

**2012 No. 1204**

**POLICE, ENGLAND AND WALES**

**The Police (Complaints and Misconduct) Regulations 2012**

*Made* - - - - *1st May 2012*

*Laid before Parliament* *3rd May 2012*

*Coming into force* - - *22nd November 2012*

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 13, 20(5), 21(10) and (12), 23, 29(1), 39(9) and 105(4) and (5) of, and paragraphs 2(8), 3(7), 4(1)(b), 4(4), 7(1), (1A) and (3), 8(2), 11(2)(c), 13(4), 14C(2), 17(7), 19B(7) and (10), 19C(2)(b), 19D, 21(1), (1A), (2), (4) and (6), 22(7), 23(11), 24(9), 25(13) and 29 of Schedule 3 to, of the Police Reform Act 2002(a).

In accordance with sections 24 and 39(11) of the Police Reform Act 2002, the Secretary of State has consulted with the Independent Police Complaints Commission, the Association of Police Authorities, the Association of Chief Police Officers and such other persons as she thinks fit.

In accordance with section 63(3)(b) of the Police Act 1996(b), the Secretary of State supplied a draft of these Regulations to the Police Advisory Board of England and Wales and has taken into consideration their representations before making these Regulations.

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Police (Complaints and Misconduct) Regulations 2012 and come into force on 22 November 2012.

(2) In these Regulations—

“the 2002 Act” means the Police Reform Act 2002;

“the 2011 Act” means the Police Reform and Social Responsibility Act 2011(c);

“acting chief officer” means—

- (a) a person exercising or performing functions of a chief constable in accordance with section 41 of the 2011 Act;
- (b) a person exercising powers or duties of the Commissioner of Police of the Metropolis in accordance with section 44 or 45(4) of the 2011 Act; or

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(a) 2002 c. 30. Relevant amendments were made by paragraphs 1, 9 and 10 of Schedule 12 to the Serious Organised Crime and Police Act 2005 (c. 15), paragraphs 1 and 2 of Schedule 23 to the Criminal Justice and Immigration Act 2008 (c. 4) and Schedules 14 and 16 to the Police Reform and Social Responsibility Act 2011 (c. 13).

(b) 1996 c. 16. Section 63(3)(b) was substituted by paragraphs 68 and 78 of Schedule 4 to the Serious Organised Crime Act 2005; there have been further amendments to section 63 that are not relevant for these purposes.

(c) 2011 c. 13.

(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(a);

“appropriate authority”—

(a) in relation to a person serving with the police or in relation to any complaint, conduct matter or investigation relating to the conduct of such a person, means—

(i) if that person is the chief officer or an acting chief officer, the local policing body for the area of the police force of which he is a member; and

(ii) if he is not the chief officer or an acting chief officer, the chief officer under whose direction and control he is; and

(b) in relation to a death or serious injury (DSI) matter, means—

(i) if the relevant officer is the chief officer or an acting chief officer, the local policing body for the area of the police force of which he is a member; and

(ii) if he is not the chief officer or an acting chief officer, the chief officer under whose direction and control he is;

“bank holiday” means a day which is a bank holiday under the Banking and Financial Dealings Act 1971(b) in England and Wales;

“the Commission” means the Independent Police Complaints Commission;

“the Conduct Regulations” means the Police (Conduct) Regulations 2008(c);

“direction and control matter” has the same meaning as in paragraph 29 of Schedule 3 to the 2002 Act;

“disciplinary proceedings”—

(a) in relation to a member of a police force or a special constable means—

(i) disciplinary proceedings within the meaning of the Conduct Regulations; and

(ii) unsatisfactory performance procedures within the meaning of the Performance Regulations; and

(b) in relation to a person serving with the police who is not a member of a police force or a special constable, means—

(i) misconduct proceedings; and

(ii) any proceedings or management process during which the performance of such a person is considered in order to determine whether it is unsatisfactory and whether, as a result, any action is to be taken in relation to it,

but this definition does not apply in relation to regulation 36, which defines disciplinary proceedings for the purposes of Part 2 of the 2002 Act;

“investigator” means a person appointed or designated to investigate under paragraph 16, 17, 18 or 19 of Schedule 3 to the 2002 Act (investigations);

“misconduct hearing” has the same meaning as in the Conduct Regulations;

“misconduct meeting” has the same meaning as in the Conduct Regulations;

“misconduct proceedings”—

(a) in relation to a member of a police force or a special constable, means a misconduct meeting or misconduct hearing; and

(b) in relation to a person serving with the police who is not a member of a police force or a special constable, means any proceedings or management process during which the conduct (as opposed to the performance) of such a person is considered in order to determine whether a sanction or punitive measure is to be imposed against him in relation to that conduct;

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(a) 2 & 3 Vict. x xciv.

(b) 1971 c. 80.

(c) S.I. 2008/2864, as amended by S.I. 2011/3027.

“the Performance Regulations” means the Police (Performance) Regulations 2008(a);

“police friend” means a person chosen by the person concerned in accordance with regulation 17;

“police officer” means a member of a police force or special constable;

“police staff member” means—

- (a) a member of the civilian staff of a police force, including the metropolitan police force, within the meaning of section 102(4) and (6) of the 2011 Act; or
- (b) an employee of the Common Council of the City of London who is under the direction and control of the Commissioner of the City of London Police;

“a relevant offence” means—

- (a) an offence for which the sentence is fixed by law, or
- (b) an offence for which a person of 18 years or over (not previously convicted) may be sentenced to imprisonment for a term of seven years (or might be so sentenced but for the restrictions imposed by section 33 of the Magistrates’ Courts Act 1980(b));

“senior officer” means a member of a police force holding a rank above that of chief superintendent;

“Standards of Professional Behaviour” has the same meaning as in the Conduct Regulations;

“working day” means any day other than a Saturday or Sunday or a day which is a bank holiday or public holiday in England and Wales.

### **Revocation and transitional provisions**

2.—(1) Subject to the following provisions of this regulation, the following Regulations are revoked—

- (a) the Police (Complaints and Misconduct) Regulations 2004(c);
- (b) the Police (Complaints and Misconduct) (Amendment) Regulations 2006(d);
- (c) the Police (Complaints and Misconduct) (Amendment) Regulations 2008(e); and
- (d) the Police (Complaints and Misconduct) (Amendment: Metropolitan Police) Regulations 2011(f).

(2) Where a complaint, conduct matter or DSI matter came to the attention of an appropriate authority before 22 November 2012, nothing in these Regulations shall apply and the Police (Complaints and Misconduct) Regulations 2004 shall continue to have effect with the modifications in paragraph (3).

(3) In regulation 1(2) of the Police (Complaints and Misconduct) Regulations 2004—

- (a) for the definition of “appropriate authority” substitute the definition in regulation 1(2) of these Regulations;
- (b) in paragraph (a) of the definition of “police authority”, for “police authority established under section 3 of that Act” substitute “police and crime commissioner”;
- (c) in paragraph (b) of the definition of “police staff member”, for “the Metropolitan Police Force (within the meaning of section 102(6) of the Police Reform and Social Responsibility Act 2011)” substitute “a police force, including the Metropolitan Police Force, within the meaning of section 102(4) and (6) of the Police Reform and Social Responsibility Act 2011”.

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(a) S.I. 2008/2862, as amended by S.I. 2011/3027.  
 (b) 1980 c. 43.  
 (c) S.I. 2004/643, as amended by S.I. 2011/3028.  
 (d) S.I. 2006/1406.  
 (e) S.I. 2008/2866.  
 (f) S.I. 2011/3028.

(4) Where, as a result of the coming into force of paragraph (3), a chief officer replaces the police authority as the appropriate authority in relation to any complaint, conduct matter or DSI matter, the Police (Complaints and Misconduct) Regulations 2004 shall have effect as if anything done, or treated as done, by or in relation to the police authority in its capacity as appropriate authority had been done by or in relation to the chief officer.

### **Recording of complaints**

3.—(1) For the purposes of paragraph 2(8) of Schedule 3 to the 2002 Act (descriptions of complaint not required to be recorded) the complaints set out in paragraph (2) are hereby specified.

(2) Those complaints are complaints in the case of which the appropriate authority considers that—

- (a) the matter is already the subject of a complaint made by or on behalf of the same complainant;
- (b) the complaint discloses neither the name and address of the complainant nor that of any other interested person and it is not reasonably practicable to ascertain such a name or address;
- (c) the complaint is vexatious, oppressive or otherwise an abuse of the procedures for dealing with complaints;
- (d) the complaint is repetitious; or
- (e) the complaint is fanciful.

