
STATUTORY RULES OF NORTHERN IRELAND

2008 No. 242

Police Powers for Designated Staff (Complaints and Misconduct) Regulations (Northern Ireland) 2008

PART I
INTRODUCTORY

Citation and commencement

1.—(1) These regulations may be cited as the Police Powers for Designated Staff (Complaints and Misconduct) Regulations (Northern Ireland) 2008.

(2) These regulations shall come into operation on 1st July 2008.

Interpretation

2.—(1) In these regulations, except where the context otherwise requires—

“the 1998 Act” means the Police (Northern Ireland) Act 1998(1);

“the 2000 Act” means the Police (Northern Ireland) Act 2000(2);

“the 2003 Act” means the Police (Northern Ireland) Act 2003;

“allegation” includes a matter referred to the Ombudsman under section 55 of the 1998 Act;

“appointed officer” means an officer—

(i) appointed under regulation 29(1) to prepare a report on a case concerning the relevant conduct of a designated person employed by a contractor, or

(ii) appointed under regulation 35(1) to investigate a case concerning the relevant conduct of a designated person who is a member of the police support staff, or

(iii) appointed by the Ombudsman to investigate a case concerning the relevant conduct of a designated person under section 56 or 57 of the 1998 Act;

“the appropriate officer” means an Assistant Chief Constable;

“the appropriate standard” means the standard of conduct contained in the code of ethics;

“the Board” means the Northern Ireland Policing Board;

“the code of ethics” means the code of ethics issued by the Board under section 52 of the 2000 Act, and applied to designated persons by virtue of the Police Powers for Designated Staff (Code of Ethics) Order (Northern Ireland) 2008(3);

(1) 1998 c. 32. Relevant amendments were made to Part 7 by sections 62 to 65 of, and paragraph 23(5) of Schedule 6 to, the Police (Northern Ireland) Act 2000 (c. 32), section 13 of the Police (Northern Ireland) Act 2003 (c. 6), section 6 of the Justice (Northern Ireland) Act 2004 (c. 4), section 55 of the Serious Organised Crime and Police Act 2005 (c. 15), Schedule 2 to the Police and Criminal Evidence (Amendment) (Northern Ireland) Order 2007 (NI 2) and Article 11(2) of the Policing (Miscellaneous Provisions) (Northern Ireland) Order 2007 (NI 6).

(2) 2000 c. 32.

(3) S.R. 2008 No. 243

“contractor” means a person with whom the Chief Constable, on behalf of and in the name of the Board, has entered into a contract under section 5A of the 2000 Act for the provision of services relating to the detention or escort of persons who have been arrested or are otherwise in custody;

“the contractor concerned” means, in relation to a designated person, the contractor responsible for supervising the designated person in the carrying out of the functions to which the relevant conduct related;

“copy of a complaint”, in the case of a complaint made orally, includes a copy of the record of the complaint;

“designated person” means a person designated under section 30, 30A or 31 of the 2003 Act;

“the designated person concerned” means the designated person in relation to whose conduct there has been a report, complaint or allegation;

“designation” means, in relation to a designated person, his designation under section 30, 30A or 31 of the 2003 Act;

“the Director” means the Director of Public Prosecutions for Northern Ireland;

“an interested party”, in relation to a case, means a witness or any person involved in the conduct which is the subject of the case or who otherwise has a direct interest in the case;

“misconduct proceedings” means proceedings under Part VII;

“Ombudsman” means the Police Ombudsman for Northern Ireland established by section 51 of the 1998 Act;

“other matter” means a matter (not being a complaint) which the Ombudsman may investigate under section 55 of the 1998 Act (as it applies by virtue of regulation 14);

“police force in Great Britain” means a police force within the meaning of the Police Act 1996(4) or the Police (Scotland) Act 1967(5);

“presenting officer” means, in relation to a case, a police officer appointed under regulation 50(1) to present the case;

“register” includes the holding of information by electronic means;

“relevant conduct” means, in relation to a designated person, conduct relating to the carrying out of a function for the purpose of which any power or duty is conferred or imposed on him by his designation;

“supervising member” has the meaning given by regulation 28 or (as the case may be) regulation 34.

