



Policing and Crime Act 2017

2017 CHAPTER 3

PART 2

POLICE COMPLAINTS, DISCIPLINE AND INSPECTION

CHAPTER 3

WHISTLE-BLOWING: POWER OF IPCC TO INVESTIGATE

28 Investigations by the IPCC: whistle-blowing

- (1) After Part 2A of the Police Reform Act 2002 (for which see sections 25 to 27 above) insert—

“PART 2B

INVESTIGATION OF CONCERNS RAISED BY WHISTLE-BLOWERS

29D Power to investigate concerns raised by whistle-blowers

- (1) The Commission may investigate any concern raised by a whistle-blower of which it becomes aware (whether because the whistle-blower has contacted the Commission or for any other reason) but only if the whistle-blower informs the Commission, before the beginning of the investigation, that he or she consents to an investigation taking place.
- (2) In deciding whether to investigate, the Commission must take into account the public interest.
- (3) For the purposes of this Part, a person is a “whistle-blower” if—
- the person is, or was at any time, under the direction and control of a chief officer of police,

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- (b) the person raises a concern that is about a police force or a person serving with the police,
 - (c) the matter to which the concern relates is not—
 - (i) about the conditions of service of persons serving with the police, or
 - (ii) a matter that is, or could be, the subject of a complaint by the person under Part 2, and
 - (d) at the time the Commission first becomes aware of the concern, the matter to which it relates is not—
 - (i) under investigation under the direction of the Commission in accordance with paragraph 18 of Schedule 3,
 - (ii) under investigation by the Commission in accordance with paragraph 19 of that Schedule,
 - (iii) being dealt with as a complaint under section 29A under regulations under section 29C (regulations about super-complaints), or
 - (iv) under investigation under this Part.
- (4) Subsection (1) is subject to section 29F (which deals with the position where the concern is a conduct matter for the purposes of Part 2) and to section 29G (which deals with the position where the concern is a DSI matter for the purposes of that Part).
- (5) Schedule 3A (which makes provision about the procedure etc where the Commission decides to investigate under subsection (1)) has effect.

29E Commission’s powers and duties where it decides not to investigate

- (1) If the Commission decides not to carry out an investigation under section 29D(1), the Commission must inform the whistle-blower of the decision.
- (2) In such a case, the Commission may, with the consent of the whistle-blower—
 - (a) disclose the nature of the concern to the appropriate authority, and
 - (b) make recommendations in the light of the concern.
- (3) In this Part, except where otherwise provided, “appropriate authority” means—
 - (a) if the concern relates to a chief officer or an acting chief officer, the local policing body for the area of the police force of which he or she is a member;
 - (b) if the concern relates to any other person, the chief officer under whose direction and control that person is;
 - (c) if the concern does not relate to any particular persons, the chief officer of the police force to which the concern relates.
- (4) The Secretary of State may by regulations make further provision about recommendations under subsection (2).
- (5) The regulations may (amongst other things)—
 - (a) describe the kinds of recommendations that the Commission may make under subsection (2);

- (b) specify the persons to whom the recommendations may be made;
- (c) authorise the Commission to require a response to any recommendation made by the Commission under subsection (2).

29F Special provision for “conduct matters”

- (1) Before deciding whether to carry out an investigation under section 29D(1), the Commission must consider whether the concern is about a conduct matter for the purposes of Part 2 (see section 12(2)).
- (2) If the Commission determines that the concern is about a conduct matter for the purposes of Part 2—
 - (a) it may not carry out an investigation under section 29D(1), and
 - (b) it must notify the appropriate authority in relation to the person whose conduct is in question of its determination.
- (3) Where the appropriate authority in relation to the person whose conduct is in question is notified under subsection (2), it must record the matter under paragraph 11 of Schedule 3 to this Act as a conduct matter.
- (4) The Secretary of State may by regulations make provision modifying Schedule 3 in relation to a conduct matter that, in accordance with subsection (3), is recorded under paragraph 11 of that Schedule but only for the purpose of making provision for the protection of the anonymity of whistle-blowers.

