

## SCHEDULES

### SCHEDULE 22

Section 126

#### POLICE MISCONDUCT AND PERFORMANCE PROCEDURES

##### PART 1

###### AMENDMENTS OF POLICE ACT 1996

1 The Police Act 1996 (c. 16) has effect subject to the following amendments.

###### *General duty of Secretary of State*

2 In section 36(2)(d) (general duty of Secretary of State) for “section 85” substitute “sections 84 and 85”.

###### *Regulations for police forces*

3 (1) Section 50 (regulations for police forces) is amended as follows.

(2) For subsection (3) substitute—

“(3) Without prejudice to the powers conferred by this section, regulations under this section shall—

(a) establish, or

(b) make provision for the establishment of,

procedures for the taking of disciplinary proceedings in respect of the conduct, efficiency and effectiveness of members of police forces, including procedures for cases in which such persons may be dealt with by dismissal.”

(3) In subsection (4) omit “, subject to subsection (3)(b),”.

###### *Regulations for special constables*

4 (1) Section 51 (regulations for special constables) is amended as follows.

(2) In subsection (2)(ba) (conduct of special constables) after “conduct” insert “, efficiency and effectiveness”.

(3) After subsection (2) insert—

“(2A) Without prejudice to the powers conferred by this section, regulations under this section shall—

(a) establish, or

(b) make provision for the establishment of,

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procedures for the taking of disciplinary proceedings in respect of the conduct, efficiency and effectiveness of special constables, including procedures for cases in which such persons may be dealt with by dismissal.”

*Police Federations*

- 5 In section 59(3) (representation only by another member of a police force except in certain circumstances) for “provided by” substitute “provided in regulations made in accordance with”.

*Police Advisory Board*

- 6 (1) Section 63(3) (supply of draft regulations to the Police Advisory Board) is amended as follows.
- (2) In paragraph (a), for “regulations under section 50 or 52” substitute “regulations or rules under section 50, 52, 84 or 85”.
- (3) After “a draft of the regulations” insert “or rules”.

*Representation at disciplinary and other proceedings*

- 7 For section 84 substitute—

**“84 Representation etc. at disciplinary and other proceedings**

- (1) The Secretary of State shall by regulations make provision for or in connection with—
- (a) enabling the officer concerned or a relevant authority to be represented in proceedings conducted under regulations made in pursuance of section 50(3) or section 51(2A);
  - (b) enabling the panel conducting such proceedings to receive advice from a relevant lawyer or another person falling within any prescribed description of persons.
- (2) Regulations under this section may in particular make provision—
- (a) specifying the circumstances in which the officer concerned or a relevant authority is entitled to be legally represented (by a relevant lawyer);
  - (b) specifying the circumstances in which the officer concerned or a relevant authority is entitled to be represented by a person (other than a relevant lawyer) who falls within any prescribed description of persons;
  - (c) for securing that—
    - (i) a relevant authority may be legally represented, and
    - (ii) the panel conducting the proceedings may receive advice from a relevant lawyer,
 whether or not the officer concerned is legally represented.
- (3) Without prejudice to the powers conferred by this section, regulations under this section shall, in relation to cases where the officer concerned is entitled to legal or other representation, make provision—

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- (a) for securing that the officer is notified of his right to such representation;
  - (b) specifying when the officer is to be so notified;
  - (c) for securing that proceedings at which the officer may be dismissed are not to take place unless the officer has been notified of his right to such representation.
- (4) In this section—
- “the officer concerned”, in relation to proceedings within subsection (1)(a), means the member of a police force or special constable to whom the proceedings relate;
  - “the panel”, in relation to proceedings within subsection (1)(a), means the panel of persons, or the person, prescribed for the purpose of conducting the proceedings;
  - “prescribed” means prescribed by regulations under this section;
  - “relevant authority” means—
    - (a) where the officer concerned is a member of a police force (other than a senior officer), or a special constable, the chief officer of police of the police force of which the officer is a member, or for which the officer is appointed as a special constable;
    - (b) where the officer concerned is a senior officer, the police authority for the police force of which the officer is a member;
  - “relevant lawyer” means a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience (within the meaning of that Act);
  - “senior officer” means a member of a police force holding a rank above that of chief superintendent.
- (5) But in prescribed circumstances “relevant authority” also includes the Independent Police Complaints Commission.
- (6) Regulations under this section may make different provision for different cases and circumstances.
- (7) A statutory instrument containing regulations under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (8) Subsection (7) does not apply to a statutory instrument containing (whether alone or with other provision) any regulations under this section coming into force at a time that is the earliest time at which any regulations under this section are to come into force since the commencement of paragraph 7 of Schedule 22 to the Criminal Justice and Immigration Act 2008.
- (9) A statutory instrument within subsection (8) may not be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.”

