

*Status: Point in time view as at 05/12/2022.*

*Changes to legislation: There are currently no known outstanding effects for the Armed Forces Act 2021, Schedule 4. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 4

Section 11

#### SERVICE POLICE: COMPLAINTS, MISCONDUCT ETC

#### *Service Police Complaints Commissioner*

1 After Schedule 14 to AFA 2006 insert—

“SCHEDULE 14A

Section 365BA

#### THE SERVICE POLICE COMPLAINTS COMMISSIONER

#### **Status**

- 1 The Service Police Complaints Commissioner is a corporation sole.
- 2 The Commissioner is not to be regarded—
  - (a) as the servant or agent of the Crown, or
  - (b) as enjoying any status, immunity or privilege of the Crown.

#### **Appointment**

- 3 The Commissioner is to be appointed by Her Majesty on the recommendation of the Secretary of State.

#### **Disqualification**

- 4 A person is disqualified from being the Commissioner if any of the following applies—
  - (a) the person is a member of the regular or reserve forces (whether or not as a member of a service police force);
  - (b) the person has been a member of a service police force;
  - (c) the person is employed in the civil service of the State.

#### **Vacancy or incapacity**

- 5 (1) Sub-paragraph (2) applies if—
  - (a) the office of the Commissioner becomes vacant, or
  - (b) it appears to the Secretary of State that the ability of the Commissioner to carry out the Commissioner’s functions is seriously impaired because of ill health (whether mental or physical).
- (2) The Secretary of State may appoint a person to act as the Commissioner during the vacancy or period of ill health.

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- (3) An acting Commissioner holds and vacates office in accordance with the terms of the acting Commissioner’s appointment.
- (4) While an acting Commissioner holds office, the acting Commissioner is to be regarded (except for the purposes of paragraphs 3, 4 and 6 and this paragraph) as the Commissioner.

### Term of office

- 6 The Commissioner holds and vacates office in accordance with the terms of the Commissioner’s appointment.

### Delegation of functions

- 7 The Commissioner may authorise a member of staff working for the Commissioner to exercise any power or duty of the Commissioner on the Commissioner’s behalf.

### Liability

- 8 (1) This paragraph applies where a person has been seconded to serve as a member of the Commissioner’s staff.
- (2) The Commissioner is liable in respect of unlawful conduct of the person in the carrying out, or purported carrying out, of their functions as a member of the Commissioner’s staff, in the same manner as an employer is liable in respect of unlawful conduct of an employee in the course of their employment.
- (3) In sub-paragraph (1) the reference to secondment to serve as a member of the Commissioner’s staff is to serving as a member of the Commissioner’s staff without being employed by the Commissioner.”

#### Commencement Information

- I1** Sch. 4 para. 1 not in force at Royal Assent, see [s. 24\(1\)](#)
- I2** [Sch. 4 para. 1](#) in force at 1.11.2022 for specified purposes by [S.I. 2022/1095](#), [reg. 3](#)

### Investigatory Powers

- 2 (1) The Investigatory Powers Act 2016 is amended as follows.
- (2) In section 58 (section 57: meaning of “excepted disclosure”), in subsection (4), after paragraph (c) insert—
  - “(ca) a disclosure made to the Service Police Complaints Commissioner for the purposes of facilitating the carrying out of any of the Commissioner’s functions;”.
- (3) In section 106 (power to issue warrants to law enforcement officers), after subsection (11) insert—
  - “(11A) A law enforcement chief who is the Service Police Complaints Commissioner may consider that the condition in subsection (1)(a) is

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satisfied only if the offence, or all of the offences, to which the serious crime relates are offences that are being investigated as part of an investigation carried out under regulations under section 340P of the Armed Forces Act 2006 (power to make further provision).”

- (4) In section 107 (restriction on issue of warrants to certain law enforcement officers), in subsection (2), after paragraph (h) insert—

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

- (5) In section 133 (section 132: meaning of “excepted disclosure”), in subsection (3), after paragraph (b) insert—

“(ba) a disclosure made to the Service Police Complaints Commissioner for the purposes of facilitating the carrying out of any of the Commissioner’s functions;”.

- (6) In Part 1 of Schedule 4 (relevant public authorities and designated senior officers etc), after the entry relating to the Independent Office for Police Conduct, insert—

“Service Police Complaints Commissioner	60A(7)(b) and (g)	Senior investigating officer	All	61A(7)(a) and (e)”.
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- (7) In Part 2 of Schedule 6 (issue of warrants under section 106 etc), after the entry relating to the Director General of the Independent Office for Police Conduct, insert—

“The Service Police Complaints Commissioner.	A member of the Service Police Complaints Commissioner’s staff who is designated by the Commissioner for the purpose.	An investigating officer appointed under section 365BB”.
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#### Commencement Information

**I3** Sch. 4 para. 2 not in force at Royal Assent, see [s. 24\(1\)](#)

**I4** [Sch. 4 para. 2](#) in force at 1.11.2022 for specified purposes by [S.I. 2022/1095](#), [reg. 3](#)

#### Other amendments

- 3 In Part 2 of the Table in paragraph 3 of Schedule 1 to the Public Records Act 1958 (definition of public records), at the appropriate place insert—

“Service Police Complaints Commissioner.”

