

SCHEDULE 7
MINOR AND CONSEQUENTIAL AMENDMENTS

PART 1

AMENDMENTS RELATING TO PART 1

Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10)

- 33 (1) The Police, Public Order and Criminal Justice (Scotland) Act 2006 is amended as follows.
- (2) In section 34 (“relevant complaint” and “person serving with police”)—
- (a) in subsection (1), after “is” insert “made,”,
 - (b) in subsection (2)—
 - (i) for “written statement” substitute “statement (whether oral, written or electronic)”,
 - (ii) for paragraphs (a) to (e) substitute—
 - “(a) by the Authority;
 - (b) by the Police Service; or”,
 - (c) after subsection (2), insert—
 - “(2A) A “complaint” may relate to—
 - (a) any action taken, or failed to be taken, by or on behalf of the subject of the complaint;
 - (b) the standard of any service which the subject of the complaint has provided or failed to provide.”.
- (3) In section 35 (examination of manner of handling of complaint)—
- (a) in subsection (3), after paragraph (b) insert “; and
 - (c) if the Commissioner considers it appropriate to do so, publish the report drawn up under paragraph (b) in such manner as the Commissioner considers appropriate.”,
 - (b) in subsection (8)(b), for the words from “any” to “authority” substitute “the Authority where the appropriate authority is the chief constable”,
 - (c) in subsection (10), for the words from “proceedings” to “procedures)” substitute “procedures made by regulations made under section 48 of the Police and Fire Reform (Scotland) Act 2012 (asp 8) for dealing with constables whose standard of behaviour or performance is unsatisfactory”.
- (4) In section 36—
- (a) in subsection (1), after “subsection” insert “(1A) or”,
 - (b) after subsection (1) insert—
 - “(1A) This subsection applies to a complaint handling review if—
 - (a) it relates or, if it took place, would relate to a relevant complaint in respect of which the appropriate authority in relation to the complaint—
 - (i) has concluded its consideration of the complaint;

Status: This is the original version (as it was originally enacted).

- (ii) has communicated its findings to the complainer;
- (b) a period of 3 months or longer has elapsed between the date on which those findings were so communicated and the date on which the Commissioner was requested to carry out the complaint handling review; and
- (c) the Commissioner is not satisfied that there are exceptional circumstances which justified the delay in requesting the review.”.

(5) After section 40, insert—

“40A Arrangements for handling relevant complaints

- (1) The Commissioner must—
 - (a) keep under review all arrangements maintained by the Commissioner, the Authority and the chief constable for the handling of relevant complaints; and
 - (b) seek to secure that those arrangements—
 - (i) are efficient and effective;
 - (ii) contain and manifest an appropriate degree of independence; and
 - (iii) are adhered to.
- (2) The Commissioner may make such recommendations, or give such advice, for the modification of—
 - (a) the arrangements mentioned in subsection (1); or
 - (b) the practice of the Authority or the chief constable in relation to other matters,

as appear from the carrying out of the Commissioner’s other functions to be necessary or desirable.”.
- (6) In section 41 (appropriate authority in relation to complaint), for paragraphs (a) to (j) of subsection (1) substitute—
 - “(a) the Authority in cases where the complaint is about an act or omission by—
 - (i) the Authority;
 - (ii) a senior officer of the Police Service; or
 - (iii) a member of the Authority’s staff; and
 - (b) the chief constable in cases where the complaint is about an act or omission by—
 - (i) the Police Service;
 - (ii) a constable of the Police Service who is not a senior officer; or
 - (iii) a member of the police staff.”.
- (7) In section 43 (reports to Scottish Ministers)—
 - (a) in subsection (4), for “42(d)” substitute “40A(2)”,
 - (b) in subsection (6)—
 - (i) in paragraph (a), for the words from “all” to “Act” substitute “the Authority, the chief constable and the inspectors of constabulary

Status: This is the original version (as it was originally enacted).

