

SCHEDULE 2

Regulation 5(b)

**MODIFICATION OF SCHEDULE 3 TO THE 2002 ACT**

1. Schedule 3 to the 2002 Act is modified as follows.
- 2.—(1) Paragraph 1 (duties to preserve evidence relating to complaints) is modified as follows.
  - (2) Omit sub-paragraph (1).
  - (3) For sub-paragraph (2) substitute—
    - “(2) Where—
      - (a) a complaint is made to the appropriate authority about the conduct of an immigration officer exercising specified enforcement functions or an official of the Secretary of State exercising specified enforcement functions in relation to immigration or asylum, or
      - (b) the appropriate authority becomes aware that a complaint about an immigration officer exercising specified enforcement functions or an official of the Secretary of State exercising specified enforcement functions in relation to immigration or asylum has been made to the Commission;the appropriate authority shall take all such steps as appear to it to be appropriate for the purposes of Part 2 of this Act for obtaining and preserving evidence relating to the conduct complained of.”.
  - (4) In sub-paragraph (3), for “chief officer’s” substitute “appropriate authority’s”.
  - (5) In sub-paragraph (4)—
    - (a) for “he shall” substitute “the appropriate authority shall”;
    - (b) for “he is” substitute “it is”; and
    - (c) for “him” substitute “it”.
  - (6) In sub-paragraph (5), for “a police authority” substitute “the appropriate authority”.
  - (7) In sub-paragraph (6)—
    - (a) for “a chief officer” substitute “the appropriate authority”;
    - (b) for “he” substitute “it”; and
    - (c) omit “by the police authority maintaining his force or”.
- 3.—(1) Paragraph 2 (initial handling and recording of complaints) is modified as follows.
  - (2) In sub-paragraph (1)(a), omit “police authority or chief officer who is the”.
  - (3) Omit sub-paragraphs (2) and (3).
  - (4) For sub-paragraph (5) substitute—
    - “(5) Where the Commission gives notification of a complaint under sub-paragraph (1) or the Commission brings any matter to the appropriate authority’s attention under sub-paragraph (4), the Commission shall notify the complainant—
      - (a) that the notification has been given and of what it contained; or
      - (b) that the matter has been brought to the appropriate authority’s attention to be dealt with otherwise than as a complaint.”.
  - (5) For sub-paragraph (6) substitute—
    - “(6) Where the appropriate authority receives a complaint made to it, or a complaint is notified to the appropriate authority, the authority shall record the complaint.”.

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- 4.—(1) Paragraph 3 (failures to notify or record a complaint) is modified as follows.
- (2) In sub-paragraph (1), for “a police authority or chief officer” substitute “the appropriate authority”.
- (3) In sub-paragraph (2)—
- (a) for “police authority or chief officer” substitute “appropriate authority”; and
  - (b) for “authority or chief officer” substitute “appropriate authority”.
- (4) In sub-paragraph (3)—
- (a) for “any” substitute “a”;
  - (b) for “police authority or chief officer” substitute “appropriate authority”; and
  - (c) at the end insert “where that failure concerns a complaint falling within regulation 2(2) of the Complaints Regulations”.
- (5) In sub-paragraph (4)—
- (a) for “police authority or chief officer” substitute “appropriate authority”; and
  - (b) for “a police authority or chief officer” substitute “the appropriate authority”.
- (6) In sub-paragraph (6)(a), for “police authority or, as the case may be, the chief officer” substitute “appropriate authority”.
- (7) In sub-paragraph (6)(b), for “police authority or chief officer” substitute “appropriate authority”.
- 5.—(1) Paragraph 4 (reference of complaints to the Commission) is modified as follows.
- (2) For sub-paragraph (3) insert—
- “(3) In a case where—
    - (a) the Commission has notified the appropriate authority that it requires a complaint to be referred to it for its consideration; or
    - (b) a complaint has been referred to the Commission on the grounds that it would be appropriate to do so by reason of the gravity of the subject matter or complaint, or any exceptional circumstances;  - the Commission may give such direction to the appropriate authority as it considers appropriate for recording the complaint.”.
- (3) After sub-paragraph (3) insert—
- “(3A) Directions under sub-paragraph (3) may require action taken in pursuance of the directions to be treated as taken in accordance with any such provision of paragraph 2 as may be specified in the direction.”.
- (4) In sub-paragraph (5)(b)—
- (a) for “a police authority or chief officer” substitute “the appropriate authority”; and
  - (b) omit “or (3)”.
- (5) In sub-paragraph (6)—
- (a) for “A police authority or chief officer” substitute “The appropriate authority”; and
  - (b) in paragraph (b), omit “or chief officer”.
6. In paragraph 5 (duties of Commission on references under paragraph 4), in sub-paragraph (1), for “a police authority or chief officer” substitute “the appropriate authority”.
- 7.—(1) Paragraph 6 (handling of complaints by the appropriate authority) is modified as follows.

