

Police (Ethics, Conduct and Scrutiny) (Scotland) Bill

[AS AMENDED AT STAGE 2]

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Police (Ethics, Conduct and Scrutiny) (Scotland) Bill

[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make provision about a code of ethics and a duty of candour for the police; to make provision about vetting of constables and police staff; to make provision about procedures for misconduct and the consequences of certain conduct by constables; to make provision about the functions of the Police Investigations and Review Commissioner; and to make provision for a board to advise the Police Investigations and Review Commissioner.

References to Acts

1 Meaning of “2006 Act” and “2012 Act”

In this Act—

- (a) the “2006 Act” means the Police, Public Order and Criminal Justice (Scotland) Act 2006,
- (b) the “2012 Act” means the Police and Fire Reform (Scotland) Act 2012.

Ethics of the police

2 Code of ethics

- (1) The 2012 Act is amended as follows.
- (2) In Part 1, after Chapter 4, insert—

“CHAPTER 4A

CODE OF ETHICS

36A Code of ethics

- (1) The chief constable must prepare a code of ethics for the Police Service (to be known as “the Code of Ethics for Policing in Scotland”) as soon as is reasonably practicable after section 2 of the Police (Ethics, Conduct and Scrutiny) (Scotland) Act 2024 comes into force.
- (2) The code of ethics is a code which sets out the values of the Police Service and expectations relating to the conduct and practice of its constables and of police staff.

- (3) The chief constable must involve the Authority in the preparation of the code of ethics and the Authority must provide the chief constable with such assistance as the chief constable may reasonably require in that regard.
- (4) In preparing the code of ethics, the chief constable must have regard to—
- (a) the policing principles set out in section 32,
 - (b) the standards of behaviour referred to in section 52(2)(a)(i),
 - (ba) the European Code of Police Ethics adopted as Recommendation Rec(2001)10 of the Committee of Ministers to member states on the European Code of Police Ethics, by the Committee of Ministers on 19 September 2001 at the 765th meeting of the Ministers' deputies,
 - (bb) the United Nations' Code of Conduct for Law Enforcement Officials, adopted by General Assembly resolution 34/169 of 17 December 1979,
 - (bc) the United Nations' Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990,
 - (c) Convention rights within the meaning of section 1 of the Human Rights Act 1998,
 - (ca) the rights and obligations set out in the schedule of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, and
 - (d) such other human rights contained in any international convention, treaty or other international instrument ratified by the United Kingdom as the chief constable considers relevant.
- (5) The chief constable must—
- (a) publish the code of ethics on a website maintained by or on behalf of the Police Service and in such other manner as the chief constable considers appropriate,
 - (b) lay a copy of it before the Scottish Parliament, and
 - (c) secure that—
 - (i) all such steps are taken as the chief constable considers necessary to ensure that all constables and police staff have read and understood it, and
 - (ii) a record is made and kept by the chief constable of the steps taken in relation to each constable and member of staff.

36B Preparation and revision of the code of ethics

- (1) When preparing the code of ethics under section 36A(1), the chief constable must—
- (a) consult and share a draft with—
 - (i) the persons specified in schedule 2ZA, and
 - (ii) such other persons as the chief constable considers appropriate, and

- (b) consider any representations made.
- (2) The chief constable—
- (a) may review the code of ethics from time to time,
- (b) must review it at least once during each 5 year period beginning with the day on which the code, a revised code or a statement under paragraph (c)(ii) is laid and must, in particular, do so if any of the things mentioned in paragraphs (a) or (b) of section 36A(4) have been significantly revised, and
- (c) following such a review, must—
- (i) revise the code of ethics, or
- (ii) lay a statement before the Scottish Parliament that, having undertaken a review, the chief constable has concluded that there is no need to revise it.
- (3) Section 36A(2) to (5) and subsections (1) and (2) apply to a revised code of ethics as they apply to the code of ethics prepared under section 36A(1).
- (4) The Scottish Ministers may by regulations modify schedule 2ZA by—
- (a) adding a person, or
- (b) removing, or modifying the description of, a person for the time being mentioned there.”.
- (3) In section 10(1) (constable’s declaration), after “impartiality,” insert “that I will follow the Code of Ethics for Policing in Scotland”.
- (4) In section 17 (chief constable’s responsibility for the policing of Scotland)—
- (a) in subsection (2), after paragraph (d), insert—
- “(da) is to prepare the Code of Ethics for Policing in Scotland (see section 36A),”,
- (b) in subsection (4)(a), after “policing principles” insert “and the Code of Ethics for Policing in Scotland”.
- (5) In section 125 (subordinate legislation), after subsection (2), insert—
- “(2A) Regulations under section 36B(4) are subject to the affirmative procedure.”.
- (6) After schedule 2, insert—

“SCHEDULE 2ZA
(introduced by section 36B)

PERSONS TO BE CONSULTED IN RESPECT OF THE CODE OF ETHICS FOR POLICING IN
SCOTLAND

- 1 The Scottish Ministers.
- 2 The Lord Advocate.
- 3 His Majesty’s Inspectorate of Constabulary in Scotland.
- 4 The Police Investigations and Review Commissioner.
- 4A The Scottish Commission for Human Rights.
- 4B The Commission for Equality and Human Rights.