#### Commencement Information

**I5** Sch. 4 para. 3 not in force at Royal Assent, see [s. 24\(1\)](#)

**I6** [Sch. 4 para. 3](#) in force at 1.11.2022 for specified purposes by [S.I. 2022/1095](#), [reg. 3](#)

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- 4 In Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975 (other disqualifying offices), at the appropriate place insert—  
 “Service Police Complaints Commissioner.”

**Commencement Information**

- I7** Sch. 4 para. 4 not in force at Royal Assent, see [s. 24\(1\)](#)  
**I8** Sch. 4 para. 4 in force at 1.11.2022 for specified purposes by [S.I. 2022/1095, reg. 3](#)

- 5 In Part 3 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (other disqualifying offices), at the appropriate place insert—  
 “Service Police Complaints Commissioner.”

**Commencement Information**

- I9** Sch. 4 para. 5 not in force at Royal Assent, see [s. 24\(1\)](#)  
**I10** Sch. 4 para. 5 in force at 1.11.2022 for specified purposes by [S.I. 2022/1095, reg. 3](#)

- 6 In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (public authorities), at the appropriate place insert—  
 “Service Police Complaints Commissioner.”

**Commencement Information**

- I11** Sch. 4 para. 6 not in force at Royal Assent, see [s. 24\(1\)](#)  
**I12** Sch. 4 para. 6 in force at 1.11.2022 for specified purposes by [S.I. 2022/1095, reg. 3](#)

- 7 In section 47 of the Coroners and Justice Act 2009 (interested person)—  
 (a) in subsection (2), after paragraph (k) insert—  
     “(ka) where subsection (5A) applies, the Service Police Complaints Commissioner;”;  
 (b) after subsection (5) insert—  
     “(5A) This subsection applies where the death of the deceased is or has been the subject of an investigation directed or carried out by the Service Police Complaints Commissioner in accordance with provision made under section 340P of the Armed Forces Act 2006.”

**Commencement Information**

- I13** Sch. 4 para. 7 not in force at Royal Assent, see [s. 24\(1\)](#)  
**I14** Sch. 4 para. 7 in force at 1.11.2022 for specified purposes by [S.I. 2022/1095, reg. 3](#)

- 8 In Part 1 of Schedule 19 to the Equality Act 2010 (public authorities, general), under the heading “Armed forces”, at the appropriate place insert—  
 “Service Police Complaints Commissioner.”

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- I15** Sch. 4 para. 8 not in force at Royal Assent, see [s. 24\(1\)](#)
- I16** [Sch. 4 para. 8](#) in force at 1.11.2022 for specified purposes by [S.I. 2022/1095](#), [reg. 3](#)

9 In Schedule 7 to the Data Protection Act 2018 (competent authorities), after paragraph 18 insert—

“18A The Service Police Complaints Commissioner.”

#### Commencement Information

- I17** Sch. 4 para. 9 not in force at Royal Assent, see [s. 24\(1\)](#)
- I18** [Sch. 4 para. 9](#) in force at 1.11.2022 for specified purposes by [S.I. 2022/1095](#), [reg. 3](#)

#### Commencement Information

- I5** Sch. 4 para. 3 not in force at Royal Assent, see [s. 24\(1\)](#)
- I6** [Sch. 4 para. 3](#) in force at 1.11.2022 for specified purposes by [S.I. 2022/1095](#), [reg. 3](#)
- I7** Sch. 4 para. 4 not in force at Royal Assent, see [s. 24\(1\)](#)
- I8** [Sch. 4 para. 4](#) in force at 1.11.2022 for specified purposes by [S.I. 2022/1095](#), [reg. 3](#)
- I9** Sch. 4 para. 5 not in force at Royal Assent, see [s. 24\(1\)](#)
- I10** [Sch. 4 para. 5](#) in force at 1.11.2022 for specified purposes by [S.I. 2022/1095](#), [reg. 3](#)
- I11** Sch. 4 para. 6 not in force at Royal Assent, see [s. 24\(1\)](#)
- I12** [Sch. 4 para. 6](#) in force at 1.11.2022 for specified purposes by [S.I. 2022/1095](#), [reg. 3](#)
- I13** Sch. 4 para. 7 not in force at Royal Assent, see [s. 24\(1\)](#)
- I14** [Sch. 4 para. 7](#) in force at 1.11.2022 for specified purposes by [S.I. 2022/1095](#), [reg. 3](#)
- I15** Sch. 4 para. 8 not in force at Royal Assent, see [s. 24\(1\)](#)
- I16** [Sch. 4 para. 8](#) in force at 1.11.2022 for specified purposes by [S.I. 2022/1095](#), [reg. 3](#)
- I17** Sch. 4 para. 9 not in force at Royal Assent, see [s. 24\(1\)](#)
- I18** [Sch. 4 para. 9](#) in force at 1.11.2022 for specified purposes by [S.I. 2022/1095](#), [reg. 3](#)

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