

SCHEDULES

SCHEDULE 5

COMPLAINTS, CONDUCT MATTERS AND DSI MATTERS: PROCEDURE

PART 4

REVIEWS

29 Schedule 3 to the Police Reform Act 2002 (handling of complaints and conduct matters etc) is further amended as follows.

30 In paragraph 4 (reference of complaints to the Commission), after sub-paragraph (5) insert—

“(5A) The power of an appropriate authority to refer a complaint to the Commission under sub-paragraph (2) is also exercisable after a complaint has been handled in accordance with this Schedule if a recommendation is made under paragraph 6A(6)(a) or 25(4E)(b) (recommendation on a review).”

31 After paragraph 6 insert—

“Reviews relating to complaints dealt with other than by investigation

6A (1) This paragraph applies where a complaint is handled by the appropriate authority in accordance with paragraph 6(2A) otherwise than by the authority making arrangements for the complaint to be investigated by the authority on its own behalf.

(2) The complainant has the right to apply to the relevant review body for a review of the outcome of the complaint.

(3) The relevant review body must notify the following of an application for a review under sub-paragraph (2)—

- (a) the appropriate authority,
- (b) every person entitled to be kept properly informed in relation to the complaint under section 21, and
- (c) the person complained against (if any).

(4) On a review applied for under sub-paragraph (2), the relevant review body must determine whether the outcome is a reasonable and proportionate outcome.

(5) Where the Commission is the relevant review body and the Commission finds that the outcome is not a reasonable and proportionate outcome, the Commission may—

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- (a) determine that it is necessary for the complaint to be investigated;
 - (b) make a recommendation under paragraph 28ZA.
- (6) Where a local policing body is the relevant review body and the local policing body finds that the outcome is not a reasonable and proportionate outcome, the local policing body may—
- (a) where the complaint has not previously been referred to the Commission under paragraph 4, make a recommendation to the appropriate authority that it refer the complaint to the Commission under sub-paragraph (2) of that paragraph;
 - (b) make a recommendation to the appropriate authority that it make arrangements for the complaint to be investigated by the authority on its own behalf;
 - (c) make a recommendation under paragraph 28ZA.
- (7) The Secretary of State may by regulations make further provision about recommendations under sub-paragraph (6)(a) or (b).
- (8) The regulations may (amongst other things) authorise the local policing body making the recommendation to require a response to the recommendation.
- (9) The relevant review body must give notification of the outcome of a review under this paragraph and of its reasons for the determination made under sub-paragraph (4)—
- (a) to the appropriate authority,
 - (b) to the complainant,
 - (c) to every person entitled to be kept properly informed in relation to the complaint under section 21, and
 - (d) except in a case where it appears to the relevant review body that to do so might prejudice any investigation of the complaint, to the person complained against (if any).
- (10) In this paragraph references to the outcome of a complaint do not include the outcome of any criminal or disciplinary proceedings brought in relation to any matter which was the subject of the complaint.”
- 32 Omit paragraph 8A (appeals relating to complaints dealt with other than by investigation) and the italic heading before that paragraph.
- 33 In the italic heading before paragraph 25, for “Appeals” substitute “Reviews”.
- 34 (1) Paragraph 25 (appeals with respect to an investigation) is amended as follows.
- (2) After sub-paragraph (1) insert—
- “(1A) But this paragraph does not apply where the person investigating submitted a report on the investigation under provision made by virtue of paragraph 20A(4)(b) and did not (as a result of provision made by virtue of paragraph 20A(4)(a)) submit a further report under paragraph 22(2).
- (1B) Where this paragraph applies, the complainant has the right to apply to the relevant review body for a review of the outcome of the complaint.

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(1C) The relevant review body must notify the following of an application for a review under sub-paragraph (1B)—

- (a) the appropriate authority,
- (b) every person entitled to be kept properly informed in relation to the complaint under section 21, and
- (c) the person complained against (if any).”

(3) Omit sub-paragraphs (2) to (3).

(4) For sub-paragraph (4) substitute—

“(4) Where the relevant review body so requires on the making of an application for a review under sub-paragraph (1B), the appropriate authority must provide the relevant review body with—

- (a) a copy of the report of the investigation, and
- (b) such information concerning the authority’s determinations under paragraph 24 as is described in a notification given by the relevant review body to the authority.”