*Appeals against dismissal etc.*

8 (1) Section 85 (appeals against dismissal etc.) is amended as follows.

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(2) For subsections (1) and (2) substitute—

“(1) The Secretary of State shall by rules make provision specifying the cases in which a member of a police force or a special constable may appeal to a police appeals tribunal.

(2) A police appeals tribunal may, on the determination of an appeal under this section, make an order dealing with the appellant in any way in which he could have been dealt with by the person who made the decision appealed against.”

(3) For subsection (4) substitute—

“(4) Rules made under this section may, in particular, make provision—

- (a) for enabling a police appeals tribunal, in such circumstances as are specified in the rules, to determine a case without a hearing;
- (b) for the appellant or the respondent to be entitled, in a case where there is a hearing, to be represented—
  - (i) by a relevant lawyer within the meaning of section 84, or
  - (ii) by a person who falls within any description of persons prescribed by the rules;
- (c) for enabling a police appeals tribunal to require any person to attend a hearing to give evidence or to produce documents,

and rules made in pursuance of paragraph (c) may apply subsections (2) and (3) of section 250 of the Local Government Act 1972 with such modifications as may be set out in the rules.

(4A) Rules under this section may make different provision for different cases and circumstances.”

(4) For subsection (5) substitute—

“(5) A statutory instrument containing rules under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(5A) Subsection (5) does not apply to a statutory instrument containing (whether alone or with other provision) the first rules made under this section after the commencement of paragraph 8 of Schedule 22 to the Criminal Justice and Immigration Act 2008: such an instrument may not be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.”

*Guidance concerning disciplinary proceedings etc.*

9 (1) Section 87 (guidance concerning disciplinary proceedings etc.) is amended as follows.

(2) For subsection (1) substitute—

“(1) The Secretary of State may issue relevant guidance to—

- (a) police authorities,
- (b) chief officers of police,
- (c) other members of police forces,
- (d) special constables, and

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- (e) persons employed by a police authority who are under the direction and control of the chief officer of police of the police force maintained by that authority.

(1ZA) “Relevant guidance” is guidance as to the discharge of functions under regulations under section 50 or 51 in relation to the matters mentioned in section 50(2)(e) or 51(2)(ba).”

- (3) In subsection (1A), after “section 50” insert “or 51”.
- (4) In subsection (5), after “section 50” insert “or 51”.

#### *Police officers engaged on service outside their force*

- 10 (1) Section 97 (police officers engaged on service outside their force) is amended as follows.
  - (2) In subsection (6)—
    - (a) in paragraph (b), omit “or is required to resign as an alternative to dismissal”;
    - (b) in paragraph (c), omit “or is required to resign as an alternative to dismissal”.
  - (3) In subsection (7), omit “, or required to resign as an alternative to dismissal,”.

#### *Police Appeals Tribunals*

- 11 (1) Schedule 6 (appeals to police appeals tribunals) is amended as follows.
  - (2) In paragraph 1(1) (appeals by senior officers) for paragraphs (b) and (c) substitute—
    - “(b) one shall be Her Majesty’s Chief Inspector of Constabulary appointed under section 54(1) or one of Her Majesty’s Inspectors of Constabulary nominated by the Chief Inspector, and
    - (c) one shall be the permanent secretary to the Home Office or a Home Office director nominated by the permanent secretary.”
  - (3) In paragraph 2 (appeals by other members of police forces) for sub-paragraph (1) substitute—
    - “(1) In the case of an appeal by a member of a police force (other than a senior officer) or a special constable, the police appeals tribunal shall consist of four members appointed by the relevant police authority, of whom—
      - (a) one shall be a person chosen from the list referred to in paragraph 1(1)(a),
      - (b) one shall be a senior officer,
      - (c) one shall be a member of the relevant police authority, and
      - (d) one shall be a retired member of a police force who, at the time of his retirement, was a member of an appropriate staff association.”
  - (4) Omit paragraph 6 (hearings).
  - (5) In paragraph 7 (effect of orders) for sub-paragraph (1) substitute—
    - “(1) Where on the determination of an appeal the tribunal makes such an order as is mentioned in section 85(2), the order shall take effect—
      - (a) by way of substitution for the decision appealed against, and
      - (b) as from the date of that decision.”