(2) Other expressions used in these regulations and in the 2000 Act have the same meanings in these regulations as they have in that Act.

(3) Any reference in these regulations to a complaint, except in regulation 5(1) or (2), 8(1), 28 or 34, is a reference to a complaint in relation to which the Ombudsman has made a determination under section 52(8) of the 1998 Act, as it applies by virtue of regulation 8, that it—

- (a) is about the relevant conduct of a designated person, and
- (b) is made by, or on behalf of, a member of the public.

Delegation of functions by Chief Constable

3.—(1) The Chief Constable may not delegate any function conferred on him under or by virtue of these regulations, except to—

(4) 1996 c. 16.
(5) 1967 c. 77.

- (a) a police officer of at least the rank of chief inspector, or
 - (b) an employee holding an appropriate position in the police support staff.
- (2) A person who has conducted an investigation in a case, or who has acted in relation to it in pursuance of an attempt to resolve it by way of informal resolution shall not, as respects that case, exercise any function in pursuance of a delegation under paragraph (1).
- (3) Any reference in the following provisions of these regulations to the Chief Constable shall be construed as including a reference to a person discharging the functions of the Chief Constable.

PART II

PART 7 OF THE 1998 ACT

Part 7 of the 1998 Act

4.—(1) Part 7 of the 1998 Act shall apply with respect to designated persons, subject to the limitations and modifications set out in these regulations.

(2) In section 60A of that Act (Ombudsman’s power to investigate current practice and policy) as it applies by virtue of paragraph (1), any reference to a practice or policy of the police shall include a reference to a practice or policy concerning the relevant conduct of designated persons.

(3) In section 63(1)(d) of that Act (restriction on disclosure of information) as it applies by virtue of paragraph (1), the proceedings for the purposes of which an exception is made to the restriction on disclosure of information shall include misconduct proceedings under these regulations.

(4) In section 65 of that Act (guidance concerning discipline, complaints etc.) as it applies by virtue of paragraph (1), the power of the Secretary of State to issue guidance includes power to issue guidance concerning the discharge of functions under these regulations.

(5) Any provision of Part 7 of the 1998 Act applying with respect to designated persons by virtue of these regulations shall be construed in accordance with—

- (a) section 50 of that Act, and
- (b) regulation 2.

PART III

SUSPENSION, MODIFICATION AND WITHDRAWAL OF DESIGNATIONS

Suspension

5.—(1) Where there has been a report, complaint or allegation which indicates that the relevant conduct of a designated person did not meet the appropriate standard—

- (a) the Chief Constable may suspend his designation, whether or not the matter has been investigated, and
- (b) during any period of suspension of that person’s designation, he shall be suspended from duty as an officer described in section 30(1), 30A(1) or 31(2) of the 2003 Act.

(2) The Chief Constable may exercise his powers under paragraph (1) at any time from the time of the receipt of the report, complaint or allegation until the conclusion of the case.

(3) Any period of suspension under paragraph (1) shall continue until the conclusion of the case or until the Chief Constable decides that the suspension shall cease, whichever first occurs.

(4) Where a designated person who is suspended from duty is, at the conclusion of the case, given notice of dismissal or required to resign, he shall remain suspended from duty during the period of his notice.

(5) Any reference in this regulation to the conclusion of a case is, in relation to the case of a designated person, to the time when the first of these events occurs—

- (a) the supervising member decides not to refer the case to a hearing, or
- (b) the notification of a finding that the conduct of the designated person concerned did meet the appropriate standard, or
- (c) (in the case of a member of the police support staff) the time limit for giving notice of intention to seek a review under regulation 62 has expired, or
- (d) (in the case of a member of the police support staff) any review under regulation 63 has been completed.

Notification of matters relating to suspension

6.—(1) Where the Ombudsman determines during the course of an investigation under any provision of the 1998 Act that the investigation indicates that the conduct of a designated person did not meet the appropriate standard, the Ombudsman shall immediately notify the Chief Constable, and provide all relevant material, to enable the Chief Constable to consider suspending that person's designation.

(2) Where the Chief Constable suspends a person's designation during the course of an investigation under any provision of the 1998 Act, he shall notify the Ombudsman.

