
STATUTORY INSTRUMENTS

2004 No. 643

POLICE, ENGLAND AND WALES

The Police (Complaints and Misconduct) Regulations 2004

Made - - - - *8th March 2004*
Laid before Parliament *11th March 2004*
Coming into force - - *1st April 2004*

Whereas the Secretary of State, has consulted, in accordance with sections 24 and 39(11) of the Police Reform Act 2002⁽¹⁾, the Independent Police Complaints Commission, persons whom he considers to represent the interests of police authorities, persons whom he considers to represent the interests of chief officers of police and such other persons as he thinks fit;

And whereas the Secretary of State has supplied a draft of these Regulations to the Police Advisory Board for England and Wales and has taken into consideration their representations in accordance with section 63(3)(d) of the Police Act 1996⁽²⁾;

Now, therefore, the Secretary of State, in exercise of the powers conferred on him by sections 39(1) and 83(1) to (2A) of the Police Act 1997⁽³⁾, and sections 13, 20(5), 21(10) and (12), 23, 29(1), 39(9) and 105(4) and (5) of, and paragraphs 3(7), 4(1)(b) and (4), 7(1) and (3), 8(2), 9(8), 11(2)(c), 13(4), 23(11), 24(9) and 25(13) of Schedule 3 to, the Police Reform Act 2002, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Police (Complaints and Misconduct) Regulations 2004 and shall come into force on 1st April 2004.

(2) In these Regulations—

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

“bank holiday” means a day which is a bank holiday under the Banking and Financial Dealings Act 1971⁽⁴⁾ in England and Wales.

“the Commission” means the Independent Police Complaints Commission;

“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.

(1) 2002 c. 30.

(2) 1996 c. 16; section 63(3)(d) was inserted by section 107 of, and paragraph 17 of Schedule 7 to, the 2002 Act.

(3) 1997 c. 50; sections 39(1) and 83(1) to (2A) were substituted by section 25 of the 2002 Act.

(4) 1971 c. 80.

Reference of complaints to the Commission

2.—(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 a disciplinary sanction 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 serious arrestable offence, within the meaning of section 116 of the Police and Criminal Evidence Act 1984⁽⁵⁾, 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) not later than the end of the working 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) not later than the end of the working 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.

Dispensation by the Commission

3.—(1) For the purposes of paragraph 7 of Schedule 3 to the 2002 Act (dispensation by the Commission from 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;

(5) 1984 c. 60; section 116 was amended by section 125(1) of, paragraphs 5 and 11 of Schedule 15 to, and Part 1 of Schedule 16 to, the Terrorism Act 2000 (c. 11) and by section 456, of, and paragraphs 1 and 14 of Schedule 11 to, the Proceeds of Crime Act 2002 (c. 29).

- (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; 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)(e) a complaint is repetitious if, and only if—
- (a) it is substantially the same as a previous complaint (whether made by or on behalf of the same or a different complainant), or it concerns substantially the same conduct as a previous conduct matter;
 - (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 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;
 - (ii) the complaint was locally resolved in accordance with the provisions of paragraph 8 of that Schedule;
 - (iii) the Commission gave the appropriate authority a direction under regulation 7(7)(b) (requirement to dispense with the requirements of Part 2 of the 2002 Act);
 - (iv) the complainant gave such notification that he withdrew the complaint as is mentioned in regulation 15(1)(a); or
 - (v) the Commission, under paragraph 7 of Schedule 3 to the 2002 Act, gave the appropriate authority permission to handle the complaint in whatever way it saw fit.
- (4) 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.
- (5) 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.
- (6) An application under paragraph 7(1) of Schedule 3 to the 2002 Act for permission to handle a complaint in whatever manner (if any) an 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) in a case falling within paragraph (2)(e), the previous complaint and a copy of the record of any resolution, withdrawal or dispensation of that complaint;
- (d) 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 of Schedule 3 to the 2002 Act.

Local resolution of complaints

4.—(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 admitted the conduct in question and has agreed to the apology.

(5) Where the person complained against chooses not to comment on the complaint, the appointed person shall record this fact in writing.

(6) 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 the person complained against shall be sent a copy of that record.

(7) A complainant shall be entitled to obtain a copy of that record from the appropriate authority if he applies for such a copy not later than the end of three months from the day on which—

- (a) the local resolution of his complaint was achieved; or
- (b) for whatever other reason, it was determined that the complaint should no longer be subject to that procedure.