29G Special provision for “DSI matters”

- (1) Before deciding whether to carry out an investigation under section 29D(1), the Commission must consider whether the concern is about a death or serious injury matter (“a DSI matter”) for the purposes of Part 2 (see section 12(2A)).
- (2) If the Commission determines that the concern is about a DSI matter for the purposes of Part 2—
 - (a) it may not carry out an investigation under section 29D(1), and
 - (b) it must notify the appropriate authority in relation to the DSI matter.
- (3) Where the appropriate authority in relation to the DSI matter is notified under subsection (2), it must record the matter under paragraph 14A of Schedule 3 to this Act as a DSI matter.
- (4) The Secretary of State may by regulations make provision modifying Schedule 3 in relation to a DSI matter that, in accordance with subsection (3), is recorded under paragraph 14A of that Schedule but only for the purpose of making provision for the protection of the anonymity of whistle-blowers.
- (5) In this section, references to the appropriate authority in relation to a DSI matter have the same meaning as in Part 2 (see section 29).

29H Commission’s powers and duties where whistle-blower is deceased

- (1) The power of the Commission to carry out an investigation under section 29D(1) applies where the whistle-blower dies before the Commission becomes aware of the concern (or before it decides to investigate).

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- (2) Any investigation begun by the Commission under section 29D(1) before the death of the whistle-blower may be continued after the death.
- (3) Where a whistle-blower dies—
 - (a) any requirement under this Part to obtain the consent of the whistle-blower may be satisfied by obtaining the consent of that person’s approved representative;
 - (b) any requirement under this Part to give any document or other information to the whistle-blower may be satisfied by giving the document or other information to the person’s approved representative;
 - (c) any requirement under this Part not to disclose the identity of the whistle-blower does not apply or (where the Commission became aware of the concern before the death) ceases to apply.
- (4) For the purpose of this section, “approved representative” means a person who has been approved by the Commission for the purposes of this Part.
- (5) The Commission may only approve a person who is—
 - (a) the widow or widower (or surviving civil partner) of the deceased whistle-blower,
 - (b) a personal representative (within the meaning of section 55(1)(xi) of the Administration of Estates Act 1925) of the deceased whistle-blower, or
 - (c) any other person appearing to the Commission to have, by reason of a family or similar relationship with the deceased whistle-blower, a relevant interest in the outcome of the concern.

29I Duty to keep whistle-blowers informed

- (1) Where the Commission carries out an investigation under section 29D(1), it must keep the whistle-blower properly informed about the progress of the investigation and its outcome.
- (2) The Secretary of State may by regulations provide for exceptions to the duty under subsection (1).
- (3) The power conferred by subsection (2) may be exercised only to the extent that the Secretary of State considers necessary for any of the permitted non-disclosure purposes.
- (4) “The permitted non-disclosure purposes” are—
 - (a) preventing the premature or inappropriate disclosure of information that is relevant to, or may be used in, any actual or prospective criminal proceedings;
 - (b) preventing the disclosure of information in any circumstances in which it has been determined in accordance with the regulations that its non-disclosure—
 - (i) is in the interests of national security,
 - (ii) is for the purposes of the prevention or detection of crime or the apprehension or prosecution of offenders,

- (iii) is for the purposes of the investigation of an allegation of misconduct against the whistle-blower or the taking of disciplinary proceedings or other appropriate action in relation to such an allegation,
 - (iv) is for the purposes of an investigation under Part 2 that relates to the whistle-blower,
 - (v) is required on proportionality grounds, or
 - (vi) is otherwise necessary in the public interest.
- (5) The non-disclosure of information is required on proportionality grounds if its disclosure would cause, directly or indirectly, an adverse effect which would be disproportionate to the benefits arising from its disclosure.

29J Protection of anonymity of whistle-blowers

- (1) The Secretary of State may by regulations make provision setting out the circumstances in which the Commission is required or authorised to disclose information falling within subsection (2) (or any particular description of such information) to persons specified, or of a description specified, in the regulations.
- (2) The information falling within this subsection is—
- (a) the identity of a whistle-blower or information that might (whether alone or with other information) tend to reveal that identity;
 - (b) the nature of a concern raised by a whistle-blower.
- (3) The power conferred by subsection (1) may be exercised only to the extent that the Secretary of State considers necessary for any of the permitted disclosure purposes.
- (4) “The permitted disclosure purposes” are—
- (a) the protection of the interests of national security;
 - (b) the prevention or detection of crime or the apprehension of offenders;
 - (c) the institution or conduct of criminal proceedings;
 - (d) the investigation of allegations of misconduct against whistle-blowers and the taking of disciplinary proceedings or other appropriate action in relation to such allegations;
 - (e) investigations under Part 2 that relate to whistle-blowers;
 - (f) investigations under this Part;
 - (g) any other purpose that is for the protection of the public interest.
- (5) Except as provided by regulations under subsection (1) or by any other provision of this Part, the Commission may not disclose information falling within subsection (2) unless the whistle-blower consents to the disclosure.

