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STATUTORY INSTRUMENTS

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**2012 No. 62**

**The Elected Local Policing Bodies (Complaints  
and Misconduct) Regulations 2012**

**PART 2**

**Initial Handling of Complaints and Conduct Matters**

**Duties to preserve evidence**

**8.**—(1) Where a complaint or conduct matter that relates to the conduct of a relevant office holder comes to the attention of the police and crime panel, it shall be the duty of that panel to secure that all such steps as are appropriate for the purposes of these Regulations are taken, both initially and from time to time after that, for obtaining and preserving evidence relating to the conduct in question.

(2) Where—

- (a) a complaint is made to a relevant office holder,
- (b) a relevant office holder becomes aware that a complaint has been made to a police and crime panel, a chief officer of police or the Commission, or
- (c) a relevant office holder becomes aware of any conduct matter,

it shall be the duty of the office holder to take all such steps as appear to him to be appropriate for the purposes of these Regulations for obtaining and preserving evidence relating to the conduct in question.

(3) The relevant office holder's duty under paragraph (2) must be performed as soon as practicable after—

- (a) the complaint is made,
- (b) the relevant office holder becomes aware of the complaint, or
- (c) the relevant office holder becomes aware of the conduct matter,

as the case may be.

(4) After that, the relevant office holder shall be under a duty, until he is satisfied that it is no longer necessary for him to do so, to continue to take the steps from time to time appearing to him to be appropriate for the purposes of these Regulations for obtaining and preserving the evidence relating to the conduct in question.

(5) It shall be the duty of a police and crime panel to comply with all such directions as may be given to it by the Commission in relation to the performance of its duty under paragraph (1).

(6) It shall be the duty of a relevant office holder to take all such steps for obtaining or preserving evidence as he may be directed to take for the purposes of this regulation by the police and crime panel or by the Commission.

### **Notification and recording of complaints**

**9.**—(1) Where a complaint is made to the Commission that relates to the conduct of a relevant office holder, it shall give notification of the complaint to the police and crime panel unless it considers that there are exceptional circumstances that justify notification not being given.

(2) Where a complaint is made to a police and crime panel that relates to the conduct of a relevant office holder, it shall—

- (a) determine whether or not it is itself the police and crime panel in relation to that relevant office holder; and
- (b) if it determines that it is not, give notification of the complaint to the panel that is.

(3) Where a complaint is made to a chief officer of police that relates to the conduct of a relevant office holder, he shall give notification of the complaint to the police and crime panel.

(4) Where a complaint is made to a relevant office holder that relates to his own conduct, he shall give notification of the complaint to the police and crime panel.

(5) Where—

- (a) a police and crime panel determines, in the case of a complaint made to the panel that relates to the conduct of a relevant office holder, that it is itself the police and crime panel in relation to that relevant office holder, or
- (b) a complaint is notified to a police and crime panel under this regulation,

the panel shall record the complaint.

(6) Nothing in this regulation shall require the notification or recording by any person of any complaint if—

- (a) that person is satisfied that the subject-matter of the complaint has been, or is already being, dealt with by means of criminal proceedings against the relevant office holder; or
- (b) the complaint has been withdrawn in accordance with regulation 16.

### **Failures to record or notify a complaint**

**10.**—(1) This regulation applies where anything which is or purports to be a complaint in relation to which regulation 9 (notification and recording of complaints) has effect is received by a police and crime panel, a relevant office holder or a chief officer of police (whether in consequence of having been made directly or of a notification under that regulation).

(2) If the police and crime panel, relevant office holder or chief officer of police decides not to take action under regulation 9 for notifying or recording the whole or any part of what has been received, the panel, office holder or chief officer shall notify the complainant of the following matters—

- (a) the decision to take no action and, if that decision relates to only part of what was received, the part in question; and
- (b) the grounds on which the decision was made.

### **Notification and recording of conduct matters arising in civil proceedings**

**11.**—(1) This regulation applies where—

- (a) a police and crime panel has received notification that civil proceedings relating to any matter have been brought by a member of the public against a relevant office holder, or it otherwise appears to a police and crime panel that such proceedings are likely to be so brought; and
- (b) it appears to that panel (whether at the time of the notification or at any time subsequently) that those proceedings involve or would involve a conduct matter.