(2) For sub-paragraph (2) substitute—

“(2) The appropriate authority shall determine whether or not the complaint is suitable for being subjected to local resolution, and if it determines that it is so suitable it shall be so subjected.”.

(3) Omit sub-paragraphs (3) to (7).

**8.** Paragraphs 7 (dispensation by the Commission from requirements of Schedule), 8 (local resolution of complaints) and 9 (appeals relating to local resolution) are omitted.

**9.—**(1) Paragraph 10 (conduct matters arising in civil proceedings) is modified as follows.

(2) In sub-paragraph (1)—

- (a) for “a police authority or chief officer” substitute “the appropriate authority” (in each place that it occurs);
- (b) in paragraph (a), for “that authority or chief officer” substitute “the Secretary of State”; and
- (c) in paragraph (b), for “that authority or chief officer” substitute “the appropriate authority”.

(3) Omit sub-paragraph (2).

(4) For sub-paragraph (3) substitute—

“(3) Where the appropriate authority considers that sub-paragraph (1) applies it shall record that conduct matter.”.

**10.** In paragraph 11 (recording etc. of conduct matters in other cases), in sub-paragraph (1), omit “police authority or chief officer who is the”.

**11.—**(1) Paragraph 12 (duties to preserve evidence relating to conduct matters) is modified as follows.

(2) Omit sub-paragraph (1).

(3) In sub-paragraph (2)—

- (a) for “a chief officer” substitute “the appropriate authority”;
- (b) for “a person under his direction and control” substitute “an immigration officer exercising specified enforcement functions or an official of the Secretary of State exercising specified enforcement functions in relation to immigration or asylum”;
- (c) for “his” substitute “its”; and
- (d) for “him” substitute “it”.

(4) In sub-paragraph (3)—

- (a) for “chief officer’s” substitute “appropriate authority’s”; and
- (b) for “he” substitute “it”.

(5) In sub-paragraph (4)—

- (a) for “he shall” substitute “the appropriate authority shall”;
- (b) for “he is” substitute “it is”; and
- (c) for “him” substitute “it”.

(6) In sub-paragraph (5), for “a police authority” substitute “the appropriate authority”.

(7) In sub-paragraph (6)—

- (a) for “chief officer” substitute “appropriate authority”;
- (b) for “he” substitute “it”; and
- (c) omit “the police authority maintaining his force or by”.