(8) An appropriate authority shall provide a copy of any such record as soon as practicable after it has received such an application.

(9) 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

5.—(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 a disciplinary sanction 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 serious arrestable offence, within the meaning of section 116 of the Police and Criminal Evidence Act 1984;
- (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 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.

(3) 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, not later than the end of the working 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, not later than the end of the working day following the day on which the Commission notifies the appropriate authority that the conduct matter is to be referred.

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

6.—(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 or recordable conduct 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 or recordable conduct 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 of the Commission to discontinue an investigation

7.—(1) For the purposes of paragraph 21(1) 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 Commission considers that it is not reasonably practicable to continue the investigation;
- (b) which the complainant has agreed may be subjected to local resolution;
- (c) which the Commission considers is vexatious, oppressive or otherwise an abuse of the procedures for dealing with complaints or conduct matters;
- (d) which is repetitious, as defined in regulation 3(3); or

- (e) which the Commission otherwise considers is such as to make it not reasonably practicable to proceed with the investigation.
- (3) 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 or conduct matter under investigation falls within paragraph (2) of this regulation.
- (4) 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.
- (5) 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
 - (b) supply any further information requested by the Commission for the purpose of considering that application.
- (6) 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.
- (7) 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 dispense with the requirements of Part 2 of the 2002 Act as respects that complaint;
 - (c) in a case within paragraph (1)(b) 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.
- (8) The steps set out in paragraph (9) are hereby specified for the purposes of paragraph 21(4)(b) of Schedule 3 to the 2002 Act (steps that may be taken by the Commission when an investigation is discontinued).
- (9) 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 dispense with the requirements of Part 2 of the 2002 Act as respects that complaint;
 - (c) to handle the matter in whatever manner it thinks fit.

Appeals to the Commission: failures to notify or record a complaint

8.—(1) An appeal under paragraph 3 of Schedule 3 to the 2002 Act against any failure referred to in paragraph 3(3) (failure by a police authority or chief officer to determine who is the appropriate authority or to notify or record anything under paragraph 2) shall be made within 28 days of the

date on which notification of that failure is made or sent to the complainant under paragraph 3(2) of that Schedule.

- (2) Any such 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 police authority which gave notification of the failure;
 - (d) the grounds for the appeal; and
 - (e) the date on which the complainant was notified of the determination or of the failure to record the complaint.
- (3) Where the Commission receives such an appeal it shall—
 - (a) notify the police authority or chief officer concerned of the appeal, and
 - (b) request any information from any person which it considers necessary to dispose of the appeal.
- (4) Where the Commission receives an appeal which fails to comply with one or more of the requirements mentioned in paragraph (2), it may decide to proceed as if those requirements had been complied with.
- (5) A police authority or chief officer shall supply to the Commission any information requested under paragraph (3)(b).
- (6) The Commission shall determine the outcome of the appeal as soon as practicable.
- (7) The Commission shall notify the complainant and the police authority or chief officer concerned of the reasons for its determination.
- (8) The Commission may extend the time period mentioned in paragraph (1) in any case where it is satisfied that by reason of the special circumstances of the case it is just to do so.

Appeals to the Commission: local resolution

9.—(1) Any appeal under paragraph 9 of Schedule 3 to the 2002 Act (appeal by a complainant whose complaint has been subjected to local resolution against the conduct of the local resolution) shall be made within 28 days of the date on which the alleged contravention of the procedural requirements occurred.

- (2) Any such 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 grounds for the appeal; and
 - (d) the date on which the complainant was notified of the outcome of that local resolution.
- (3) Where the Commission receives such an appeal it shall request any information from any person which it considers necessary to dispose of the appeal.
- (4) Where the Commission receives an appeal which fails to comply with one or more of the requirements mentioned in paragraph (2), it may decide to proceed as if those requirements had been complied with.
- (5) The appropriate authority shall supply to the Commission any further information requested of it under paragraph (3).
- (6) The Commission shall determine the outcome of the appeal as soon as practicable.
- (7) The Commission shall notify the complainant, the appropriate authority and the person complained against of the reasons for its determination.

(8) The Commission shall notify the complainant and the person complained against of any direction it gives to the appropriate authority as to the future handling of the complaint.

