

CRIMINAL JUSTICE AND IMMIGRATION ACT 2008

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Part 9: Policing

Section 126 and Schedule 22: Police misconduct and performance procedures

719. This section gives effect to Schedule 22, Part 1 of which amends the Police Act 1996 to make changes in relation to the procedures for dealing with police conduct, efficiency and effectiveness. Part 2 of Schedule 22 makes equivalent changes to the Ministry of Defence Police Act 1987 for the purposes of the Ministry of Defence Police, and Part 3 makes equivalent changes to the Railways and Transport Safety Act 2003 for the purposes of the British Transport Police.
720. *Paragraph 2* of Schedule 22 amends section 36 of the 1996 Act. That section places a duty on the Secretary of State to exercise his or her powers under specified provisions of the 1996 Act in such a manner as to promote the efficiency and effectiveness of the police. The amendment adds a reference to section 84 (as substituted by paragraph 7 of Schedule 22) to the list of specified provisions: that section makes provision for the representation of police officers at disciplinary and other hearings.
721. *Paragraph 3* of Schedule 22 amends section 50 of the 1996 Act. That section confers a power on the Secretary of State to make regulations as to the government, administration and conditions of service of police forces. Section 50(3) requires that such regulations must make provision for taking disciplinary proceedings against police officers and specifies the possible sanctions. Paragraph 3(2) substitutes a new section 50(3) which again requires regulations to be made setting out the procedures for the taking of disciplinary proceedings in respect of the conduct, efficiency and effectiveness of members of police forces, but does not mandate the possible sanctions, other than that of dismissal.
722. *Paragraph 4(2)* amends section 51(2)(ba) of the 1996 Act to allow the Secretary of State to make regulations relating to the efficiency and effectiveness of special constables. This mirrors the existing power, in section 50(2)(e) of the 1996 Act, to make regulations as to the efficiency and effectiveness of police officers.
723. *Paragraph 4(3)* inserts a new subsection (2A) in section 51 of the 1996 Act to provide that regulations must be made setting out the procedures for the taking of disciplinary proceedings in respect of the conduct, efficiency and effectiveness of special constables, including procedures for dismissal. The intention is to mirror for special constables the arrangements to be put in place for regular police officers.
724. *Paragraph 5* makes an amendment to section 59(3) of the 1996 Act (which provides, subject to exceptions, that a police officer may only be represented by another officer

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at any misconduct or performance proceedings) consequential to the amendment to section 84 which provides a regulation-making power.

725. *Paragraph 6* amends section 63(3) of the 1996 Act to extend the regulations that the Police Advisory Board of England and Wales are to be consulted on to include the regulations that deal with the representation of members of a police force (ie regular police officers) and special constables at disciplinary and other proceedings, regulations dealing with appeals against the findings and outcomes of misconduct and performance proceedings, and rules as to the procedure on appeals to the Police Appeals Tribunal.
726. *Paragraph 7* substitutes a new section 84 in the 1996 Act which provides that the Secretary of State is to make regulations in connection with the representation of police officers and the relevant authority (including the Independent Police Complaints Commission) in misconduct and performance proceedings and enabling panels hearing such proceedings to receive advice.
727. The regulations are to specify when a police officer has a right to legal or other representation, and when he or she is to be notified of that right. The regulations must also provide that proceedings at which the officer can be dismissed cannot take place unless he has been notified of his or her right to such representation. On the first occasion when any regulations or set of regulations exercising this power are made after the coming into force of this Act, they will be subject to the affirmative resolution procedure. The negative resolution procedure applies to subsequent regulations.
728. *Paragraph 8(2)* substitutes new section 85(1) and (2) of the 1996 Act, making provision that the Secretary of State is to make rules setting out the circumstances when a police officer may appeal to a police appeals tribunal and allowing the police appeals tribunal to deal with the appellant in any way in which the original misconduct or performance proceedings could have dealt with the officer concerned.
729. *Paragraph 8(3)* substitutes a new section 85(4) which provides that the police appeals tribunal rules that are made under section 85(3) may make provision specifying the circumstances in which a case may be determined without a hearing, the entitlement of the appellant or respondent to be represented at a hearing by a legal representative or other persons, and for the tribunal to be able to require a person to attend a hearing and give evidence or produce documents.
730. New section 85(4A) and (5A) allow the rules to make different provision for different cases and specify that, on the first occasion when the rules are made, they must be made using the affirmative resolution procedure. Thereafter, they must be made using the negative resolution procedure.
731. *Paragraph 9* amends section 87 of the 1996 Act which sets out a power of the Secretary of State to issue guidance concerning the police officer disciplinary and performance procedures. The amendments extend the power of the Secretary of State to issue guidance to special constables and members of police staff as they will have functions within the new disciplinary and performance procedures.
732. *Paragraph 10* amends section 97 to remove references to a disciplinary sanction of “requirement to resign” as this disciplinary outcome will not be available in the new police officer misconduct or performance proceedings.
733. *Paragraph 11(1), (2), and (3)* amend Schedule 6, changing the persons who will sit on a police appeals tribunal for senior and non-senior police officers (including special constables). Paragraph 11(6) provides definitions for this purpose. Paragraph 11(4) and (5) make amendments consequential on the amendments to section 85.
734. *Paragraphs 12 to 16* make amendments to the Ministry of Defence Police Act 1987 in relation to the Ministry of Defence Police and *paragraphs 17 to 21* relating the to Railways and Transport Safety Act 2003 in relation to the British Transport Police.