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- 12.**—(1) Paragraph 13 (reference of conduct matters to the Commission) is modified as follows.
- (2) In sub-paragraph (1)—
- (a) for “a police authority or a chief officer” substitute “the appropriate authority”; and
  - (b) omit “in which the authority or chief officer is the appropriate authority”.
- (3) Omit sub-paragraph (3).
- (4) In sub-paragraph (5)(b)—
- (a) for “a police authority or chief officer” substitute “the appropriate authority”; and
  - (b) omit “or (3)”.
- (5) In sub-paragraph (6)—
- (a) for “a police authority or chief officer” substitute “the appropriate authority”; and
  - (b) omit “or chief officer” (in each place that it occurs).
- 13.** In paragraph 14 (duties of Commission on references under paragraph 13), in sub-paragraph (1), for “a police authority or chief officer” substitute “the appropriate authority”.
- 14.** In paragraph 14A (duty to record DSI matters)(1), in sub-paragraph (1), omit “police authority or chief officer who is the”.
- 15.**—(1) Paragraph 14B (duty to preserve evidence relating to DSI matters) is modified as follows.
- (2) In sub-paragraph (1)—
- (a) for “a police authority, and” substitute “the appropriate authority”; and
  - (b) omit sub-paragraph (b).
- (3) Omit sub-paragraph (2).
- (4) In sub-paragraph (3)—
- (a) for “chief officer’s” substitute “appropriate authority’s”;
  - (b) for “(2)” substitute “(1)”;
  - (c) for “he” substitute “it”.
- (5) In sub-paragraph (4)—
- (a) for “he shall” substitute “the appropriate authority shall”;
  - (b) for “he” substitute “it”; and
  - (c) for “him” substitute “it”.
- (6) In sub-paragraph (5), for “a police authority” substitute “the appropriate authority”.
- (7) In sub-paragraph (6)—
- (a) for “chief officer” substitute “appropriate authority”;
  - (b) for “he” substitute “it”; and
  - (c) omit “the police authority maintaining his force or by”.
- 16.** In paragraph 14D (duties of Commission on references under paragraph 14C), in sub-paragraph (1), for “a police authority or a chief officer” substitute “the appropriate authority”.

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(1) Paragraphs 14A to 14D of Schedule 3 to the 2002 Act were inserted by section 160 of, and paragraphs 1, 11 and 12 of Schedule 12 to, the Serious Organised Crime and Police Act 2005.

17. In paragraph 15 (power of the Commission to determine the form of an investigation)(2) in sub-paragraph (4)—

(a) after paragraph (b) insert—

“(ba) an investigation by a police force under the supervision of the Commission;”;

(b) after paragraph (c) insert—

“(ca) an investigation by a police force under the management of the Commission;”.

18.—(1) Paragraph 16 (investigations by the appropriate authority on its own behalf)(3) is modified as follows.

(2) for sub-paragraph (3)(4) substitute—

“(3) It shall be the duty of the appropriate authority to appoint an immigration officer or an official of the Secretary of State to investigate the complaint or matter.”.

(3) Omit sub-paragraphs (4) and (5).

19.—(1) Paragraph 17 (investigations supervised by the Commission)(5) is modified as follows.

(2) For sub-paragraph (2)(6) substitute—

“(2) On being given notice of that determination, the appropriate authority shall, if it has not already done so, appoint an immigration officer or an official of the Secretary of State to investigate the complaint or matter.”.

(3) In sub-paragraph (4)(a), for “sub-paragraph (2)(a), (b) or (c)” substitute “sub-paragraph (2)”.

(4) Omit sub-paragraphs (6) and (6A)(7).

20. After paragraph 17 insert—

**“Investigations by a police force under the supervision of the Commission**

17A.—(1) This paragraph applies where the Commission determines that there should be an investigation by a police force under the supervision of the Commission.

(2) The appropriate authority shall—

(a) identify the police force for the police area which includes the geographical area to which the subject matter of the complaint, recordable conduct matter or DSI matter most closely relates; and

(b) take steps to obtain the agreement of the chief officer of police of that force, to the appointment of that force to carry out the investigation.