- (2) The police and crime panel—
  - (a) shall consider whether it is itself the police and crime panel in relation to the relevant office holder concerned; and
  - (b) if it is not, shall notify that police and crime panel about the proceedings, or the proposal to bring them, and about the circumstances that make it appear as mentioned in subparagraph (1)(b).
- (3) Where a police and crime panel determines for the purposes of this regulation that it is the police and crime panel in relation to a relevant office holder to whom any conduct matter relates, it shall record that matter.
- (4) Nothing in paragraph (3) shall require the police and crime panel to record any conduct matter if it is satisfied that the matter—
  - (a) has been recorded as a complaint under regulation 9(5); or
  - (b) has been, or is already being, dealt with by means of criminal proceedings against the person to whose conduct the matter relates.
- (5) For the purposes of this regulation civil proceedings involve a conduct matter if—
  - (a) they relate to such a matter; or
  - (b) they are proceedings that relate to a matter in relation to which a conduct matter, or evidence of a conduct matter, is or may be relevant.

#### **Recording of conduct matters in other cases**

**12.**—(1) Where a conduct matter comes (otherwise than as mentioned in regulation 11) to the attention of the police and crime panel for the relevant office holder concerned, it shall be the duty of the panel to record that matter.

(2) Nothing in paragraph (1) shall require the police and crime panel to record any conduct matter if it is satisfied that the matter—

- (a) has been recorded as a complaint under regulation 9(5); or
  - (b) has been, or is already being, dealt with by means of criminal proceedings against the person to whose conduct the matter relates.
- (3) If it appears to the Commission—
- (a) that any matter that has come to its attention is a conduct matter, but
  - (b) that that matter has not been recorded by the police and crime panel,

the Commission may direct the panel to record that matter; and it shall be the duty of that panel to comply with the direction.

#### **Reference of serious complaints and conduct matters to the Commission**

**13.**—(1) It shall be the duty of a police and crime panel to refer a complaint to the Commission if—

- (a) the panel determines that the complaint is a serious complaint; or
- (b) the Commission notifies the panel that it requires the complaint to be referred to the Commission for its consideration.

(2) It shall be the duty of a police and crime panel to refer a conduct matter to the Commission if—

- (a) the panel has recorded the matter under regulation 11, 12 or 16(6); or
- (b) the Commission notifies the panel that it requires the matter to be referred to the Commission for its consideration.

(3) Where a complaint or conduct matter is required to be referred to the Commission under paragraph (1)(a) or (2)(a), notification of the complaint or conduct matter shall be given to the Commission—

- (a) as soon as is practicable, and in any event not later than the end of the day following the day on which it first becomes clear to the police and crime panel that the complaint or conduct matter is one to which the paragraph (1)(a) or (2)(a) applies, and
- (b) in such manner as the Commission specifies.

(4) Where a complaint or conduct matter is required to be referred to the Commission under paragraph (1)(b) or (2)(b), notification of the complaint or conduct matter shall be given to the Commission—

- (a) as soon as is practicable, and in any event not later than the end of the day following the day on which the Commission notifies the police and crime panel that the complaint or conduct matter is to be referred, and
- (b) in such manner as the Commission specifies.

(5) The power of the Commission by virtue of paragraph (1)(b) or (2)(b) to require a complaint or conduct matter to be referred to it shall be exercisable at any time irrespective of whether the complaint or conduct matter is already being investigated by any person or has already been considered by the Commission.

(6) A police and crime panel which refers a complaint or conduct matter to the Commission under this regulation shall give a notification of the making of the reference—

- (a) to the complainant (if there is one), and
- (b) except in a case where it appears to that panel that to do so might prejudice a possible future investigation of the complaint or conduct matter, to the person to whose conduct the complaint or matter relates.

(7) A complaint or conduct matter that has already been referred to the Commission under this regulation on a previous occasion shall not be required to be referred again unless the Commission so directs.

#### **Duties of Commission on a reference**

**14.**—(1) It shall be the duty of the Commission in the case of every complaint or conduct matter referred to it by a police and crime panel to determine whether or not it is necessary for the complaint or matter to be investigated.

(2) Where the Commission determines under this regulation that it is not necessary for a complaint or conduct matter to be investigated, it shall refer the complaint or matter back to the police and crime panel—

- (a) in the case of a complaint, to be dealt with by that panel in accordance with Part 4 (resolution of other complaints), and
- (b) in the case of a conduct matter, to be dealt with by that panel in such manner (if any) as that panel may determine.