(3) Where the Ombudsman is investigating under section 56 of the 1998 Act a complaint against a designated person, or any other matter concerning that person, and that person's designation has been suspended, the Ombudsman shall—

- (a) keep the Chief Constable informed of the progress of that investigation to allow him to consider whether suspension remains appropriate, and
- (b) immediately inform the Chief Constable of any matter which indicates that the Chief Constable should reconsider the suspension.

Notices in relation to designations

7.—(1) Where the Chief Constable receives a recommendation under regulation 32(1) or 60(3) that he modify or withdraw the designation of a designated person, and the Chief Constable decides—

- (a) not to modify or withdraw the designation, or
- (b) to modify or withdraw the designation otherwise than in accordance with the recommendation,

he shall notify the designated person concerned and (in the case of a designated person employed by a contractor) the contractor concerned.

(2) Where the Ombudsman sends a memorandum to the Chief Constable under regulation 27(5) or under section 59(2) of the 1998 Act concerning the relevant conduct of a designated person, and the Chief Constable decides to withdraw or modify the designation of that person—

- (a) he shall notify the designated person concerned in accordance with section 33(4) of the 2003 Act,
- (b) he shall (in the case of a designated person employed by a contractor) notify the contractor concerned in accordance with section 33(5) of that Act,
- (c) he shall notify the Ombudsman, and

(d) the Ombudsman shall notify the complainant.

(3) Where the Ombudsman sends a memorandum to the Chief Constable under regulation 27(5) or under section 59(2) of the 1998 Act recommending that the designation of a person be modified or withdrawn, and the Chief Constable decides—

- (a) not to modify or withdraw the designation, or
- (b) to modify or withdraw the designation otherwise than in accordance with the recommendation,

he shall notify the Ombudsman in writing of his decision and the reasons for his decision.

(4) Where the Chief Constable notifies the Ombudsman of a decision in accordance with paragraph (3), the Ombudsman—

- (a) shall notify the complainant, and
- (b) may furnish the complainant with such relevant information in explanation thereof, if any, as appears to the Ombudsman to be appropriate.

(5) The Ombudsman shall be relieved of the duty of notifying the complainant as mentioned in paragraph (4) if compliance therewith appears to him to be not reasonably practicable.

PART IV

COMPLAINTS AND OTHER MATTERS

Complaints: making and receipt

8.—(1) Subsections (1) to (3) of section 52 of the 1998 Act (receipt of complaints) shall apply in relation to complaints about designated persons as they apply in relation to complaints about the police, with the following modifications—

- (a) the persons required to refer complaints to the Ombudsman under subsection (1)(b) shall include any contractor or member of the police support staff to whom a complaint is made about the relevant conduct of a designated person; and
- (b) the persons required to take steps to preserve evidence under subsection (2) shall include any contractor or member of the police support staff to whom a complaint is made about the relevant conduct of a designated person.

(2) Subsections (4) to (10) of that section (initial classification of complaints) shall apply in relation to the relevant conduct of a designated person as they apply in relation to the conduct of a police officer who is not a senior officer, with the following modifications—

- (a) in subsection (5) (exclusion of certain complaints) after “Chief Constable” insert “, the direction and control of designated persons by the Chief Constable or the terms or operation of a contract entered into under section 5A of the Police (Northern Ireland) Act 2000”;
- (b) in subsection (9) for the reference to disciplinary proceedings substitute a reference to misconduct proceedings; and
- (c) subsection (10) shall apply in any case where a complaint is made otherwise than to the Chief Constable.

(3) A complainant may have a complaint about the relevant conduct of a designated person registered on his behalf by a third party providing the complainant gives his consent, either in writing or orally, or is incapable of giving consent.