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- (2) Paragraph 15 of Schedule 3 to the 2002 Act has been amended by: section 160 of, and paragraphs 1, 11, and 13 of Schedule 12 to, the Serious Organised Crime and Police Act 2005.
- (3) Paragraph 16 of Schedule 3 to the 2002 Act has been amended by: section 160 of, and paragraphs 1, 11, 13 and 14 of Schedule 12 to, the Serious Organised Crime and Police Act 2005; and section 1(3) of, and paragraphs 80 and 89 of Schedule 1 to, the Police and Justice Act 2006.
- (4) Paragraph 16(3) of Schedule 3 to the 2002 Act has been amended by: section 160 of, and paragraphs 1, 11 and 14 of Schedule 12 to, the Serious Organised Crime and Police Act 2005; and section 1(3) of, and paragraphs 80 and 89 of Schedule 1 to, the Police and Justice Act 2006.
- (5) Paragraph 17 of Schedule 3 to the 2002 Act has been amended by: sections 55(1), and 160 of, and paragraphs 1 and 11 to Schedule 2 to, paragraphs 1, 11 and 15 of Schedule 12 to, the Serious Organised Crime and Police Act 2005; and section 1(3) of, and paragraphs 80 and 89 of Schedule 1 to, the Police and Justice Act 2006.
- (6) Paragraph 17(2) of Schedule 3 to the 2002 Act has been amended by: sections 55(1), and paragraphs 1 and 11 of Schedule 2 to, the Serious Organised Crime and Police Act 2005; and section 1(3), and paragraphs 80 and 89 of Schedule 1 to, the Police and Justice Act 2006.
- (7) Paragraph 17(6) of Schedule 3 to the 2002 Act has been amended by section 160, and paragraphs 1, 11, and 15 of Schedule 12 to, the Serious Organised Crime and Police Act 2005. Paragraph 17(6A) of Schedule 3 to the 2002 Act was inserted by section 160, and paragraphs 1, 11 and 15 of Schedule 12 to, the Serious Organised Crime and Police Act 2005.

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(3) In the event that no agreement is reached under sub-paragraph (2) the appropriate authority or the Commission may require the chief officer of police of any police force it considers appropriate to carry out the investigation.

(4) A chief officer of police of a police force who agrees to or is required to carry out an investigation shall, if he has not already done so, appoint a person serving with the police who is a member of that force to investigate that complaint or matter.

(5) The Commission may require that no appointment is made under sub-paragraph (4) unless it has given notice to the chief officer that it approves the person serving with the police whom he proposes to appoint.

(6) Sub-paragraphs (4) and (5) and (7) of paragraph 17 shall apply as they apply to an investigation by the appropriate authority which the Commission has determined is one that it should supervise and for that purpose any references to the appropriate authority in those sub-paragraphs shall be treated as references to the chief officer of police concerned.

(7) An appointment of a person under sub-paragraph (4) or under paragraph 17(5) as applied by sub-paragraph (6) shall be notified by the chief officer of police concerned to the appropriate authority.”.

21. In paragraph 18 (investigations managed by the Commission)(8), in sub-paragraph(2) for “(2) to (6A)” substitute “(2) to (5)”.

22. After paragraph 18 insert—

**“Investigations by a police force under the management of the Commission**

**18A.—**(1) This paragraph applies where the Commission determines that there should be an investigation by a police force under the management of the Commission.

(2) The appropriate authority shall—

- (a) identify the police force for the police area which includes the geographical area to which the subject matter of the complaint, recordable conduct matter or DSI matter most closely relates; and
- (b) take steps to obtain the agreement of—
  - (i) the chief officer of police of that force, and
  - (ii) the appropriate authority,

to the appointment by the appropriate authority of that force to carry out the investigation.

(3) In the event that no agreement is reached under sub-paragraph (2) the Commission may require the chief officer of police of any police force it considers appropriate to carry out the investigation.

(4) A chief officer of police of a police force who agrees to or is required to carry out an investigation shall, if he has not already done so, appoint a person serving with the police who is a member of that force to investigate that complaint or matter.

(5) The Commission may require that no appointment is made under sub-paragraph (4) unless it has given notice to the chief officer that it approves the person serving with the police whom he proposes to appoint.

