ANNEX A

FOI REQUEST – 202600502390

From:[Redacted]@copfs.gov.uk
Sent: Wednesday, August 28, 2024 10:55 AM
To: [Redacted]@gov.scot
Subject: RE: Misconduct proceedings to progress without delay [FOR INFO]

Morning

Thanks for sighting me on this.

I note and am content with the terms of your draft response.

I noticed one small typo – highlighted below – should be “suspend”, rather than “suspect”.

[Redacted s30(b)(ii)]

Regards

[Redacted]

From: [Redacted]@gov.scot
Sent: Wednesday, August 28, 2024 9:44 AM
To: [Redacted]@copfs.gov.uk
Subject: Misconduct proceedings to progress without delay [FOR INFO]

Hi

Hope you’re well.

Just a heads up that we will shortly issue the SG response to the CJC Stage 1 report on the PECSS Bill.

In particular the following –

The Committee notes the recommendation from Police Scotland at paragraph 325 to amend section 9 of the 2014 conduct regulations for officers to make the default position that misconduct proceedings “must proceed without delay”, notwithstanding extant or possible criminal proceedings, provided that to do so does not prejudice the criminal proceedings. The Committee asks the Scottish Government to provide a view on this recommendation and whether a similar amendment should be made to section 7 of the 2013 conduct regulations for senior officers.

In response we intend to say –

My officials will consult with the Scottish Police Consultative Forum on this issue, alongside other aspects of the conduct regulations (for senior and non-senior officers).

The views of the Crown Office and Procurator Fiscals Service will also be important as, constitutionally, the Scottish Government cannot make changes which impact on the prosecutorial discretion of the Lord Advocate.

As my officials confirmed in the evidence session, we do not agree with the suggestion that the regulations have an in-built assumption not to proceed. The regulations give the relevant Deputy Chief Constable, or the SPA, the discretion to suspect or postpone misconduct proceedings, but it does not oblige them to do so. Therefore, it is not the current legislation that is preventing cases from proceeding without delay.

It is not clear whether any amendment would make a practical difference to the position, as the ability of COPFS to direct the police in potential prosecutions would have to be preserved.

We are also of the view that there may be a workable solution to be found between Police Scotland and the COPFS which would deliver the same result more quickly and without the need for legislation. We would therefore encourage Police Scotland to explore these options directly with COPFS.

[Redacted s30(b)(ii)]

Happy to discuss.
Best wishes

[Redacted]

Police (Ethics, Conduct & Scrutiny) Bill Unit
Police Division | Directorate for Safer Communities | Scottish Government, 1R St Andrew's House, Edinburgh EH1 3DG

From: [Redacted]@gov.scot
Sent: Wednesday, September 11, 2024 6:17 PM
To: [Redacted]@scotland.police.uk
Subject: RE: [Redacted] presentation/thank you [OFFICIAL]

OFFICIAL

Hello
[Redacted]

In the time we discussed, it was clear that no one thought there was merit in discussing proceedings without delay unless the Lord Advocate's officials are involved. I also set out the SG position and the Cabinet Secretary reiterated this in the SG response to the CJ Committee's Stage 1 report –
(a) in our view modifying the regulations will not make any practical difference
(b) the situation is different in Scotland because we cannot make changes which impact on the prosecutorial discretion of the Lord Advocate.

Hopefully progress on the Dame Elish recommendation for accelerated hearings will mitigate some of the problems you're grappling with. But if you think there's a role for SG to be involved in any discussions between Police Scotland and COPFS on shifting the dial, please let me know.

Happy to discuss.
[Redacted]

Police (Ethics, Conduct & Scrutiny) Bill Unit

Police Division | Directorate for Safer Communities | Scottish Government, 1R St Andrew's House, Edinburgh EH1 3DG

From: [Redacted]@scotland.police.uk
Sent: Wednesday, September 11, 2024 10:47 AM
To: [Redacted]@gov.scot; [Redacted]@spa.police.uk
Cc: [Redacted]@scotland.police.uk
Subject: [Redacted] presentation/thank you [OFFICIAL]

OFFICIAL
[Redacted]

We are going to engage with some of our colleagues in England to understand the difference the change made around "progression without delay" as it is my understand that has been very impactful and positive as I hope that may help inform some of our discussions with some practical examples moving forward.

