 23(2)(a) of the 2006 Act, and

(ii) section 26(2A) of the Police (Scotland) Act 1967 as applied to police members of that Agency by virtue of paragraph 9(1) of schedule 2 to the 2006 Act

(b) in the case of persons engaged on relevant service within paragraph (bd) of section 38A(1) of the Police (Scotland) Act 1967 (temporary service with the Scottish Police Services Authority), be construed as a reference to regulations made in accordance with section 26(2A) of the Police (Scotland) Act 1967 as applied to such persons by virtue of paragraph 10(10) of schedule 1 to the 2006 Act.

(3) The reference in section 60(3) to regulations under section 26 of the Police (Scotland) Act 1967 shall—

(a) in the case of police members of the Scottish Crime and Drug Enforcement Agency, be construed as a reference to regulations under either of—

(i) section 23 of the 2006 Act, and

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(ii) section 26 of the Police (Scotland) Act 1967 as applied to police members of that Agency by virtue of paragraph 9(1) of schedule 2 to the 2006 Act

(b) in the case of persons engaged on relevant service within paragraph (bd) of section 38A(1) of the Police (Scotland) Act 1967, be construed as a reference to regulations made under section 26 of the Police (Scotland) Act 1967 as applied to such persons by virtue of paragraph 10(10) of schedule 1 to the 2006 Act.

(4) For the purposes of paragraphs (c) and (d) of subsection (2) of section 60—

(a) the Scottish Police Services Authority shall be treated as a police authority, and

(b) the Director General of the Scottish Crime and Drug Enforcement Agency shall be treated as a chief officer of police,and the reference in paragraph (d) of that subsection to police purposes shall be construed accordingly.

(5) In this section, "the 2006 Act" means the Police, Public Order and Criminal Justice (Scotland) Act 2006.".

(3) In section 61 (Police Negotiating Board for the United Kingdom), in subsection (1), after paragraph (c) there is inserted—

"(ca) the Scottish Police Services Authority,

(cb) constables seconded to that Authority under paragraph 10(2) of schedule 1 to the Police, Public Order and Criminal Justice (Scotland) Act 2006 but not appointed to be police members of the Scottish Crime and Drug Enforcement Agency in accordance with paragraph 7 of schedule 2 to that Act,

(cc) persons seconded to that Authority under paragraph 10(3) of schedule 1 to that Act but not appointed as mentioned in paragraph (cb),

(cd) persons appointed as police members of the Scottish Crime and Drug Enforcement Agency in accordance with paragraph 7 of schedule 2 to that Act,".

(4) In section 62 (functions of the Board with respect to regulations)—

(a) in subsection (1A)—

(i) the words "regulations under section 26 or 27 of the Police (Scotland) Act 1967 (other than regulations relating to special constables)" become paragraph (a) of the subsection;

(ii) after that paragraph there is inserted—

"(b) regulations under section 23 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 or an order under paragraph 10(10) of schedule 1 to, or paragraph 9(1) of schedule 2 to, that Act,"

(iii) after "regulations", where last occurring, there is inserted " "or order "; and

(b) after that subsection there is inserted—

"(1AA) Before determining the terms and conditions on which an appointment mentioned in subsection (1AB) below is made, the Scottish Police Services Authority shall—

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(a) consult the Police Negotiating Board for the United Kingdom about any term or condition which relates to any of the matters mentioned in section 61(1) (other than pensions), and(b)take into consideration any recommendation made by the Board.

(1AB) Those appointments are—

(a) the appointment of a constable seconded as a member of the staff of the Authority under paragraph 10(2) of schedule 1 to the Police, Public Order and Criminal Justice (Scotland) Act 2006,

(b) the appointment of a person seconded as member of staff of the Authority under paragraph 10(3) of schedule 1 to that Act, and

(c) the appointment of a person as a police member of the Scottish Crime and Drug Enforcement Agency in accordance with paragraph 7 of schedule 2 to that Act.

(1AC) Before determining the terms and conditions on which the Director General or the Deputy Director General of the Scottish Crime and Drug Enforcement Agency is to be appointed, the Scottish Ministers shall—

(a) consult the Police Negotiating Board for the United Kingdom about any term or condition which relates to any of the matters mentioned in section 61(1) (other than pensions), and

(b) take into consideration any recommendation made by the Board.”; and

(c) in subsection (2), after “above” there is inserted “ “, or for the purposes of subsection (1AA) or (1AC) above, ”.

