

SCHEDULE 1

Regulation 36(5)

Further provision in relation to investigations under regulation 36 (investigations by the Commissioner)

PART 1

Modifications

1. The provisions specified in paragraphs 2 to 8 apply in relation to investigations under regulation 36 with the modifications specified in those paragraphs.

Application of the Criminal Justice and Public Order Act 1994

2.—(1) Sections 34 to 38 of the Criminal Justice and Public Order Act 1994⁽¹⁾, as modified by the provisions of the Criminal Justice and Public Order Act 1994 (Application to the Armed Forces) Order 2009⁽²⁾, apply in relation to such investigations with the following modifications.

(2) Section 38 applies as if the definitions of “service policeman” and “authorised place of detention” were omitted.

(3) Any reference in sections 34 to 37 to—

- (a) a service policeman is to be read as a reference to a person designated under regulation 36(2) of these Regulations;
- (b) an authorised place of detention is to be read as a reference to premises used for the purposes of the functions of the Service Police Complaints Commissioner.

Application of Part 3 and 4 of the Armed Forces Act 2006

3.—(1) Parts 3 and 4 of the 2006 Act apply in relation to such investigations with the following modification.

(2) Any reference in those Parts to a service policeman is to be read as a reference to a person designated under regulation 36(2) of these Regulations.

Application of the Criminal Procedure and Investigations Act 1996 (Code of Practice) (Armed Forces) Order 2009

4.—(1) The Criminal Procedure and Investigations Act 1996 (Code of Practice) (Armed Forces) Order 2009⁽³⁾ applies in relation to such investigations with the following modifications.

(2) Any reference to a service policeman in that Order is to be read as a reference to a person designated under regulation 36(2) of these Regulations.

(3) Article 1 of that Order and paragraph 2 of the Schedule (Code of Practice) are to be read as if the definitions of “service police force”, “service policeman” and “tri-service serious crime unit” were omitted.

(4) The Order is to be read as if article 2 were omitted.

(5) The Schedule is to be read as if—

- (a) in paragraph 2(1), for the definition of “disclosure officer” there were substituted—
““disclosure officer” means the investigating officer responsible for—

(1) 1994 c. 33.

(2) S.I. 2009/990. Sections 34 to 38 of the 1994 Act are modified by Article 2 of, and Schedule 1 and 2 to the Order.

(3) S.I. 2009/989, amended by S.I. 2018/682 and 2022/1051.

- (a) examining material retained by the Service Police Complaints Commissioner during the service investigation;
 - (b) revealing material to the Director during the service investigation and any proceedings in a service court resulting from it; and
 - (c) certifying that he has done this;”;
- (b) in paragraph 3(1), for “within each service police force or the tri-service serious crime unit” there were substituted “established by the Service Police Complaints Commissioner”;
- (c) in paragraph 3(3) the references to—
- (i) the Provost Marshal of each of the service police forces and the Provost Marshal for serious crime; and
 - (ii) the Provost Marshals,
- were references to the Service Police Complaints Commissioner;
- (d) in paragraph 3(7), for “either his officer commanding or the officer in charge of service investigations for the service police force concerned, or, as the case may be, the tri-service serious crime unit” there were substituted “the Service Police Complaints Commissioner”.

Application of the Police and Criminal Evidence Act 1984 (Armed Forces) Order 2009

5.—(1) The Police and Criminal Evidence Act 1984 (Armed Forces) Order 2009(4) applies in relation to such investigations with the following modifications.

- (2) The Order is to be read as if any reference to—
- (a) an authorising service policeman is a reference to an authorising officer;
 - (b) a service policeman (other than in the expression “authorising service policeman”) is a reference to a person designated under regulation 36(2) of these Regulations;
 - (c) a service police establishment is a reference to premises used for the purpose of the functions of the Service Police Complaints Commissioner;
 - (d) a Provost Marshal of a service police force is as a reference to the Service Police Complaints Commissioner.
- (3) Article 2 of that Order is to be read as if the definitions of “service police establishment” and “service policeman” were omitted.
- (4) Article 3 of that Order is to be read as if—
- (a) in paragraph (1) for “he is a service policeman of or above the rank of lieutenant commander, military or marine major or squadron leader”, there were substituted—
“that person is the Service Police Complaints Commissioner or a senior investigating officer”;
 - (b) in paragraph (2) for “he is a service policeman of or above the rank of naval lieutenant, military or marine captain or flight lieutenant” there were substituted—
“that person is the Service Police Complaints Commissioner or an investigating officer who is at least a deputy senior investigating officer”;
 - (c) in paragraph (3) for “any service policeman may act as an authorising service policeman if he is senior in rank to the service policeman seeking authorisation” there were substituted—

(4) [S.I. 2009/1922](#), amended by [S.I. 2013/2554](#) and [2022/1051](#).

