
STATUTORY INSTRUMENTS

1987 No. 938

Police (Northern Ireland) Order 1987

PART II

POLICE COMPLAINTS

The Independent Commission for Police Complaints for Northern Ireland

Establishment of Commission

3.—(1) There shall be established a body to be known as the Independent Commission for Police Complaints for Northern Ireland.

(2) Schedule 1 shall have effect in relation to the Commission.

(3) The Police Complaints Board for Northern Ireland is hereby abolished.

Handling of complaints, etc.

Preliminary handling of complaints by Chief Constable

4.—(1) Where a complaint is submitted to the Chief Constable, it shall be his duty to take any steps that appear to him to be desirable for the purpose of obtaining or preserving evidence relating to the conduct complained of.

(2) After performing the duties imposed on him by paragraph (1), the Chief Constable shall determine whether he is the appropriate authority in relation to the member of the police force against whom the complaint was made.

(3) If he determines that he is not the appropriate authority, it shall be his duty—

(a) to send the complaint or, if it was made orally, particulars of it, to the Police Authority; and

(b) to give notice that he has done so to the complainant.

(4) Nothing in this part has effect in relation to a complaint in so far as it relates to the direction or control of the police force by the Chief Constable.

(5) If any conduct to which a complaint wholly or partly relates is or has been the subject of criminal or disciplinary proceedings, none of the provisions of this part which relate to the recording and investigation of complaints have effect in relation to the complaint in so far as it relates to that conduct.

Investigation of complaints against officers, other than senior officers

5.—(1) If the Chief Constable determines that he is the appropriate authority in relation to a member of the police force about whose conduct a complaint has been made and who is not a senior officer, he shall record it.

(2) After doing so he shall consider whether the complaint is suitable for informal resolution and may appoint a member of the police force to assist him.

(3) If it appears to the Chief Constable that the complaint is not suitable for informal resolution, he shall appoint a member of the police force or a member of another United Kingdom police force to investigate it formally.

(4) If it appears to him that it is suitable for informal resolution, he shall seek to resolve it informally and may appoint a member of the police force to do so on his behalf.

(5) If it appears to the Chief Constable, after attempts have been made to resolve a complaint informally—

- (a) that informal resolution of the complaint is impossible; or
- (b) that the complaint is for any other reason not suitable for informal resolution, he shall appoint a member of the police force or a member of another United Kingdom police force to investigate it formally.

(6) A member of the police force may not be appointed to investigate a complaint formally if he has previously been appointed to act in relation to it under paragraph (4).

(7) No member of the police force may be appointed under this Article unless—

- (a) where the member of the police force against whom the complaint is made is of the rank of superintendent or chief superintendent, he is of at least one rank above the rank of that member; and

(8) Unless an investigation under this Article is supervised by the Commission under Article 9, the person appointed under paragraph (3) or (5) shall submit his report on the investigation to the Chief Constable.

(9) A complaint is not suitable for informal resolution unless—

- (a) the complainant gives his consent; and
- (b) the Chief Constable is satisfied that the conduct complained of, even if proved, would not justify a criminal or disciplinary charge.

Investigation of complaints against senior officers

6.—(1) Where a complaint about the conduct of a senior officer—

- (a) is submitted to the Police Authority; or
- (b) is sent to the Police Authority under Article 4(3), it shall be the Authority's duty to record it and, subject to paragraph (2), to investigate it.

(2) The Police Authority may deal with the complaint according to the Authority's discretion, if satisfied that the conduct complained of, even if proved, would not justify a criminal or disciplinary charge.

(3) In any other case the Police Authority shall appoint a member of the police force or a member of another United Kingdom police force to investigate the complaint.

(4) The Chief Constable shall provide a member of the police force to be appointed, if a request is made to him for one to be appointed under paragraph (3).

(5) No member of the police force may be appointed under paragraph (3) unless he is of at least the rank of the member against whom the complaint is made.

(6) Unless an investigation under this Article is supervised by the Commission under Article 9, the person appointed under paragraph (3) shall submit his report on the investigation to the Police Authority.

Reference of complaints to Commission

7.—(1) Where the appropriate authority decides under Article 5(3) or (5) or Article 6(3) to appoint a member of the police force or a member of another United Kingdom police force to investigate a complaint, the appropriate authority shall refer that complaint to the Commission.

(2) Where a complaint falls to be referred to the Commission under paragraph (1), it shall be the appropriate authority's duty to refer it to the Commission not later than the end of a period specified in regulations made by the Secretary of State.