(3) Where the Commission refers a complaint or conduct matter back under paragraph (2), it shall give a notification of the making of the reference back—

- (a) to the complainant (if there is one), and
- (b) to the person to whose conduct the complaint or matter relates.

### **Disapplication of requirements of Regulations**

**15.**—(1) This regulation applies where a complaint has been recorded by a police and crime panel unless the complaint is one which has been, or must be, referred to the Commission under regulation 13, and is not for the time being referred back to the panel under regulation 14(2).

(2) If the police and crime panel considers—

(a) that it should handle the complaint otherwise than in accordance with Part 4 or should take no action in relation to it, and

(b) that the complaint falls within a description of complaints specified in paragraph (3), the panel may handle the complaint in whatever manner (if any) that panel thinks fit.

(3) The descriptions of complaints specified for the purposes of paragraph (2)(b) are those where the police and crime panel considers that—

(a) the complaint is concerned entirely with the conduct of a relevant office holder in relation to a person who was working in his capacity as a member of the office holder's staff at the time when the conduct is supposed to have taken place.

(b) 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—

(i) no good reason for the delay has been shown, or

(ii) injustice would be likely to be caused by the delay;

(c) the matter is already the subject of a complaint;

(d) 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;

(e) the complaint is vexatious, oppressive or otherwise an abuse of the procedures for dealing with complaints;

(f) the complaint is repetitious (for which, see paragraph (4)).

(4) A complaint is repetitious for the purposes of paragraph (3)(f) 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 regards the previous complaint or conduct matter, either—

(i) the Commission took the steps required by regulation 26(2) (action in response to an investigation report);

(ii) the complaint was resolved in accordance with the provisions of Part 4 (resolution of other complaints);

(iii) the complainant gave such notification that he withdrew the complaint as is mentioned in regulation 16; or

(iv) the police and crime panel decided to handle the complaint in whatever way it saw fit, in accordance with this regulation.

(5) The police and crime panel shall notify the complainant that it has decided to handle the complaint as permitted by paragraph (2).

**Withdrawn and discontinued complaints**

16.—(1) If a police and crime panel 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 panel 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, these Regulations 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 police and crime panel, then—

- (a) the Commission shall send a copy of that notification to the panel;
- (b) that panel 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 these Regulations shall cease to apply in respect of that complaint.

(3) Where a complainant gives such notification as is mentioned in paragraph (1) to a police and crime panel, or where the panel receives a copy of a notification under paragraph (2), and it relates to a complaint which was referred to the Commission under regulation 13 and which has not been referred back to the panel under regulation 14(2), then the panel 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) Where a complainant gives such notification as is mentioned in paragraph (1) to a police and crime panel, or where the panel receives a copy of a notification under paragraph (2), and that notification relates to a complaint which does not fall within paragraph (3), then the panel shall determine whether the complaint is one made about conduct which constitutes or involves, or appears to constitute or involve, the commission of a criminal offence and should therefore be treated as a conduct matter.

(5) In a case falling within paragraph (3), the Commission shall determine whether it is in the public interest for the complaint to be treated as a conduct matter, and shall notify the police and crime panel of its determination.

(6) Where a determination is made that a complaint is to be treated as a conduct matter, then it shall be recorded by the police and crime panel as a conduct matter and the provisions of these Regulations shall apply to it accordingly.

(7) 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 police and crime panel, the panel shall take the steps set out in paragraph (8);
- (b) in the case of an indication received by the Commission, the Commission shall refer the matter to the panel which shall take the steps set out in paragraph (8).

(8) Those steps are—

- (a) the police and crime panel 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 panel 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 panel shall continue to handle the complaint in accordance with these Regulations.

(9) The police and crime panel 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 should be treated as a conduct matter;
- (c) the Commission determines that a complaint should be treated as a conduct matter; or
- (d) the provisions of these Regulations cease to apply in respect of a complaint.

(10) But nothing in paragraph (9) shall require the police and crime panel to make a notification if it has previously decided under regulation 31(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.

### **Conduct occurring outside England and Wales**

**17.—**(1) It shall be the duty of a relevant office holder to notify the police and crime panel of any allegation, investigation or proceedings in relation to his conduct which does not amount to a conduct matter for the purposes of these Regulations only by reason of the fact that the conduct in question did not occur in England and Wales.

(2) A police and crime panel receiving a notification under paragraph (1) shall handle the matter in whatever manner (if any) that panel thinks fit.