(5) In section 63 (Police Advisory Boards for England and Wales and for Scotland), after subsection (1) there is inserted—

“(1ZA) The Police Advisory Board for Scotland shall also advise the Scottish Ministers on general questions affecting—

(a) constables seconded to the Scottish Police Services Authority under paragraph 10(2) of schedule 1 to the Police, Public Order and Criminal Justice (Scotland) Act 2006 but not appointed to be police members of the Scottish Crime and Drug Enforcement Agency in accordance with paragraph 7 of schedule 2 to that Act,

(b) persons seconded to the Scottish Police Services Authority under paragraph 10(3) of schedule 1 to that Act but not appointed as mentioned in paragraph (a); or

(c) persons appointed as police members of the Scottish Crime and Drug Enforcement Agency in accordance with paragraph 7 of schedule 2 to that Act.”.

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Commencement Information

I22 Sch. 6 para. 5 wholly in force at 1.4.2007; Sch. 6 para. 5 not in force at Royal Assent see s. 104; Sch. 6 para. 5(4)(5) in force at 1.1.2007 by S.S.I. 2006/607, **art. 3**, Sch; Sch. 6 para. 5 in force at 1.4.2007 insofar as not already in force by S.S.I. 2007/84, **art. 3(3)**

VALID FROM 01/04/2007

The Police Act 1997 (c. 50)

6 (1) The Police Act 1997 is modified as follows.

(2) In section 93 (authorisations to interfere with property)—

(a) in subsection (3), after paragraph (e) there is inserted—

"(f) if the authorising officer is within subsection (5)(j), by a police member of the Scottish Crime and Drug Enforcement Agency appointed in accordance with paragraph 7 of schedule 2 to the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10).";

(b) in subsection (5), after paragraph (i) there is inserted—

"(j) the Director General of the Scottish Crime and Drug Enforcement Agency."; and

(c) in subsection (6), after paragraph (cb) there is inserted—

"(cc) in relation to the Director General of the Scottish Crime and Drug Enforcement Agency, means Scotland,".

(3) In section 94 (authorisations given in absence of authorising officer)—

(a) in subsection (2), after paragraph (g) there is inserted—

"(h) where the authorising officer is within paragraph (j) of that subsection, by a person mentioned in subsection (5).";

(b) in subsection (4)—

(i) in paragraph (a), the words "or (d)" and "or, as the case may be, section 5(4) of the Police (Scotland) Act 1967" are repealed; and

(ii) after that paragraph there is inserted—

"(aa) in the case of an authorising officer within paragraph (d) of section 93(5), means the person holding the rank of—

(i) deputy chief constable and, where there is more than one person in a police force who holds that rank, who is designated as the officer having the powers and duties conferred on a deputy chief constable by section 5A(1) of the Police (Scotland) Act 1967; or

(ii) assistant chief constable who is designated to act under section 5A(2) of that Act;"; and

(c) after subsection (4) there is inserted—

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"(5) The person referred to in subsection (2)(h) is—

(a) the chief constable whose relevant area (within the meaning of section 93(6)(b)) is the area to which the application for authorisation relates; or

(b) his designated deputy (within the meaning of subsection (4)(aa)); or

(c) where it is not reasonably practicable for the chief constable or his designated deputy to consider the application, a person holding the rank of assistant chief constable in the chief constable's police force.".

(4) In section 95(7) (designated deputy permitted to exercise authorising officer's powers), for "or (d)" there is substituted " "(d) or (j) ".

(5) In section 107(4) (power of Prime Minister to exclude matters from a report), after paragraph (b) there is inserted—

"(ba) the functions of the Scottish Crime and Drug Enforcement Agency;".

The Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7)

7 In schedule 3 to the Ethical Standards in Public Life etc. (Scotland) Act 2000 (devolved public bodies) there is inserted after the entry relating to Scottish Natural Heritage the following entry— " The Scottish Police Services Authority ".