Section 127 and Schedule 23: Investigation of complaints of police misconduct etc.

735. This section gives effect to Schedule 23 which amends Schedule 3 to the Police Reform Act 2002. Schedule 3 makes provision about the handling and investigation of: (a) complaints about the conduct of a person serving with the police (“a complaint”), (b) matters which are not the subject of a complaint but where there is an indication that a person serving with the police may have committed a criminal offence or behaved in a manner which would justify the bringing of disciplinary proceedings (“a conduct matter”), and (c) cases which are not the subject of a complaint and which are not a conduct matter but where a person who was, broadly, in the care of the police has died or sustained a serious injury (“a DSI matter”). The full definitions of these terms appear in section 12 of the Police Reform Act 2002.
736. *Paragraph 2* of Schedule 23 explicitly provides the Secretary of State with the power to specify who, apart from a person’s legal representative, can make representations to the Independent Police Complaints Commission on behalf of a person to whose conduct an investigation relates.
737. *Paragraph 4* of Schedule 23 amends paragraph 6(4) of Schedule 3 to remove references to “requirement to resign or retire”, “reduction in rank or other demotion” or “the imposition of a fine” as these disciplinary sanctions will no longer exist in the new disciplinary arrangements for members of a police force and special constables (“police officers”).
738. *Paragraph 5* inserts new paragraphs 19A to 19E into Schedule 3, which will apply to investigations relating to police officers. The new paragraph 19B places a duty on the person investigating a complaint, where there is an indication that a police officer may have committed a criminal offence or behaved in a manner justifying the bringing of disciplinary proceedings, or a recordable conduct matter, to assess whether the conduct concerned if proved would amount to misconduct or gross misconduct and what form any disciplinary proceedings in respect of the conduct would be likely to take.
739. The assessment must be made after consultation with the appropriate authority. The appropriate authority is, in the case of a senior officer, the police authority for the area of the police force of which he is a member and, in the case of a person who is not a senior officer, the chief officer under whose direction or control the person is (see section 29 of the Police Reform Act 2002). On completing the assessment, the person investigating must notify the person whose conduct is the subject of the investigation, giving the information required by new paragraph 19B(7) and such other information to be prescribed in regulations (subject to the negative resolution procedure). The notification is not to be given if it might prejudice the investigation in question or any other investigation (including a criminal one). New paragraph 19B also provides for revised assessments to be made when the investigator considers it appropriate due to, for example, fresh evidence being available.
740. New paragraph 19C provides that in the same cases to which the obligation to carry out an assessment under paragraph 19B applies, if the person subject to the investigation provides the investigator with a statement or document relating to the complaint or matter under investigation (including one suggesting new lines of enquiry or witnesses), then the investigator will be under a duty to consider it. The time limits for providing documents and statements are to be prescribed and notified to the person concerned in the notice given under new paragraph 19B. There is also a duty for the investigator to consider relevant documents provided by other persons (in addition to the person subject to the investigation) who are to be prescribed (subject to the negative resolution procedure).
741. New paragraph 19D provides for the Secretary of State by regulations (subject to the negative resolution procedure) to set out the procedure to be followed in connection with any interview of a person who is subject to an investigation in a case to which the obligation to carry out an assessment under new paragraph 19B applies.