(5) After sub-paragraph (4) insert—

“(4A) On a review applied for under sub-paragraph (1B), the relevant review body must determine whether the outcome of the complaint is a reasonable and proportionate outcome.

(4B) In making a determination under sub-paragraph (4A), the relevant review body may review the findings of the investigation.

(4C) Where the Commission is the relevant review body and the Commission finds that the outcome is not a reasonable and proportionate outcome, the Commission may—

- (a) make its own findings (in place of, or in addition to, findings of the investigation);
- (b) direct that the complaint be re-investigated;
- (c) make a recommendation to the appropriate authority in respect of any person serving with the police—
 - (i) that the person has a case to answer in respect of misconduct or gross misconduct or has no case to answer in relation to the person’s conduct to which the investigation related;
 - (ii) that the person’s performance is, or is not, unsatisfactory;
 - (iii) that disciplinary proceedings of the form specified in the recommendation are brought against the person in respect of the person’s conduct, efficiency or effectiveness to which the investigation related;
 - (iv) that any disciplinary proceedings brought against that person are modified so as to deal with such aspects of that conduct, efficiency or effectiveness as may be so specified;
- (d) make a recommendation under paragraph 28ZA.

(4D) Where the Commission makes a recommendation under sub-paragraph (4C)(c)—

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- (a) the appropriate authority must notify the Commission whether it accepts the recommendation and (if it does) set out in the notification the steps that it is proposing to take to give effect to it, and
 - (b) sub-paragraphs (4) to (8) and (9)(b) of paragraph 27 apply in relation to the recommendation as if it had been made under that paragraph.
- (4E) Where a local policing body is the relevant review body and the local policing body finds that the outcome is not a reasonable and proportionate outcome, the local policing body may—
- (a) make a recommendation to the appropriate authority that the complaint be re-investigated by the authority on its own behalf;
 - (b) where the complaint has not previously been referred to the Commission under paragraph 4, make a recommendation to the appropriate authority that it refer the complaint to the Commission under sub-paragraph (2) of that paragraph;
 - (c) make a recommendation to the appropriate authority in respect of any person serving with the police—
 - (i) that the person has a case to answer in respect of misconduct or gross misconduct or has no case to answer in relation to the person’s conduct to which the investigation related;
 - (ii) that the person’s performance is, or is not, unsatisfactory;
 - (iii) that disciplinary proceedings of the form specified in the recommendation are brought against the person in respect of the person’s conduct, efficiency or effectiveness to which the investigation related;
 - (iv) that any disciplinary proceedings brought against that person are modified so as to deal with such aspects of that conduct, efficiency or effectiveness as may be so specified;
 - (d) make a recommendation under paragraph 28ZA.
- (4F) Sub-paragraph (4G) applies where, on a review applied for under sub-paragraph (1B), the relevant review body determines that the report of the investigation indicates that a criminal offence may have been committed by a person (if any) to whose conduct the investigation related and that—
- (a) the circumstances are such that, in the opinion of the relevant review body, it is appropriate for the matters dealt with in the report to be considered by the Director of Public Prosecutions, or
 - (b) any matters dealt with in the report fall within any category of matters prescribed for the purposes of paragraph 24(2B)(b).
- (4G) Where this sub-paragraph applies—
- (a) if the Commission is the relevant review body, the Commission must notify the Director of Public Prosecutions of the determination under sub-paragraph (4F) and send the Director a copy of the report;