Reference of other matters to Commission

8.—(1) The appropriate authority may refer to the Commission any matter which—

- (a) appears to the appropriate authority to indicate that a member of the police force may have committed a criminal offence or an offence against discipline; and
- (b) is not the subject of a complaint, if it appears to the appropriate authority that it ought to be referred by reason—
 - (i) of its gravity; or
 - (ii) of exceptional circumstances.

(2) The Secretary of State or the Police Authority may refer to the Commission any matter which—

- (a) appears to the Secretary of State or the Authority to indicate that a member of the police force may have committed a criminal offence or an offence against discipline; and
- (b) is not the subject of a complaint, if it appears to the Secretary of State or the Authority that it is desirable in the public interest that the Commission should supervise the investigation of the matter.

Supervision of investigations by Commission

9.—(1) The Commission shall supervise the investigation—

- (a) of any complaint alleging that the conduct of a member of the police force resulted in the death of or serious injury to some other person; and
- (b) of any other description of complaint specified for the purposes of this Article in regulations made by the Secretary of State; and in sub-paragraph (a) "serious injury" means a fracture, damage to an internal organ, impairment of bodily function, a deep cut or a deep laceration.

(2) The Commission shall supervise the investigation of any matter referred to it under Article 8(2) if required to do so by the Secretary of State or the Police Authority.

(3) The Commission may supervise the investigation—

- (a) of any complaint the investigation of which it is not required to supervise under paragraph (1); and
- (b) of any matter referred to it under Article 8(1), if the Commission considers that it is desirable in the public interest that it should supervise that investigation.

(4) Where the Commission decides to supervise an investigation under paragraph (3), it shall be the duty of the Commission to notify the appropriate authority to that effect.

(5) Where an investigation is to be supervised by the Commission it may require—

- (a) that no appointment of a person to conduct the investigation shall be made unless the Commission has given notice to the appropriate authority that it approves the person whom that authority proposes to appoint; or

(b) if such an appointment has already been made and the Commission is not satisfied with the person appointed, that—

- (i) the appropriate authority shall, as soon as is reasonably practicable, select another member of the police force or member of another United Kingdom police force and notify the Commission that it proposes to appoint him; and
- (ii) the appointment shall not be made unless the Commission gives notice to the appropriate authority that it approves that person.

(6) It shall be the duty of the Secretary of State by regulations to provide that the Commission shall have power, subject to any restrictions or conditions specified in the regulations, to impose requirements as to a particular investigation additional to any requirements imposed by virtue of paragraph (5); and it shall be the duty of a member of the police force or a member of another United Kingdom police force to comply with any requirement imposed on him by virtue of the regulations.

(7) At the end of an investigation which the Commission has supervised the person appointed to conduct the investigation—

- (a) shall submit a report on the investigation to the Commission; and
- (b) shall send a copy to the appropriate authority.

(8) After considering a report submitted to it under paragraph (7), the Commission shall submit to the appropriate authority a statement—

- (a) whether the investigation was or was not conducted to the Commission's satisfaction;
- (b) specifying any respect in which it was not so conducted; and
- (c) dealing with any such other matters as the Secretary of State may by regulations provide.

(9) If it is practicable to do so, the Commission, when submitting the statement under paragraph (8), shall send a copy to the member of the police force whose conduct has been investigated.

(10) If—

- (a) the investigation related to a complaint; and
- (b) it is practicable to do so,

the Commission shall also send a copy of the statement under paragraph (8) to the complainant.

(11) The power to issue a statement under paragraph (8) includes power to issue separate statements in respect of the disciplinary and criminal aspects of an investigation.

(12) No disciplinary charge shall be brought before the statement under paragraph (8) is submitted to the appropriate authority.

(13) Subject to paragraph (14), neither the appropriate authority nor the Director of Public Prosecutions for Northern Ireland shall bring criminal proceedings before the statement under paragraph (8) is submitted to the appropriate authority.

(14) The restriction imposed by paragraph (13) does not apply if it appears to the Director that there are exceptional circumstances which make it undesirable to wait for the submission of the statement under paragraph (8).