VALID FROM 01/04/2007

The Regulation of Investigatory Powers Act 2000 (c. 23)

8 In section 76A(11) of the Regulation of Investigatory Powers Act 2000 (foreign surveillance operations: definitions) for paragraph (c) of the definition of "United Kingdom officer" there is substituted—

"(c) a police member of the Scottish Crime and Drug Enforcement Agency appointed in accordance with paragraph 7 of schedule 2 to the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10);"

VALID FROM 01/04/2007

The Regulation of Investigatory Powers (Scotland) Act 2000 (asp 11)

9 (1) The Regulation of Investigatory Powers (Scotland) Act 2000 is modified as follows.

(2) In section 9 (special provision for the Scottish Crime Squad)—

(a) subsection (1) is repealed

(b) in subsection (2), for "Scottish Crime Squad and constables seconded to it" there is substituted " "Scottish Crime and Drug Enforcement Agency "

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Changes to legislation: *Police, Public Order and Criminal Justice (Scotland) Act 2006 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(c) in subsection (3), for "Scottish Crime Squad" there is substituted " "Scottish Crime and Drug Enforcement Agency "

(d) in subsection (4)—

(i) for "Scottish Crime Squad" there is substituted " "Scottish Crime and Drug Enforcement Agency "; and

(ii) for "constable seconded to that Squad" there is substituted " "police member of that Agency ";

(e) subsections (5) and (6) are repealed; and

(f) the section heading becomes " "**Special provision for the Scottish Crime and Drug Enforcement Agency** ".

(3) In section 10 (authorisation of intrusive surveillance)—

(a) in subsection (1), after "force" there is inserted " "and the Director General of the Scottish Crime and Drug Enforcement Agency "; and

(b) in subsection (2), for "chief constable" there is substituted " "person ".

(4) In section 11 (grant of authorisations)—

(a) in subsection (2), at the beginning there is inserted " "Subject to section 12A below, ";

(b) for subsection (3) there is substituted—

"(3) The Director General of the Scottish Crime and Drug Enforcement Agency shall not grant an authorisation for the carrying out of intrusive surveillance except on an application made by a police member of that Agency.";

(c) in subsection (4)—

(i) in paragraph (a), after "force" there is inserted " "or is a police member of the Scottish Crime and Drug Enforcement Agency "; and

(ii) in paragraph (b), for "a police force," there is substituted—

"(i) where that individual is a member of a police force, a police force; or

(ii) where that individual is a police member of the Scottish Crime and Drug Enforcement Agency, that Agency,"; and

(d) in subsection (5), after "section" there is inserted " "and section 12A below ".

(5) In section 12 (grant of authorisations in cases of urgency)—

(a) in subsection (1), after "application" there is inserted " "(other than an application to which section 12A below applies) "

(b) in subsection (4), after "rank of" there is inserted " "deputy chief constable or "; and

(c) in subsection (5), for the words from "assistant" to the end there is substituted—

"(a) deputy chief constable and, where there is more than one person in a police force who holds that rank, who is designated as the officer having the powers and duties conferred on a deputy chief constable by section 5A(1) of the Police (Scotland) Act 1967 (c. 77); or

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(b) assistant chief constable who is designated to act under section 5A(2) of that Act.".

(6) After section 12 there is inserted—

"**12A Grant of authorisations in cases of urgency: Scottish Crime and Drug Enforcement Agency**

(1) This section applies in the case of an application to the Director General of the Scottish Crime and Drug Enforcement Agency for an authorisation for the carrying out of intrusive surveillance where the case is urgent.

(2) If it is not reasonably practicable, having regard to the urgency of the case, for the application to be considered by the Director General or the Deputy Director General of that Agency, the application may be made to and considered by—

(a) the chief constable of the police force to which subsection (3) below applies

(b) a person (if there is one) who is entitled, as a designated deputy of that chief constable, to exercise the functions in relation to that application of that chief constable; or

(c) if it is not reasonably practicable, having regard to the urgency of the case, for the application to be considered by a person such as is mentioned in paragraph (a) or (b) above, any person who is entitled under subsection (4) of section 12 above to act, for the purposes of that section, for that chief constable.

(3) This subsection applies to a police force if—

(a) in the case of an authorisation for the carrying out of intrusive surveillance in relation to any residential premises, those premises are in; and

(b) in the case of an authorisation for the carrying out of intrusive surveillance in relation to any private vehicle, the chief constable of that police is satisfied that the operation will commence in,the area of operation of that police force.

(4) In this section "designated deputy" has the same meaning as in section 12 above.".