“any investigating officer may act as an authorising officer if that officer is more senior than the officer seeking authorisation”.

(5) Article 15J is to be read as if any reference to a service police force or the tri-service serious crime unit were references to the Service Police Complaints Commissioner.

Application of the Armed Forces (Disposal of Property) Regulations 2009

6.—(1) The Armed Forces (Disposal of Property) Regulations 2009⁽⁵⁾ apply in relation to such investigations with the following modifications.

(2) Regulation 2 of those Regulations is to be read as if the definitions of “service police” and “a service policeman” were omitted.

(3) Any reference in those Regulations to—

(a) a service policeman, is to be read as a reference to a person designated under regulation 36(2) of these Regulations;

(b) the service police is to be read as a reference to the Service Police Complaints Commissioner.

Application of the Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009

7.—(1) The Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order 2009⁽⁶⁾ applies in relation to such investigations with the following modifications.

(2) Any reference in that Order to a service policeman (other than in the expression “authorising service policeman”) is to be read as a reference to a person designated under regulation 36(2) of these Regulations.

(3) Any reference in that Order to an authorising service policeman is to be read as a reference to the Service Police Complaints Commissioner or to an investigating officer who is at least a deputy senior investigating officer.

(4) Article 2 of that Order is to be read as if the definition of “authorising service policeman” were omitted.

(5) Article 3(2) of that Order is to be read as if—

(a) for paragraph (a) there were substituted—

“(a) documentary evidence that they have been designated under regulation 36(2) of the Service Police (Complaints etc.) Regulations 2023,”;

(b) in paragraph (b) the words “whether he is in uniform or not” were omitted.

(6) That Order is to be read as if any reference to a person’s rank or rate, or to the name of a person’s unit or to its address and telephone number, were omitted.

Application of the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021

8.—(1) The Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021⁽⁷⁾ applies in relation to the Service Police Complaints Commissioner’s functions under these Regulations in relation to such investigations with the following modifications.

(5) [S.I. 2009/1923](#), amended by [S.I. 2022/1051](#).

(6) [S.I. 2009/2056](#), amended by [S.I. 2012/2919](#) and [2014/934](#).

(7) [2021 asp 3](#).

(2) Subject to sub-paragraph (3), any reference in that Act to “a service police force” is to be read as a reference to “the Service Police Complaints Commissioner”.

(3) Any reference in that Act to “a member of a service police force” is to be read as a reference to “a person designated under regulation 36(2) of the Service Police (Complaints etc.) Regulations 2023”.

PART 2

Consequential Amendments

Amendment of the Police Act 1997

9.—(1) Part 3 of the Police Act 1997⁽⁸⁾ is amended as follows.

(2) In section 93 (authorisations to interfere with property etc.)—

(a) in subsection (3), after paragraph (aaa) insert—

“(aab) if the authorising officer is within subsection (5)(edb), by the investigating officer designated to take charge of the investigation under regulation 36(2)(a) of the Service Police (Complaints etc.) Regulations 2023 or a person designated under paragraph (2)(b) of that regulation to assist the person designated under sub-paragraph (a);”;

(b) after subsection (3ZA) insert—

“(3ZB) An authorisation under this section may be given by the authorising officer within subsection (5)(edb) only where it relates to the carrying out of the functions of the Service Police Complaints Commissioner.”;

(c) in subsection (5), after paragraph (eda) insert—

“(edb) the Service Police Complaints Commissioner;”;

(d) in subsection (6A) substitute “or (eda)” with “, (eda) or (edb)”.

(3) In section 94 (authorisations given in absence of authorising officer) in subsection (2), after paragraph (dca) insert—

“(dcb) where the authorising officer is within paragraph (edb) of that subsection, by a person designated by the Service Police Complaints Commissioner for the purposes of this section;”.

Amendment of the Regulation of Investigatory Powers Act 2000

10.—(1) Parts 2 and 4 of the Regulation of Investigatory Powers Act 2000⁽⁹⁾ are amended as follows.

(2) In section 32 (authorisation of intrusive surveillance)—

(a) after subsection (3A), insert—

“(3B) In the case of an authorisation granted by the Service Police Complaints Commissioner, the authorisation is necessary on grounds falling within subsection (3) only if it is necessary for the purpose of carrying out the functions of the Commissioner.”.

(b) in subsection (6), after paragraph (ia) insert—

“(ib) the Service Police Complaints Commissioner;”.

⁽⁸⁾ 1997 c. 50.

⁽⁹⁾ 2000 c. 23.