(4) Where the Ombudsman has recorded a complaint against a designated person, the Ombudsman shall, as soon as practicable—

- (a) send a copy of the complaint to the Chief Constable, and the complainant, and
 - (b) subject to paragraphs (5) and (6), send a copy of the complaint to—
 - (i) the designated person, and
 - (ii) in the case of a complaint against a designated person employed by a contractor, the contractor concerned.
- (5) Paragraph (4) shall not require the Ombudsman to supply a copy of a complaint if he is of the opinion that compliance with the request—
- (a) would impede any investigation of the matter, or
 - (b) might prejudice any criminal proceedings pending at the time the request is made, or
 - (c) would be contrary to the public interest and the Secretary of State agrees that no copy should be so supplied.
- (6) Where a request is made to the Ombudsman for a copy of a complaint to be sent to a person under paragraph (4)(b) and the Ombudsman refuses to supply a copy of the complaint on the ground that he is of the opinion mentioned in paragraph (5)(a), (b) or (c), he shall give written notice of his refusal to the person who made the request.
- (7) Where notice is given to a person under paragraph (6), no further request may be made by that person for a copy of the complaint within the period of six months beginning with the date of the notice, without prejudice, however, to further such requests being made subsequently.
- (8) The Chief Constable shall supply the Ombudsman with such material as he may require relating to a complaint about the conduct of a designated person made or referred to the Ombudsman under section 52(1) of the 1998 Act, whether or not such complaint is the subject of an investigation by the Ombudsman or supervised by the Ombudsman, for the purpose of enabling the Ombudsman to fulfil his functions under these regulations or the 1998 Act.
- (9) The Ombudsman shall cause a register to be kept of complaints about the relevant conduct of designated persons, in which there shall be recorded the steps taken in dealing with a complaint and their outcome.

Conditions to be met for complaints

- 9.—(1) Subject to regulation 10, section 52(4) of the 1998 Act shall not apply in relation to a complaint about the relevant conduct of a designated person unless the conditions in paragraph (2) are satisfied in relation to the complaint.
- (2) The conditions are that—
- (a) the complaint is about conduct which took place not more than 12 months before the date on which the complaint is made or referred to the Ombudsman under section 52(1) of the 1998 Act; and
 - (b) a memorandum has not been issued in respect of the conduct under regulation 27(5) or under section 59(2) of the 1998 Act; and
 - (c) the complaint has not been—
 - (i) informally resolved in accordance with section 53 of the 1998 Act,
 - (ii) withdrawn under regulation 24,
 - (iii) dispensed with under regulation 26, or
 - (iv) otherwise investigated by the police, and
 - (d) the complaint has not been dealt with under any regulations made under section 34 of the 2003 Act—
 - (i) under which any provision of Part 7 of the 1998 Act is not to apply, or

- (ii) which allow the Ombudsman to dispense with any requirement of that Part.

Exceptions for certain complaints

- 10.**—(1) Regulation 9(2)(a) shall not apply in relation to a complaint where—
- (a) the complaint is not the same or substantially the same as a previous complaint or matter, and
 - (b) the Ombudsman believes that a designated person may have committed a criminal offence or may have behaved in a manner which would—
 - (i) in the case of a member of the police support staff, justify misconduct proceedings, or
 - (ii) in the case of an employee of a contractor, justify the modification or withdrawal of his designation, and
 - (c) the Ombudsman believes that the complaint should be investigated because of the gravity of the matter or the exceptional circumstances.
- (2) Regulation 9(2) shall not apply in relation to a complaint where—
- (a) new evidence has come to light which is not evidence which was reasonably available at the time of the original complaint, and
 - (b) the Ombudsman believes that a designated person may have committed a criminal offence or behaved in a manner which would—
 - (i) in the case of a member of the police support staff, justify misconduct proceedings, or
 - (ii) in the case of an employee of a contractor, justify the modification or withdrawal of his designation, and
 - (c) the Ombudsman believes that the complaint should be investigated because of the gravity of the matter or the exceptional circumstances.
- (3) Where the Ombudsman decides that a case falls within paragraph (1) or (2), he shall formally investigate it in accordance with section 56 of the 1998 Act.
- (4) Where the Ombudsman—
- (a) decides that a complaint meets the criteria in paragraph (1) or (2) except that the case is not grave or exceptional, and
 - (b) believes that the designated person concerned may have committed a criminal offence,
- then he may formally investigate it in accordance with section 56 of the 1998 Act.
- (5) Where a complaint wholly or partly relates to the conduct of a designated person who is a member of the police support staff, and that conduct is or has been the subject of criminal or misconduct proceedings, the Ombudsman shall have no powers in relation to the complaint in so far as it relates to that conduct (except in a case to which section 56(1A) of the 1998 Act applies).
- (6) Where a complaint wholly or partly relates to the conduct of a designated person employed by a contractor, and that conduct is or has been the subject of criminal proceedings or has resulted in the modification or withdrawal of his designation, the Ombudsman shall have no powers in relation to the complaint in so far as it relates to that conduct (except in a case to which section 56(1A) of the 1998 Act applies).