(9) The Commission may extend the time period mentioned in paragraph (1) in any case where it is satisfied that by reason of the special circumstances of the case it is just to do so.

Appeals to the Commission with respect to an investigation

10.—(1) Any appeal made by a complainant under paragraph 25(2) of Schedule 3 to the 2002 Act shall be made within 28 days of the date on which the appropriate authority sends a notification to the complainant of its determination under paragraph 24(7) of that Schedule as to what action (if any) it will take in respect of the matters dealt with in the investigation report.

(2) Any such appeal shall be in writing and shall state—

- (a) details of the complaint;
- (b) the date on which the complaint was made;
- (c) the grounds for the appeal; and
- (d) the date on which the complainant received notification under paragraph 24(7) of Schedule 3.

(3) Where the Commission receives such an appeal it shall request any information from any person which it considers necessary to dispose of the appeal.

(4) Where the Commission receives an appeal which fails to comply with one or more of the requirements mentioned in paragraph (2), it may decide to proceed as if those requirements had been complied with.

(5) The appropriate authority shall supply to the Commission any further information requested of it under paragraph (3).

(6) The Commission shall determine the outcome of the appeal as soon as practicable.

(7) The Commission shall notify the complainant and the appropriate authority of the reasons for its determination.

(8) The Commission may extend the time period mentioned in paragraph (1) in any case where it is satisfied that by reason of the special circumstances of the case it is just to do so.

Manner in which duties to provide information are to be performed

11.—(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 are as follows.

(2) The Commission, in a case falling within section 20(1) or 21(6) of the 2002 Act (investigation of a complaint or conduct 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 or conduct 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 determine 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 any misconduct hearing or other action that is taken in respect of the matters dealt with in any report submitted under paragraph 22 of Schedule 3 to the 2002 Act, the Commission or, as the case may be, an appropriate authority shall notify any complainant and interested person of the outcome of that hearing or action, including the fact and outcome of any appeal against the findings of or sanctions imposed by such a hearing.

(8) Subject to paragraphs (5) and (9) any notification under this regulation shall be made in writing.

(9) 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.

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

12.—(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”

13. 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.

14.—(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.

Withdrawn and discontinued complaints

15.—(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;
- (b) which the appropriate authority knows is currently the subject of an appeal to the Commission under paragraph 3, 9 or 25 of that Schedule; or
- (c) which was notified to the appropriate authority by the Commission under paragraph 2(1) 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)(b) or (c), the appropriate authority shall also—

- (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.

(5) 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.

(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 any of sub-paragraphs (a) to (c) 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 (4)(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 21 days, 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) 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) But nothing in paragraph (11) shall require the appropriate authority to make a notification if it has previously decided under regulation 14(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

16.—(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 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

17.—(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 21 days to 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) The Commission or appropriate authority shall notify the person complained against if paragraph (5) or (6) applies.

(8) But 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

18.—(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 conduct the investigation and to manage the resources that will be required during that process;
- (b) if he has any social, financial or other connection, whether or not within the work environment, with the person whose conduct is being investigated which could, on an objective appraisal of the material facts, give rise to a legitimate fear as to whether that investigation can be carried out impartially;
- (c) if he works, directly or indirectly, under the management of the person whose conduct is being investigated;
- (d) in a case where the person who is the subject of the investigation is a senior police officer and is a member of a force other than the metropolitan police force, if he is a member of the same force as that person.

(2) No member of a police force shall be appointed to carry out an investigation under paragraph 16, 17 or 18 of Schedule 3 to the 2002 Act in a case where the person who is the subject of the investigation is also a member of a police force, unless the officer so appointed is—

- (a) of at least the rank of sergeant;
 - (b) if the officer under investigation is a superintendent or chief superintendent and—
 - (i) if the investigating officer is a member of the City of London or metropolitan police force, of at least the rank of commander;
 - (ii) if the investigating officer is a member of any other force, of at least the rank of assistant chief constable;
 - (c) of at least the same rank as the officer concerned.
- (3) In this regulation—
- (a) “senior police officer” means a chief constable, a deputy chief constable or an assistant chief constable or, in the case of the City of London police force, a member of that force of or above the rank of commander;
 - (b) any reference (other than in paragraph (1)(d)) to a member of a police force shall include a reference to a special constable;
 - (c) any reference to an officer of a particular rank shall include a reference to a special constable of an equivalent rank or grade.