- 5 The joint central committee of the Police Federation for Scotland.
- 7 Such persons as appear to the chief constable to be representative of senior officers.
- 8 Such persons as appear to the chief constable to be representative of
5 superintendents (including chief superintendents).
- 9 Such persons as appear to the chief constable to represent the collective interests of police staff.
- 10 Such persons as appear to the chief constable to represent groups of individual constables or members of police staff, or both, characterised by reference to one or more of the following characteristics—
- 10 (a) disability,
- (b) race, colour, nationality, or ethnic or national origins,
- (c) religion,
- (d) sex,
- 15 (e) sexual orientation,
- (f) transgender identity.”.

3 Duty of candour

- (1) The 2012 Act is amended in accordance with subsections (2) and (3).
- (2) In section 10(1) (constable’s declaration), after “fairness,” insert “candour.”
- 20 (3) In section 32 (policing principles)—
- (a) the word “and” following paragraph (a) is repealed,
- (b) after paragraph (b), insert “, and
- (c) that the Police Service should be candid and co-operative in proceedings, including all investigations.”.
- 25 (4) In schedule 1 of the Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013 (S.S.I. 2013/62) (standards of professional behaviour), after the paragraph headed “Honesty and integrity”, insert—

“Candour

30 Constables act with candour and are open and truthful in their dealings, without favour to their own interests or the interests of the Police Service subject, in particular, to the reasonable assertion of the privilege against self-incrimination.

Constables attend interviews and assist and participate in proceedings (including all investigations) openly, promptly and professionally, in line with the expectations of a police constable.”.

- 35 (5) In schedule 1 of the Police Service of Scotland (Conduct) Regulations 2014 (S.S.I. 2014/68) (standards of professional behaviour), after the paragraph headed “Honesty and integrity”, insert—

“Candour

40 Constables act with candour and are open and truthful in their dealings, without favour to their own interests or the interests of the Police Service subject, in particular, to the reasonable assertion of the privilege against self-incrimination.

Constables attend interviews and assist and participate in proceedings (including all investigations) openly, promptly and professionally, in line with the expectations of a police constable.”.

Police vetting

5 **3A Vetting code of practice**

- (1) The 2012 Act is amended as follows.
- (2) In Part 1, after Chapter 4A (inserted by section 2), insert—

“CHAPTER 4B

VEITING CODE OF PRACTICE

10 **36C Vetting code of practice**

- (1) The chief constable must prepare a code of practice for the vetting of constables and police staff (referred to in this section and section 36D as “the vetting code of practice”).
- (2) The chief constable must prepare the vetting code of practice as soon as is reasonably practicable after section (*Vetting code of practice*) of the Police (Ethics, Conduct and Scrutiny) (Scotland) Act 2024 comes into force but —
 - (a) the chief constable is not to carry out any consultation under section 36D(1) until the chief constable has, in accordance with section 54(2)(a)(i), received a draft of the first set of regulations to be made under section 48 in pursuance of section 50A (ongoing vetting of constables),
 - (b) the vetting code of practice does not have effect until those regulations come into force.
- (3) In this section, “vetting” is an assessment as to a person’s suitability, having regard, insofar as they relate to the ethical standards and behaviour expected of constables or (as the case may be) police staff, to the person’s character and personal circumstances, to—
 - (a) hold the office of constable or a particular rank or role,
 - (b) be a member of police staff or to hold a particular role as a member of police staff.
- (4) The vetting code of practice must, in respect of the vetting of police staff, provide for—
 - (a) a person to undergo vetting—
 - (i) periodically, and
 - (ii) if a reason to do so arises,
 - (b) circumstances in which a person who has undergone vetting is to be—
 - (i) required to comply with conditions (including as to the person’s personal circumstances),
 - (ii) redeployed,
 - (iii) demoted,
 - (iv) dismissed (with or without notice).

- (5) Provision in the vetting code of practice about the vetting of constables and police staff may, in particular, include provision about—
- (a) the frequency of vetting of a person (but see also section 50A(2)(c)),
 - (b) circumstances in which there will or may be a reason to carry out vetting,
 - (c) different categories of vetting to be carried out in different circumstances,
 - (d) steps that may be taken where certain information is disclosed by vetting.
- (6) But the code may not include any provision which is inconsistent with provision in regulations made under section 48 in pursuance of section 50A (ongoing vetting of constables).
- (7) The chief constable may prepare more than one vetting code of practice in order to make different provision for different categories of person, roles or other purposes, and a reference to the vetting code of practice in this section or in section 36D is to be construed accordingly.
- (8) The chief constable must involve the Authority in the preparation of the vetting code of practice and the Authority must provide the chief constable with such assistance as the chief constable may reasonably require in that regard.
- (9) The chief constable must—
- (a) publish the vetting code of practice on a website maintained by or on behalf of the Police Service and in such other manner as the chief constable considers appropriate, and
 - (b) lay a copy of it before the Scottish Parliament.

36D Preparation and revision of the code of vetting practice

- (1) When preparing the vetting code of practice under section 36C(1), the chief constable must—
- (a) consult and share a draft with—
 - (i) the Scottish Ministers,
 - (ii) His Majesty's Inspectorate of Constabulary in Scotland,
 - (iii) the joint central committee of the Police Federation for Scotland,
 - (iv) such persons as appear to the chief constable to be representative of senior officers,
 - (v) such persons as appear to the chief constable to be representative of superintendents (including chief superintendents),
 - (vi) such persons as appear to the chief constable to represent the collective interests of police staff,
 - (vii) such persons as appear to the chief constable to represent groups of individual constables or members of police staff, or both, characterised by reference to one or more of the following characteristics—
 - (A) disability,
 - (B) race, colour, nationality, or ethnic or national origins,
 - (C) religion,

- (D) sex,
- (E) sexual orientation,
- (F) transgender identity,

(viii) such other persons as the chief constable considers appropriate,
and

(b) consider any representations made.