Complaints — informal resolution

- 11.**—(1) Section 53 of the 1998 Act (complaints — informal resolution) shall apply in relation to the relevant conduct of a designated person as it applies in relation to the conduct of a police officer who is not a senior officer, subject to the modification that the prohibition in subsection (7)

on statements made for the purpose of the informal resolution of a complaint being admissible in subsequent proceedings shall include a prohibition on such a statement—

- (a) being admissible in misconduct proceedings, or
- (b) being taken into account by the supervising member in considering the question of a recommendation to be made under regulation 32(1).

(2) The Royal Ulster Constabulary (Complaints) (Informal Resolution) Regulations 2000(6) shall apply in relation to the relevant conduct of a designated person as they apply in relation to the conduct of a police officer who is not a senior officer.

(3) A complaint about the relevant conduct of a designated person is not suitable for informal resolution where the Ombudsman is satisfied that the conduct complained of, if proved, would justify a criminal charge.

(4) Where, under section 53(3) of the 1998 Act, the Ombudsman decides to refer a complaint about the relevant conduct of a designated person to the Chief Constable to resolve informally, he shall—

- (a) do so immediately on making that decision, and
- (b) forward all relevant material.

(5) Where the Ombudsman is investigating a complaint about the relevant conduct of a designated person under section 56 of the 1998 Act, and he determines that the evidence uncovered shows that the complaint is suitable for informal resolution, he may refer it to the Chief Constable to resolve informally under section 53 of that Act.

(6) Where the Chief Constable is investigating a complaint about the relevant conduct of a designated person under section 57 of the 1998 Act, and he determines that the evidence uncovered shows that the complaint is suitable for informal resolution, he may—

- (a) seek permission from the Ombudsman to resolve the complaint informally, and
- (b) if he agrees, informally resolve the complaint under section 53 of that Act.

(7) Where the Chief Constable determines—

- (a) that it is not possible to resolve informally a complaint about the relevant conduct of a designated person, or
- (b) that the evidence uncovered shows that such a complaint is not suitable for informal resolution,

he shall notify the Ombudsman immediately and shall forward all relevant material and the reasons for that decision.

Unsatisfactory performance

12.—(1) Where the Ombudsman in consultation with the Chief Constable considers a complaint against a designated person to be a matter of unsatisfactory performance rather than misconduct, the Ombudsman shall notify the Chief Constable and forward all relevant material to enable the matter to be dealt with in accordance with such procedures as may be appropriate for dealing with instances of unsatisfactory performance by designated persons.

(2) Where the Ombudsman forwards a complaint to the Chief Constable under paragraph (1) —

- (a) the requirements of sections 52 to 59 of the 1998 Act, to the extent that they have not already been satisfied, shall be dispensed with, and
- (b) the Ombudsman shall notify—
 - (i) the designated person concerned,

- (ii) the complainant, and
 - (iii) in the case of a complaint against a designated person employed by a contractor, the contractor concerned,
- accordingly.

Complaints referred by Ombudsman to Chief Constable

13.—(1) Section 54 of the 1998 Act (complaints — formal investigation) shall apply in relation to the relevant conduct of a designated person as it applies in relation to the conduct of a police officer who is not a senior officer.

(2) Where, under subsection (3)(b) of that section as it applies by virtue of paragraph (1), the Ombudsman decides to refer a complaint about the relevant conduct of a designated person to the Chief Constable to investigate in accordance with section 57 of that Act, he shall—

- (a) do so immediately on making that decision, and
- (b) forward all relevant material.