(5) Sub-paragraphs (4) and (5) of paragraph 17 shall apply as they apply to an investigation by the appropriate authority which the Commission has determined is one that

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(8) Paragraph 18 of Schedule 3 to the 2002 Act has been amended by section 160 of, and paragraphs 1, 11 and 16 of Schedule 12 to, the Serious Organised Crime and Police Act 2005.

it should manage and for that purpose any references to the appropriate authority in those sub-paragraphs shall be treated as references to the chief officer of police concerned.

(6) An appointment of a person under sub-paragraph (4) or 17(5) as applied by sub-paragraph (5) shall be notified by the chief officer of police concerned to the appropriate authority.

(7) The person appointed to investigate the complaint or matter shall, in relation to an investigation, be under the direction and control of the Commission.”.

**23.** In paragraph 19 (investigations by the Commission itself)(9), sub-paragraphs (3) and (3A)(10) are omitted.

**24.—**(1) Paragraph 20 (restrictions on proceedings pending the conclusion of an investigation)(11) is modified as follows.

(2) For sub-paragraph (1) substitute—

“(1) No criminal proceedings shall be brought in relation to any matter which is the subject of an investigation in accordance with the provisions of this Schedule until a report on that investigation has been submitted to the Commission or to the appropriate authority under paragraph 22 or 24A.”.

(3) In sub-paragraph (2) omit “or disciplinary proceedings”.

(4) After sub-paragraph (3) insert—

“(4) Where disciplinary proceedings are brought in relation to any matter which is the subject of an investigation in accordance with paragraph 17, 17A, 18, 18A or 19 of this Schedule the appropriate authority shall notify the Commission of that fact before such proceedings are brought.”.

**25.** Omit paragraphs 20A to 20I (accelerated procedure in special cases).

**26.—**(1) Paragraph 21 (power of the Commission to discontinue an investigation)(12) is modified as follows.

(2) In sub-paragraph (1), at the beginning insert “Subject to paragraph (1A),”.

(3) After sub-paragraph (1) insert—

“(1A) The Commission may only discontinue an investigation in respect of a complaint or matter specified in section 10(3) if—

- (a) the appropriate authority has applied to it for the purpose of discontinuing that investigation and;
- (b) the Commission has previously determined the form that investigation into the complaint or matter should take in accordance with paragraph 15 of this Schedule.”.

**27.—**(1) Paragraph 21A (procedure where conduct matter is revealed during investigation of DSI matter)(13) is modified as follows.

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(9) Paragraph 19 of Schedule 3 to the 2002 Act has been amended by section 160 of, and paragraphs 1, 11 and 17 to Schedule 12 to, the Serious Organised Crime and Police Act 2005.

(10) Paragraph 19(3A) was inserted by section 160 of, and paragraphs 1, 11, 17 to Schedule 12 to, the Serious Organised Crime and Police Act 2005.

(11) Paragraph 20 of Schedule 3 to the 2002 Act has been amended by sections 159 and 160 of, paragraphs 1 and 2 of Schedule 11 to, and paragraphs 1, 11 and 18 of Schedule 12 to, the Serious Organised Crime and Police Act 2005.

(12) Paragraph 21 of Schedule 3 to the 2002 Act has been amended by section 160 of, and paragraphs 1, 11 and 19 of Schedule 12 to, the Serious Organised Crime and Police Act 2005.

(13) Paragraph 21A of Schedule 3 to the 2002 Act was inserted by section 160 of, and paragraphs 1, 11 and 20 of Schedule 12 to, the Serious Organised Crime and Police Act 2005.

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(2) In sub-paragraphs (1) and (3), for “a person serving with the police” substitute “an immigration officer exercising specified enforcement functions or an official of the Secretary of State exercising specified enforcement functions in relation to immigration or asylum.”.

(3) In sub-paragraph (2)(a), omit “in relation to the DSI matter and (if different) the appropriate authority in relation to the person whose conduct is in question of its determination”.