(3) For the purposes of paragraph (2)(d) a complaint is repetitious if, and only if—

- (a) it concerns substantially the same conduct as a previous conduct matter or it is substantially the same as a previous complaint made by or on behalf of the same complainant;
- (b) it contains no fresh allegations which significantly affect the account of the conduct complained of;
- (c) no fresh evidence, being evidence which was not reasonably available at the time the previous complaint was made, is tendered in support of it; and
- (d) as respects the previous complaint or conduct matter, either—
  - (i) the complaint was locally resolved in accordance with the provisions of paragraph 8 of Schedule 3 to the 2002 Act;
  - (ii) the complaint was handled otherwise than in accordance with Schedule 3 to the 2002 Act or no action was taken in relation to it, in accordance with paragraph 7 of that Schedule (disapplication of requirements of Schedule);
  - (iii) the Commission gave the appropriate authority a direction under regulation 10(10)(b) of these Regulations or regulation 7(7)(b) of the Police (Complaints and Misconduct) Regulations 2004 (power of the Commission to discontinue an investigation);
  - (iv) the appropriate authority disapplied the requirements of Schedule 3 to the 2002 Act in accordance with regulation 10(12)(b);
  - (v) the complainant gave such notification as is mentioned in regulation 21(1) of these Regulations or regulation 15(1) of the Police (Complaints and Misconduct) Regulations 2004 (withdrawn complaints); or
  - (vi) the requirements of paragraph 23(7) or 24(6) of Schedule 3 to the 2002 Act (determination by the appropriate authority of what action to take) were complied with.

(4) For the purposes of paragraph (2)(e) a complaint is fanciful if, and only if, no reasonable person could lend any credence to it.

### **Reference of complaints to the Commission**

4.—(1) For the purposes of paragraph 4(1)(b) of Schedule 3 to the 2002 Act (reference to the Commission of any complaint of a specified description), the complaints set out in paragraph (2) are hereby specified.

(2) Those complaints are—

- (a) any complaints not falling within paragraph 4(1)(a) of that Schedule but alleging conduct which constitutes—
  - (i) a serious assault, as defined in guidance issued by the Commission;
  - (ii) a serious sexual offence, as defined in guidance issued by the Commission;
  - (iii) serious corruption, as defined in guidance issued by the Commission;
  - (iv) a criminal offence or behaviour which is liable to lead to misconduct proceedings and which in either case was aggravated by discriminatory behaviour on the grounds of a person's race, sex, religion, or other status identified in guidance by the Commission;
  - (v) a relevant offence, or
- (b) complaints which arise from the same incident as one in which any conduct falling within sub-paragraph (a) or within paragraph 4(1)(a) of Schedule 3 to the 2002 Act is alleged.

(3) Where a complaint is required to be referred to the Commission under sub-paragraph (1)(a) or (b) of paragraph 4 of Schedule 3 to the 2002 Act, notification of the complaint shall be given to the Commission—

- (a) without delay and in any event not later than the end of the day following the day on which it first becomes clear to the appropriate authority that the complaint is one to which that sub-paragraph applies, and
- (b) in such manner as the Commission specifies.

(4) Where a complaint is required to be referred to the Commission under sub-paragraph (1)(c) of paragraph 4 of Schedule 3 to the 2002 Act, notification of the complaint shall be given to the Commission—

- (a) without delay and in any event not later than the end of the day following the day on which the Commission notifies the appropriate authority that the complaint is to be referred, and
- (b) in such manner as the Commission specifies.

### **Disapplication of requirements of Schedule 3**

5.—(1) For the purposes of paragraph 7 of Schedule 3 to the 2002 Act (disapplication of requirements of Schedule 3) the complaints set out in paragraph (2) are hereby specified.

(2) Those complaints are complaints where the appropriate authority considers that—

- (a) more than 12 months have elapsed between the incident, or the latest incident, giving rise to the complaint and the making of the complaint and either that no good reason for the delay has been shown or that injustice would be likely to be caused by the delay;
- (b) the matter is already the subject of a complaint made by or on behalf of the same complainant;
- (c) the complaint discloses neither the name and address of the complainant nor that of any other interested person and it is not reasonably practicable to ascertain such a name or address;
- (d) the complaint is vexatious, oppressive or otherwise an abuse of the procedures for dealing with complaints;
- (e) the complaint is repetitious, as defined in regulation 3(3); or

- (f) it is not reasonably practicable to complete the investigation of the complaint or any other procedures under Schedule 3 to the 2002 Act.

(3) For the purposes of paragraph (2)(f) it is not reasonably practicable to complete the investigation of a complaint or any other procedures under Schedule 3 to the 2002 Act if, and only if—

- (a) it is not reasonably practicable to communicate with the complainant or a person acting on his behalf; or
- (b) it is not reasonably practicable to complete a satisfactory investigation in consequence of—
  - (i) a refusal or failure, on the part of the complainant, to make a statement or afford other reasonable assistance for the purposes of the investigation; or
  - (ii) the lapse of time since the event or events forming the subject-matter of the complaint.

(4) In this regulation any reference to action not being reasonably practicable shall include a reference to action which it does not appear reasonably practicable to take within a period which is reasonable in all the circumstances of the case.

(5) Before deciding to handle a complaint in whatever manner (if any) it thinks fit in accordance with paragraph 7(1) of Schedule 3 to the 2002 Act, an appropriate authority shall—

- (a) write to the complainant at his last known address—
  - (i) inviting him to make representations in relation to the matter, and
  - (ii) allowing him a period of 28 days, commencing on the day after the date of the letter, to do so; and
- (b) have regard to any representations made by the complainant.

(6) An application under paragraph 7(1A) of Schedule 3 to the 2002 Act for permission to handle a complaint in whatever manner (if any) an appropriate authority thinks fit shall be in writing and shall be accompanied by—

- (a) a copy of the complaint;
- (b) an explanation of the appropriate authority's reasons for making the application;
- (c) copies of any other documents or material in the possession of the appropriate authority which are relevant to the complaint.

(7) The appropriate authority shall supply any further information requested by the Commission for the purpose of considering an application by that authority made under paragraph 7(1A) of Schedule 3 to the 2002 Act.

### **Local resolution of complaints**

6.—(1) The procedures that are to be available for dealing with a complaint which is to be subjected to local resolution are, subject to the provisions of this regulation, any procedures which are approved by the Commission.

(2) Where it appears to the appointed person that the complaint had in fact already been satisfactorily dealt with at the time it was brought to his notice, he may, subject to any representation by the complainant, treat it as having been locally resolved.

(3) The appointed person shall as soon as practicable give the complainant and the person complained against an opportunity to comment on the complaint.

(4) The appointed person shall not, for the purpose of locally resolving a complaint, tender on behalf of the person complained against an apology for his conduct unless the person complained against has agreed to the apology.

(5) Where a complaint has been dealt with by way of local resolution, a record shall be made as soon as practicable of the outcome of the procedure and a copy of the record sent to the complainant and the person complained against.

(6) At the time of sending a copy of the record of outcome to the complainant under paragraph (5), the appropriate authority shall notify the complainant in writing of his right of appeal against that outcome under paragraph 8A of Schedule 3 to the 2002 Act (appeals relating to complaints dealt with other than by investigation), unless sub-paragraph (2) of that paragraph applies.

(7) In this regulation, “the appointed person” means a person appointed under paragraph 8(1) of Schedule 3 to the 2002 Act to secure the local resolution of a complaint.

### **Recording and reference of conduct matters**

7.—(1) For the purposes of paragraph 11(2)(c) of Schedule 3 to the 2002 Act (recording etc of conduct matters), the following descriptions of conduct are hereby specified—

- (a) a serious assault, as defined in guidance issued by the Commission;
- (b) a serious sexual offence, as defined in guidance issued by the Commission;
- (c) serious corruption, as defined in guidance issued by the Commission;
- (d) a criminal offence or behaviour which is liable to lead to misconduct proceedings and which in either case was aggravated by discriminatory behaviour on the grounds of a person’s race, sex, religion, or other status identified in guidance by the Commission;
- (e) a relevant offence;
- (f) conduct whose gravity or other exceptional circumstances make it appropriate to record the matter in which the conduct is involved; or
- (g) conduct which is alleged to have taken place in the same incident as one in which conduct within sub-paragraphs (a) to (e) is alleged.

(2) For the purposes of paragraphs 10(4A) and 11(3B) of Schedule 3 to the 2002 Act (conduct matters not required to be recorded), any conduct matter which is repetitious within the meaning of paragraph (3) is specified.