29K Other restrictions on disclosure of information

- (1) The Secretary of State may by regulations make provision setting out the circumstances in which the Commission is required or authorised to disclose information falling within subsection (2) (or any particular description of such information) to persons specified, or of a description specified, in the regulations.

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- (2) The information falling within this subsection is—
 - (a) information relating to an investigation under section 29D;
 - (b) information relating to the outcome of any such investigation.
- (3) The power conferred by subsection (1) may be exercised only to the extent that the Secretary of State considers necessary for any of the permitted disclosure purposes.
- (4) In this section, “the permitted disclosure purposes” has the same meaning as in section 29J.
- (5) Except as provided by regulations under subsection (1) or by any other provision of this Part, the Commission may not disclose information falling within subsection (2).

29L Application of provisions of Part 2

- (1) The following provisions of Part 2 apply in relation to the functions of the Commission under this Part as they apply in relation to the functions of the Commission under Part 2—
 - (a) section 15 (general duties of local policing bodies, chief officers and inspectors);
 - (b) section 16 (payment for assistance with investigation);
 - (c) section 17 (provision of information to the Commission);
 - (d) section 18 (inspection of police premises on behalf of the Commission);
 - (e) section 19 (use of investigatory powers by or on behalf of the Commission);
 - (f) section 21A (restriction on disclosure of sensitive information);
 - (g) section 21B (provision of sensitive information to the Commission);
 - (h) section 22 (power of the Commission to issue guidance);
 - (i) section 26 (forces maintained otherwise than by local policing bodies);
 - (j) section 26BA (College of Policing);
 - (k) section 26C (the National Crime Agency).
- (2) Except as provided by subsection (1), the provision made by sections 15 to 29 of Part 2 does not apply in relation to the functions of the Commission under this Part.

29M Regulation-making powers: consultation

Before making regulations under this Part, the Secretary of State must consult—

- (a) the Commission,
- (b) such persons as appear to the Secretary of State to represent the views of police and crime commissioners,
- (c) the Mayor’s Office for Policing and Crime;
- (d) the Common Council,
- (e) the National Police Chiefs’ Council, and

- (f) such other persons as the Secretary of State thinks fit.

29N Interpretation

- (1) In this Part—

“the Commission” means the Independent Police Complaints Commission;

“appropriate authority” has the meaning given by section 29E(3);

“chief officer” means the chief officer of police of any police force; and “acting chief officer” means (as appropriate)—

- (a) a person exercising or performing functions of a chief constable in accordance with section 41 of the Police Reform and Social Responsibility Act 2011,
- (b) a person exercising powers or duties of the Commissioner of Police of the Metropolis in accordance with section 44 or 45(4) of that Act, or
- (c) a person exercising duties of the Commissioner of Police for the City of London in accordance with section 25 of the City of London Police Act 1839;

“conduct” has the same meaning as in Part 2 (see section 29(1));

“whistle-blower” has the meaning given by section 29D(3).

- (2) References in this Part to a person serving with the police have the same meaning as in Part 2 (see section 12(7)).”

- (2) After Schedule 3 to the Police Reform Act 2002 insert the new Schedule 3A set out in Schedule 6 to this Act.

- (3) In section 10 of that Act, after subsection (3A) (for which see section 27 above), insert—

“(3B) The Commission also has the functions which are conferred on it by Part 2B (whistle-blowing).”

- (4) In section 105 of that Act, in subsection (5), after “Part 2” insert “or 2B”.

- (5) In section 63 of the Police Act 1996 (Police Advisory Board for England and Wales), in subsection (3)(b), after “Part 2” insert “or 2B”.