- (3) In section 33 (rules for grant of authorisations)—
- (a) after subsection (2) insert—
- “(2A) A person who is a designated person for the purposes of section 28 or 29 by reference to that person’s office or position as a member of staff of the Service Police Complaints Commissioner, or as the Commissioner, must not grant an authorisation except on an application made by a person designated under regulation 36(2) of the 2023 Regulations;”;
- (b) after subsection (3ZZA) insert—
- “(3ZZB) The Service Police Complaints Commissioner must not grant an authorisation for the carrying out of intrusive surveillance except—
- (a) on an application made by a person designated under regulation 36(2) of the 2023 Regulations; and
- (b) in the case of an authorisation for the carrying out of any intrusive surveillance in relation to any residential premises, where those premises are in the area of operation of a police force mentioned in subsection (6)(d).”;
- (c) in subsection (5)(a), after “member of a police force,” insert “a person designated under regulation 36(2) of the 2023 Regulations,”.
- (4) In section 34 (grant of authorisations in the senior officer’s absence)—
- (a) in subsection (1)(a)(10), after “a member of the tri-service serious crime unit,” in the second place where those words occur, insert “a person designated under regulation 36(2) of the 2023 Regulations,”;
- (b) in subsection (2)(a)(11), after “Provost Marshal for serious crime or” insert “the Service Police Complaints Commissioner or”;
- (c) in subsection (4), after paragraph (ha), insert—
- “(hb) a person is entitled to act for the Service Police Complaints Commissioner if the person is designated by the Commissioner for the purposes of this paragraph as a person entitled so to act in an urgent case;”;
- (5) In section 35 (notification of authorisations for intrusive surveillance)—
- (a) in subsection (1)(12) after “tri-service serious crime unit,” insert “Service Police Complaints Commissioner,”;
- (b) in subsection (10)(13)—
- (i) in the opening words, after the words “tri-service serious crime unit,” insert “Service Police Complaints Commissioner,”; and
- (ii) after paragraph (aa) insert—
- “(ab) the Service Police Complaints Commissioner;”.
- (6) In section 36 (approval required for authorisation to take effect)—
- (a) in subsection (1) after paragraph (aa)(14) insert—
- “(ab) a person who has been designated under regulation 36(2) of the 2023 Regulations;”;

(10) Paragraph (a) was amended to insert “members of the tri service crime unit” by paragraph 16(2) of Schedule 5 to the 2021 Act; there are other amendments that are not relevant to these Regulations.

(11) Paragraph (a) was amended to insert “as Provost Marshal for serious crime” by paragraph 16(3) of Schedule 5 to the 2021 Act.

(12) Subsection (1) was amended for the purposes of the tri-service serious crime unit by paragraph 17(2) of Schedule 5 the 2021 Act; there are other amendments not relevant to these Regulations.

(13) Subsection (10) was amended to add the words “tri-service serious crime unit”, by paragraph 17(3)(a) of Schedule 5 to the 2021 Act; there are other amendments not relevant to these Regulations.

(14) Paragraph (aa) was inserted by paragraph 18(2) of Schedule 5 to the 2021 Act.

(b) in subsection (6)(15) after paragraph (aa) insert—

“(ab) where the authorisation was granted by the Service Police Complaints Commissioner or by a person entitled to act for the Commissioner by virtue of section 34(4)(hb), the Commissioner;”.

(7) In section 37(1) (quashing of police and customs authorisations etc.), after paragraph (a) insert—

“(ab) a person designated under regulation 36(2) of the 2023 Regulations;”.

(8) In section 46(3) (restrictions on authorisations extending to Scotland), after paragraph (dza) insert—

“(dzb) the Service Police Complaints Commissioner;”.

(9) In section 48 (interpretation of Part II), in subsection (1) at the appropriate place insert—

“the 2023 Regulations” means the Service Police (Complaints etc.) Regulations 2023;”.

(10) In section 65 (the Tribunal), in subsection (6) after paragraph (c) insert—

“(cza) the Service Police Complaints Commissioner;”.

(11) In section 68(7) (Tribunal procedure), after paragraph (da) insert—

“(db) the Service Police Complaints Commissioner and every member of the Commissioner’s staff;”.

(12) In Part 1 of Schedule 1 (authorisation of surveillance and covert human intelligence sources: relevant public authorities for the purposes of section 28 and 29), after paragraph 19A insert—

“**19B.** The Service Police Complaints Commissioner.”.

Amendment of the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010

11.—(1) The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010(16) is amended as follows.

(2) In Part 1 of Schedule 1 (offices etc and restrictions in respect of public authorities specified in Part 1 of Schedule 1 to the Act), after the entry relating to the Royal Air Force Police, insert—

“The Service Police Complaints Commissioner	A senior investigating officer	An investigating officer	Paragraph (b)”
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(15) Section 36(6) is amended by section 12 of, and paragraph 18(3)(a) of Schedule 5 to, the 2021 Act; there are other amendments not relevant to these Regulations.

(16) [S.I. 2010/521](#).