(3) A conduct matter is repetitious for the purposes of paragraph (2) if, and only if—

- (a) it concerns substantially the same conduct as a previous complaint or conduct matter;
- (b) there is no fresh indication in respect of that matter 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;
- (c) there is no fresh evidence in respect of that matter which was not reasonably available at the time the previous complaint was made or the previous conduct matter was recorded; and
- (d) as respects the previous complaint or conduct matter, either—
  - (i) the complaint was locally resolved in accordance with the provisions of paragraph 8 of Schedule 3 to the 2002 Act;
  - (ii) the complaint was handled otherwise than in accordance with Schedule 3 to the 2002 Act or no action was taken in relation to it, in accordance with paragraph 7 of that Schedule (disapplication of requirements of Schedule);
  - (iii) the Commission gave the appropriate authority a direction under regulation 10(10)(b) of these Regulations or regulation 7(7)(b) of the Police (Complaints and Misconduct) Regulations 2004 (power of the Commission to discontinue an investigation);
  - (iv) the appropriate authority disapplied the requirements of Schedule 3 Part 2 of the 2002 Act in accordance with regulation 10(12)(b);
  - (v) the complainant gave such notification as is mentioned in regulation 21(1) of these Regulations or regulation 15(1) of the Police (Complaints and Misconduct) Regulations 2004 (withdrawn complaints), and the complaint does not fall to be treated as a recordable conduct matter by reason of regulation 21(4) to (8) of these Regulations or regulation 15(4) to (8) of the Police (Complaints and Misconduct) Regulations 2004; or

- (vi) the requirements of paragraph 23(7) or 24(6) of Schedule 3 to the 2002 Act (determination by the appropriate authority of what action to take) were complied with.

(4) For the purposes of paragraph 13(1)(b) of Schedule 3 to the 2002 Act (reference of recordable conduct matters to the Commission) any matter which relates to conduct falling within paragraph (1)(a) to (e) or (g) of this regulation is hereby specified.

(5) Any conduct matter which is required to be referred to the Commission shall be referred in such manner as the Commission specifies and—

- (a) if the matter falls within sub-paragraph (1)(a) or (b) of paragraph 13 of Schedule 3 to the 2002 Act, without delay and in any event not later than the end of the day following the day on which it first becomes clear to the appropriate authority that the conduct matter is one to which that sub-paragraph applies, and
- (b) if the matter falls within sub-paragraph (1)(c) of that paragraph, without delay and in any event not later than the end of the day following the day on which the Commission notifies the appropriate authority that the conduct matter is to be referred.

### **Reference of Death or Serious Injury matters**

8. Any DSI matter which is required to be referred to the Commission shall be referred in such manner as the Commission specifies and—

- (a) in a case where the Commission directs that the matter be referred to it, without delay and in any event not later than the end of the day following the day on which the Commission so directs;
- (b) in any other case, without delay and in any event not later than the end of the day following the day on which the matter first comes to the attention of the appropriate authority.

### **Power of Commission to impose requirements in relation to an investigation which it is supervising**

9.—(1) For the purposes of paragraph 17(7) of Schedule 3 to the 2002 Act (investigations supervised by the Commission) the requirements which may be imposed by the Commission on a person appointed to investigate a complaint, recordable conduct matter or DSI matter are, subject to paragraphs (2) and (3), any reasonable requirements as to the conduct of the investigation as appear to it to be necessary.

(2) Where at any stage of an investigation of a complaint, recordable conduct matter or DSI matter the possibility of criminal proceedings arises, the Commission shall not, under paragraph (1), impose any requirement relating to the obtaining or preservation of evidence of a criminal offence without first obtaining the consent of the Director of Public Prosecutions to the imposition thereof.

(3) The Commission shall not, under paragraph (1), impose any requirement relating to the resources to be made available by a chief officer for the purposes of an investigation without first consulting him and having regard to any representations he may make.

### **Power to discontinue an investigation**

10.—(1) For the purposes of paragraph 21(1) and (1A) of Schedule 3 to the 2002 Act (discontinuance of investigations) the descriptions of complaint or matter set out in paragraph (2) of this regulation are hereby specified.

(2) Those descriptions are any complaint or matter—

- (a) in which the complainant refuses to co-operate to the extent that the relevant body considers that it is not reasonably practicable to continue the investigation;
- (b) which the appropriate authority has determined is suitable for local resolution;



- (c) which the relevant body considers is vexatious, oppressive or otherwise an abuse of the procedures for dealing with complaints, conduct matters or DSI matters;
  - (d) which is repetitious, as defined in regulation 3(3); or
  - (e) which the relevant body otherwise considers is such as to make it not reasonably practicable to proceed with the investigation.
- (3) For the purposes of paragraph (2) “relevant body” means—
- (a) the Commission, in a case where discontinuance is within the Commission’s power in accordance with paragraph 21(1B) of Schedule 3 to the 2002 Act; and
  - (b) the appropriate authority, in any other case.
- (4) For the purposes of paragraph 21(2) of Schedule 3 to the 2002 Act the cases in which the Commission is authorised to discontinue an investigation that is being carried out in accordance with paragraph 19 of that Schedule are any cases where the complaint, conduct matter or DSI matter under investigation falls within paragraph (2) of this regulation.
- (5) Before discontinuing an investigation or applying to the Commission for an order requiring the discontinuance of an investigation, an appropriate authority shall—
- (a) write to the complainant at his last known address—
    - (i) inviting him to make representations in relation to the matter, and
    - (ii) allowing him a period of 28 days, commencing on the day after the date of the letter, to do so; and
  - (b) have regard to any representations made by the complainant.
- (6) Any application by an appropriate authority to the Commission for an order that it discontinue an investigation shall be in writing and shall be accompanied by—
- (a) a copy of the complaint, and
  - (b) a memorandum from the appropriate authority containing a summary of the investigation undertaken so far and explaining the reasons for the application to discontinue the investigation.
- (7) The appropriate authority shall—
- (a) send the complainant a copy of any such application on the same day as the day on which the application is sent to the Commission; and
  - (b) supply any further information requested by the Commission for the purpose of considering that application.
- (8) The Commission shall not require the discontinuance of an investigation in a case where there has been no application to do so by the appropriate authority unless it has consulted with that authority.
- (9) Before requiring the discontinuance of an investigation under paragraph 21(1) of Schedule 3 to the 2002 Act in a case where there has been no application to do so by the appropriate authority, or discontinuing an investigation itself under paragraph 21(2) of that Schedule, the Commission shall—
- (a) write to the complainant at his last known address—
    - (i) inviting him to make representations in relation to the matter, and
    - (ii) allowing him a period of 28 days, commencing on the day after the date of the letter, to do so; and
  - (b) have regard to any representations made by the complainant.
- (10) A direction given to an appropriate authority by the Commission under paragraph 21(4)(a) of Schedule 3 to the 2002 Act may—
- (a) require the appropriate authority to produce an investigation report on the discontinued investigation under paragraph 22 of that Schedule and to take any subsequent steps under that Schedule;

- (b) where the investigation concerned a complaint, require the appropriate authority to disapply the requirements of Schedule 3 to the 2002 Act as respects that complaint;
- (c) in a case within paragraph (2)(b) of this regulation, require the appropriate authority to subject the complaint to local resolution;
- (d) direct the appropriate authority to handle the matter in whatever manner (if any) that authority thinks fit.

(11) The steps set out in paragraph (12) are hereby specified for the purposes of paragraph 21(6)(a) of Schedule 3 to the 2002 Act (steps that may be taken by the appropriate authority when an investigation is discontinued) and, with the exception of the step set out in paragraph (12)(c), are also specified for the purposes of paragraph 21(4)(b) of that Schedule (steps that may be taken by the Commission when an investigation is discontinued).

(12) Those steps are—

- (a) to produce an investigation report on the discontinued investigation and take any subsequent steps under that Schedule;
- (b) where the investigation concerned a complaint, to disapply the requirements of Schedule 3 to the 2002 Act as respects that complaint;
- (c) to subject the complaint to local resolution;
- (d) to handle the matter in whatever manner the appropriate authority or (as the case may be) the Commission thinks fit.

## Appeals

11.—(1) This regulation applies to an appeal under any of the following provisions of Schedule 3 to the 2002 Act—

- (a) paragraph 3(3) (appeal against a failure to notify or record a complaint);
- (b) paragraph 7(8) (appeal against a decision to handle a complaint otherwise than in accordance with the Schedule or take no action in relation to it);
- (c) paragraph 8A(1) (appeal against the outcome of a complaint subjected to local resolution or handled otherwise than in accordance with the Schedule);
- (d) paragraph 21(7) (appeal against a decision to discontinue an investigation); and
- (e) paragraph 25(2) (appeal in relation to an investigation).

