



EXPLANATORY NOTES

Police (Complaints and Conduct) Act 2012

Chapter 22

£5.75

POLICE (COMPLAINTS AND CONDUCT) ACT 2012

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Police (Complaints and Conduct) Act 2012 which received Royal Assent on 19 December 2012. They have been prepared by the Home Office in order to assist the reader in understanding the Act and to help inform debate on it. They do not form part of the Act and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

BACKGROUND AND SUMMARY

The framework for the investigation of police complaints and other conduct matters

3. The Independent Police Complaints Commission (“IPCC”) was established by Part 2 of the Police Reform Act 2002 (“the 2002 Act”) to provide an effective and independent means of overseeing the investigation of complaints and alleged misconduct relating to the police in England and Wales. It came into effect in April 2004, replacing its predecessor, the Police Complaints Authority (“PCA”). The provisions governing the transition between the two bodies are contained in the Independent Police Complaints Commission (Transitional Provisions) Order 2004¹.

4. The IPCC has a general duty to secure public confidence in the arrangements for handling complaints (and other matters). Part 2 of the 2002 Act sets out the statutory framework within which the IPCC has oversight of police complaints, conduct matters and death and serious injury (“DSI”) matters.

5. There are three ways to enter the police complaints system set out by the 2002 Act. The first is via complaints. For a complaint to be dealt with under the 2002 Act, it must be one about the conduct of a person serving with the police.

6. The second concerns circumstances where there has not been a complaint but where there is an indication that a person serving with the police may have either committed a criminal offence or behaved in a way which would justify disciplinary proceedings (“a conduct matter”).

¹ SI 2004/671

7. The third relates to a DSI matter. This arises where there has been no complaint or conduct matter but the circumstances are such that a person has died or sustained serious injury and the police are involved in one or more of the ways defined in the 2002 Act.

8. Chief officers and local policing bodies (that is Police and Crime Commissioners or, in London, the Mayor's office for Policing and Crime and the Common Council of the City of London) have a duty under the 2002 Act to record complaints, conduct matters and DSI matters that fall within the Act and for which they are the appropriate authority². All DSI matters and certain categories of complaints and conduct matters (as set out in paragraphs 4 and 13 of Schedule 3 to the 2002 Act and Regulation 4 and 7, Police (Complaints and Misconduct) Regulations 2012³) must be referred to the IPCC. The IPCC also encourages appropriate authorities to refer complaints or incidents that do not come within these categories but where the gravity of the subject matter or exceptional circumstances justifies referral.

9. When cases are referred to the IPCC, it assesses the seriousness of the case and the public interest and determines the form of investigation. There are four types of investigation:

- **Independent investigations** - Carried out by IPCC investigators and overseen by an IPCC Commissioner. IPCC investigators have all the powers of the police.
- **Managed investigations** - Carried out by Professional Standards Departments ("PSDs") of police forces under the direction and control of the IPCC.
- **Supervised investigations** - Carried out by police PSDs under their own direction and control. The IPCC will set the terms of reference and receive the investigation report when it is complete.
- **Local investigations** - Carried out entirely by police PSDs.

If the IPCC decide there is no need for it to investigate a complaint or conduct matter it can also refer this back to the appropriate authority.

Hillsborough

10. The publication of the Hillsborough Independent Panel's report on 12 September 2012⁴ exposed a number of significant failures by the police and associated shortcomings in the police investigation that followed the disaster at the Hillsborough stadium on 15 April 1989, in which 96 men, women and children lost their lives.

² From 22 November 2012, the appropriate authority for a person serving with the police is: for a chief officer or an acting chief officer, the local policing body for the area of the police force of which the officer is a member; in any other case, the chief officer with direction and control over the person serving with the police.

³ SI 2012/1204

⁴ *Hillsborough: The Report of the Hillsborough Independent Panel*, 12 September 2012 available at: http://hillsborough.independent.gov.uk/repository/report/HIP_report.pdf

11. In light of this report, the Prime Minister made a statement apologising to the families of the Hillsborough victims for what he called the “double injustice”⁵ they suffered. In the first instance, this injustice was manifested in the tragic events which took place on that day in April 1989 and the time it has taken for the truth about what happened on that day to be made public. The Prime Minister referred to the second injustice as the “denigration of the deceased” - the suggestion that those who died were culpable for their own demise. This resulted in calls for an urgent investigation into allegations of criminality and misconduct by the police linked to the Hillsborough tragedy.

12. In October 2012, the IPCC published its *Decision in response to the report of the Hillsborough Independent Panel*⁶ setting out the matters it will be investigating. In this, it confirms that it received referrals from the South Yorkshire Police, West Midlands Police and West Yorkshire Police Authority in relation to Hillsborough. It further makes clear that despite the fact that it does “not have investigative powers over all of the parties referred to in the report”, its desire is to “go forward in the spirit of the Panel’s work, to seek to ensure that there is a coordinated approach that can encompass all the issues, agencies and individuals involved, and which liaises closely with the families”.