Combining and splitting investigations

- 19.—(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

- 20.—(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, the Commission—

- (a) shall notify the appropriate authority, the complainant 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) But 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 against a person who has subsequently ceased to serve with the police

21. 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 against a person whose identity is unascertained

22.—(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

23.—(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 bring and conduct, or otherwise participate or intervene 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.

Keeping of records

24. Every police authority 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(3) of Schedule 3 to the 2002 Act;
- (c) every exercise of a power or performance of a duty under Part 2 of the 2002 Act.

Register to be kept by the Commission

25.—(1) The Commission shall establish and maintain a register of all information supplied to it by a police authority 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, of investigations by the Commission, or of 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 the purposes mentioned in regulation 12(1)(a) and (b).

Delegation of powers and duties by chief officer

26.—(1) Subject to paragraphs (3) and (4), 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).

(2) Those powers or duties may be delegated—

- (a) in the City of London police force, to an assistant commissioner or a commander of that force;
- (b) in the metropolitan police force, to an assistant commissioner, a deputy assistant commissioner or a commander of that force;
- (c) in any other police force, to a deputy chief constable or an assistant chief constable of that force.

(3) 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.

(4) A chief officer shall not, in any particular case, delegate any power or duty under paragraph (1) to an officer who has acted as investigating officer in that case, or who has acted in relation to it in pursuance of an attempt to resolve it by way of local resolution.

(5) This regulation is without prejudice to any other power of a chief constable to delegate powers, duties or functions (whether at common law or otherwise).

Manner and time limits of notifications

27.—(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

28.—(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 person who is under the direction and control of a chief officer shall include references to a detention officer or escort officer who has been so designated by that chief officer.

(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.

Application to NCIS and NCS

29.—(1) Subject to the modifications set out in this regulation, Part 2 of the 2002 Act and these Regulations shall apply to any member of the National Criminal Intelligence Service and to any member of the National Crime Squad as they apply in relation to persons serving with the police.

(2) In their application to any member of the National Criminal Intelligence Service and to any member of the National Crime Squad, Part 2 of the 2002 Act and these Regulations shall apply as if—

- (a) any reference to a police authority was a reference to the Service Authority of the National Criminal Intelligence Service or the National Crime Squad, as the case may be;
- (b) any reference to a chief officer was reference to the Director General of the National Criminal Intelligence Service or the National Crime Squad, as the case may be;
- (c) any reference (other than in this regulation) to a person serving with the police was a reference to a member of the National Criminal Intelligence Service or the National Crime Squad, as the case may be.

(3) In this regulation—

- (a) a reference to a member of the National Criminal Intelligence Service includes any person who falls within section 9(1) of the Police Act 1997, and

- (b) a reference to a member of the National Crime Squad includes any person who falls within section 55(1) of that Act.
- (4) The statutory instruments set out in paragraph (5) are hereby revoked.
- (5) Those statutory instruments are—
 - (a) the National Crime Squad (Complaints) Regulations 1998⁽⁶⁾;
 - (b) the NCIS (Complaints) Regulations 1998⁽⁷⁾;
 - (c) the National Crime Squad (Complaints) (Amendment) Regulations 1999⁽⁸⁾;
 - (d) the NCIS (Complaints) (Amendment) Regulations 1999⁽⁹⁾;
 - (e) the National Crime Squad (Dispensation from Requirement to Investigate Complaints) Regulations 2003⁽¹⁰⁾.

Disciplinary proceedings for police staff

30. 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 any proceedings or management process during which the conduct 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.

Home Office
8th March 2004

Hazel Blears
Minister of State

⁽⁶⁾ S.I.1998/638.
⁽⁷⁾ S.I. 1998/641.
⁽⁸⁾ S.I. 1999/1266.
⁽⁹⁾ S.I. 1999/1273.
⁽¹⁰⁾ S.I. 2003/2601.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set out the process to be followed under Part 2 of the Police Reform Act 2002 (“the Act”) in relation to complaints against persons serving with the police and misconduct by such persons.

Regulation 2 sets out descriptions of complaint which must be referred by the appropriate authority (the police authority, in the case of a complaint against an officer above the rank of chief superintendent, or the chief officer in any other case) to the Independent Police Complaints Commission (“the Commission”).