(2) The chief constable—

- (a) may review the vetting code of practice from time to time,
- (b) must review it at least once during each 5 year period beginning with the day on which the code, a revised code or a statement under paragraph (c)(ii) is laid, and
- (c) following such a review, must—
 - (i) revise the vetting code of practice, or
 - (ii) lay a statement before the Scottish Parliament that, having undertaken a review, the chief constable has concluded that there is no need to revise it.

(3) Section 36C(2) to (9) and subsections (1) and (2) apply to a revised vetting code of practice as they apply to the vetting code of practice prepared under section 36C(1).”.

3B Procedures for vetting

- (1) The 2012 Act is amended as follows.
- (2) After section 50, insert—

“50A Ongoing vetting

(1) Regulations made under section 48 must provide for—

- (a) constables to undergo vetting—
 - (i) periodically, and
 - (ii) if a reason to do so arises,
- (b) circumstances in which a constable who has undergone vetting is to be—
 - (i) demoted,
 - (ii) dismissed (with or without notice).

(2) Such regulations may make provision for—

- (a) circumstances other than those mentioned in subsection (1)(a) in which constables must undergo vetting,
- (b) the process to be followed in the carrying out of vetting,
- (c) a minimum frequency for vetting of individual constables,
- (d) vetting to be carried out by a person holding such office, rank or role as is specified in the regulations,

- (e) a duty for constables to disclose such changes in their personal circumstances as are specified in the regulations,
- (f) a duty for constables to co-operate with any vetting they undergo,
- (g) circumstances in which a constable who has undergone vetting is to be—
- (i) required to comply with conditions (including as to the constable's personal circumstances),
- (ii) redeployed,
- (h) appeals against determinations mentioned in subsection (1)(b) and paragraph (g),
- (i) circumstances in which constables may, pending the completion of vetting or an appeal, be—
- (i) required to comply with conditions (including as to the person's personal circumstances),
- (ii) suspended from duty,
- (iii) redeployed,
- (j) the steps to be taken if a matter which is or may be the subject of a person's vetting is or may be the subject of —
- (i) criminal proceedings,
- (ii) proceedings for dealing with a constable whose standard of behaviour or performance is unsatisfactory brought under procedures set out in regulations made under section 48.
- (3) In this section, “vetting” is an assessment as to a constable’s suitability, having regard, insofar as they relate to the ethical standards and behaviour expected of constables, to the constable’s character and personal circumstances, to hold the office of constable or a particular rank or role.”.

Police conduct

4 Liability of the Scottish Police Authority for unlawful conduct of the chief constable

In section 24 of the 2012 Act (liability for unlawful conduct)—

(a) after subsection (3), insert—

“(3A) The Authority is liable in respect of any unlawful conduct on the part of the chief constable in the carrying out (or purported carrying out) of the chief constable’s 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.”,

(b) in subsection (4), for “(3)” substitute “(3A)”.

5 Procedures for misconduct: functions of the Police Investigations and Review Commissioner

In section 52 of the 2012 Act (disciplinary procedures: conduct and performance), in paragraph (d) of subsection (2) for “investigations of whether a constable has been

engaged in misconduct” substitute “procedures for dealing with a constable whose standard of behaviour is unsatisfactory”.

6 Procedures for misconduct: former constables

In section 52 of the 2012 Act (disciplinary procedures: conduct and performance)—

(a) in subsection (2), after paragraph (e), insert—

“(f) applying the procedures for dealing with a constable whose standard of behaviour is unsatisfactory (with or without modification) in relation to a person who has ceased to be a constable.”,

(b) after subsection (2), insert—

“(2A) Such regulations, if they provide for procedures for dealing with a constable whose standard of behaviour is unsatisfactory to be applied in relation to a person who has ceased to be a constable—

(a) must provide for—

(i) an allegation of unsatisfactory behaviour against such a person to be investigated in accordance with those procedures only where the allegation is of behaviour while the person was a constable which would amount to gross misconduct,

(ii) a decision to be made as to how the person would have been dealt with, had the person still been a constable, and

(b) must provide for a period of time, running from the date on which the person ceased to be a constable, after which time, unless such criteria as are specified in the regulations are met—

(i) the procedures do not apply to the person, or

(ii) such steps in the procedures as are specified in the regulations may not be taken in relation to the person.

(2B) In subsection (2A)(b), criteria specified must include that it would be in the public interest for the procedures to apply to the person.”,

(c) after subsection (4), insert—

“(5) In subsection (2A)(a)(i), “gross misconduct” means a breach of the standards of behaviour referred to in subsection (2)(a)(i) so serious that demotion in rank or dismissal would be justified.”.

7 Scottish police advisory list and Scottish police barred list

(1) The 2012 Act is amended as follows.

(2) In Part 1, after Chapter 9, insert—

“CHAPTER 9A

ADVISORY LIST AND BARRED LIST

59A Scottish police advisory list and Scottish police barred list

(1) The Authority must establish and maintain—

(a) the Scottish police advisory list (“the advisory list”), and

(b) the Scottish police barred list (“the barred list”).