Consideration of other matters by the Ombudsman

14.—(1) Section 55 of the 1998 Act (consideration of other matters by the Ombudsman) shall apply in relation to the relevant conduct of a designated person as it applies in relation to the conduct of a police officer who is not a senior officer, with the following modifications—

- (a) in subsections (1)(a)(ii), (4)(a)(ii), (4A)(a)(ii) and (6)(a)(ii) (which require matters which would justify disciplinary proceedings to be referred to the Ombudsman) for “justify disciplinary proceedings” (in each place where that phrase appears) substitute “, in the case of a member of the police support staff, justify misconduct proceedings, or in the case of an employee of a contractor, justify the modification or withdrawal of his designation”;
- (b) in subsection (7) (Ombudsman to notify Board, Secretary of State or Chief Constable of the outcome of criminal or disciplinary proceedings) for “disciplinary” substitute “misconduct”; and
- (c) after subsection (7) insert—

“(8) In the case of a matter referred under subsection (1) the Ombudsman shall notify the Board or the Secretary of State of the withdrawal or modification of any designation in connection with the matter so referred.”.

(2) Where the Ombudsman is to investigate a matter concerning a designated person under section 55 of the 1998 Act he shall, as soon as practicable, send written notice of the investigation to the designated person, unless to do so would impede the investigation or any other investigation of the matter.

(3) The Chief Constable shall supply the Ombudsman with such material as he may require relating to the investigation of a matter under section 55 of that Act concerning the relevant conduct of a designated person, whether or not such matter is the subject of an investigation by the Ombudsman or supervised by the Ombudsman, for the purpose of enabling the Ombudsman to fulfil his functions under these regulations or the 1998 Act.

Conditions to be met for investigation of matters referred to Ombudsman

15. Subject to regulation 17, the Ombudsman’s duty to investigate a matter under section 55(3) or (5) of the 1998 Act relating to the relevant conduct of a designated person has effect if—

- (a) the relevant conduct to which the matter relates took place not more than 12 months before the date on which the matter is referred to the Ombudsman under section 55(1), (2), (4) or (4A) of that Act; and
- (b) a memorandum has not been issued in respect of the relevant conduct under regulation 27(5) or under section 59(2) of the 1998 Act; and
- (c) the matter has not been—
 - (i) informally resolved in accordance with section 53 of that Act,
 - (ii) withdrawn under regulation 24,
 - (iii) dispensed with under regulation 26, or
 - (iv) otherwise investigated by the police, and
- (d) the matter has not been dealt with under any regulations made under section 34 of the 2003 Act—
 - (i) under which any provision of Part 7 of the 1998 Act is not to apply, or
 - (ii) which allow the Ombudsman to dispense with any requirement of that Part.

Conditions to be met for investigation of other matters

16. Subject to regulation 17, the Ombudsman has power to investigate a matter under section 55(6) of the 1998 Act relating to the relevant conduct of a designated person at any time if—

- (a) the relevant conduct to which the matter relates took place not more than 12 months before that time, and
- (b) a memorandum has not been issued in respect of the relevant conduct under regulation 27(5) or under section 59(2) of the 1998 Act; and
- (c) the matter has not been—
 - (i) informally resolved in accordance with section 53 of that Act,
 - (ii) withdrawn under regulation 24,
 - (iii) dispensed with under regulation 26, or
 - (iv) otherwise investigated by the police, and
- (d) the matter has not been dealt with under any regulations made under section 34 of the 2003 Act—
 - (i) under which any provision of Part 7 of the 1998 Act is not to apply, or
 - (ii) which allow the Ombudsman to dispense with any requirement of that Part.

Exceptions for certain matters

17.—(1) The time limits in regulations 15(a) and 16(a) shall not apply in relation to a matter where—

- (a) the matter is not the same or substantially the same as a previous complaint or matter, and
- (b) the Ombudsman believes that a designated person may have committed a criminal offence or behaved in a manner which would—
 - (i) in the case of a member of the police support staff, justify misconduct proceedings, or
 - (ii) in the case of an employee of a contractor, justify the modification or withdrawal of his designation, and
- (c) the Ombudsman believes that the matter should be investigated because of the gravity of the matter or the exceptional circumstances.

