Draft Order laid before Parliament under section 115(1) of, and paragraphs 1, 2 and 3 of Schedule 7 to, the Scotland Act 1998 for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2007 No.

CONSTITUTIONAL LAW
DEVOLUTION, SCOTLAND
POLICE
CRIMINAL LAW

The Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007

Made - - - - 2007

Coming into force in accordance with Article 1

The Secretary of State makes the following Order in exercise of the powers conferred by sections 104, 112(1) and 113(2), (3) and (4) of the Scotland Act 1998(**1**).

In accordance with section 115(1) of, and paragraphs 1, 2 and 3 of Schedule 7 to, that Act, a draft of this Order was laid before Parliament and approved by a resolution of each House of Parliament.

Citation, commencement and extent

1.—(1) This Order may be cited as the Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007.

(2) Subject to paragraph (3), this Order shall come into force on the day after the day on which it is made.

(3) Articles 2(b), (c) and (d), 3, 4 and 6 and the Schedule shall come into force on 1st April 2007.

(4) Subject to paragraphs (5), (6) (7) and (8), the provisions of this Order extend to the whole of the United Kingdom.

(5) Article 5 extends to England and Wales and Northern Ireland only.

(6) Subject to paragraphs (7) and (8), the modifications specified in the Schedule have the same extent as the provisions being modified.

(7) The modification specified in paragraph 4(16) of the Schedule extends to Scotland only.

(**1**) 1998 c. 46.

(8) The modifications specified in paragraphs 4(17) and 6 of the Schedule extend to England and Wales and Northern Ireland only.

Interpretation

2. In this Order–

(a) "the Act" means the Police, Public Order and Criminal Justice (Scotland) Act 2006(**2**);

(b) "the Agency" means the Scottish Crime and Drug Enforcement Agency;

(c) "the Commissioner" means the Police Complaints Commissioner for Scotland;

(d) "SOCA" means the Serious Organised Crime Agency.

Disclosure of information

3.—(1) Any person may disclose information to the Agency or the Commissioner if the disclosure is made for the purposes of the exercise or carrying out by the Agency or the Commissioner of any of their functions within the meaning of the Act.

(2) Any person who, without the consent of the Commissioners for Her Majesty's Revenue and Customs, discloses information to another person which those Commissioners have disclosed under paragraph (1) commits an offence.

(3) It is a defence for a person charged with an offence under paragraph (2) to prove that he reasonably believed that–

(a) the disclosure was lawful; or

(b) the information had already and lawfully been made available to the public.

(4) A person who commits an offence under paragraph (2) is liable–

(a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine, or both; or

(b) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale, or to both.

(5) Information disclosed by the Agency under section 19 of the Act 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 of the permitted purposes specified in section 19(2) of the Act; and

(b) with the consent of the Agency.

(6) Information disclosed by the Commissioner under section 46 of the Act to any public body or office holder must not be further disclosed except–

(a) for a purpose connected with any function of that public body or office holder; and

(b) with the consent of the Commissioner.

(7) Consent under paragraphs (2), (5) and (6) 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.

(8) A disclosure under this article 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).

(**2**) 2006 asp 10.

(9) But nothing in this article authorises–

(a) a disclosure, in contravention of any provisions of the Data Protection Act 1998(**3**), of personal data which are not exempt from those provisions; or

(b) a disclosure which is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000(**4**).

(10) Paragraph (1) does not apply to any person who may disclose information under section 20(1) or 46(4) of the Act.

(11) Paragraphs (5) and (6) do not apply to further disclosure by any person, body or office holder to whom section 19(4) or 46(2) of the Act applies.

Agreements to establish complaints procedures

4.—(1) The Commissioner and the British Transport Police Authority may enter into an agreement to establish and maintain procedures which correspond to or are similar to those contained in Chapter 2 of Part 1 of the Act in relation to complaints made about the acts or omissions of the British Transport Police Force, a constable of that Force and any other persons specified in the agreement who serve with that Force or who are employed by the British Transport Police Authority.

(2) The Commissioner and the Civil Nuclear Police Authority may enter into an agreement to establish and maintain procedures which correspond to or are similar to those contained in Chapter 2 of Part 1 of the Act in relation to complaints made about the acts or omissions of the Civil Nuclear Constabulary, a member of that Constabulary and any other persons specified in the agreement who are serving with that Constabulary or who are employed by the Civil Nuclear Police Authority.

(3) The Commissioner and the Secretary of State may enter into an agreement to establish and maintain procedures which correspond to or are similar to those contained in Chapter 2 of Part 1 of the Act in relation to complaints made about the acts or omissions of the Ministry of Defence Police, a member of the Ministry of Defence Police and any other persons specified in the agreement who serve with the Ministry of Defence Police.

(4) The Commissioner and SOCA may enter into an agreement to establish and maintain procedures which correspond to or are similar to those contained in Chapter 2 of Part 1 of the Act in relation to complaints made about the acts or omissions of SOCA and members of the staff of SOCA.