(2) The Authority must enter a person on the advisory list if—

(a) in the circumstances set out in subsection (3), the person ceases to be a constable, or

(b) where the person was (but is no longer) a constable, disciplinary proceedings are brought against the person in respect of an allegation of gross misconduct.

(3) The circumstances referred to in subsection (2) are that—

(a) before the person ceased to be a constable, disciplinary proceedings were brought against the person in respect of an allegation of gross misconduct, and

(b) those proceedings have not concluded when the person ceases to be a constable.

(4) The Authority must enter a person on the barred list if—

(a) the person is dismissed as a constable in disciplinary proceedings against the person,

(b) the person was (but is no longer) a constable and a decision is made in such proceedings that the person would have been dismissed as a constable, had the person still been a constable, or

(c) the person is dismissed as a constable after undergoing vetting, within the meaning of section 50A(3), in accordance with regulations made under section 48.

(4A) The following persons must consult the advisory list and the barred list before employing or otherwise appointing a person—

(a) the Authority,

(b) His Majesty’s Inspectorate of Constabulary in Scotland,

(c) the Police Service of Scotland,

(d) the Police Investigations and Review Commissioner.

(4B) The Scottish Ministers must by regulations make provision for notice to be given to a person who is to be entered in or removed from, the advisory list or the barred list.

(5) The Scottish Ministers may by regulations make provision for or about—

(a) information to be included in the advisory list or the barred list in respect of a person on that list,

(b) circumstances in which a person—

(i) who would otherwise require to be entered on the advisory list or the barred list is not to be so entered, or

(ii) is to be removed from the advisory list or the barred list,

(c) notice to be given to the Authority by a person specified in the regulations of a person who is to be entered in, or removed from, the advisory list or the barred list,

(e) the consequences of a person being on the advisory list or the barred list, including in particular provision preventing the employment or other appointment of a person on the barred list by a person specified in the regulations,

(f) persons who must consult the advisory list and the barred list before employing or otherwise appointing a person,

(g) circumstances in which information about a person which is included in the advisory list or the barred list may be shared by the Authority,

(ga) circumstances in which information about a person which is included in the barred list may be published by the Authority,

(h) the delegation by the Authority of its functions in relation to the advisory list or the barred list,

(i) such other matters in connection with the lists as the Scottish Ministers consider appropriate.

(6) Regulations under subsection (5) may modify this or any enactment.

(7) Before making regulations under subsection (5), the Scottish Ministers must consult—

(a) the chief constable,

(b) the Authority,

(c) the joint central committee of the Police Federation for Scotland, and

(d) such other persons as they consider appropriate.

(8) In this section—

“disciplinary proceedings” means proceedings (including any investigation) in respect of alleged misconduct brought under the procedures for misconduct set out in regulations made under section 48, and a reference to such proceedings being brought is a reference to the person being notified that the person is the subject of such proceedings,

“gross misconduct” has the meaning given by section 52(5).”.

(3) In section 125 (subordinate legislation), after subsection (2A) (inserted by section 2(5)), insert—

“(2B) Regulations under section 59A(4B) and 59A(5) are subject to the affirmative procedure.”.

8 Procedures for misconduct: senior officers

(1) The 2012 Act is amended as follows.

(2) For subsection (3) of section 52 (disciplinary procedures: conduct and performance), substitute—

“(3) Such regulations must provide for—

(a) the Authority to determine any case which relates to the standard of performance of a senior officer,

(b) a panel independent of the Authority to determine any case which relates to the standard of behaviour of a senior officer or a person who has ceased to be a senior officer.”.

(3) In section 56 (right to appeal to police appeals tribunal)—

(a) after subsection (1), insert—

“(1A) A senior officer may appeal to a police appeals tribunal against any decision to take any other action against the senior officer, in pursuance of regulations made under section 48 which provide for procedures for dealing with a constable whose standard of behaviour is unsatisfactory.”,

(b) after subsection (2), insert—

“(2A) In this section, a reference to a constable or senior officer includes a person who was a constable or a senior officer, as the case may be.”.

(4) In subsection (2) of section 58 (determinations by tribunal), for “dismissal or demotion in rank of” substitute “action against”.

Functions of the Police Investigations and Review Commissioner

9 Investigations into matters involving persons serving with the police

In section 33A of the 2006 Act (general functions of the Police Investigations and Review Commissioner)—

(a) in paragraph (b)(i), for the words “serving with the police may have committed an offence” substitute “who is, or has been, a person serving with the police may have committed an offence (regardless of when those circumstances occurred)”,

(b) in paragraph (b)(ii), after “2016” insert “, whether or not the circumstances occurred in the course of the person’s duty, employment or appointment”.

10 Complaints made by persons serving with the police

(1) In section 34 of the 2006 Act—

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

“(aa) any statement made by a person serving with the police about an act or omission mentioned in subsection (3A);”,

(b) after subsection (3), insert—

“(3A) An act or omission referred to in subsection (3)(aa) is one which—

(a) took place in relation to, or adversely affected, the person in the person’s capacity as a person serving with the police, or

(b) was witnessed by the person (whether or not in that capacity).”,

(c) in subsection (6), in each place where they occur, for the words “member of the public” substitute “person”.

(2) The title of that section becomes “**Meaning of “relevant complaint”**”.

11 Complaint handling reviews

In section 35 of the 2006 Act (examination of manner of handling of complaint)—

(a) after subsection (1), insert—

“(1A) The Commissioner may carry out a complaint handling review of the Commissioner’s own volition if satisfied that it is in the public interest to do so.