- (2) Regulations 15 and 16 shall not apply where—
 - (a) new evidence has come to light which is not evidence which was reasonably available at the time the matter originally occurred, and
 - (b) the Ombudsman believes that a designated person may have committed a criminal offence or behaved in a manner which would—
 - (i) in the case of a member of the police support staff, justify misconduct proceedings, or
 - (ii) in the case of an employee of a contractor, justify the modification or withdrawal of his designation, and
 - (c) the Ombudsman believes that the matter should be investigated because of the gravity of the matter or the exceptional circumstances.
- (3) Where the Ombudsman decides that a matter falls within paragraph (1) or (2), he shall formally investigate it in accordance with section 56 of the 1998 Act.
- (4) Where the Ombudsman—
 - (a) decides that a matter meets the criteria in paragraph (1) or (2) except that the case is not grave or exceptional, and
 - (b) believes that the designated person may have committed a criminal offence,then he may formally investigate it in accordance with section 56 of the 1998 Act.
- (5) Where a matter wholly or partly relates to the conduct of a designated person who is a member of the police support staff, and that conduct is or has been the subject of criminal or misconduct proceedings, the Ombudsman shall have no powers in relation to the matter in so far as it relates to that conduct (except in a case to which section 56(1A) of the 1998 Act applies).
- (6) Where a matter wholly or partly relates to the conduct of a designated person employed by a contractor, and that conduct is or has been the subject of criminal proceedings or has resulted in the modification or withdrawal of his designation, the Ombudsman shall have no powers in relation to the matter in so far as it relates to that conduct (except in a case to which section 56(1A) of the 1998 Act applies).

Investigation under Part 7 of the 1998 Act

- 18.—**(1) Sections 56 and 57 of the 1998 Act (formal investigation by the Ombudsman or by a police officer) shall apply in relation to the relevant conduct of a designated person as they apply in relation to the conduct of a police officer who is not a senior officer.
- (2) Investigations under section 56 or 57 of the 1998 Act concerning the relevant conduct of a designated person shall be conducted without undue delay.
 - (3) Where the Ombudsman is conducting an investigation into the relevant conduct of a designated person under section 56 of the 1998 Act and he decides to refer the complaint to the Chief Constable to investigate under section 57 of that Act, the Ombudsman shall—
 - (a) notify the Chief Constable immediately of his decision, and
 - (b) furnish him immediately with all relevant material.
 - (4) Where, under section 57(4) of the 1998 Act, the Ombudsman decides to supervise an investigation of a complaint against a designated person, he shall notify the Chief Constable to that effect when he forwards the complaint for investigation.
 - (5) If during the course of the investigation the Ombudsman decides to relinquish supervision of the investigation, he shall notify the Chief Constable immediately of that decision.
 - (6) Where the Chief Constable is conducting an investigation of a complaint against a designated person under section 57 of the 1998 Act, he shall notify the Ombudsman of any information revealed

during the investigation which may suggest that it is in the public interest for the Ombudsman to continue the investigation in accordance with section 56 of that Act.

(7) Where the Chief Constable is conducting an investigation of a complaint against a designated person under section 57 of the 1998 Act, and the Ombudsman determines to assume the investigation—

- (a) the Ombudsman shall notify the Chief Constable of his decision immediately; and
- (b) the Chief Constable shall immediately furnish the Ombudsman with all relevant material relating to the investigation.

Report on investigation under Part 7 of the 1998 Act

19.—(1) Any report submitted to the Ombudsman under section 56(6) or 57(8) of the 1998 Act concerning the relevant conduct of a designated person shall be in writing.

(2) Where the Ombudsman considers any such report concerning the relevant conduct of a designated person, he shall—

- (a) deal with the report without undue delay, and
- (b) as soon as practicable, take such decisions as appear to him appropriate.

(3) At the end of an investigation of a matter investigated under section 55 of the 1998 Act concerning the relevant conduct of a designated person the Ombudsman shall send a copy of the report on the investigation to—

- (a) the Board,
- (b) the Secretary of State, and
- (c) unless he has already received a copy of the report under regulation 20(2), the Chief Constable.

(4) Where the Chief Constable receives a copy of a report under paragraph (3)(c) concerning the conduct of a designated person employed by a contractor, he may send a copy of it to the contractor, if he is of the opinion that to do so—

- (a) would not prejudice any criminal investigation or proceedings pending at the time he receives the copy of the report, and
- (b) would not be contrary to the public interest.

Criminal proceedings

20.—(1) Section 58 of the 1998 Act (steps to be taken after investigation — criminal proceedings) shall apply in relation to the relevant conduct of a designated person as it applies in relation to the conduct of a police officer who is not a senior officer.