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- (6) In paragraph 10 (interpretation)—
- (a) for sub-paragraph (b) substitute—
- “(b) “the relevant police authority” means the police authority which maintains—
- (i) the police force of which the appellant is a member, or
- (ii) the police force for the area for which the appellant is appointed as a special constable,
- as the case may be.”
- (b) for sub-paragraph (c) substitute—
- “(c) “appropriate staff association” means—
- (i) where the appellant was, immediately before the proceedings from which the appeal is brought, of the rank of chief superintendent or superintendent, the Police Superintendents' Association of England and Wales; and
- (ii) in any other case, the Police Federation of England and Wales.”

## PART 2

### AMENDMENTS OF MINISTRY OF DEFENCE POLICE ACT 1987

- 12 The Ministry of Defence Police Act 1987 (c. 4) has effect subject to the following amendments.

#### *Defence Police Federation*

- 13 In section 3(4) (representation of a member of the Ministry of Defence Police by the Federation) for “on an appeal to the Secretary of State or as provided by” substitute “as provided in regulations made under”.

#### *Regulations relating to disciplinary matters*

- 14 (1) Section 3A (regulations relating to disciplinary matters) is amended as follows.
- (2) For subsection (1) substitute—
- “(1) The Secretary of State may make regulations with respect to—
- (a) the conduct of members of the Ministry of Defence Police and the maintenance of discipline;
- (b) the suspension from duty of members of the Ministry of Defence Police.
- (1A) Without prejudice to the powers conferred by subsection (1), regulations under this section shall—
- (a) establish, or
- (b) make provision for the establishment of,

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procedures for the taking of disciplinary proceedings in respect of the conduct of members of the Ministry of Defence Police, including procedures for cases in which such persons may be dealt with by dismissal.”

(3) For subsection (2) substitute—

“(2) The regulations may provide for decisions which would otherwise fall to be taken by the Secretary of State or the chief constable of the Ministry of Defence Police to be taken instead by—

- (a) a person appointed in accordance with the regulations; or
- (b) the Ministry of Defence Police Committee.”

*Representation etc. at disciplinary proceedings*

15 For section 4 substitute—

**“4 Representation etc. at disciplinary proceedings**

(1) The Secretary of State shall by regulations make provision for or in connection with—

- (a) enabling the officer concerned or the relevant authority to be represented in proceedings conducted under regulations made in pursuance of section 3A;
- (b) enabling the panel conducting such proceedings to receive advice from a relevant lawyer or another person falling within any prescribed description of persons.

(2) Regulations under this section may in particular make provision—

- (a) specifying the circumstances in which the officer concerned or the relevant authority is entitled to be represented by a relevant lawyer;
- (b) specifying the circumstances in which the officer concerned or the relevant authority is entitled to be represented by a person (other than a relevant lawyer) who falls within any prescribed description of persons;
- (c) for securing that—
  - (i) the relevant authority may be legally represented, and
  - (ii) the panel conducting the proceedings may receive advice from a relevant lawyer,whether or not the officer concerned is legally represented.

(3) Without prejudice to the powers conferred by this section, regulations under this section shall, in relation to cases where the officer concerned is entitled to legal or other representation, make provision—

- (a) for securing that the officer is notified of his right to such representation;
- (b) specifying when the officer is to be so notified;
- (c) for securing that proceedings at which the officer may be dismissed are not to take place unless the officer has been notified of his right to such representation.

(4) In this section—

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“the officer concerned”, in relation to proceedings within subsection (1)(a), means the member of the Ministry of Defence Police to whom the proceedings relate;

“the panel”, in relation to proceedings within subsection (1)(a), means the panel of persons, or the person, prescribed for the purpose of conducting the proceedings;

“prescribed” means prescribed by regulations under this section;

“relevant authority” means—

- (a) where the officer concerned is a member of the Ministry of Defence Police (other than a senior officer), the chief constable for the Ministry of Defence Police;
- (b) where the officer concerned is a senior officer, the Ministry of Defence Police Committee;

“relevant lawyer” means—

- (a) in relation to England and Wales, a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience (within the meaning of that Act), and
- (b) in relation to Scotland or Northern Ireland, counsel or a solicitor;

“senior officer” means a member of the Ministry of Defence Police holding a rank above that of chief superintendent.