5 (1B) Where the Commissioner carries out a complaint handling review under subsection (1A), the Commissioner must notify the complainer of the decision to carry out a complaint handling review.”,

(b) in subsection (3)—

(i) in paragraph (a), after sub-paragraph (ii), insert—

10 “(iii) any recommendations in relation to the complaint that the Commissioner proposes to make to the appropriate authority as a result of the complaint handling review;”,

(ii) in paragraph (b), for “and proposed action” substitute “, proposed action and recommendations”,

(c) after subsection (4), insert—

15 “(4A) Where the report includes recommendations in relation to the complaint, the appropriate authority must, within such period as is specified in the report, give the Commissioner a response in writing setting out—

(a) details of what the authority has done, or proposes to do, in response to the recommendation, or

20 (b) if the authority has not done, and does not intend to do, anything in response to the recommendation, the reasons for that.

(4B) The Commissioner must, as soon as reasonably practicable after receiving the response, publish it in such manner as the Commissioner considers appropriate.

(4C) But the Commissioner—

25 (a) must withhold from publication any information in the response which would identify an individual (other than the chief constable),

(b) may withhold the whole or part of the response from publication if the Commissioner considers that it is in the public interest to do so.”.

12 Call-in of relevant complaints

30 (1) The 2006 Act is amended as follows.

(2) In section 35 (examination of manner of handling complaint)—

(a) after subsection (2), insert—

“2A) This section does not apply in relation to a complaint which is being, or has been, considered by the Commissioner under section 40ZA(1).”,

35 (b) in subsection (7)—

(i) the words from “give a direction” to the end become paragraph (a),

(ii) after that paragraph, insert “; or

(b) if satisfied that it is in the public interest for the Commissioner to do so, determine that the complaint is to be reconsidered by the Commissioner (see section 40ZA).”.

40 (3) After section 40, insert—

“40ZA Power of Commissioner to consider complaints

- (1) The Commissioner may consider a relevant complaint if—
- (a) the Commissioner determines under section 35(7)(b) (examination of manner of handling complaint) that the complaint is to be reconsidered by the Commissioner,
 - (b) the appropriate authority in relation to the complaint requests the Commissioner to consider the complaint, or
 - (c) the Commissioner—
 - (i) has reasonable grounds to believe that the complaint has not been, or is not being, considered properly by the appropriate authority, and
 - (ii) is satisfied that it is in the public interest for the Commissioner to consider the complaint.
- (2) For the purposes of subsection (1)(c), a complaint is not considered properly by the appropriate authority if the arrangements for handling relevant complaints maintained by the authority are not adhered to by the authority in its consideration of the complaint.
- (3) A complaint may be considered by the Commissioner under subsection (1)(b) or (c) whether or not—
- (a) the appropriate authority has completed its consideration of the complaint,
 - (b) the Commissioner has—
 - (i) discontinued, or not proceeded with, a complaint handling review in relation to the complaint under section 36(1), or
 - (ii) ordered the discontinuance of a reconsideration of the complaint under section 39(1).
- (4) The Commissioner may consider a complaint under subsection (1)(c)—
- (a) at the request of the complainer, or
 - (b) of the Commissioner’s own volition.
- (5) The Commissioner must consult the appropriate authority before deciding to consider a complaint under subsection (1)(c).
- (6) Where the complainer makes a request as mentioned in subsection (4)(a), the Commissioner may, instead of deciding to consider the complaint under subsection (1)(c), treat the request as if it were a request mentioned in section 35(1)(a).
- (7) Nothing in this section affects the ability of the complainer or the appropriate authority to make a request in relation to a complaint under section 35(1).
- (8) In this section and section 40ZB, in relation to a complaint, “the complainer” means the person who made the complaint.

40ZB Report following Commissioner's consideration of complaint

(1) On completion of the Commissioner's consideration of the complaint, the Commissioner must—

(a) inform the persons mentioned in subsection (2) about—

(i) the conclusions the Commissioner has drawn from that consideration and the reasons for them,

(ii) what action (if any) the Commissioner proposes to take in consequence of those conclusions,

(iii) any recommendations in relation to the complaint that the Commissioner proposes to make to the appropriate authority as a result of the Commissioner's consideration of it,

(b) draw up a report of the consideration of the complaint and the conclusions, reasons, proposed action and recommendations referred to in paragraph (a) and send it to the appropriate authority, 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.

(2) 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.

(3) Where the report includes recommendations in relation to the complaint, the appropriate authority must, within such period as is specified in the report, give the Commissioner a response in writing setting out—

(a) details of what the authority has done, or proposes to do, in response to the recommendation, or

(b) if the authority has not done, and does not intend to do, anything in response to the recommendation, the reasons for that.

(4) The Commissioner must, as soon as reasonably practicable after receiving the response, publish it in such manner as the Commissioner considers appropriate.

(4A) But the Commissioner—

(a) must withhold from publication any information in the response which would identify an individual (other than the chief constable),

(b) may withhold the whole or part of the response from publication if the Commissioner considers that it is in the public interest to do so.

(5) Section 35(5), and any regulations made under that section, apply in relation to the duties imposed by subsection (1)(a) as they apply in relation to the duties imposed by section 35(3)(a)."