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- (b) if a local policing body is the relevant review body, the local policing body must make a recommendation to the appropriate authority that the appropriate authority—
 - (i) notify the Director of Public Prosecutions of the determination under sub-paragraph (4F), and
 - (ii) send the Director a copy of the report.
- (4H) The Secretary of State may by regulations make further provision about recommendations under sub-paragraph (4E)(a), (b) or (c) or (4G)(b).
- (4I) The regulations may (amongst other things) authorise the local policing body making the recommendation to require a response to the recommendation.
- (4J) Where this paragraph applies because the person investigating submitted a report on the investigation under provision made by virtue of paragraph 20A(4)(b) (“the first report”) and a further report under paragraph 22(2), the references in sub-paragraphs (4B) and (4C)(a) to the findings of the investigation do not include a reference to findings on the first report.”
- (6) Omit sub-paragraphs (5) to (9A).
- (7) In sub-paragraph (10)—
 - (a) in the words before paragraph (a)—
 - (i) for “appeal” substitute “review”;
 - (ii) for “any determination” substitute “the outcome of a review”;
 - (iii) after “paragraph” insert “and of its reasons for the determination made under sub-paragraph (4A)”;
 - (b) in paragraph (a), omit “(unless it is the relevant appeal body)”;
 - (c) in paragraph (d)—
 - (i) for “appeal” substitute “review”;
 - (ii) omit “proposed review or”.
- (8) Omit sub-paragraph (11).
- (9) In sub-paragraph (13)—
 - (a) in paragraph (a), for “appeals under this paragraph are to be brought” substitute “applications under sub-paragraph (1B) are to be made”;
 - (b) in paragraph (b), for “appeal must be brought” substitute “application must be made”;
 - (c) for paragraph (c) substitute—
 - “(c) for the procedure to be followed by the relevant review body when carrying out a review applied for under sub-paragraph (1B).”
- (10) After sub-paragraph (13) insert—
 - “(14) In this paragraph references in relation to an investigation to the outcome of the complaint do not include the outcome of any criminal or disciplinary proceedings brought in relation to any matter which was the subject of the investigation.”
- 35 After paragraph 25 insert—

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“Information for complainant about disciplinary recommendations

- 25A (1) This paragraph applies where, on the review of the outcome of a complaint under paragraph 25, the Commission makes a recommendation under sub-paragraph (4C)(c) of that paragraph.
- (2) Where the appropriate authority notifies the Commission under paragraph 25(4D)(a) that the recommendation has been accepted, the Commission must notify the complainant and every person entitled to be kept properly informed in relation to the complaint under section 21 of that fact and of the steps that have been, or are to be taken, by the appropriate authority to give effect to it.
- (3) Where the appropriate authority—
- (a) notifies the Commission under paragraph 25(4D)(a) that it does not (either in whole or in part) accept the recommendation, or
 - (b) fails to take steps to give full effect to the recommendation,
- the Commission must determine what, if any, further steps to take under paragraph 27 as applied by paragraph 25(4D)(b).
- (4) The Commission must notify the complainant and every person entitled to be kept properly informed in relation to the complaint under section 21—
- (a) of any determination under sub-paragraph (3) not to take further steps, and
 - (b) where the Commission determines under that sub-paragraph that it will take further steps, of the outcome of the taking of those steps.”

36 For the italic heading before paragraph 26, substitute “Re-investigations following a review”.

37 (1) Paragraph 26 (reviews and re-investigations following an appeal) is amended as follows.

(2) Omit sub-paragraph (1).

(3) In sub-paragraph (2), omit “or sub-paragraph (1)”.

(4) In sub-paragraph (3), for “(3)” substitute “(4)”.

(5) After sub-paragraph (3) insert—

“(3A) Where, following a recommendation under paragraph 25(4E)(a) in relation to a complaint, the appropriate authority determines that it is appropriate for it to re-investigate the complaint on its own behalf, sub-paragraphs (3) to (5) of paragraph 16 shall apply in relation to the re-investigation as they apply in relation to an investigation to which paragraph 16 applies.”

(6) In sub-paragraph (4)—

(a) for “25(8)” substitute “25(4C)(b)”;

(b) omit “or sub-paragraph (1) of this paragraph”;

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- (c) before “as they apply” insert “and any re-investigation of the type described in sub-paragraph (3A) of this paragraph”.

(7) After sub-paragraph (4) insert—

“(4A) Where the Commission determines under sub-paragraph (2) that the re-investigation should take the form of an investigation by the appropriate authority on its own behalf, the Commission may also give the appropriate authority such directions as to the handling of the matter in future as the Commission thinks fit.”

(8) For sub-paragraph (5) substitute—

“(5) The Commission shall notify the appropriate authority of any determination that it makes under this paragraph and of its reasons for making the determination.

(5A) The Commission shall also notify the following of any determination that it makes under this paragraph and of its reasons for making the determination—

- (a) the complainant;
- (b) every person entitled to be kept properly informed in relation to the complaint under section 21;
- (c) the person complained against (if any).

(5B) The duty imposed by sub-paragraph (5A) on the Commission shall have effect subject to such exceptions as may be provided for by regulations made by the Secretary of State.