Regulation 3 prescribes categories of complaints which the Commission may permit an appropriate authority to handle in whatever manner the authority thinks fit. These categories include complaints that were unreported for over a year old, complaints that are anonymous, vexatious, repetitious or have already been investigated, and complaints that cannot reasonably practicably be investigated.

Regulation 4 sets out procedural requirements which are to be met when complaints are subjected to a local resolution procedure.

Regulation 5 sets out descriptions of conduct by persons serving with the police which must be recorded by an appropriate authority and referred to the Commission. These include assaults causing actual bodily harm, serious corruption, misconduct aggravated by discriminatory behaviour, serious arrestable offences, and other grave or exceptional conduct.

Regulation 6 allows the Commission to specify the requirements which it can impose on a person conducting an investigation which is supervised by the Commission.

Regulation 7 sets out descriptions of complaints or conduct matters into which an investigation can be discontinued by order of the Commission. These include investigations where the complainant refuses to co-operate or agrees to the local resolution procedure, and complaints that are vexatious, repetitious or cannot reasonably practicably be investigated. The procedural consequences of a discontinuance are also set out.

Regulations 8 to 10 set out the procedures to be followed if an appeal is made to the Commission against a failure to record a complaint, against the conduct of the local resolution of a complaint or in relation to the investigation of a complaint.

Regulation 11 sets out the duties imposed on the Commission and on appropriate authorities to keep complainants and other interested persons informed about the investigation of a complaint or conduct matter.

Regulation 12 sets out the exceptions to those duties.

Regulation 13 defines the word “relative” for the purposes of identifying the persons who are to be regarded as interested persons and accordingly must, if they have indicated that they so consent, be kept informed about the handling of a complaint or conduct matter.

Regulation 14 requires an appropriate authority to supply a complainant with a copy of the record made of his complaint, and (subject to exceptions) to supply to a person complained against a copy of that complaint.

Regulation 15 sets out the procedure to be followed if a complainant withdraws his complaint or indicates that he does not wish any further steps to be taken as a result of his complaint. This procedure includes a requirement on the appropriate authority or Commission to consider whether

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the subject-matter of the complaint should be treated as a recordable conduct matter, in which case it can continue to be subject to an investigation.

Regulation 16 allows the Commission to direct an investigation to be suspended while another investigation or procedure takes place.

Regulation 17 sets out the procedure to be followed if the investigation of a complaint has been suspended until the conclusion of criminal proceedings. In these circumstances an appropriate authority need not resume the investigation if the complainant fails to indicate that he wishes this to happen.

Regulation 18 imposes requirements and restrictions on the categories of persons who may carry out investigations of complaints and conduct matters.

Regulation 19 provides for the combining of more than one investigation into a single investigation, and for the splitting of a single investigation into two or more separate investigations.

Regulation 20 sets out the procedure to be followed if the Commission relinquishes control of an investigation that it has been supervising or managing.

Regulation 21 explains how the Regulations apply if a complaint is made against a person who subsequently ceases to serve with the police.

Regulation 22 explains how the Regulations apply if a complaint is made against a person serving with the police whose identity is not ascertained.

Regulation 23 imposes requirements on the Commission to inform interested parties of any steps it takes in relation to disciplinary proceedings or criminal prosecution, when an investigation is completed.

Regulation 24 requires police authorities and chief officers to keep records relating to complaints and conduct matters.

Regulation 25 requires the Commission to keep a register of the information which it receives from police authorities and chief officers, and sets out the circumstances in which information stored on that register can be disclosed.

Regulation 26 gives chief officers power to delegate functions conferred on them by the Act. This is without prejudice to the power of a police chief at common law to delegate powers to suitable officers for whom the chief officer is answerable.

Regulation 27 provides that the timescale and manner in which various notifications must be made under the Act can be determined by the Commission in guidance.

Regulation 28 provides that Part 2 of the Act and these Regulations apply to contracted-out staff designated as detention officers or escort officers in the carrying out of their functions.

Regulation 29 provides that Part 2 of the Act and these Regulations apply to members of the National Criminal Intelligence Service and the National Crime Squad.

Regulation 30 identifies the proceedings which are to constitute disciplinary proceedings for police staff for the purposes of the definition of “disciplinary proceedings” in section 29(1) of the Act.