Steps to be taken after investigation

10.—(1) It shall be the duty of the Police Authority, on receiving—

- (a) a report concerning the conduct of a senior officer which is submitted to it under Article 6(6); or

- (b) a copy of a report concerning the conduct of a senior officer which is sent to it under Article 9(7), to send a copy of the report to the Director of Public Prosecutions for Northern Ireland unless the report satisfies the Authority that no criminal offence has been committed.
- (2) Nothing in the following provisions of this Article or in Articles 11 to 14 has effect in relation to senior officers.
- (3) On receiving—
 - (a) a report concerning the conduct of an officer who is not a senior officer which is submitted to him under Article 5(8); or
 - (b) a copy of a report concerning the conduct of such an officer which is sent to him under Article 9(7), it shall be the duty of the Chief Constable—
 - (i) to determine whether the report indicates that a criminal offence may have been committed by a member of the police force; and
 - (ii) if he determines that it does, to consider whether the offence indicated is such that the member of the police force ought to be charged with it.
- (4) If the Chief Constable—
 - (a) determines that the report does indicate that a criminal offence may have been committed by a member of the police force; and
 - (b) considers that the offence indicated is such that the officer ought to be charged with it, he shall send a copy of the report to the Director of Public Prosecutions for Northern Ireland.
- (5) Subject to Article 11(1), after the Director has dealt with the question of criminal proceedings, the Chief Constable shall send the Commission a memorandum, signed by him and stating whether he has preferred disciplinary charges in respect of the conduct which was the subject of the investigation and, if not, his reasons for not doing so.
- (6) If the Chief Constable—
 - (a) determines that the report does indicate that a criminal offence may have been committed by a member of the police force; and
 - (b) considers that the offence indicated is not such that the officer ought to be charged with it, he shall send the Commission a memorandum to that effect, signed by him and stating whether he proposes to prefer disciplinary charges in respect of the conduct which was the subject of the investigation and, if not, his reasons for not proposing to do so.
- (7) Subject to Article 11(1), if the Chief Constable considers that the report does not indicate that a criminal offence may have been committed by a member of the police force, he shall send the Commission a memorandum to that effect, signed by him and stating whether he has preferred disciplinary charges in respect of the conduct which was the subject of the investigation and, if not, his reasons for not doing so.
- (8) A memorandum under this Article—
 - (a) shall give particulars—
 - (i) of any disciplinary charges which the Chief Constable has preferred or proposes to prefer in respect of the conduct which was the subject of the investigation; and
 - (ii) of any exceptional circumstances affecting the case by reason of which he considers that Article 14 should apply to the hearing; and
 - (b) shall state his opinion of the complaint or other matter to which it relates.
- (9) Where the investigation—
 - (a) related to conduct which was the subject of a complaint; and
 - (b) was not supervised by the Commission,

the Chief Constable shall send the Commission a copy of the report of the investigation at the same time as he sends it the memorandum.

(10) Subject to Article 13(6)—

- (a) if the Chief Constable's memorandum states that he proposes to prefer disciplinary charges, it shall be his duty to prefer and proceed with them; and
- (b) if such a memorandum states that he has preferred such charges, it shall be his duty to proceed with them.

Steps to be taken where accused has admitted charges

11.—(1) No memorandum need be sent to the Commission under Article 10 if disciplinary charges have been preferred in respect of the conduct which was the subject of the investigation and the accused has admitted the charges and has not withdrawn his admission.

(2) In any such case the Chief Constable shall send to the Commission, after the conclusion of the disciplinary proceedings (including any appeal to the Secretary of State), particulars of the disciplinary charges preferred and of any punishment imposed.

(3) If—

- (a) the charges related to conduct which was the subject of a complaint; and
- (b) the investigation of the complaint was not supervised by the Commission,

the Chief Constable shall also send the Commission a copy of the report of the investigation.

Powers of Commission to direct reference of reports, etc. to Director of Public Prosecutions

12.—(1) When the Chief Constable has performed all duties imposed on him by Articles 10 and 11 in relation to the report of an investigation concerning the conduct of a member of the police force who is not a senior officer, it shall be the duty of the Commission—

- (a) to determine whether the report indicates that a criminal offence may have been committed by that member; and
- (b) if so, to consider whether the offence is such that the member ought to be charged with it.

(2) If the Commission considers that the member of the police force ought to be charged, it shall be its duty to direct the Chief Constable to send the Director of Public Prosecutions for Northern Ireland a copy of the report.

(3) When the Commission gives a direction under paragraph (2) it may also direct the Chief Constable to send the Director the information contained in the memorandum under Article 10.

(4) If the investigation was an investigation of a complaint, the Commission shall direct the Chief Constable to send the Director a copy of the complaint or of the record of the complaint.