13. The Independent Panel’s report was further debated by the House of Commons on 22 October 2012⁷. In that debate, the Home Secretary gave a commitment to ensuring that the IPCC had the powers and resources it needs to carry out its investigations into Hillsborough “thoroughly, transparently and exhaustively”⁸. Amongst other things, the Home Secretary indicated that the Government was examining proposals to require officers who may be a witness to a matter under investigation to attend an interview with IPCC investigators and whether this might require fast-track legislation. In that debate, the Shadow Home Secretary indicated that she supported the case for exploring such fast-track legislation.

14. This Act equips the IPCC with additional powers to: (a) require an individual, who is currently serving with the police or an additional police body, to attend an interview during the course of an investigation; and (b) investigate a matter which was previously the subject of an investigation by its predecessor, the PCA or was otherwise dealt with under earlier legislation.

TERRITORIAL EXTENT

15. Section 1(1), (2) and (4) and section 3 of the Act extend to the United Kingdom. Sections 1(3) and 2 extend to England and Wales only. In relation to Wales, the provisions of the Act do not relate to devolved matters or confer functions on the Welsh Ministers.

⁵ Hansard, 12 September 2012, columns 283 to 306

⁶ Available at: <http://www.ipcc.gov.uk>

⁷ Hansard, columns 719 to 804

⁸ Hansard, column 721

COMMENTARY ON SECTIONS

Section 1: Interview of serving officers during investigations

16. The detailed provisions governing the handling of complaints, conduct matters and DSI matters are set out in Schedule 3 to the 2002 Act. The level at which a complaint etc. is handled will depend on a number of matters (for example, its gravity) and, in broad terms, the more serious matters are referred to the IPCC. Paragraph 15 of Schedule 3 sets out the basis on which the IPCC may determine how a matter referred to it is to be handled. In particular, the IPCC may determine that it will handle the investigation itself (paragraph 15(4)(d)).

17. Further detail of the processes in accordance with which matters are handled is prescribed in the Police (Complaints and Misconduct) Regulations 2012⁹, made in part under paragraph 19D of Schedule 3 to the 2002 Act. Regulation 19 provides for the process whereby arrangements are made in certain circumstances for a person (that is, a police officer or special constable) whose conduct is subject to investigation to attend an interview. Regulation 19(7), in particular, provides that the person in question *shall attend the interview*. There is no equivalent power to require a police officer who may be a witness to a matter under investigation similarly to attend for interview.

18. *Subsection (2)* inserts a new paragraph 19F into Schedule 3 to the 2002 Act. New paragraph 19F(1) provides that this power applies to any investigation carried out or managed by the IPCC under Schedule 3. New paragraph 19F(2) enables the Secretary of State to make regulations, subject to the negative resolution procedure, setting out the procedure to be followed in connection with the interview of a ‘serving officer’ during an investigation undertaken or managed by the IPCC. Without prejudicing the generality of the regulation-making power, new paragraph 19F(3) sets out an indicative list of matters that may be dealt with in such regulations including, in particular, a provision requiring a serving officer to attend for interview.

19. New paragraph 19F(4) defines a ‘serving officer’ for these purposes as meaning a person serving with the police (that is, a police officer, special constable or member of police staff) or serving with an ‘additional police body’. An additional police body, as set out in new paragraph 19F(7), is a body of constables specified in the regulations (for example, the British Transport Police Force, the Civil Nuclear Constabulary, the Ministry of Defence Police or a Ports Police Force), the Serious Organised Crime Agency (which, following the passage of the Crime and Courts Bill, will be replaced by the National Crime Agency) and the National Policing Improvement Agency. Paragraph 19F(7)(a) contains power to prescribe by regulations an additional police body; this may include a police force maintained under section 1 of the Police (Scotland) Act 1967 (or, from the date on which section 6 of the Police and Fire Reform (Scotland) Act 2012 is brought into force, the Police Service of Scotland).

20. Such regulations may only apply in respect of persons serving with the Police Service of Northern Ireland if the Northern Ireland Assembly has consented to such regulations

⁹ SI 2012/1204

where they contain provisions within the legislative competence of the Assembly (new paragraph 19F(8) and (9)).

21. Provision in regulations made under new paragraph 19F would be similar to that in regulations made under paragraph 19D. To avoid the new regulation-making power implying that the paragraph 19D power does not confer power to make regulations requiring attendance, *subsection (3)* amends paragraph 19D(2) of the 2002 Act to make this explicit.