(2) Where a local policing body or chief officer notifies the complainant of a decision which is or may be capable of appeal under any of the provisions in paragraph (1), the local policing body or chief officer shall at the same time notify the complainant in writing of—

- (a) the existence of the right of appeal;
- (b) the identity of the relevant appeal body or, in a case to which paragraph 3 of Schedule 3 applies, the fact that the appeal is to the Commission;
- (c) where the appropriate authority has determined that the Commission is the relevant appeal body, the sub-paragraph of regulation 30(2) relied upon in making that determination;
- (d) where the appropriate authority has determined that the chief officer is the relevant appeal body, the fact that there is no right of appeal to the Commission; and
- (e) the time limit for making an appeal mentioned in paragraph (3).

(3) Subject to paragraphs (4) and (5), an appeal shall be made within a period of 28 days commencing on the day after the date of the letter giving notification under paragraph (2).

(4) For the purposes of the time period mentioned in paragraph (3), the following shall be left out of account—

- (a) any time elapsing between the appeal being received by the Commission under paragraph 31(1)(a) of Schedule 3 to the 2002 Act and being forwarded to the appropriate authority under paragraph 31(2)(a) of that Schedule;

- (b) any time elapsing between the appeal being received by the appropriate authority under paragraph 32(1)(a) of that Schedule and being forwarded to the Commission under paragraph 32(2)(a) of that Schedule.

(5) The relevant appeal body or, in a case of an appeal under paragraph 3 of Schedule 3, the Commission may extend the time period mentioned in paragraph (3) in any case where it is satisfied that by reason of the special circumstances of the case it is just to do so.

(6) Subject to paragraph (7), an appeal shall be made in writing and shall state—

- (a) details of the complaint;
- (b) the date on which the complaint was made;
- (c) the name of the police force or local policing body whose decision is the subject of the appeal;
- (d) the grounds for the appeal; and
- (e) the date on which notification was given under paragraph (2).

(7) Where the relevant appeal body or, in the case of an appeal under paragraph 3 Schedule 3, the Commission receives an appeal which fails to comply with one or more of the requirements mentioned in paragraph (6), it may decide to proceed as if those requirements had been complied with.

(8) Where the Commission receives an appeal it shall—

- (a) in the case of an appeal under paragraph 3 of Schedule 3, notify the local policing body or chief officer concerned of the appeal as soon as reasonably practicable; and
- (b) in that or any other case, request any information from any person which it considers necessary to dispose of the appeal.

(9) Any person receiving a request under paragraph (8)(b) shall supply to the Commission the information requested.

(10) The relevant appeal body or, in the case of an appeal under paragraph 3 of Schedule 3, the Commission shall determine the outcome of the appeal as soon as practicable.

(11) The relevant appeal body or, in the case of an appeal under paragraph 3 of Schedule 3, the Commission shall notify the complainant of the reasons for its determination, and the Commission—

- (a) in the case of an appeal under the said paragraph 3, shall also notify the local policing body or chief officer concerned; and
- (b) in a case where it is the relevant appeal body, shall also notify the appropriate authority.

(12) In the case of an appeal other than one under paragraph 3 of Schedule 3—

- (a) where the Commission is the relevant appeal body—
  - (i) it shall notify the complainant of any direction it gives to the appropriate authority as to the future handling of the complaint; and
  - (ii) subject to paragraph (13), the appropriate authority shall notify the person complained against of any such direction;
- (b) where the chief officer is the relevant appeal body, he shall notify the complainant and the person complained against of the action that he proposes to take in relation to the complaint.

(13) An appropriate authority may decide not to make a notification under paragraph (12)(a)(ii) if it is of the opinion that to do so might prejudice any criminal investigation or pending proceedings or would otherwise be contrary to the public interest.

### **Manner in which duties to provide information are to be performed**

**12.—**(1) For the purposes of sections 20(5) and 21(10) of the 2002 Act (duties to keep complainant and other persons informed), the manner in which the Commission or, as the case may be, an appropriate authority shall perform the duties imposed by those sections is as follows.

(2) The Commission, in a case falling within section 20(1) or 21(6) of the 2002 Act (investigation of a complaint, conduct matter or DSI matter by or under the management of the Commission), shall inform the complainant or, as the case may be, the interested party—

- (a) of the progress of the investigation promptly and in any event—
  - (i) if there has been no previous notification, within four weeks of the start of the investigation; and
  - (ii) in any other case, within four weeks of the previous notification;
- (b) of any provisional findings of the person carrying out the investigation as frequently as the Commission determines to be appropriate in order for the complainant to be kept properly informed.

(3) An appropriate authority, in a case falling within section 20(2) or 21(7) of the 2002 Act (investigation of a complaint, conduct matter or DSI matter by an appropriate authority), shall inform the complainant or the interested party (as the case may be)—

- (a) of the progress of the investigation promptly and in any event—
  - (i) if there has been no previous notification, within four weeks of the start of the investigation; and
  - (ii) in any other case, within four weeks of the previous notification.
- (b) of any provisional findings of the person carrying out the investigation as frequently as the appropriate authority determines to be appropriate in order for the complainant to be kept properly informed.

(4) When an investigation has been completed, each complainant and interested person shall be notified—

- (a) of the date on which the final report under paragraph 22 of Schedule 3 to the 2002 Act is likely to be submitted;
- (b) of the date on which the notification under paragraph 23(9) or 24(7) of that Schedule is likely to be given.

(5) In performing the duties imposed by section 20(1) and (2) and section 21(6) and (7) of the 2002 Act, and by paragraphs 23(9) and 24(7) of Schedule 3 to that Act, the Commission or, as the case may be, the appropriate authority shall determine whether it is appropriate to offer, or to accede to a request for, a meeting with a complainant or, as the case may be, an interested person.

(6) As soon as practicable after any such meeting the Commission or, as the case may be, the appropriate authority shall send to the complainant or interested person a written record of the meeting and an account of how any concerns of that person will be addressed.

(7) As soon as practicable after the conclusion of any disciplinary proceedings that are taken in respect of the matters dealt with in any report submitted under paragraph 22 of Schedule 3 to the 2002 Act, the appropriate authority shall notify the Commission, any complainant and any interested person of the outcome of those proceedings, including the fact and outcome of any appeal against the outcome of the proceedings.

(8) If the Commission or, as the case may be, the appropriate authority, considers that an investigation has made minimal or no progress since the previous notification, then the next notification may be made by any means that in the opinion of the Commission or, as the case may be, the appropriate authority is suitable.

(9) Any notification under this regulation shall be given in writing, except in a case where the notification is given at a meeting held in consequence of a determination under paragraph (5) or it is given by means other than writing in accordance with paragraph (8).

#### **Exceptions to the duty to keep the complainant informed and to provide information for other persons**

13.—(1) Subject to paragraph (2), the duties mentioned in section 20(1) and (2) (duty to keep the complainant informed) and section 21(6) and (7) (duty to provide information for other persons) of the 2002 Act and in paragraphs 23(9) and 24(7) of Schedule 3 to that Act (action by

the Commission or appropriate authority in response to an investigation report) shall not apply in circumstances where in the opinion of the Commission, or, as the case may be, of the appropriate authority, the non-disclosure of information is necessary for the purpose of—

- (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 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 required on proportionality grounds; or
  - (iv) is otherwise necessary in the public interest.

(2) The Commission or, as the case may be, the appropriate authority shall not conclude that the non-disclosure of information is necessary under paragraph (1) unless it is satisfied that—

- (a) there is a real risk of the disclosure of that information causing an adverse effect; and
- (b) that adverse effect would be significant.

(3) Without prejudice to the generality of paragraph (1), the Commission or, as the case may be, the appropriate authority shall consider whether the non-disclosure of information is justified under that paragraph in circumstances where—

- (a) that information is relevant to, or may be used in, any actual or prospective disciplinary proceedings;
- (b) the disclosure of that information may lead to the contamination of the evidence of witnesses during such proceedings;
- (c) the disclosure of that information may prejudice the welfare or safety of any third party;
- (d) that information constitutes criminal intelligence.

### **Meaning of “relative”**

14. For the purposes of section 21(12) of the 2002 Act (meaning of “relative”), the description of person that is hereby prescribed is any spouse, partner, parent or adult child.