(5) It shall be the duty of the Chief Constable to comply with any direction under this Article.

(6) Articles 10 and 11 shall apply where a copy of a report is sent to the Director under this Article as they apply where a copy is sent to him under Article 10(4).

Powers of Commission as to disciplinary charges

13.—(1) Where a memorandum under Article 10 states that the Chief Constable has not preferred disciplinary charges or does not propose to do so, the Commission may recommend him to prefer such disciplinary charges as it may specify.

(2) Subject to paragraph (6), the Chief Constable may not withdraw charges which he has preferred in accordance with a recommendation under paragraph (1).

(3) If after the Commission has made a recommendation under this Article and consulted the Chief Constable he is still unwilling to prefer such charges as the Commission considers appropriate, it may direct him to prefer such charges as it may specify.

(4) Where the Commission gives the Chief Constable a direction under this Article, it shall furnish him with a written statement of its reasons for doing so.

(5) Subject to paragraph (6), it shall be the duty of the Chief Constable to prefer and proceed with charges specified in such a direction.

(6) The Commission may give the Chief Constable leave—

- (a) not to prefer charges which Article 10(10) or paragraph (5) would otherwise oblige him to prefer; or
- (b) not to proceed with charges with which Article 10(10) or paragraph (2) or (5) would otherwise oblige him to proceed.

(7) The Commission may request the Chief Constable to furnish it with such information as it may reasonably require for the purpose of discharging its functions under this Article.

(8) It shall be the duty of the Chief Constable to comply with any such request.

Disciplinary tribunals

14.—(1) Where the Chief Constable prefers a disciplinary charge in respect of a matter to which a memorandum under Article 10 relates, this Article applies—

- (a) to the hearing of any charge in pursuance of a direction under Article 13; and
- (b) to the hearing of any other charge to which the Commission directs that it shall apply.

(2) The Commission may direct that this Article shall apply to the hearing of a charge if it considers that to be desirable by reason of any exceptional circumstances affecting the case.

(3) Where this Article applies to the hearing of a disciplinary charge—

- (a) the function of determining whether the accused is guilty of the charge shall be discharged by a tribunal consisting of—
 - (i) a chairman who, subject to paragraphs (4) and (5), shall be the Chief Constable or such other person as may be prescribed by regulations made by the Secretary of State; and
 - (ii) two members of the Commission nominated by the Commission being members who have not been concerned with the case; and
- (b) the function of determining any punishment to be imposed shall, subject to paragraph (8), be discharged by the chairman after consulting the other members of the tribunal.

(4) In any case in which the Chief Constable is interested otherwise than in his capacity as such, or in which he is a material witness, the chairman shall be such other person as may be prescribed by regulations made by the Secretary of State.

(5) Without prejudice to paragraph (4), regulations made by the Secretary of State may provide for enabling the Chief Constable, where he considers it appropriate to do so, to direct that the chairman shall be the Chief Constable of another United Kingdom police force.

(6) The Secretary of State may by regulations provide for the procedure to be followed by tribunals constituted under this Article.

(7) The decision of the tribunal as to whether the accused is guilty of the charge may be a majority decision.

(8) Where—

- (a) the chairman of the tribunal is not the Chief Constable; and

- (b) the Chief Constable is neither interested in the case otherwise than in his capacity as such nor a material witness, the function of determining any punishment to be imposed shall be discharged by the Chief Constable after considering any recommendation as to punishment made by the chairman.
- (9) Before making any recommendation the chairman shall consult the other members of the tribunal.
- (10) Where—
 - (a) this Article applies to the hearing of a disciplinary charge; and
 - (b) there is another disciplinary charge against the accused which, in the opinion of the Chief Constable, can conveniently and fairly be determined at the same time, the Chief Constable may direct that this Article shall apply also to the hearing of the other charge.

Information as to manner of dealing with complaints, etc.

15. The Police Authority in carrying out its duty with respect to the maintenance of an adequate and efficient police force shall keep itself informed as to the working of Articles 4 to 13.

Constabularies not maintained by Police Authority

16.—(1) An agreement for the establishment in relation to any body of constables maintained by an authority other than the Police Authority of procedures corresponding to any of those established by or by virtue of this part may, with the approval of the Secretary of State, be made between the Commission and the authority maintaining the body of constables.

(2) Where no such procedures are in force in relation to any body of constables, the Secretary of State may by order establish such procedures.