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742. New paragraph 19E provides that the person investigating such a case must supply the appropriate authority with such information as the authority requests in order that the appropriate authority can discharge its duty to consider whether it is appropriate for a police officer to be suspended from his office as constable and (in relation to a member of a police force) membership of that force.
743. *Paragraph 6* of Schedule 23 amends paragraph 20A(7) of Schedule 3 which sets out the special conditions that must be satisfied before a police officer disciplinary matter can be dealt with using the accelerated disciplinary procedure. These amendments remove the requirement that there may have been an imprisonable offence but require that there is sufficient evidence to establish gross misconduct.
744. *Paragraphs 7 and 9* omit paragraphs 20B(5) and 20E(5) of Schedule 3 so that where the appropriate authority certifies a case as one where the special conditions are satisfied and therefore the accelerated disciplinary procedures apply, there will no longer be an automatic requirement to send a copy of the file to the DPP. *Paragraph 10* omits paragraph 20G as a consequential amendment.
745. *Paragraph 11* amends paragraph 21A of Schedule 3 to provide that where an investigation into a DSI matter identifies that a person serving with the police may have committed a criminal offence or behaved in a manner that would justify the bringing of disciplinary proceedings, and the investigation is therefore reclassified as a conduct matter, then the original investigator for the DSI matter can continue as the investigator of the conduct matter (subject to the IPCC determining under paragraph 15(5) of Schedule 3 that the investigation should take a different form).
746. *Paragraph 12(4)* inserts new sub-paragraphs (7) to (10) in paragraph 22 of Schedule 3. The new sub-paragraph (7) provides that the Secretary of State may by regulations (subject to the negative resolution procedure) make provision to require the report on an investigation within paragraph 19B(1)(a) or (b) (where conduct has been identified that may lead to disciplinary proceedings) to include such matters as required by the regulations and for the investigation report to be accompanied by such documents or other items as may be specified.
747. The new sub-paragraphs (8) to (10) place a duty on the person who submits the investigation report to supply the appropriate authority with copies of such other documents or items to enable that authority to comply with his or its obligations under the misconduct procedures in regulations or to ensure that a police officer receives a fair hearing. This provision is to be used in the event that an investigation report does not attach documents the appropriate authority consider sufficient for him or it for these purposes.
748. *Paragraph 13(2) and (3)* amends paragraph 23 of Schedule 3 so that the IPCC must refer to the DPP a report on an investigation submitted to it following a investigation conducted under paragraph 18 (investigations managed by the IPCC) or 19 (investigations by the IPCC itself) of Schedule 3, if the report indicates to the IPCC that a criminal offence may have been committed and either (a) the IPCC considers the case should be so referred or (b) matters in the report fall within a prescribed category. The regulations setting out categories of cases which must be referred are subject to the negative resolution procedure.
749. *Paragraph 13(5)* substitutes new sub-paragraphs (6) and (7) into paragraph 23 of Schedule 3, which provide that the IPCC must, on receipt of an investigator's report, require the appropriate authority to determine whether any person to whose conduct the investigation related has a case to answer in respect of misconduct or gross misconduct or neither and what action it must or will take (both disciplinary action and other action). The appropriate authority must then submit a memorandum to the IPCC setting out its determinations. These amendments take account of the fact that the proposed new Police (Conduct) Regulations will set out the disciplinary action the appropriate

authority must or may take as a result of its determination on whether there is a case to answer.

750. *Paragraph 14* amends paragraph 24 of Schedule 3 so that the appropriate authority must refer to the DPP a report on an investigation submitted to it following an investigation conducted under paragraph 16 (investigations conducted by appropriate authority on its own behalf) or 17 (investigations conducted by appropriate authority but supervised by the IPCC) of Schedule 3, if the report indicates to the authority that a criminal offence may have been committed and either (a) the appropriate authority considers the case should be so referred or (b) matters in the report fall within a prescribed category.
751. By virtue of the new subsections (5A) and (5B) inserted into paragraph 24, in cases where the IPCC has supervised an investigation into a recordable conduct matter, the appropriate authority will be required to inform the IPCC of its determination as to whether the conditions for referring the case to the DPP are satisfied. Where the appropriate authority informs the IPCC that it has determined that the conditions for referral are not satisfied, then the IPCC will make its own determination and may direct that the appropriate authority refer the case to the DPP.
752. The new sub-paragraph (6) substituted in paragraph 24 also requires the appropriate authority, on receipt of an investigator's report (on a case investigated under paragraph 16 or 17 of Schedule 3), to determine whether any person to whose conduct the investigation related has a case to answer in respect of misconduct or gross misconduct or neither and what action it must or will take (both disciplinary action and other action). These amendments take account of the fact that the proposed new Police (Conduct) Regulations will set out the action the appropriate authority must or may take as a result of its determination on whether there is a case to answer.
753. *Paragraph 16* amends paragraph 24B of Schedule 3 to clarify that where, following completion of an investigation into a DSI matter, that matter is recorded as a conduct matter, the person who investigated the DSI matter may continue as the investigator of the conduct matter (subject to the IPCC determining under paragraph 15(5) that the investigation should take a different form under paragraph).
754. *Paragraph 17(2)* amends paragraph 25 of Schedule 3 to give complainants additional rights of appeal following an investigation by the appropriate authority (either on its own behalf or under supervision by the IPCC). The new provisions will allow complainants to appeal to the IPCC against the determination of the appropriate authority as to whether a person who was the subject of the investigation has a case to answer in respect of misconduct or gross misconduct or neither (and in relation to being given inadequate information about this determination); and also against a decision of an appropriate authority not to send the investigation report to the DPP.
755. *Paragraph 17(3)* amends paragraph 25(3) to extend the matters the IPCC can require the appropriate authority to cover in its memorandum to the IPCC following an appeal. The memorandum can now include the appropriate authority's determination on case to answer, the action it must or has decided to take (whether under the Police (Conduct) Regulations or otherwise), and where the appropriate authority has determined that the report of the investigation should not be sent to the DPP, the reasons for that determination.
756. The amendment made by *paragraph 17(4)(a)* to paragraph 25(5) of Schedule 3 clarifies the operation of that sub-paragraph, which caters for both cases where it is clear from the appeal what ground of appeal is being pursued and where the ground of appeal is not clear. The amendment at *paragraph 17(4)(b)* extends the list of matters that the IPCC is required to determine (if appropriate) on an appeal, to reflect the new grounds of appeal.
757. *Paragraph 17(6)* inserts a new sub-paragraph (9A) into paragraph 25 which provides that where the appropriate authority has determined that the conditions for referring a case to the DPP are not met and the complainant has appealed against this determination,