- appointed under section 71 of the Police and Fire Reform (Scotland) Act 2012 (asp 8)”,
- (ii) in paragraph (b), for “all relevant authorities and to” substitute “the Authority, the chief constable and”,
- (c) after subsection (7) insert—
- “(8) Nothing in this section requires or authorises the Commissioner to report on the carrying out of a particular investigation carried out on the direction of the appropriate prosecutor in pursuance of paragraph (b) of section 33A.”.
- (8) In section 44 (provision of information to the Commissioner)—
- (a) in subsection (1), for “A relevant authority” substitute “The Authority and the chief constable”,
- (b) in subsection (2)—
- (i) for “A relevant authority” substitute “The Authority and the chief constable”,
- (ii) for “that person” (in paragraph (a)) substitute “the Authority or, as the case may be, the chief constable”,
- (c) in subsection (3), for “any person” substitute “the Authority or the chief constable”,
- (d) in subsection (4)—
- (i) for “a relevant authority” substitute “the Authority or the chief constable”,
- (ii) for “the authority” substitute “the Authority or, as the case may be, the chief constable”.
- (9) In section 45 (power of Commissioner to issue guidance)—
- (a) in subsection (1)(a), for “relevant authorities” substitute “the Authority or the chief constable”,
- (b) in subsection (2), for paragraph (a) substitute—
- “(a) the Authority and the chief constable;”.
- (10) In section 46 (disclosure of information), after subsection (5) insert—
- “(6) Nothing in this section requires or authorises the disclosure of any information relating to a particular investigation carried out by the Commissioner on the direction of the appropriate prosecutor in pursuance of paragraph (b) of section 33A (unless the appropriate prosecutor consents to such disclosure).”.
- (11) For section 47 substitute—

“47 Interpretation of Chapter 2

In this Chapter—

- “appropriate prosecutor” means the Lord Advocate or procurator fiscal;
- “the Authority” means the Scottish Police Authority;
- “chief constable” means the chief constable of the Police Service;
- “the Commissioner” means the Police Investigations and Review Commissioner;
- “constable” means a constable of the Police Service;

Status: This is the original version (as it was originally enacted).

“financial year” means each yearly period ending with 31 March;
“firearm” has the meaning given by section 57(1) of the Firearms Act 1968 (c.27);
“member of the Authority’s staff” and “member of the police staff” have the same meanings as in the Police and Fire Reform (Scotland) Act 2012 (asp 8);
“person serving with the police” means—
 (a) a constable of the Police Service;
 (b) a member of the police staff; or
 (c) a member of the Authority’s staff;
“Police Service” means the Police Service for Scotland;
“relevant complaint” has the meaning given by section 34;
“senior officer” has the same meaning as in the Police and Fire Reform (Scotland) Act 2012.”.

- (12) In section 52(1) (application for football banning order)—
 (a) in the opening words, for “a police force” substitute “the Police Service of Scotland”,
 (b) paragraphs (a) and (b) are repealed.
- (13) In section 57(3) (variation of football banning order)—
 (a) in paragraph (b), for the words from “police” to “resides” substitute “Police Service of Scotland”,
 (b) paragraphs (c) and (d) are repealed.
- (14) In section 69(1) (interpretation), in the definition of “the football banning orders authority”, for the words from “police force” to “area” substitute “Police Service of Scotland”.
- (15) In section 103(4)(a) (subordinate legislation)—
 (a) “or”, where second occurring, is repealed, and
 (b) after “schedule 2” insert “or paragraph 7A(8) or 7B(4) of schedule 4 or regulations under section 41D(1)”.
- (16) For the title of schedule 4 substitute—

“THE POLICE INVESTIGATIONS AND REVIEW COMMISSIONER”.

- (17) In schedule 4—
 (a) in paragraph 2(1)—
 (i) in sub-paragraph (b), for “a police force” substitute “the Police Service (or of a police force previously maintained under the [Police \(Scotland\) Act 1967 \(c.77\)](#))”,
 (ii) after sub-paragraph (d) insert—
 “(da) is or has been a member of the Authority;”,
 (iii) in sub-paragraph (e), after “Authority” insert “or has been a member of staff of the body which was known as the Scottish Police Services Authority”,
 (iv) in sub-paragraph (g) after “been” insert “employed as a member of police staff or as a member of the Authority’s staff or has been”,

Status: This is the original version (as it was originally enacted).