(4) In section 36 (duty of Commissioner not to proceed with certain complaint handling reviews), in subsection (4)(d), after "(c)" insert "and section 40ZA(1)".

(5) In section 39 (power of Commissioner to discontinue reconsideration), in subsection (3)(e), after "(d)" insert "and section 40ZA(1)".

- (6) In section 41 (appropriate authority in relation to a complaint), in subsection (1), for “40” substitute “40ZB”.
- (7) In section 46A (protection from actions for defamation), in subsection (1)(a)—
- (a) in sub-paragraph (i), after “handling review” insert “, in considering a complaint under section 40ZA”,
- (b) in sub-paragraph (ii), after “review” insert “, consideration”,
- (c) in sub-paragraph (iii), after “review” insert “, consideration”.

13 Review of arrangements for investigation of whistleblowing complaints

- (1) In section 40A of the 2006 Act—
- (a) in subsection (1)(a)—
- (i) the words from “the Commissioner” to “complaints;” become sub-paragraph (i),
- (ii) after that sub-paragraph, insert—
- “(ii) the Authority and the chief constable for the investigation of information provided in a whistleblowing complaint;”,
- (b) after subsection (1), insert—
- “(1A) In subsection (1)(a)(ii), “whistleblowing complaint” means a protected disclosure within the meaning of section 43A of the Employment Rights Act 1996 made to the Authority or, as the case may be, the chief constable.”.
- (2) The title of that section becomes “**Arrangements for handling relevant complaints and investigation of whistleblowing complaints**”.

14 Investigations involving constables from outwith Scotland

- (1) The 2006 Act is amended as follows.
- (2) After section 41F, insert—

“Investigations in relation to constables not serving with the Police Service

41G Investigations into matters involving constables of forces other than the Police Service

- (1) This section applies in relation to an individual who—
- (a) is a member of—
- (i) a police force maintained under section 2 of the Police Act 1996,
- (ii) the metropolitan police force,
- (iii) the City of London police force, or
- (iv) the Police Service of Northern Ireland, and
- (b) is not engaged on temporary service with the Police Service of Scotland in accordance with section 16 of the Police and Fire Reform (Scotland) Act 2012.

- (2) The Commissioner must, where directed to do so by the appropriate prosecutor, investigate—
- (a) any circumstances in which there is an indication that the individual may have committed an offence in Scotland whilst acting in the execution of the individual's duties,
- (b) on behalf of the relevant procurator fiscal, the circumstances of any death involving the individual whilst acting in the execution of the individual's duties, which that procurator fiscal is required to investigate under section 1 of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016.
- (3) Section 41A (investigations under supervision of Lord Advocate or procurator fiscal) applies to an investigation in pursuance of a direction issued under—
- (a) subsection (2)(a) as it applies to an investigation in pursuance of a direction issued under section 33A(b)(i),
- (b) subsection (2)(b) as it applies to an investigation in pursuance of a direction issued under section 33A(b)(ii).
- (4) The Commissioner must, where requested to do so by the appropriate chief constable or officer, investigate and report on a serious incident involving the individual which occurred in Scotland.
- (5) Subsection (4) is subject to any provision made in regulations under section 41H(1) (investigations under section 41G(4): procedure and reporting).
- (6) For the purposes of subsection (4)—
- (a) a serious incident is a circumstance as described in section 41B(1) (serious incidents involving the police) which, instead of involving a person serving with the police, involved the individual acting in the execution of the individual's duties, other than a matter—
- (i) which is being investigated by the Commissioner in pursuance of subsection (2)(a) or in respect of which criminal proceedings have been brought following such an investigation by the Commissioner, or
- (ii) which is being or has been investigated by the Commissioner in pursuance of subsection (2)(b) or by any other person under section 1 of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016,
- (b) the appropriate chief constable or officer is—
- (i) the chief constable of the Police Service, where the individual was acting in the course of the duties mentioned in subsection (7)(b),
- (ii) otherwise, the chief officer or, as the case may be, the chief constable of the police force of which the individual is a member.
- (7) In this section, a reference to an individual's duties—
- (a) is a reference to the individual's duties as a member of the police force of which the individual is a member,
- (b) includes a reference to the duties of an individual acting under the direction and control of the chief constable of the Police Service by

virtue of section 98 of the Police Act 1996 (cross-border aid of one police force by another).

41H Investigations under section 41G(4): procedure and reporting

- 5 (1) The Scottish Ministers may by regulations make such provision about investigations by the Commissioner in pursuance of section 41G(4) (investigations into matters involving constables of forces other than the Police Service) as they consider appropriate.
- (2) Regulations may, in particular, make provision—
- 10 (a) about the circumstances in which the Commissioner—
- (i) must not or need not carry out an investigation, or
- (ii) may discontinue an investigation,
- (b) about the form and procedure of an investigation,
- (c) imposing restrictions on the extent of any investigation,
- (d) setting time limits within which matters must be investigated,
- 15 (e) requiring persons to assist and co-operate with the Commissioner when carrying out an investigation (by providing evidence, attending hearings or otherwise), and
- (f) for the delegation of functions to the Commissioner.
- (3) Before making regulations under subsection (1), the Scottish Ministers must consult—
- 20 (a) the Commissioner,
- (b) the chief constable,
- (c) such persons as appear to them to be representative of senior officers,
- (d) such persons as appear to them to be representative of superintendents (including chief superintendents),
- 25 (e) the joint central committee of the Police Federation for Scotland,
- (f) the Secretary of State,
- (g) the chief constable of the Police Service of Northern Ireland, and
- (h) such other persons as they think appropriate.
- 30 (4) The Commissioner must prepare a report of each investigation carried out in pursuance of section 41G(4).
- (5) The Commissioner must—
- (a) provide a copy of a report prepared under subsection (4) to—
- (i) the person who requested the investigation, and
- 35 (ii) any other person whom the Commissioner considers appropriate, and
- (b) if the Commissioner considers it appropriate to do so, publish the report in such manner as the Commissioner considers appropriate.