### **Copies of complaints etc**

15.—(1) Where a complaint is recorded under paragraph 2(6) of Schedule 3 to the 2002 Act, the appropriate authority shall—

- (a) supply to the complainant a copy of the record made of that complaint; and
- (b) subject to paragraphs (2) to (4), supply to the person complained against a copy of the complaint.

(2) A copy of a complaint supplied under this regulation may be in a form which keeps anonymous the identity of the complainant or of any other person.

(3) An appropriate authority may decide not to supply such a copy of a complaint if it is of the opinion that to do so—

- (a) might prejudice any criminal investigation or pending proceedings, or
- (b) would otherwise be contrary to the public interest.

(4) Where an appropriate authority decides not to supply such a copy, it shall keep that decision under regular review.

## Written notices

16.—(1) For the purposes of paragraph 19B(7) of Schedule 3 to the 2002 Act (assessment of seriousness of conduct under investigation) the notification given by the investigator to the person concerned must be in writing and state—

- (a) the conduct that is the subject matter of the allegation and how that conduct is alleged to fall below the Standards of Professional Behaviour;
- (b) that there is to be an investigation into the matter and the identity of the investigator;
- (c) the investigator's assessment of whether that conduct, if proved, would amount to misconduct or gross misconduct;
- (d) whether, if the matter were to be referred to misconduct proceedings, those would be likely to be a misconduct meeting or a misconduct hearing;
- (e) that if the likely form of any misconduct proceedings to be held changes, further notice (with reasons) will be given;
- (f) that he has the right to seek advice from his staff association or any other body and of the effect of regulation 17(1) to (3);
- (g) the effect of regulation 18 and paragraph 19C of Schedule 3 to the 2002 Act (duty to consider submissions from person whose conduct is being investigated) and regulations 7(1) to (3) of the Conduct Regulations (legal or other representation); and
- (h) that whilst he does not have to say anything it may harm his case if he does not mention when interviewed or when providing any information under regulation 18 or regulation 22(2) or (3) of the Conduct Regulations (procedure on receipt of notice of referral to misconduct proceedings) something which he later relies on in any misconduct proceedings, special case hearing, an appeal meeting or appeal hearing.

(2) For the purposes of paragraph 19B(10) of Schedule 3 to the 2002 Act (assessment of seriousness of conduct under investigation), if following service of the notice under paragraph (1), the investigator revises his assessment of the conduct in accordance with paragraph 19B(9) of Schedule 3 to the 2002 Act or his determination of the likely form of any misconduct proceedings to be taken, the investigator shall, as soon as practicable, give the person concerned further written notice of—

- (a) the assessment of whether the conduct, if proved, would amount to misconduct or gross misconduct as the case may be and the reason for that assessment;
  - (b) whether, if the case were to be referred to misconduct proceedings, those would be likely to be a misconduct meeting or a misconduct hearing and the reason for this.
- (3) The notice whether given in accordance with paragraph (1) or (2) shall be—
- (a) given to the person concerned in person;
  - (b) left with some person at, or sent by recorded delivery to, the person concerned's last known address; or
  - (c) given to him in person by his police friend where the police friend has agreed with the appropriate authority to deliver the notice.

(4) In paragraph (1)(h), “appeal hearing”, “appeal meeting” and “special case hearing” have the same meaning as in the Conduct Regulations.

## Police friend

17.—(1) Where the person concerned is a police officer he may choose—

- (a) a police officer;
- (b) a police staff member; or
- (c) where the officer concerned is a member of a police force, a person nominated by his staff association,

who is not otherwise involved in the matter to act as his police friend.

- (2) Where the person concerned is a police staff member he may choose—
- (a) a person employed by a trade union of which he is an official within the meaning of sections 1 and 119 of the Trade Union and Labour Relations (Consolidation) Act 1992 (meaning of trade union);
  - (b) an official of a trade union (within that meaning) whom the union has reasonably certified in writing as having experience of, or as having received training in, acting as a police staff member's companion at disciplinary proceedings;
  - (c) a police officer;
  - (d) a police staff member; or
  - (e) any other person nominated by the person concerned and approved by the chief officer of the force in which a police staff member is serving,

who is not otherwise involved in the matter to act as his police friend.

- (3) A police friend may—
- (a) provide any relevant document to the investigator in accordance with paragraph 19C(2)(b) of Schedule 3 to the 2002 Act (power to prescribe persons who may provide submissions to the investigator);
  - (b) accompany the officer concerned to any interview conducted under regulation 19;
  - (c) advise the person concerned throughout proceedings under these Regulations; and
  - (d) make representations to the Commission concerning any aspect of the proceedings under these Regulations.

(4) Where a police friend is a police officer or a police staff member, the chief officer of the force of which the police friend is a member shall permit him to use a reasonable amount of duty time for the purposes referred to in paragraph (3).

(5) The reference in paragraph (4) to the force of which the police friend is a member shall include a reference to the force maintained for the police area for which a special constable is appointed and the force in which a police staff member is serving.

### **Representations to the investigator**

**18.** For the purposes of paragraph 19B(7)(c) of Schedule 3 to the 2002 Act (time limits for providing documents to the investigator), the person concerned or police friend shall have 10 working days starting with the day after which the notice is given under regulation 16(1) (unless this period is extended by the investigator) to provide any relevant statement or relevant document as the case may be.

### **Interviews during investigation**

**19.—(1)** For the purposes of paragraph 19D(1) of Schedule 3 to the 2002 Act (interview of person whose conduct is being investigated), where an investigator wishes to interview the person concerned as part of his investigation, he shall, if reasonably practicable, agree a date and time for the interview with the person concerned.

(2) Where no date and time is agreed under paragraph (1), the investigator shall specify a date and time for the interview.

(3) Where a date and time is specified under paragraph (2) and—

- (a) the person concerned or his police friend will not be available at that time; and
- (b) the person concerned proposes an alternative time which satisfies paragraph (4),

the interview shall be postponed to the time proposed by the person concerned.

(4) An alternative time must—

- (a) be reasonable; and

- (b) fall before the end of the period of 5 working days beginning with the first working day after the day specified by the investigator.

(5) The person concerned shall be given written notice of the date, time and place of the interview.

(6) The investigator shall, in advance of the interview, provide the person concerned with such information as the investigator considers appropriate in the circumstances of the case to enable the person concerned to prepare for the interview.

(7) The person concerned shall attend the interview.

(8) A police friend may not answer any questions asked of the person concerned during the interview.

### **Report of investigation**

**20.** For the purposes of paragraph 22(7) of Schedule 3 to the 2002 Act (final reports on investigations), on completion of an investigation the investigator's report shall—

- (a) provide an accurate summary of the evidence;
- (b) attach or refer to any relevant documents; and
- (c) indicate the investigator's opinion as to whether there is a case to answer in respect of misconduct or gross misconduct or whether there is no case to answer.

### **Withdrawn complaints**

**21.—(1)** If an appropriate authority receives from a complainant notification in writing signed by him or by his solicitor or other authorised agent on his behalf to the effect either—

- (a) that he withdraws the complaint, or
- (b) that he does not wish any further steps to be taken in consequence of the complaint,

then the appropriate authority shall forthwith record the withdrawal or the fact that the complainant does not wish any further steps to be taken, as the case may be, and subject to the following provisions of this regulation, the provisions of Part 2 of the 2002 Act shall cease to apply in respect of that complaint.

(2) Where a complainant gives such notification as is mentioned in paragraph (1) to the Commission but, so far as is apparent to the Commission, has not sent that notification to the appropriate authority, then—

- (a) the Commission shall send a copy of the notification to the appropriate authority;
- (b) that appropriate authority shall record the withdrawal or the fact that the complainant does not wish any further steps to be taken, as the case may be; and
- (c) subject to the following provisions of this regulation, the provisions of Part 2 of the 2002 Act shall cease to apply in respect of that complaint.

(3) Where a complainant gives such notification as is mentioned in paragraph (1) to an appropriate authority, or where the appropriate authority receives a copy of a notification under paragraph (2), and it relates to a complaint—

- (a) which was referred to the Commission under paragraph 4(1) of Schedule 3 to the 2002 Act and which has not been referred back to the appropriate authority under paragraph 5(2) of that Schedule; or
- (b) which the appropriate authority knows is currently the subject of an appeal to the Commission under paragraph 3(3), 7(8), 8A(1), 21(7) or 25(2) of that Schedule,

then the appropriate authority shall notify the Commission that it has recorded the withdrawal of the complaint or the fact that the complainant does not wish any further steps to be taken, as the case may be.



(4) In a case falling within paragraph (3)(a), the Commission shall determine whether it is in the public interest for the complaint to be treated as a recordable conduct matter, and shall notify the appropriate authority of its decision.