- (b) in paragraph 3—
 - (i) in sub-paragraph (2)(a), for “3” substitute “5”,
 - (ii) in sub-paragraph (2)(b), for “2” substitute “3”,
- (c) after paragraph 7 insert—

“Staff officers

- 7A (1) The Commissioner may make arrangements for constables of the Police Service to be appointed to serve as members of the Commissioner’s staff.
- (2) The Commissioner may make arrangements for a person falling within sub-paragraph (3) to be appointed to serve as a member of the Commissioner’s staff.
- (3) 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;
 - (c) the City of London police force;
 - (d) the Police Service of Northern Ireland;
 - (e) 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 \(c.4\)](#);
 - (f) the British Transport Police Force;
 - (g) the Civil Nuclear Constabulary;
 - (h) the States of Jersey Police Force;
 - (i) the salaried police force of the Island of Guernsey; or
 - (j) the Isle of Man Constabulary.
- (4) A constable or other person appointed under arrangements made under sub-paragraph (1) or (2) is to be appointed on such terms and conditions (including as regards remuneration, allowances and expenses) as the Commissioner determines.
- (5) The Commissioner’s determination under sub-paragraph (4) may be made by reference to provision made by regulations made under section 48 of the [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#).
- (6) A constable or other person appointed under arrangements made under sub-paragraph (1) or (2)—
- (a) has all the powers and privileges of a constable throughout Scotland; and
 - (b) is subject to the direction and control of the Commissioner.
- (7) The Commissioner is liable in respect of any unlawful conduct on the part of any constable or other person appointed under arrangements made under sub-paragraph (1) or (2) in the carrying out (or purported carrying out) of that person’s

Status: This is the original version (as it was originally enacted).

functions in the same manner as an employer is liable in respect of any unlawful conduct on the part of an employee in the course of employment.

- (8) The Scottish Ministers may by order apply any provision of the Police and Fire Reform (Scotland) Act 2012 or any other enactment relating to constables (including any such provision or other enactment creating offences against or as regards constables), with such modifications as are considered appropriate, in relation to a person appointed under arrangements made under sub-paragraph (2).

Staff involved in investigations

- 7B (1) The Commissioner may designate—
- (a) any member of the Commissioner’s staff appointed under paragraph 7 or 7A to take charge of any investigation on behalf of the Commissioner; and
 - (b) other members of the Commissioner’s staff to assist the member designated to take charge.
- (2) This sub-paragraph applies to a person who is a member of the Commissioner’s staff appointed under paragraph 7 and is designated under sub-paragraph (1).
- (3) A person to whom sub-paragraph (2) applies—
- (a) has all the powers and privileges of a constable throughout Scotland; but
 - (b) is not as a result of the designation to be treated as being in police service for the purposes of—
 - (i) section 280 of the [Trade Union and Labour Relations \(Consolidation\) Act 1992 \(c.52\)](#); or
 - (ii) section 200 of the [Employment Rights Act 1996 \(c.18\)](#).
- (4) The Scottish Ministers may by order apply any enactment relating to the investigation of offences by constables (subject to such modifications as they consider appropriate) in relation to investigations carried out in pursuance of paragraph (b) (i) of section 33A by a member of the Commissioner’s staff designated under sub-paragraph (1).”,
- (d) in paragraph 11—
- (i) the existing text becomes sub-paragraph (1),
 - (ii) after that text insert—

“(2) Nothing in this paragraph requires or authorises the provision of any information or document relating to a particular investigation carried out by the Commissioner on the direction of the appropriate prosecutor in pursuance of paragraph (b) of section 33A (unless the appropriate prosecutor consents to disclosure of the information or document).”.