the IPCC will be required to determine whether it considers the conditions are satisfied. Where the IPCC determines that the conditions are satisfied it must direct the appropriate authority to refer the case to the DPP.

758. *Paragraph 18* amends paragraph 27 of Schedule 3 to allow the IPCC to make a recommendation to the appropriate authority in respect of whether a person has a case to answer in respect of misconduct or gross misconduct or has no case to answer; and to provide that where a recommendation is made by the IPCC that disciplinary proceedings are brought, the form of those proceedings must be specified.
759. *Paragraph 19* defines a number of the terms to be inserted into Schedule 3 and provides for the definition of “the Standards of Professional Behaviour” expected of a police officer to be set out in regulations.

Section 128: Financial assistance under section 57 of Police Act 1996.

760. Section 57(1) of the Police Act 1996 gives the Secretary of State power to maintain or contribute to organisations, services and facilities that promote the efficiency and effectiveness of the police. *Subsection (1)* inserts new subsections (1A) to (1D) into section 57.
761. The new subsection (1A) makes it clear that the Secretary of State can provide financial assistance in exercising his power under section 57(1). The new subsection (1B) provides that financial assistance may in particular be given by way of grant, investment in a body corporate, loan or guarantee and that the Secretary of State can set the terms and conditions on which the assistance is given. These new subsections clarify but do not extend the Secretary of State’s existing powers under section 57(1).
762. New subsection (1B) also requires the consent of the Treasury to financial assistance (except for grants) made under the section 57(1) power. This is to ensure that the terms and conditions attached to any loans, investment or guarantees are in line with Government Accounting Rules and follow best practice.
763. New subsection (1C) states that the terms and conditions the Secretary of State can impose for the giving of financial assistance include those relating to repayment with or without interest.
764. New subsection (1D) requires that where financial assistance under section 57 is given on terms and conditions requiring that the body make payments to the Secretary of State (e.g. repayments of capital or interest relating to a loan), those payments will be paid into the Consolidated Fund.
765. *Subsection (2)* provides that any outstanding loan already made by the Secretary of State to a body under section 57(1) for the purposes of promoting the efficiency and effectiveness of the police (such as a loan to the Forensic Science Service) will, from the date of Royal Assent, be treated as a loan made in accordance with section 57 of the 1996 Act as amended by section 128. In practice, this will mean that Treasury will be treated as having given its consent to existing loans and the loans will be treated as being in compliance with Government Accounting Rules.

Section 129: Inspection of police authorities

766. This section extends Her Majesty’s Inspectorate of Constabulary’s (HMIC’s) powers of inspection in police authorities. It provides for HMIC to carry out general inspections of the performance of all the functions of police authorities, rather than limit these powers to the inspection of a police authority’s compliance with best value in Part 1 of the Local Government Act 1999.
767. The intention is that this section mirrors the provision made by section 152 of the Local Government and Public Involvement in Health Act 2007. That section broadens the Audit Commission’s powers to enable the general inspection of the performance of best

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value authorities rather than again limit their powers to compliance with best value. With both organisations having powers of inspection in police authorities that are on an equal footing, the intention is to develop a joint police authority inspection programme combining the expertise and resources of the Audit Commission and HMIC.