Thanks
[Redacted]

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15 November 2024: Handwritten notes from Scottish Government meeting with Criminal Allegations Against the Police Division on 15 November 2024, 1pm

Amendment 54. No issue, but need a policy to scrutinise and let COPFS analyse it. Risk sack officers without the opportunity to defend. Run hearing in advance of criminal proceedings where witness changes position. Alert accused of evidence against them [Redacted s30(b)(i)].

[Redacted s30(b)(i)]

Article 6 rights.

From: [Redacted]@gov.scot
Sent: 15 November 2024 11:29
To: Cc: [Redacted]@gov.scot; [Redacted]@copfs.gov.uk
Subject: RE: Police Misconduct / Criminal Trials / PECSS Bill

Hi [Redacted]

[Redacted]

B. [Redacted s30(b)(ii)] Amendment 54 (Groupings of Amendments for Stage 2 (parliament.scot)) [Redacted s30(b)(ii)]. Pasted below for ease:

Sharon Dowey 54 After section 6, insert—

<Procedure for misconduct: criminal and conduct proceedings

(1) The 2012 Act is amended as follows.

(2) In section 52 (disciplinary procedures: conduct and performance), after subsection (3) insert—

“(3A) Such regulations must provide that disciplinary proceedings will continue notwithstanding the fact that criminal proceedings are ongoing in relation to the constable’s behaviour.

(3B) Where both disciplinary proceedings and criminal proceedings are being undertaken in relation to the behaviour of a constable, such regulations must provide that any evidence or outcomes of the disciplinary proceedings will not be published until after the criminal proceedings have concluded.”.>

[Redacted s30(b)(ii)]

Look forward to picking up with you shortly,

[Redacted]

From: [Redacted]@copfs.gov.uk
Sent: Wednesday, November 13, 2024 12:39 PM
To: [Redacted]@gov.scot
Cc: Redacted]@gov.scot
Subject: RE: Police Misconduct / Criminal Trials / PECSS Bill

Afternoon [Redacted]

Yes. 1pm on Friday works for me.

Just send me through a Teams meeting link and I’ll see you then.

Regards

[Redacted]

From: [Redacted]@gov.scot
Sent: 13 November 2024 10:09
To: [Redacted]@copfs.gov.uk
Cc:[Redacted]@gov.scot
Subject: RE: Police Misconduct / Criminal Trials / PECSS Bill

Many thanks [Redacted]. Spoke to [Redacted] and the earlier the better, does Friday at about 1pm work?

[Redacted]

From: [Redacted]@copfs.gov.uk
Sent: Tuesday, November 12, 2024 9:02 PM
To: [Redacted]@gov.scot
Cc: [Redacted]@gov.scot
Subject: RE: Police Misconduct / Criminal Trials / PECSS Bill

Evening [Redacted]

Thanks for your e-mail and hope you are well.

I’ll be happy to meet with you, [Redacted] and any other SG colleagues in order to discuss the issues you’ve identified below.

I'm available this Friday afternoon (15 Nov) and then have some availability on Wednesday afternoon (20 Nov) and then again next Friday afternoon (22 Nov).

Any of those times suit?

Regards

[Redacted]

[Redacted]
Criminal Allegations Against the Police Division

From: [Redacted]@gov.scot
Sent: 12 November 2024 14:48
To: [Redacted]@copfs.gov.uk
Cc: [Redacted]@gov.scot
Subject: RE: Police Misconduct / Criminal Trials / PECSS Bill

Hi [Redacted]

Hope you're doing well. I'm getting in touch after Stage 2 (and still awaiting a date for Stage 3, but we think it will be before Winter recess beginning 21 Dec).

You might have picked up there were some amendments that were lodged at Stage 2 of the Bill that the Scottish Government didn't support, for example Amendment 54 - misconduct procedures should continue, notwithstanding the fact that criminal proceedings are ongoing. We've discussed before and know the difficulties here. We're mindful of being landed with some things by way of a Stage 3 amendment that is either impractical or bad legislation. With these in mind, we're keen to pick up with you to discuss [Redacted s30(b)(ii)].

[Redacted]

Would you be available for a discussion over the next week or so? Grateful if you can suggest a few dates, and I'll find time for us to chat if that's ok?

Best,

[Redacted]

[Redacted]
[Redacted] | Police (Ethics, Conduct and Scrutiny) Bill Unit | Police Division | Scottish Government | St Andrew's House | Edinburgh | [Redacted]@gov.scot |