(5) The Commissioner and Her Majesty's Revenue and Customs may enter into an agreement to establish and maintain procedures which correspond to or are similar to those contained in Chapter 2 of Part 1 of the Act in relation to complaints made about the acts or omissions of Her Majesty's Revenue and Customs, the Commissioners for Revenue and Customs, an officer of Revenue and Customs and any other persons specified in the agreement who are authorised to act for or on behalf of Her Majesty's Revenue and Customs.

(7) But "complaint" for the purposes of an agreement made under this article, does not include–

(a) a statement which consists of or includes an allegation of an act or omission which constitutes a crime;

(b) any statement made by a person who is serving with, or who has served with–

(i) the British Transport Police Force;

(ii) the Civil Nuclear Constabulary;

(iii) the Ministry of Defence Police;

(iv) SOCA;

about the terms and conditions of their service;

(**3**) 1998 c. 29.
(**4**) 2000 c. 23.

(c) any statement made by a person who is employed by, or has been employed by–

(i) the British Transport Police Authority;

(ii) the Civil Nuclear Police Authority;

(iii) SOCA;

about the terms and conditions of their employment;

(d) any statement made by any person who is serving with, or has served with, or who is or has been authorised to act on behalf of, Her Majesty's Revenue and Customs about the terms and conditions of their service; and

(e) any statement made by a person who is serving as, or who has served as–

(i) an immigration officer who exercises, or who has exercised, specified enforcement functions; or

(ii) an official of the Secretary of State who exercises, or who has exercised, specified enforcement functions relating to asylum or immigration;

about the terms and conditions of their service.

(8) An agreement made under this article shall not be made, varied or terminated without the approval of the Secretary of State and the Scottish Ministers.

(9) Complaints procedures established and maintained in accordance with any agreement under this article shall have no effect in relation to anything done outside Scotland by any person or body in relation to whom complaints procedures are so established and maintained.

(10) An agreement made under paragraph (6) of this article shall not establish and maintain procedures in relation to complaints about the exercise by any person of a function conferred on him by or under Part 8 of the Immigration and Asylum Act 1999(**5**).

(11) Information obtained by the Commissioner in connection with any of the Commissioner's functions under an agreement which may be entered into under paragraph (5) or (6) of this article may be disclosed by the Commissioner to the Parliamentary Commissioner for Administration–

(a) for any purpose connected with the carrying out of the Commissioner's functions under an agreement which may be entered into under paragraph (5) or (6) of this article; or

(b) for the purpose of enabling or assisting the Parliamentary Commissioner for Administration to carry out any function under the Parliamentary Commissioner Act 1967(**6**).

(12) The Parliamentary Commissioner for Administration may disclose information to the Commissioner if the disclosure is made–

(a) for any purpose connected with the carrying out of any of the Commissioner's functions under an agreement which may be entered into under paragraph (5) or (6) of this article; or

(b) for the purpose of enabling or assisting the Parliamentary Commissioner for Administration to carry out any function under the Parliamentary Commissioner Act 1967.

(13) An agreement made under this article may–

(a) specify types of complaints in relation to which procedures may not be established and maintained;

(**5**) 1999 c. 33, Part 8 consists of sections 147 to 159; section 147 was amended by the Nationality, Immigration and Asylum Act 2002 (c. 41) ("the NIA Act 2002"), sections 62, 66 and Schedule 9; sections 148, 150 to 153, 155, 158 and 159 were amended by the NIA Act 2002, section 66; section 149 was amended by the NIA Act 2002, section 66 and the Agricultural Holdings (Scotland) Act 2003 (asp 11), schedule 1, paragraph 52; section 154 was amended by the NIA Act 2002, section 65 and section 156 was amended by S.I.2005/2078, Schedule 1, paragraph 5. There have been further amendments to Part 8 but these are not relevant.

(**6**) 1967 c. 13.

(b) include provision for payment to the Commissioner for any function which he may exercise under it;

(c) make different provision for different purposes or circumstances.

(14) For the purposes of this article–

(a) an "immigration officer" means a person appointed under paragraph 1 of Schedule 2 to the Immigration Act 1971(**7**);

(b) the reference to enforcement functions includes, in particular, reference to–

(i) powers of entry;

(ii) power to search persons or property;

(iii) power to seize or detain property;

(iv) power to arrest persons;

(v) power to detain persons;

(vi) powers to examine persons or otherwise to obtain information (including powers to take fingerprints or to acquire other personal data); and

(vii) powers in connection with the removal of persons from the United Kingdom.

Football Banning Orders

5.—(1) A person who fails to comply with any requirement imposed on the person by a football banning order made under section 51 or 52 of the Act commits an offence.

(2) It is a defence for a person charged with an offence under paragraph (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 paragraph (1) is liable on summary conviction to imprisonment for a term not exceeding 3 months, or to a fine not exceeding level 5 on the standard scale, or to both.

Modifications of enactments

6. The modifications specified in the Schedule shall have effect.

Parliamentary Under Secretary of State Scotland Office
Department for Constitutional Affairs

Dover House,London
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(**7**) 1971 c. 77.