(7) In section 14(5)(b) (meaning of "most senior relevant person"), for the words from "member" to the end there is substituted " "police member of the Scottish Crime and Drug Enforcement Agency, the Director General of that Agency. ".

(8) In section 15(7) (persons receiving a report when authorisation is quashed), after paragraph (a) there is inserted—

"(aa) in the case of an authorisation granted under section 12A above, to the chief constable mentioned in subsection (2)(a) of that section;".

(9) In section 16(1) (appeals), after "force" there is inserted " "or the Director General of the Scottish Crime and Drug Enforcement Agency ".

(10) In section 18 (information to be provided to the Surveillance Commissioners), for paragraph (b) there is substituted—

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"(b) the Director General, the Deputy Director General and every police member of the Scottish Crime and Drug Enforcement Agency,".

(11) In section 20(6) (meaning of "deputy" in relation to cancellations)—

(a) the words from "in", where it second occurs, to "constable", where it second occurs, become paragraph (a); and

(b) after those words there is inserted—

"(b) in relation to the Director General of the Scottish Crime and Drug Enforcement Agency, to the Deputy Director General of that Agency".

(12) In section 23(5)(b) (conduct taking place in challengeable circumstances), after "force" there is inserted " "or to the Scottish Crime and Drug Enforcement Agency ".

(13) In section 24(2)(b) (powers and duties in relation to which codes of practice must be issued), after "force" there is inserted " "or to the Scottish Crime and Drug Enforcement Agency ".

(14) In section 31(1) (interpretation), after the definition of "police force" there is inserted—

""police member", in relation to the Scottish Crime and Drug Enforcement Agency, means a person appointed as such a member in accordance with paragraph 7 of schedule 2 to the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10);"

VALID FROM 01/04/2007

The Scottish Public Services Ombudsman Act 2002 (asp 11)

10 (1) The Scottish Public Services Ombudsman Act 2002 is amended as follows.

(2) In schedule 2 (listed authorities)—

(a) the entry numbered 14 is repealed; and

(b) after the entry numbered 32 there is inserted—

"32A The Police Complaints Commissioner for Scotland.".

(3) In schedule 4 (matters which the Ombudsman must not investigate)—

(a) for paragraph 1(b) there is substituted—

"(c) by the Police Complaints Commissioner for Scotland,"; and

(b) after paragraph 15 there is inserted—

"16 Action taken—

(a) by a local authority in discharge of its functions as a police authority, or

(b) by any other person in discharge of the functions of a local authority as a police authority, by virtue of section 56(1) of the Local Government (Scotland) Act 1973 (c. 65).".

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Changes to legislation: *Police, Public Order and Criminal Justice (Scotland) Act 2006 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

VALID FROM 01/04/2007

The Freedom of Information (Scotland) Act 2002 (asp 13)

11 In schedule 1 to the Freedom of Information (Scotland) Act 2002 (public authorities subject to requirements to provide information)—

(a) there is inserted after the entry numbered 52 the following entry—

"52A The Scottish Police Services Authority, but only in respect of information relating to the provision of the police support services within the meaning of section 3(2) of the Police, Public Order and Criminal Justice (Scotland) Act 2006."; and

(b) there is inserted after the entry numbered 75 the following entry—

"75A The Police Complaints Commissioner for Scotland.".

The Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4)

12 In schedule 2 to the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (specified authorities), there is inserted after the entry relating to Scottish Natural Heritage the following entry— " Scottish Police Services Authority ".

VALID FROM 01/04/2007

The Serious Organised Crime and Police Act 2005 (c. 15)

13 (1) The Serious Organised Crime and Police Act 2005 is modified as follows.

(2) In section 3(5)(d) (meaning of "special police force"), for "Scottish Drug Enforcement Agency" there is substituted " "Scottish Crime and Drug Enforcement Agency ".