(5C) Subsections (6) to (8) of section 20 apply for the purposes of sub-paragraph (5B) as they apply for the purposes of that section.”

(9) Omit sub-paragraph (6).

38 In the italic heading before paragraph 30—

- (a) for “Appeals” substitute “Reviews”;
- (b) for “appeal” substitute “review”.

39 (1) Paragraph 30 (appeals: the relevant appeal body) is amended as follows.

(2) In sub-paragraph (1)—

- (a) in the words before paragraph (a)—
 - (i) for “appeal”, in the first place it occurs, substitute “review”;
 - (ii) for “an appeal” substitute “a review”;
- (b) in paragraph (a), after “in a case where” insert “a local policing body is the appropriate authority in relation to the relevant complaint or”;
- (c) for paragraph (b) substitute—
 - “(b) the local policing body which is the relevant local policing body in relation to the relevant complaint, in any other case.”

(3) For sub-paragraph (2) substitute—

“(2) In this paragraph and paragraphs 31 and 32—

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“relevant complaint”, in relation to a review, means the complaint to which the review relates;

“relevant local policing body”, in relation to a relevant complaint where a chief officer is the appropriate authority in relation to the complaint, means the local policing body for the area of the police force of which the chief officer is a member;

“review” means a review applied for under paragraph 6A(2) or 25(1B).”

40 For paragraph 31 (appeal made to the Commission in error) substitute—

- “31 (1) This paragraph applies in a case where—
- (a) an application for a review is made to the Commission, and
 - (b) a local policing body is the relevant review body in relation to the review.
- (2) The Commission must—
- (a) forward the application to the local policing body, and
 - (b) notify the person who applied for the review—
 - (i) that the local policing body is the relevant review body, and
 - (ii) the application has been forwarded.
- (3) The application is to be taken to have been—
- (a) made to the local policing body, and
 - (b) so made at the time when it is forwarded to the local policing body.”

41 For paragraph 32 (appeal made to appropriate authority in error) substitute—

- “32 (1) This paragraph applies in a case where—
- (a) an application for a review is made to a local policing body, and
 - (b) the Commission is the relevant review body in relation to the review.
- (2) The local policing body must—
- (a) forward the application to the Commission, and
 - (b) notify the person who applied for the review—
 - (i) that the Commission is the relevant review body, and
 - (ii) the application has been forwarded.
- (3) The application is to be taken to have been—
- (a) made to the Commission, and
 - (b) so made at the time when it is forwarded to the Commission.”

42 In section 15 of the Police Reform Act 2002 (general duties of local policing bodies, chief officers and inspectors)—

- (a) in subsection (4) (duty to provide the Commission with assistance), at the end insert “or any review under paragraph 25 of Schedule 3”;
- (b) in subsection (6)—
 - (i) in paragraph (a), after “investigation” insert “or review (as the case may be)”;
 - (ii) omit the “and” at the end of paragraph (a);

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- (iii) in paragraph (b), at the beginning insert “in the case of an investigation.”;
 - (iv) at the end of paragraph (b) insert “and
 - (c) in the case of a review applied for under paragraph 25(1B) of Schedule 3 in respect of an investigation, irrespective of who had the person appointed to carry out the investigation under his direction and control.”.
- 43 In section 16 of the Police Reform Act 2002 (payment for assistance with investigations)—
- (a) in subsection (1)(b), for “in such a connection to the Commission.” substitute “to the Commission in connection with an investigation under this Part or a review under paragraph 25 of Schedule 3.”;
 - (b) in subsection (2)(b)—
 - (i) in the words before sub-paragraph (i), for “in such a connection by a police force (“the assisting force”) to the Commission” substitute “by a police force (“the assisting force”) to the Commission in connection with an investigation under this Part or a review under paragraph 25 of Schedule 3”;
 - (ii) omit the “or” at the end of sub-paragraph (i);
 - (iii) after sub-paragraph (ii) insert “, or
 - (iii) a review under paragraph 25 of Schedule 3 of the outcome of a complaint where the complainant expressed dissatisfaction with a force other than that force.”
- 44 In section 18 of the Police Reform Act 2002 (inspections of police premises on behalf of the Commission), in subsection (2), after paragraph (b) insert—
- “(c) the purposes of any review by the Commission under paragraph 25 of Schedule 3.”