(3) An agreement under this Article may at any time be varied or terminated with the approval of the Secretary of State.

(4) Before making an order under this Article the Secretary of State shall consult—

- (a) the Commission; and
- (b) the authority maintaining the body of constables to whom the order would relate.

(5) Orders made under this Article shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.

(6) Nothing in any other statutory provision shall prevent an authority which maintains a body of constables from carrying into effect procedures established by virtue of this Article.

(7) No such procedures shall have effect in relation to anything done by a constable outside Northern Ireland.

Reports

17.—(1) The Commission shall, at the request of the Secretary of State, report to him on such matters relating generally to its functions as the Secretary of State may specify, and the Commission may for that purpose carry out research into any such matters.

(2) The Commission may make a report to the Secretary of State on any matters coming to its notice under this part to which it considers that his attention should be drawn by reason of their gravity or of other exceptional circumstances; and the Commission shall send a copy of any such report to the Police Authority and to the Chief Constable or, if the report concerns any such body of constables as is mentioned in Article 16, to the authority maintaining it and the officer having the direction and the control of it.

(3) As soon as practicable after the end of each calendar year the Commission shall make to the Secretary of State a report on the discharge of its functions during that year.

(4) The Commission shall keep under review the working of Articles 4 to 16 and shall make to the Secretary of State a report on it at least once in every three years after the coming into force of this Article.

(5) The Secretary of State shall lay before Parliament a copy of every report received by him under this Article and shall cause every such report to be published.

(6) The Commission shall send to the Police Authority—

- (a) a copy of every report made by the Commission under paragraph (3); and
- (b) any statistical or other general information which relates to the year dealt with by the report and which the Commission considers should be brought to the Police Authority's attention in connection with its functions under Article 15.

Restriction on disclosure of information

18.—(1) No information received by the Commission in connection with any of its functions under Articles 4 to 17 or regulations made by virtue of Article 19 shall be disclosed by any person who is or has been a member, officer or servant of the Commission except—

- (a) to the Secretary of State or to a member, officer or servant of the Commission or, so far as may be necessary for the proper discharge of the functions of the Commission, to other persons;
- (b) for the purposes of any criminal, civil or disciplinary proceedings; or
- (c) in the form of a summary or other general statement made by the Commission which does not identify the person from whom the information was received or any person to whom it relates.

(2) Any person who discloses information in contravention of this Article shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Regulations

19.—(1) The Secretary of State may make regulations as to the procedure to be followed under this part.

(2) It shall be the duty of the Secretary of State to provide by regulations—

- (a) that, subject to such exceptions as may be specified by the regulations, the appropriate authority shall furnish, in accordance with such procedure as may be so specified, a copy of, or of the record of, a complaint against a member of the police force—
 - (i) to the complainant; and
 - (ii) to the member of the police force against whom the complaint was made;
- (b) procedures for the informal resolution of complaints of such descriptions as may be specified in the regulations, and for giving the complainant a record of the outcome of any such procedure if he applies for one within such period as the regulations may provide;
- (c) procedures for giving a member of the police force against whom a complaint is made which falls to be resolved informally an opportunity to comment orally or in writing on the complaint;
- (d) for cases in which any provision of this part is not to apply where a complaint, other than a complaint which falls to be resolved by an informal procedure, is withdrawn or the complainant indicates that he does not wish any further steps to be taken;

- (e) for enabling the Commission to dispense with any requirement of this part;
 - (f) procedures for the reference or submission of complaints or other matters to the Commission;
 - (g) for the time within which the Commission is to give a notification under Article 9(4);
 - (h) that the Commission shall be supplied with such information or documents of such description as may be specified in the regulations at such time or in such circumstances as may be so specified;
 - (i) that any action or decision of the Commission which it takes in consequence of the receipt of a memorandum under Article 10 shall be notified if it is an action or decision of a description specified in the regulations, to the person concerned and that, in connection with such a notification, the Commission shall have power to furnish him with any relevant information;
 - (j) that the Chief Constable shall have power to delegate any functions conferred on him by or by virtue of the foregoing provisions of this part, other than his functions under Article 14(3), (5) or (8).
- (3) Regulations under this part may authorise the Secretary of State to make provision for any purposes specified in the regulations.
- (4) Before making any regulations under this part, the Secretary of State shall consult both the Police Authority and the Police Association for Northern Ireland.
- (5) Regulations made under this part shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.