- (6) A report must not—
- (a) mention the name of any person, or
 - (b) contain any particulars which, in the Commissioner’s opinion, are likely to identify any person and can be omitted without impairing the effectiveness of the report,
- unless the Commissioner determines that it is necessary to do so (having taken into account the public interest).”.

- (3) In section 33A (general functions of the Commissioner)—

- (a) the word “and” following paragraph (c) is repealed,
- (b) after paragraph (d), insert—

“(e) to carry out investigations in relation to constables of police forces other than the Police Service where directed or requested to do so under section 41G;”.

- (4) In section 46 (disclosure of information by and to the Commissioner), in subsection (6), after “33A” insert “or section 41G(2)”.

- (5) In section 46A (protection from actions for defamation), in subsection (1)—

- (a) in paragraph (a)(i), for “or (d)” substitute “, (d) or (e)”,
- (b) in paragraph (b), for “or (d)” substitute “, (d) or (e)”.

- (6) In section 103 (subordinate legislation), in subsection (4)(a), after “41D(1)” insert “or 41H(1)”.

15 Review of, and recommendations about, practices and policies of the police

- (1) The 2006 Act is amended as follows.
- (2) After section 41H (inserted by section 14(2)), insert—

“Review of, and recommendations about, practices and policies of the police

41I Review of police practices or policies

- (1) Where the Commissioner considers that it would be in the public interest to do so, the Commissioner may review a practice or policy of the Authority or the chief constable.
- (2) The arrangements mentioned in section 40A(1) (arrangements for handling relevant complaints and investigation of whistleblowing complaints) are not a practice or policy for the purposes of subsection (1).
- (3) Before carrying out a review under subsection (1), the Commissioner must—
 - (za) consult His Majesty’s Inspectorate of Constabulary in Scotland,
 - (a) inform the person whose practice or policy is to be reviewed,
 - (b) state the practice or policy under review, and
 - (c) provide reasons as to why the review is proposed.
- (4) The person whose practice or policy is to be reviewed must assist the Commissioner when carrying out a review under subsection (1) (by providing evidence, attending hearings or otherwise).

- (5) The Commissioner must prepare a report of each review carried out under subsection (1).
- (6) A report prepared under subsection (5) may include such recommendations as appear to the Commissioner to be necessary or desirable in relation to—
- 5 (a) the practice or policy to which the review relates, or
- (b) any other practice of the Authority or the chief constable.
- (7) The Commissioner must—
- (a) give a copy of each report prepared under subsection (5) to—
- 10 (i) the Authority,
- (ii) the chief constable,
- (iii) His Majesty's Inspectorate of Constabulary in Scotland,
- (iv) the Scottish Ministers, and
- (v) any other person whom the Commissioner considers appropriate, and
- 15 (b) publish it in such manner as the Commissioner considers appropriate.
- (8) But the Commissioner—
- (a) must withhold from publication any information in the report which would identify an individual (other than the chief constable),
- 20 (b) may withhold the whole or part of the report from publication if the Commissioner considers that it is in the public interest to do so.

41J Recommendations about complaints handling and other matters

- (1) The Commissioner may make such recommendations, and give such advice, in relation to—
- 25 (a) the arrangements mentioned in section 40A(1) (arrangements for handling relevant complaints and whistleblowing complaints),
- (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 functions (other than those under section 41I (review of police practices or policies)) to be necessary or desirable.
- 30 (2) A recommendation made, or advice given, under subsection (1) may be—
- (a) set out in a report prepared by the Commissioner, or
- (b) made or given in such other manner as the Commissioner considers appropriate.
- 35 (3) The Commissioner must—
- (a) give a copy of each report prepared under subsection (2)(a) to—
- (i) the Authority,
- (ii) the chief constable,
- (iii) His Majesty's Inspectorate of Constabulary in Scotland,

- (iv) the Scottish Ministers, and
 - (v) any other person whom the Commissioner considers appropriate, and
- (b) publish it in such manner as the Commissioner considers appropriate.
- 5 (4) But the Commissioner—
- (a) must withhold from publication any information in the report which would identify an individual (other than the chief constable),
 - (b) may withhold the whole or part of the report from publication if the Commissioner considers that it is in the public interest to do so.