(4) In sub-paragraph (2)(b), omit “(or each of them)”.

(5) In sub-paragraph (3), omit “in relation to the DSI matter”.

(6) In sub-paragraph (4), omit paragraph (a).

(7) In sub-paragraph (5)—

(a) in paragraph (a), at the end insert “or”;

(b) in paragraph (b) —

(i) omit “(in a case where it is also the appropriate authority in relation to the DSI matter)”;

and

(ii) at the end omit “or”;

(c) omit paragraph (c).

**28.**—(1) Paragraph 22 (final reports on investigations: complaints, conduct matters and certain DSI matters)(**14**) is modified as follows.

(2) In sub-paragraph (3) for “17 or 18” substitute “17, 17A, 18 or 18A”; and

(3) Sub-paragraph (4) is omitted.

**29.**—(1) Paragraph 24A (final reports on investigations: other DSI matters)(**15**) is amended as follows.

(2) In sub-paragraph (2), for “17 or 18” substitute “17, 17A, 18 or 18A”.

(3) In sub-paragraph (4), for “a person serving with the police” substitute “an immigration officer exercising specified enforcement functions or an official of the Secretary of State exercising specified enforcement functions in relation to immigration or asylum”.

**30.**—(1) Paragraph 24B (action by the Commission in response to an investigation report under paragraph 24A) is modified as follows.

(2) In sub-paragraph (1), for “a person serving with the police” substitute “an immigration officer exercising specified enforcement functions or an official of the Secretary of State exercising specified enforcement functions in relation to immigration or asylum”.

(3) In sub-paragraphs (1) and (2), omit “in relation to the person whose conduct is in question”.

**31.** In paragraph 24C (action by the Commission in response to an investigation report under paragraph 24A), in sub-paragraph (1), for “a person serving with the police” substitute “an immigration officer exercising specified enforcement functions or an official of the Secretary of State exercising specified enforcement functions in relation to immigration or asylum”.

**32.**—(1) Paragraph 25 (appeals to the Commission with respect to an investigation)(**16**), is modified as follows

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(14) Paragraph 22 of Schedule 3 to the 2002 Act was substituted by section 160 to, and paragraphs 1, 11 and 21 of Schedule 12 to, the Serious Organised Crime and Police Act 2005.

(15) Paragraphs 24A to 24C of Schedule 3 to the 2002 Act were inserted by section 160 of, and paragraphs 1, 11 and 24 of Schedule 12 to, the Serious Organised Crime and Police Act 2005

(16) Paragraph 25 of Schedule 3 to the 2002 Act has been amended by section 159 of, and paragraphs 1 and 4 of Schedule 11 to, the Serious Organised Crime and Police Act 2005.



(2) In sub-paragraph (2), at the beginning insert “In cases where the complaint in question is specified in section 10(3) and the Commission has determined the form of the investigation into that complaint in accordance with paragraph 15 of this Schedule,”.

(3) After sub-paragraph (6) insert—

“(6A) The Commission shall consult the appropriate authority before giving it directions in accordance with sub-paragraph (6), and shall have regard to any representations made to it by the appropriate authority.”.

**33.** In paragraph 27 (duties with respect to disciplinary proceedings), in sub-paragraph (3), for “any person serving with the police” substitute “an immigration officer exercising specified enforcement functions or an official of the Secretary of State exercising specified enforcement functions in relation to immigration or asylum.”.

**34.**—(1) Paragraph 28 (information for complainant about disciplinary recommendations) is modified as follows.

(2) In sub-paragraph (3), at the beginning insert “Subject to sub-paragraph (4),”.

(3) After sub-paragraph (3) insert—

“(4) The Commission shall consult the appropriate authority before notifying the complainant and every person entitled to be kept properly informed in accordance with sub-paragraph (1) or (3), and shall have regard to any representations made to it by the appropriate authority.”.