(5) In a case falling within paragraph (3)(b), the appropriate authority shall—

(a) determine whether it is in the public interest for the complaint to be treated as a recordable conduct matter; and

(b) notify the Commission of its determination and the reasons for that determination.

(6) Where a determination is made that a complaint is to be treated as a recordable conduct matter, then the provisions of Part 2 of Schedule 3 to the 2002 Act shall apply to that matter.

(7) Where a complainant gives such notification as is mentioned in paragraph (1) to an appropriate authority, or where the appropriate authority receives a copy of a notification under paragraph (2), and that notification relates to a complaint which does not fall within sub-paragraph (a) or (b) of paragraph (3), then—

(a) the appropriate authority shall determine whether it is in the public interest for the complaint to be treated as a recordable conduct matter;

(b) if the complaint is to be treated as a recordable conduct matter, the provisions of Part 2 of Schedule 3 to the 2002 Act shall apply to that matter;

(c) if the complaint is not to be treated as a recordable conduct matter, the provisions of Part 2 of the 2002 Act shall cease to apply in respect of that complaint.

(8) In a case where—

(a) a complaint has been subjected to an investigation by the appropriate authority on its own behalf;

(b) the complaint is currently subject to an appeal to the Commission under paragraph 25 of Schedule 3 to the Act; and

(c) the appropriate authority has notified the Commission under paragraph (5)(b) that it has determined that the complaint is not to be treated as a recordable conduct matter,

the Commission shall consider whether it is in the public interest for that determination to be reversed, and if so it shall instruct the appropriate authority to reverse the decision.

(9) Where a complainant indicates that he wishes to withdraw the complaint or that he does not wish any further steps to be taken in consequence of the complaint, but he fails to provide a notification to that effect in writing signed by him or on his behalf, then—

(a) in the case of an indication received by the appropriate authority, the authority shall take the steps set out in paragraph (10);

(b) in the case of an indication received by the Commission, the Commission shall refer the matter to the appropriate authority which shall take the steps set out in paragraph (10).

(10) Those steps are—

(a) the appropriate authority shall write to the complainant to ascertain whether he wishes to withdraw his complaint or does not wish any further steps to be taken in consequence of the complaint;

(b) if the complainant indicates that he wishes to withdraw his complaint or does not wish any further steps to be taken in consequence of the complaint, or if he fails to reply within a period of 28 days commencing on the day after the date of the letter under sub-paragraph (a), the appropriate authority shall treat the indication as though it had been received in writing signed by the complainant;

(c) if the complainant indicates that he does not wish to withdraw his complaint, or that he does wish further steps to be taken in consequence of the complaint, the appropriate authority shall start or resume the investigation as the case may be.

(11) Subject to paragraph (12), the appropriate authority shall notify the person complained against if—

- (a) it records the withdrawal of a complaint or the fact that the complainant does not wish any further steps to be taken;
- (b) it determines that a complaint shall be treated as a recordable conduct matter;
- (c) the Commission determines that a complaint shall be treated as a recordable conduct matter;
- (d) the Commission instructs it to reverse a decision not to treat a complaint as a recordable conduct matter;
- (e) the provisions of Part 2 of the 2002 Act cease to apply in respect of a complaint.

(12) Nothing in paragraph (11) shall require the appropriate authority to make a notification if it has previously decided under regulation 15(3) not to notify the person complained against of the complaint because it is of the opinion that that might prejudice any criminal investigation or pending proceedings or would be contrary to the public interest.

### **Circumstances in which an investigation or other procedure may be suspended**

**22.—**(1) The Commission may suspend any investigation or other procedure under Part 2 of the 2002 Act which would, if it were to continue, prejudice any criminal investigation or proceedings.

(2) An appropriate authority may, subject to paragraph (3), suspend any investigation or other procedure under Part 2 of the 2002 Act which would, if it were to continue, prejudice any criminal investigation or proceedings.

(3) The Commission may direct that any investigation or other procedure under Part 2 of the 2002 Act which is liable to be suspended under paragraph (2) shall continue if it is of the view that it is in the public interest to make such a direction.

(4) The Commission shall consult the appropriate authority before making such a direction.

### **Resumption of investigation after criminal proceedings**

**23.—**(1) Where the whole or part of the investigation of a complaint has been suspended until the conclusion of criminal proceedings, and the complainant has failed to indicate after the conclusion of those proceedings that he wishes the investigation to start or be resumed, the Commission or, as the case may be, appropriate authority shall take the steps set out in paragraph (2).

(2) The Commission or appropriate authority shall take all reasonable steps to contact the complainant to ascertain whether he wants the investigation to start or be resumed as the case may be.

(3) If the complainant indicates that he does wish the investigation to start or be resumed, the Commission or appropriate authority shall start or resume the investigation as the case may be.

(4) If the complainant indicates that he does not want the investigation to start or be resumed, or if he fails to reply within a period of 28 days commencing on the day after the date of a letter sent to him by the Commission or appropriate authority, the Commission or appropriate authority as the case may be shall determine whether it is in the public interest for the complaint to be treated as a recordable conduct matter.

(5) If the Commission or appropriate authority determines that it is not in the public interest for the complaint to be treated as a recordable conduct matter, the provisions of Part 2 of the 2002 Act shall cease to apply to the complaint.

(6) If the Commission or appropriate authority determines that it is in the public interest for the complaint to be treated as a recordable conduct matter, the provisions of Part 2 of Schedule 3 to the 2002 Act shall apply to the matter.

(7) Subject to paragraph (8), the Commission or appropriate authority shall notify the person complained against if paragraph (5) or (6) applies.

(8) Nothing in paragraph (7) shall require the Commission or appropriate authority to make a notification if it is of the opinion that that might prejudice any criminal investigation or pending proceedings or would be contrary to the public interest.

### **Appointment of persons to carry out investigations**

**24.**—(1) No person shall be appointed to carry out an investigation under paragraph 16, 17 or 18 of Schedule 3 to the 2002 Act (investigation by the appropriate authority on its own behalf, supervised and managed investigations)—

- (a) unless he has an appropriate level of knowledge, skills and experience to plan and manage the investigation;
- (b) subject to paragraph (2), if he works, directly or indirectly, under the management of the person whose conduct is being investigated;
- (c) subject to paragraph (2), in a case where the officer concerned is a senior officer, if he is—
  - (i) the chief officer of the police force concerned, or
  - (ii) a member of the same force as the officer concerned;
- (d) subject to paragraph (3), if he is a person whose involvement in the role could reasonably give rise to a concern as to whether he could act impartially under these Regulations.

(2) Paragraphs (1)(b) and (c) shall not apply in a case where the investigation is of a complaint in relation to a direction and control matter.

(3) In a case where the investigation is of a complaint in relation to a direction and control matter, the fact that a person—

- (a) works, directly or indirectly, under the management of the person whose conduct is being investigated; or
- (b) is the chief officer of the police force concerned or a member of the same force as the officer concerned,

shall not, without more, constitute reasonable grounds for concern as to whether that person could act impartially for the purposes of paragraph (1)(d).

(4) In this regulation any reference to a member of a police force shall include a reference to a special constable appointed for the area of that force and a police staff member serving in that force.

### **Combining and splitting investigations**

**25.**—(1) An appropriate authority which is carrying out an investigation on its own behalf may—

- (a) combine that investigation with another such investigation; or
- (b) split that investigation into two or more such separate investigations

if it considers that it is more efficient and effective, or is otherwise in the public interest, to do so.

(2) Subject to paragraph (3), where the Commission is supervising, managing or carrying out an investigation, it may—

- (a) combine that investigation with another investigation; or
- (b) split that investigation into two or more separate investigations,

if it considers that it is more efficient and effective, or is otherwise in the public interest, to do so.

(3) The Commission shall not take any action under paragraph (2) in relation to a supervised or managed investigation except after consultation with the appropriate authority.

(4) Nothing in this regulation shall prevent the Commission from determining that—

- (a) where an investigation is split into two or more separate investigations, those investigations may take different forms;
- (b) two or more separate investigations which take different forms (including an investigation being carried out by the appropriate authority on its own behalf) may be combined into a single investigation.

**Relinquishing the Commission’s supervision or management of an investigation**

**26.**—(1) This regulation applies where the Commission—

- (a) relinquishes the management of an investigation in favour of a supervised investigation or an investigation by the appropriate authority on its own behalf, or
- (b) relinquishes the supervision of an investigation in favour of an investigation by the appropriate authority on its own behalf.

