

# **SERIOUS ORGANISED CRIME AND POLICE ACT 2005**

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## **EXPLANATORY NOTES**

### **THE ACT**

#### *Commentary on Sections*

#### *Chapter 3: SOCA: Miscellaneous and supplementary*

#### *Section 55 and Schedule 2: Complaints and misconduct*

152. *Subsection (1)* introduces Schedule 2 which amends Part 2 of the Police Reform Act 2002 in order to extend to SOCA the arrangements therein for the investigation of complaints and conduct matters. Such arrangements include oversight by the Independent Police Complaints Commission (IPCC).
153. *Paragraph 8* of Schedule 2 inserts a new section 26A into Part 2 of the 2002 Act. This section places a duty on the IPCC and SOCA to enter into an agreement as to how the IPCC will operate in relation to SOCA staff and the procedures that will be put into practice. No changes may be made to this agreement without the Secretary of State's agreement, and it may not be terminated unless another agreement has been made to replace it. The IPCC will not have any jurisdiction over matters relating to the direction and control of SOCA. The provisions of Part 2 of the 2002 Act, as amended, will only apply in relation to complaints and conduct matters arising from SOCA's activities in England and Wales.
154. In accordance with the Police (Northern Ireland) Act 1998, the Police Ombudsman has jurisdiction in Northern Ireland. *Subsection (2)* inserts new section 60ZA into the 1998 Act. This provides that SOCA and the Ombudsman may enter into an agreement for the establishment of complaints procedures similar to those that apply in respect of the PSNI. There is a reserve power of the Secretary of State for Northern Ireland to establish complaints procedures in the event that SOCA and the Ombudsman fail to reach an agreement.
155. There is currently no independent police complaints mechanism in Scotland, but any criminal allegations are investigated by the Lord Advocate and Procurator Fiscal in the normal way. Allegations concerning non-criminal matters will be handled by SOCA's internal complaint process.

#### *Section 56: Application of discrimination legislation to SOCA seconded staff*

156. *Section 56* is concerned with certain provisions of sex, race and disability discrimination legislation having effect in different parts of the United Kingdom and the operation of those provisions in relation to persons seconded to SOCA to serve as members of its staff. *Subsection (1)* provides that for the purposes of the provisions listed in subsection (2) SOCA is to be treated as the employer as respects any act done by the Agency in relation to a seconded person. *Subsection (3)* provides that for the purposes

of the provisions listed in subsection (4) SOCA is to be treated as the employer of a seconded person as respects any act done by that person in the performance of his duties).

***Section 57: Assaults or obstruction in connection with joint investigation teams***

157. This section sets out various offences relating to assaulting or obstructing members of an international joint investigation team which is led by a member of SOCA's staff, in accordance with obligations under international agreements to which the United Kingdom is a party. They parallel similar offences in relation to international joint investigation teams provided for in Part 6 of the Police Reform Act 2002.
158. *Subsection (2)* makes it an offence to assault a member of a team who is carrying out his functions as a member of that team. *Subsection (3)* makes it an offence to resist or wilfully obstruct a member of a team who is carrying out such functions.
159. *Subsections (4)* and *(5)* provide for the penalties for the two offences. In the case of an offences under *subsection (2)* the maximum penalty is a term of imprisonment of 51 weeks or a fine at level 5 on the standard scale (currently £5000) or both, while in the case of a *subsection (3)* offence the maximum penalty is a term of imprisonment of 51 weeks or a fine at level 3 on the standard scale (currently £1000) or both. *Subsections (7)* and *(8)* set out the maximum term of imprisonment applicable in Scotland and Northern Ireland respectively.

***Section 58: Transfers to SOCA***

160. *Section 58* introduces Schedule 3. This provides for the Secretary of State to make a scheme for transferring to SOCA relevant staff, property, rights and liabilities from NCS, NCIS, the NCS Service Authority, the NCIS Service Authority, HMRC and the Immigration Service.

***Section 59 and Schedule 4: Minor and consequential amendments relating to SOCA***

161. This section gives effect to Schedule 4, which makes minor and consequential amendments to other enactments in connection with the establishment of SOCA. The majority of these amendments concern the replacement of statutory references to NCS and NCIS with references to SOCA.