(3) In section 23 (mutual assistance between SOCA and law enforcement agencies: voluntary arrangements)—

(a) for subsection (5) there is substituted—

"(5) In subsection (4)(a), "constables or members of staff" in relation to the Scottish Crime and Drug Enforcement Agency means police members or support staff members of that Agency.";

(b) in subsection (7), for paragraph (b) there is substituted—

"(b) a police member or support staff member of the Scottish Crime and Drug Enforcement Agency,";

(c) in subsection (10)(b) for "Scottish Drug Enforcement Agency" there is substituted " "Scottish Crime and Drug Enforcement Agency "; and

(d) in subsection (11)—

(i) after the definition of "police force" there is inserted—

""police member", in relation to the Scottish Crime and Drug Enforcement Agency, means a person appointed as such a member in accordance with paragraph 7 of schedule 2 to the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10);";

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(ii) in paragraph (f) of the definition of "relevant police authority", for "Scottish Drug Enforcement Agency" there is substituted " "Scottish Crime and Drug Enforcement Agency "; and

(iii) after the definition of "relevant police authority" there is inserted—

""support staff member", in relation to the Scottish Crime and Drug Enforcement Agency, means a person appointed as such a member in accordance with paragraph 8 of schedule 2 to the Police, Public Order and Criminal Justice (Scotland) Act 2006;".

(4) In section 24(2)(b) (bodies to which section 24 applies), for "Scottish Drug Enforcement Agency" there is substituted " "Scottish Crime and Drug Enforcement Agency ".

(5) In section 25 (directed arrangements: Scotland)—

(a) in subsection (2)(b), for "Scottish Drug Enforcement Agency" there is substituted " "Scottish Crime and Drug Enforcement Agency "

(b) in subsection (3)(b)—

(i) for "Director of the Scottish Drug Enforcement Agency" there is substituted " "Director General of the Scottish Crime and Drug Enforcement Agency "; and

(ii) for "constables or other persons" there is substituted " "police members or support staff members "

(c) in subsection (4), in both paragraphs (a) and (b), for "Scottish Drug Enforcement Agency" there is substituted " "Scottish Crime and Drug Enforcement Agency "; and

(d) after subsection (4), there is inserted—

"(5) In this section, "police member" and "support staff member" have the same meaning as in section 23.".

(6) In section 31(5)(d) (meaning of "relevant authority" in section 31), for "Scottish Drug Enforcement Agency, means" there is substituted " "Scottish Crime and Drug Enforcement Agency, means the Director General of ".

(7) In section 42 (interpretation)—

(a) in subsection (1), for paragraph (g) of the definition of "chief officer" there is substituted—

"(g) in relation to the Scottish Crime and Drug Enforcement Agency, the Director General of that Agency"; and

(b) subsection (2) is repealed.

(8) In section 47 (person having powers of constable: exercise of such powers in Scotland and Northern Ireland)—

(a) in subsection (3)(a), for "Director of the Scottish Drug Enforcement Agency" there is substituted " "Director General of the Scottish Crime and Drug Enforcement Agency "

(b) in subsection (4)(a), for "Deputy Director" there is substituted " "Deputy Director General "; and

(c) in subsection (7), the definition of "the Scottish Drug Enforcement Agency" and "the Director" is repealed.

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(9) In section 82(5) (persons who are protection providers), for paragraph (f), there is substituted—

"(f) the Director General of the Scottish Crime and Drug Enforcement Agency;"

(10) In section 94 (interpretation of Chapter 4), subsection (9) is repealed.

(11) In Schedule 5—

(a) in paragraph 20—

(i) in sub-paragraph (1), the words "is or" are repealed and for "Scottish Drug Enforcement Agency" there is substituted " "organisation known as the Scottish Drug Enforcement Agency and established under section 36(1)(a)(ii) of the Police (Scotland) Act 1967 (c. 77), that is to say a person who was engaged on central service (as defined by section 38(5) of that Act) and was appointed by the Scottish Ministers to exercise control in relation to the activities carried out in exercise of that organisation's functions "; and

(ii) in sub-paragraph (2), the words "is or" are repealed; and

(b) after paragraph 20 there is inserted—

"20A(1) A person who is or has been the Director General of the Scottish Crime and Drug Enforcement Agency.

(2) A person who is or has been under the direction and control of the Director General of the Scottish Crime and Drug Enforcement Agency.".

VALID FROM 01/04/2007

PART 2

SUBORDINATE LEGISLATION

The Regulation of Investigatory Powers (Prescription of Offices, Ranks and Positions) (Scotland) Order 2000 (S.S.I. 2000/343)

14 In the Schedule to the Regulation of Investigatory Powers (Prescription of Offices, Ranks and Positions) (Scotland) Order 2000, for "The Operational and Intelligence Group of the Scottish Drug Enforcement Agency" there is substituted " "The Scottish Crime and Drug Enforcement Agency ".

Status:
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Changes to legislation:
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