(2) Where this regulation applies, and subject to paragraph (3), the Commission—

- (a) shall notify the appropriate authority, the complainant, any interested person within the meaning of section 21 of the 2002 Act and the person complained against of its decision, and the reasons for that decision; and
- (b) shall send to the appropriate authority any documentation and evidence gathered during its investigations as will assist the appropriate authority to carry out its functions under Part 2 of the 2002 Act.

(3) Nothing in paragraph (2)(a) shall require the Commission to make a notification to the person complained against if it is of the opinion that that might prejudice any criminal investigation or pending proceedings or would be contrary to the public interest.

**Complaints or conduct matters concerning a person who has subsequently ceased to serve with the police**

**27.** Where a complaint or conduct matter relates to the conduct of a person who has ceased to be a person serving with the police since the time of the conduct, then Part 2 of the 2002 Act shall apply in relation to such a person as if it did not include any requirement for an appropriate authority to determine whether disciplinary proceedings should be brought against a person whose conduct is the subject-matter of a report.

**Complaints or conduct matters concerning a person whose identity is unascertained**

**28.**—(1) Where a complaint or conduct matter relates to the conduct of a person whose identity is unascertained at the time at which the complaint is made or the conduct matter is recorded, or whose identity is not ascertained during or subsequent to, the investigation of the complaint or recordable conduct matter, then Part 2 of the 2002 Act and these Regulations shall apply in relation to such a person as if it did not include—

- (a) any requirement for the person complained against to be given a notification or an opportunity to make representations;
- (b) any requirement for the Commission or the appropriate authority to determine whether a criminal offence may have been committed by the person whose conduct has been the subject-matter of an investigation, or to take any action in relation to such a determination;
- (c) any requirement for an appropriate authority to determine whether disciplinary proceedings should be brought against a person whose conduct is the subject-matter of a report.

(2) Where the identity of such a person is subsequently ascertained, the Commission and appropriate authority shall take such action in accordance with Part 2 of the 2002 Act and these Regulations as they see fit, regardless of any previous action taken under that Part as modified above.

### **Notification of actions and decisions**

**29.**—(1) So far as not covered by paragraph 23(9) and (10) and paragraph 25(10) and (11) of Schedule 3 to the 2002 Act (notifications by the Commission in relation to recommending disciplinary proceedings), where the Commission takes any action or decisions in consequence of it having received a memorandum under paragraph 23(7) or paragraph 25(3) of that Schedule, it shall notify such action or decisions, together with an explanation of its reasons for having taken them, to—

- (a) the appropriate authority;
- (b) the complainant and any other interested person within the meaning of section 21(5) of the 2002 Act;
- (c) subject to paragraph (3), the person complained against.

(2) Without prejudice to the generality of paragraph (1), the Commission shall include in any notification under that paragraph a statement as to whether it intends to participate in any disciplinary proceedings.

(3) The Commission may decide not to give such a notification and explanation to the person complained against if it is of the opinion that that notification might prejudice any criminal investigation, pending proceedings, or review of the complaint.

### **Relevant appeal body**

**30.**—(1) For the purposes of paragraph 30(1)(a) of Schedule 3 to the 2002 Act (descriptions of complaint in relation to which the Commission is the relevant appeal body), the complaints set out in paragraph (2) are hereby specified.

(2) Those complaints are any complaint—

- (a) about the conduct of a senior officer;
- (b) in the case of which the appropriate authority is unable to satisfy itself, from the complaint alone, that the conduct complained of (if it were proved)—
  - (i) would not justify the bringing of criminal or misconduct proceedings against a person serving with the police; or
  - (ii) would not involve the infringement of a person's rights under Article 2 or 3 of the Convention (within the meaning of the Human Rights Act 1998(a));
- (c) that has been, or must be, referred to the Commission under paragraph 4 of Schedule 3 to the 2002 Act;
- (d) arising from the same incident as a complaint to which sub-paragraph (a), (b) or (c) applies;
- (e) to any part of which sub-paragraph (a), (b), (c) or (d) applies.

### **Keeping of records**

**31.** Every local policing body and chief officer shall keep records, in such form as the Commission shall determine, of—

- (a) every complaint and purported complaint that is made to it or him;
- (b) every conduct matter recorded by it or him under paragraph 10 or 11 of Schedule 3 to the 2002 Act;
- (c) every DSI matter recorded by it or him under paragraph 14A of Schedule 3 to the 2002 Act;
- (d) every exercise of a power or performance of a duty under Part 2 of the 2002 Act.

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(a) 1998 c. 42.

### **Register to be kept by the Commission**

32.—(1) The Commission shall establish and maintain a register of all information supplied to it by a local policing body or chief officer under Part 2 of the 2002 Act.

(2) Subject to paragraph (3), the Commission may publish or otherwise disclose to any person any information held on the register provided that the publication or disclosure is necessary for or conducive to the purpose of—

- (a) learning lessons from the handling of, or demonstrating the thoroughness and effectiveness of, local resolutions, investigations by the Commission or managed or supervised investigations;
- (b) raising public awareness of the complaints system; or
- (c) improving the complaints system.

(3) Information may not be published or disclosed in circumstances where in the opinion of the Commission the non-disclosure of information is necessary for a purpose mentioned in regulation 13(1)(a) or (b).

### **Delegation of powers and duties by chief officer**

33.—(1) Subject to the remaining paragraphs of this regulation, a chief officer may delegate all or any of the powers or duties conferred or imposed on him by or under Part 2 of the 2002 Act to such an officer as is mentioned in paragraph (2), or to a police staff member who, in the opinion of the chief officer, is of at least a similar level of seniority.

(2) That officer is—

- (a) a senior officer, in the case of a complaint or conduct matter concerning the conduct of a senior officer; and
- (b) a member of a police force of at least the rank of chief inspector, in any other case.

(3) A chief officer shall not, in any particular case, delegate any power or duty under paragraph (1) to a person whose involvement in the role could reasonably give rise to a concern as to whether he could act impartially under these Regulations, whether because he has acted as investigating officer in the case or attempted to resolve it by way of local resolution or otherwise.

(4) A chief officer may delegate all or any of his powers or duties in relation to the local resolution of complaints under Part 2 of the 2002 Act to any person serving with the police.

### **Manner and time limits of notifications**

34.—(1) Any notification to be given under these Regulations shall—

- (a) unless otherwise specified in these Regulations or determined in guidance issued by the Commission, be given in writing;
- (b) unless otherwise specified in these Regulations, be made within such period as the Commission may determine in guidance.

(2) No time limit mentioned in these Regulations or determined by the Commission shall apply in any case where exceptional circumstances prevent that time limit being complied with.

### **Application to contracted-out staff**

35.—(1) Subject to paragraph (2), Part 2 of the 2002 Act and these Regulations shall apply in relation to a detention officer or escort officer as they apply in relation to a person serving with the police.

(2) Paragraph (1) applies only insofar as a complaint relates to, or another instance of misconduct involves, the carrying out of functions for the purposes of which any power or duty is conferred or imposed by a designation under section 39(2) of the 2002 Act (police powers for contracted-out staff).

(3) References in Part 2 of the 2002 Act to a civilian employee of a police force shall include references to a detention officer or escort officer who has been so designated by the chief officer of that force.

(4) In this regulation, “detention officer” means a person designated under section 39(2)(a) of the 2002 Act and “escort officer” means a person designated under section 39(2)(b) of that Act.

### **Disciplinary proceedings for police staff**

**36.** In relation to a person serving with the police who is not a member of a police force or a special constable, for the purposes of Part 2 of the 2002 Act “disciplinary proceedings” means—

- (a) any proceedings or management process during which the conduct (as opposed to the performance) of such a person is considered in order to determine whether a sanction or punitive measure is to be imposed against him in relation to that conduct; and
- (b) for the purposes of section 22 of, and paragraphs 22, 23, 25 and 27 of Schedule 3 to the 2002 Act only, any proceedings or management process during which the performance of such a person is considered in order to determine whether it is unsatisfactory and whether, as a result, any action is to be taken in relation to it.

Home Office  
1st May 2012

*Nick Herbert*  
Minister of State

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations consolidate the Police (Complaints and Misconduct) Regulations 2004 (“the 2004 Regulations”) and the various Regulations that have amended the 2004 Regulations. They also make modifications to the provisions of the 2004 Regulations in order to reflect amendments made to the Police Reform Act 2002 (“the 2002 Act”) by the Police Reform and Social Responsibility Act 2011 (“the 2011 Act”). They further modify the provisions of the 2004 Regulations in order to make improvements to the efficiency and effectiveness of the police complaints system.