10 **41K Responses to recommendations**

- 15 (1) This section applies where the Commissioner makes a recommendation to the Authority or the chief constable (“the recipient”) in a report prepared under—
- (a) section 41I(5) (review of police practices and policies), or
 - (b) section 41J(2)(a) (recommendations about complaints handling and other matters).
- 20 (2) The recipient must give the Commissioner—
- (a) a written response to the recommendation (the “initial response”), and
 - (b) unless subsection (5) applies, a report on things done during the implementation period by the recipient in response to the recommendation (“the implementation report”).
- 25 (3) The initial response must set out—
- (a) details of what the recipient has done or proposes to do in response to the recommendation, or
 - (b) if the recipient has not done, and does not intend to do, anything in response to the recommendation, the reasons for that.
- 30 (4) The implementation report must set out details of—
- (a) what the recipient has done in response to the recommendation since receiving the recommendation, and
 - (b) anything else that the recipient proposes to do in response to the recommendation.
- 35 (5) This subsection applies where the initial response states that the recipient—
- (a) has already done all of the things that the recipient proposes to do in response to the recommendation, or
 - (b) does not intend to do anything in response to the recommendation.
- 40 (6) The recipient must give the Commissioner—
- (a) the initial response within—
 - (i) the period of 8 weeks beginning with the day on which the recipient receives the recommendation, or
 - (ii) such other period as is specified by the Commissioner in the report mentioned in subsection (1),

- (b) any implementation report as soon as reasonably practicable after the end of the implementation period.
- (7) The recipient must, as soon as reasonably practicable after it is given to the Commissioner, give a copy of the initial response or implementation report to—
- (a) the Authority (where the recipient is the chief constable),
 - (b) the chief constable (where the recipient is the Authority),
 - (c) His Majesty’s Inspectorate of Constabulary in Scotland, and
 - (d) the Scottish Ministers.
- (8) The Commissioner must, as soon as reasonably practicable after receiving the initial response or implementation report, give a copy of it to any person (other than a person mentioned in subsection (7)) to whom the report mentioned in subsection (1) was given.
- (9) In this section, the “implementation period” means—
- (a) the period of 12 months beginning with the day on which the recipient receives the recommendation, or
 - (b) such other period as is specified by the Commissioner in the report mentioned in subsection (1).

41L Publication of responses to recommendations

- (1) Subsections (2) and (3) apply where the Authority or the chief constable gives the Commissioner—
- (a) an initial response under section 41K(2)(a), or
 - (b) an implementation report under section 41K(2)(b).
- (2) The Commissioner must, as soon as reasonably practicable after receiving the response or report, publish it in such manner as the Commissioner considers appropriate.
- (3) But the Commissioner—
- (a) must withhold from publication any information in the response or report which would identify an individual (other than the chief constable),
 - (b) may withhold the whole or part of the response or report from publication if the Commissioner considers that it is in the public interest to do so.
- (4) If the initial response is not given to the Commissioner by the end of the period mentioned in section 41K(6)(a), the Commissioner must publish notice of that fact.”.
- (3) In section 33A (general functions of the Commissioner), after paragraph (e) (inserted by section 14(3)), insert “and
- (f) to carry out reviews and make recommendations in accordance with sections 41I and 41J.”.
- (4) In section 40A (arrangements for handling relevant complaints), subsection (2) is repealed.
- (5) In section 43 (reports to the Scottish Ministers), subsections (4) and (6)(b) are repealed.

- (6) In section 46A (protection from actions for defamation), in subsection (1)(a)—
- (a) in sub-paragraph (i), after “33A” insert “or a review under section 41I(1)”,
 - (b) in sub-paragraph (iv), after “section” insert “41J(2)(a) or”.

16 Provision of information to the Commissioner

In section 44 of the 2006 Act (provision of information to the Commissioner), after subsection (5), insert—

- “(6) The Scottish Ministers may by regulations make provision authorising or requiring the Authority or the chief constable to provide information and documents to the Commissioner in accordance with subsection (1) or (2) by giving the Commissioner, in such circumstances and in accordance with such requirements as may be set out in the regulations, access to an electronic storage system on which they are stored.”.

Governance of the Police Investigations and Review Commissioner

17 Advisory board to the Commissioner

After section 46A of the 2006 Act, insert—

“Advisory board

46B Advisory board

- (1) The Commissioner must establish and maintain an advisory board (“the Board”).
- (2) The purpose of the Board is to advise the Commissioner about matters relating to the governance and administration of the office of Commissioner.
- (3) The members of the Board are to be individuals appointed by the Scottish Ministers.
- (4) A decision to appoint a member to the Board or to terminate a membership of the Board is to be made independently of the Commissioner.
- (6) The Commissioner may pay to members of the Board such remuneration and allowances (including expenses) as the Commissioner, with the approval of the Scottish Ministers, determines.
- (7) The procedure of the Board is to be such as the Commissioner determines.”.

Final provisions

18 Ancillary provision

- (1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to this Act.
- (2) Regulations under this section may—
 - (a) make different provision for different purposes,
 - (b) modify any enactment.

- (3) Regulations under this section—
- (a) are subject to the affirmative procedure if they add to, replace, or omit any part of the text of an Act,
 - (b) otherwise, are subject to the negative procedure.

5 **19 Commencement**

- (1) This section and sections 18 and 20 come into force on the day after Royal Assent.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.
- (3) Regulations under this section may—

- 10 (a) include transitional, transitory or saving provision,
 (b) make different provision for different purposes.

20 Short title

The short title of this Act is the Police (Ethics, Conduct and Scrutiny) (Scotland) Act 2024.

Police (Ethics, Conduct and Scrutiny) (Scotland) Bill

[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make provision about a code of ethics and a duty of candour for the police; to make provision about vetting of constables and police staff; to make provision about procedures for misconduct and the consequences of certain conduct by constables; to make provision about the functions of the Police Investigations and Review Commissioner; and to make provision for a board to advise the Police Investigations and Review Commissioner.

Introduced by: Angela Constance
On: 6 June 2023
Bill type: Government Bill

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