- (5) But in prescribed circumstances “relevant authority” also includes—
  - (a) in relation to England and Wales, the Independent Police Complaints Commission;
  - (b) in relation to Scotland, the Police Complaints Commissioner for Scotland;
  - (c) in relation to Northern Ireland, the Police Ombudsman for Northern Ireland.
- (6) A statutory instrument containing regulations under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) Subsection (6) does not apply to a statutory instrument containing (whether alone or with other provision) any regulations under this section coming into force at a time that is the earliest time at which any regulations under this section are to come into force since the commencement of paragraph 15 of Schedule 22 to the Criminal Justice and Immigration Act 2008.
- (8) A statutory instrument within subsection (7) may not be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.”

*Appeals against dismissal etc.*

16 For section 4A substitute—

**“4A Appeals against dismissal etc.**

- (1) The Secretary of State shall by regulations—



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- (a) make provision specifying the cases in which a member of the Ministry of Defence Police may appeal to a police appeals tribunal;
  - (b) make provision equivalent, subject to such modifications as the Secretary of State thinks fit, to that made (or authorised to be made) in relation to police appeals tribunals by any provision of Schedule 6 to the Police Act 1996 (c. 16) or Schedule 3 to the Police (Scotland) Act 1967 (c. 77).
- (2) A police appeals tribunal may, on the determination of an appeal under this section, make an order dealing with the appellant in any way in which he could have been dealt with by the person who made the decision appealed against.
- (3) The Secretary of State may make regulations as to the procedure on appeals to police appeals tribunals under this section.
- (4) Regulations under this section may, in particular, make provision—
- (a) for enabling a police appeals tribunal, in such circumstances as are specified in the regulations, to determine a case without a hearing;
  - (b) for the appellant or the respondent to be entitled, in a case where there is a hearing, to be represented—
    - (i) by a relevant lawyer, or
    - (ii) by a person who falls within any description of persons prescribed by the regulations;
  - (c) for enabling a police appeals tribunal to require any person to attend a hearing to give evidence or to produce documents,
- and regulations made in pursuance of paragraph (c) may apply subsections (2) and (3) of section 250 of the Local Government Act 1972 with such modifications as may be set out in the regulations.
- (5) Any statutory instrument containing regulations under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) Subsection (5) does not apply to a statutory instrument containing (whether alone or with other provision) the first regulations made under this section after the commencement of paragraph 16 of Schedule 22 to the Criminal Justice and Immigration Act 2008: such an instrument may not be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.
- (7) In this section—
- “police appeals tribunal” means a tribunal constituted in accordance with regulations under this section;
  - “relevant lawyer” has the same meaning as in section 4.”

### PART 3

#### AMENDMENTS OF RAILWAYS AND TRANSPORT SAFETY ACT 2003

- 17 The Railways and Transport Safety Act 2003 (c. 20) has effect subject to the following amendments.

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

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*Police regulations: general*

- 18 (1) Section 36 (police regulations: general) is amended as follows.
- (2) In subsection (1) (power to make regulations about constables) after “conditions” insert “of service”.
- (3) For subsection (2) substitute—
- “(2) The Authority shall also make regulations similar to the provision made by and under—
- (a) sections 84 and 85 of the Police Act 1996 (representation etc. at disciplinary and other proceedings, and appeal), and
- (b) Schedule 6 to that Act (appeals to police appeals tribunals).”

*Police regulations: special constables*

- 19 After section 37(1) (power to make regulations about special constables) insert—
- “(1A) The Authority shall also make regulations similar to the provision made by and under—
- (a) sections 84 and 85 of the Police Act 1996 (representation etc. at disciplinary and other proceedings, and appeal), and
- (b) Schedule 6 to that Act (appeals to police appeals tribunals).”

*Police regulations by Secretary of State*

- 20 For section 42(3) substitute—
- “(3) If regulations under this section make provision for a matter specified in section 50(3) or section 51(2A) of the Police Act 1996 (disciplinary proceedings), they must also make provision similar to that made by and under—
- (a) sections 84 and 85 of that Act (representation etc. at disciplinary and other proceedings, and appeal), and
- (b) Schedule 6 to that Act (appeals to police appeals tribunals).”

*Regulations: further appeal*

- 21 Omit section 43 (regulations: further appeal).