The provisions of the 2004 Regulations are re-enacted in these Regulations as follows:

<i>2004 Regulations</i>	<i>These Regulations</i>
Regulation 1	Regulation 1
Regulation 2	Regulation 4
Regulation 3	Regulation 5
Regulation 4	Regulation 6
Regulation 5	Regulation 7
Regulation 5A(a)	Regulation 8
Regulation 6	Regulation 9
Regulation 7	Regulation 10
Regulation 8	Regulation 11
Regulation 10(b)	Regulation 11
Regulation 11	Regulation 12

(a) Regulation 5A of the 2004 Regulations was inserted by S.I. 2006/1406.

(b) Regulation 9 of the 2004 Regulations concerned appeals under paragraph 9 of Schedule 3 to the 2002 Act against the conduct of local resolution of complaints. This right of appeal has been replaced with a right of appeal against the outcome of the local resolution – see paragraph 18 of Schedule 14 to the 2011 Act. Accordingly regulation 9 of the 2004 Regulations has not been re-enacted, but regulation 11 of these Regulations concerns the new right of appeal.

Regulation 12	Regulation 13
Regulation 13	Regulation 14
Regulation 14	Regulation 15
Regulation 14A(a)	Regulation 16
Regulation 14B	Regulation 17
Regulation 14C	Regulation 18
Regulation 14D	Regulation 19
Regulation 14E	Regulation 20
Regulation 15	Regulation 21
Regulation 16	Regulation 22
Regulation 17	Regulation 23
Regulation 18	Regulation 24
Regulation 19	Regulation 25
Regulation 20	Regulation 26
Regulation 21	Regulation 27
Regulation 22	Regulation 28
Regulation 23	Regulation 29
Regulation 24	Regulation 31
Regulation 25	Regulation 32
Regulation 26	Regulation 33
Regulation 27	Regulation 34
Regulation 28	Regulation 35
Regulation 30(b)	Regulation 36

These Regulations make the following modifications to the provisions in the 2004 Regulations:

In regulation 1(2) of these Regulations (interpretation), the definition of “appropriate authority” and “police staff member” are changed to reflect changes made by the 2011 Act. Definitions of “disciplinary proceedings” and “misconduct proceedings” are inserted. The former term refers to proceedings in relation to unsatisfactory performance as well as misconduct.

Regulation 3 of these Regulations (recording of complaints) specifies descriptions of complaints that do not have to be recorded by an appropriate authority(c). The descriptions are similar to those specified in regulation 3 of the 2004 Regulations for the purposes of dispensation by the Independent Police Complaints Commission (“the Commission”) from the requirements of Schedule 3 to the 2002 Act. There is an additional description of complaint; a complaint which is fanciful, in the sense that no reasonable person could lend any credence to it.

Regulation 4 of these Regulations (reference of complaints to the Commission) re-enacts regulation 2 of the 2004 Regulation with the change that complaints must be referred to the Commission without delay, and in any event not later than specified deadlines which are the same as those imposed by regulation 2 of the 2004 Regulations. Regulations 7 and 8 of these Regulations incorporate the same changes in relation to the referral of conduct matters and death or serious injury matters, respectively.

Regulation 5 of these Regulations (disapplication of requirements of Schedule 3) re-enacts regulation 3 of the 2004 Regulations but reflects the fact that paragraph 7 of Schedule 3 to the 2002 Act now refers to disapplication of the provisions of that Schedule rather than dispensation, and the provisions of the Schedule can now be disappplied by the appropriate authority without making an application to the Commission in some circumstances(d).

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(a) Regulations 14A to 14E of the 2004 Regulations were inserted by S.I. 2008/2866.

(b) Regulation 29 of the 2004 Regulations was revoked by S.I. 2006/594.

(c) See paragraph 2(8) of Schedule 3 to the 2002 Act, inserted by paragraph 8(5) of Schedule 14 to the 2011 Act.

(d) See the amendments made to paragraph 7 of Schedule 3 to the 2002 Act by paragraph 10 of Schedule 14 to the 2011 Act.



Regulation 6 of these Regulations (local resolution of complaints) re-enacts regulation 4 of the 2004 Regulations with the change that a record of the outcome of the local resolution of a complaint is to be sent to the complainant automatically, rather than on application, and at the same time the appropriate authority is to inform the complainant of his right of appeal against the outcome. The fact that the person complained against chose not to comment on the complaint does not have to be recorded.

Regulation 7 of these Regulations (recording and reference of conduct matters) re-enacts regulation 5 of the 2004 Regulations, while also specifying a repetitious conduct matter as a description of matters that do not have to be recorded by the appropriate authority, provided that the matter does not have to be recorded because it is specified as a description of matter that must be referred to the Commission**(a)**.

Regulation 10 of these Regulations (power to discontinue an investigation) re-enacts regulation 7 of the 2004 Regulations with changes to reflect the fact that investigations of complaints and conduct matters can now be discontinued by the appropriate authority without an order from the Commission, in certain circumstances**(b)**.

Regulation 11 of these Regulations (appeals) consolidates regulations 8 and 10 of the 2004 Regulations, providing a single provision applicable to the rights of appeal to which those regulations applied, and to the new rights of appeal against a decision to disapply the requirements of Schedule 3 to the 2002 Act, against the outcome of a complaint that is subjected to local resolution or handled otherwise than in accordance with that Schedule and against a decision to discontinue an investigation of a complaint**(c)**.

Regulation 12 of these Regulations (manner in which duties to provide information are to be performed) re-enacts regulation 11 of the 2004 Regulations with the change that, where disciplinary proceedings are taken in respect of matters dealt with in an investigation report, the appropriate authority is now required to notify the Commission, as well as the complainant and any interested person, of the outcome of the proceedings, including the fact and outcome of any appeal.

Regulation 24 of these Regulations (appointment of person to carry out investigations) re-enacts regulation 18 of the 2004 Regulations with the change that the prohibition on the appointment of an investigator who is the chief officer or a member of the same police force as the person being investigated, or who works under the management of that person, does not apply where the investigation is of a complaint in relation to a direction and control matter. Further, where the complaint is in relation to a direction and control matter, the fact that a person falls into one of these categories does not of itself provide reasonable cause for concern as to whether the person could act impartially (which would otherwise bar the person from appointment as investigator). In relation to the first of these changes, where the person being investigated is a chief officer, paragraphs 16(4), 17(6) and 18(2) of Schedule 3 to the 2002 Act prohibit the appointment of an investigator who is under the direction and control of that chief officer in any event.

Regulations 27 (complaints or conduct matters concerning a person who has subsequently ceased to serve with the police) and 28 (complaints or conduct matters concerning a person whose identity is unascertained) of these Regulations re-enact regulations 21 and 22 of the 2004 Regulations respectively, with the change that they apply to conduct matters as well as complaints.

Regulation 30 of these Regulations (relevant appeal body) specifies the descriptions of complaint in respect of which the Commission, rather than the chief officer of police, is the relevant appeal body**(d)**.

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(a) See paragraphs 10 and 11 of Schedule 3 to the 2002 Act, as amended by paragraphs 11 and 12 of Schedule 14 to the 2011 Act.

(b) See the amendments made to paragraph 21 of Schedule 3 to the 2002 Act by paragraph 13 of Schedule 14 to the 2011 Act.

(c) See the amendments made to Schedule 3 to the 2002 Act by paragraphs 15 to 20 of Schedule 14 to the 2011 Act.

(d) See paragraph 30 of Schedule 3 to the 2002 Act, inserted by paragraph 22 of Schedule 14 to the 2011 Act.

Regulation 33 of these Regulations (delegation of powers and duties by chief officer) re-enacts regulation 26 of the 2004 Regulations with the change that it allows powers and duties to be delegated to a member of the police force of at least the rank of chief inspector (or a police staff member of equivalent rank), except in a case where the person whose conduct is in question is a senior officer. In that case, powers and duties can be delegated to another senior officer (or the police staff equivalent).

Regulation 36 of these Regulations (disciplinary proceedings for police staff) changes the way that disciplinary proceedings are defined for the purposes of Part 2 of the 2002 Act. Proceedings for misconduct continue to be classed as disciplinary proceedings, but proceedings for unsatisfactory performance are now also classed as disciplinary proceedings for the purposes of particular provisions of the 2002 Act that concern the giving of advice, recommendations and directions by the Commission. This mirrors the position achieved for police officers by regulations made under sections 50 and 51 of the Police Act 1996.

These Regulations make further minor drafting or consequential changes in re-enacting the provisions of the 2004 Regulations.

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