22. Although the Police (Complaints and Misconduct) Regulations 2012 contain no express sanction in relation to a failure to comply with the requirement, an effective sanction is available by virtue of the Police (Conduct) Regulations 2012¹⁰. These Regulations provide that misconduct means a breach of the standards of behaviour which are set out in Schedule 2 to these Regulations. A failure to attend an interview in breach of a statutory duty is considered to be a breach of one or more of the standards of behaviour listed in the Schedule, for example *Duties and Responsibilities*. In a case where the chief officer has issued a standing or specific order in relation to this matter, that failure to comply would also be a breach of the *Orders and Instructions* behaviour. Therefore, the sanction for failure to comply with a requirement to attend for interview is (or is potentially) that the officer in question becomes the subject of misconduct proceedings.

23. *Subsection (4)* inserts new provision into section 108 of the 2002 Act to make provision to extend new paragraph 19F of Schedule 3 to the United Kingdom.

Section 2: Application of Part 2 of the Police Reform Act 2002 to old cases

24. The IPCC took over from its predecessor, the PCA, on 1 April 2004. The Independent Police Complaints Commission (Transitional Provisions) Order 2004 (“the transitional order”) sets out a number of transitional arrangements. Article 2 of the order provided that where an investigation into a complaint was ongoing on 1 April 2004, that complaint would continue to be handled under the framework in the Police Act 1996 (which was superseded by the framework in Part 2 of the 2002 Act). Article 3 excludes from the scope of Part 2 of the 2002 Act a complaint or conduct matter relating to the conduct of police staff or special constables before 1 April 2004. Article 4 of the order contains provision which prevented complaints or other matters from being recorded by forces if they had previously been the subject of an investigation by the PCA or were otherwise dealt with under the previous legislation. This in turn had the effect of preventing the IPCC from investigating those matters.

25. In its October 2012 decision in response to the report of the Hillsborough Independent Panel, the IPCC said it was prevented from investigating certain issues further because they had previously been investigated by the PCA (see paragraphs 40 and 52 of the decision). *Subsection (2)* inserts a new section 28A into the 2002 Act. New section 28A enables the IPCC, if it considers that there are “exceptional circumstances”, to direct that article 2, 3 or 4 of the transitional order does not apply in relation to a “pre-commencement matter”. This is defined as a complaint or conduct matter in relation to conduct occurring prior to 1 April 2004 which would (apart from this provision) be prevented by the transitional order from being recorded under Part 2 of the 2002 Act. New section 28A also enables the IPCC, if it

¹⁰ SI 2012/2632

considers that there are “exceptional circumstances”, to direct that for the purposes of Part 2 of the 2002 Act a matter be treated as a conduct matter or DSI matter if it relates to conduct occurring prior to 1 April 2004 which has been the subject of a complaint, and would be a conduct matter or DSI matter if it had not been the subject of a complaint. This power is included because the definitions of “conduct matter” and “DSI matter” exclude a matter which is or has been the subject of a complaint. It allows a matter which was previously the subject of a complaint to be treated as a conduct matter or DSI matter despite those definitions, so that it can be investigated even if there is no fresh complaint. The requirement that the IPCC should be satisfied of “exceptional circumstances” is intended to set a high threshold; what is meant by exceptional could include a number of considerations such as the unusual gravity of the circumstances or an overwhelming public interest in a matter being investigated. What is clear is that the decision will rest solely with the IPCC as the independent body overseeing the police complaints system. It will also be for the IPCC to determine its procedures for making such a direction and any such direction will be published in such manner as the IPCC considers appropriate.

26. New section 28A(10) enables the Secretary of State to make regulations, subject to the negative resolution procedure, which modify the application of Part 2 of the 2002 Act to a matter in respect of which the IPCC has made a direction under new section 28A(1) or (4). Such modifications to the framework in Part 2 might be necessary, for example, to modify the detailed rules about when a complaint or conduct matter must be recorded or need not be recorded.

27. *Subsection (3)* makes consequential amendments to the definitions of a conduct matter and DSI matter in section 12 of the 2002 Act and *subsection (4)* makes a consequential amendment to the definition of a recordable conduct matter in section 29 of the 2002 Act.

Section 3: Extent and short title

28. This section sets out the territorial extent of the Act. It also sets out the short title of the Act.

COMMENCEMENT

29. All provisions of the Act come into force on the day on which it receives Royal Assent.

HANSARD REFERENCES

30. The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

<i>Stage</i>	<i>Date</i>	<i>Hansard Reference</i>
House of Commons		
Introduction	22 November 2012	Vol 553 Col 762
Second Reading	05 December 2012	Vol 554 Col 924
Committee	05 December 2012	Vol 554 Col 954
Report and Third Reading	05 December 2012	Vol 554 Col 961
House of Lords		
Introduction	06 December 2012	Vol 741 Col 756
Second Reading	11 December 2012	Vol 741 Col 996
Committee Report and Third Reading	11 December 2012	Vol 741 Col 1052
Royal Assent (Commons)	19 December 2012	Vol 555 Col 891
Royal Assent (Lords)	19 December 2012	Vol 741 Col 1543

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