(2) Where the Ombudsman determines that a report submitted to him under section 56(6) or 57(8) of the 1998 Act concerning the relevant conduct of a designated person indicates that a criminal offence may have been committed by a designated person he shall, without undue delay—

- (a) forward the report to the Director, and
- (b) notify the Chief Constable, and
- (c) in the case of a report indicating that a criminal offence may have been committed by a designated person employed by a contractor, notify the contractor concerned, unless to do so would impede any investigation of the matter or any criminal proceedings.

Mediation

21. Section 58A of the 1998 Act (steps to be taken after investigation — mediation) shall apply in relation to the relevant conduct of a designated person as it applies in relation to the conduct of a police officer who is not a senior officer, subject to the following modifications—

- (a) the prohibition in subsection (4) on anything communicated to the Ombudsman as mediator being admissible in subsequent proceedings shall include a prohibition on such communications—
 - (i) being admissible in misconduct proceedings, or
 - (ii) being taken into account by the supervising member in considering the question of a recommendation to be made under regulation 32(1); and
- (b) in subsection (6) for “no further proceedings under this Act” substitute “no further steps under the Police Powers for Designated Staff (Complaints and Misconduct) Regulations (Northern Ireland) 2008”.

Compensation for complainants

22.—(1) Where the Ombudsman is satisfied that a complaint about the relevant conduct of a designated person has been substantiated, and that, as a result of the conduct complained of, the complainant has suffered physical injury, considerable distress or inconvenience, or measurable financial loss, he may recommend to the Chief Constable that he should pay compensation to the complainant.

(2) The sum recommended for compensation shall not exceed that payable in the small claims court.

(3) It shall not be disclosed in any criminal or misconduct proceedings or under regulation 32 that compensation has been recommended or paid.

Expenses of complainants and witnesses

23. The Ombudsman may, if he thinks fit, pay to the person by whom a complaint is made—

- (a) sums in respect of expenses properly incurred by him, excluding legal expenses, and
- (b) allowances by way of compensation for the loss of his time,

in accordance with such scales and subject to such conditions as the Secretary of State may determine.

Withdrawn complaints

24.—(1) Part 7 of the 1998 Act, the preceding provisions of this Part, and subsequent Parts of these regulations, shall not apply in respect of a complaint about the relevant conduct of a designated person if the Ombudsman receives from the complainant notification in writing signed by him or by his solicitor or other authorised agent on his behalf to the effect that he—

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

(2) Where such notification is given to the Chief Constable, it shall be forwarded immediately to the Ombudsman.

(3) Where a complainant gives such notification as is mentioned in paragraph (1), the Ombudsman shall notify—

- (a) the designated person concerned,
- (b) the complainant,

- (c) the Chief Constable, and
 - (d) in the case of a designated person employed by a contractor, the contractor concerned.
- (4) Where the complaint is withdrawn the Ombudsman shall record the complaint as withdrawn.

Failure to indicate whether further steps to be taken

25.—(1) Where, in response to a written request from the Ombudsman sent by recorded delivery, a complainant fails to indicate to the appointed officer within 21 days whether he wishes further steps to be taken in respect of a complaint about the relevant conduct of a designated person, the provisions of Part 7 of the 1998 Act, the preceding provisions of this Part, and subsequent Parts of these regulations, shall not apply in respect of the complaint.

(2) Where a complaint about the relevant conduct of a designated person has been referred to the Chief Constable to investigate, and the complainant fails to assist the investigation, the Chief Constable shall request the Ombudsman to write to the complainant inviting him to indicate whether he wishes any further steps to be taken.

(3) Where the complainant fails to indicate whether he wishes any further steps to be taken, the Ombudsman shall notify—

- (a) the designated person concerned,
 - (b) the complainant,
 - (c) the Chief Constable, and
 - (d) in the case of a designated person employed by a contractor, the contractor concerned,
- accordingly.

Dealing with complaints which are repetitious, vexatious etc.

26.—(1) Where the Ombudsman is of the opinion—

- (a) that—
 - (i) a complaint about the relevant conduct of a designated person is an anonymous or a repetitious one within the meaning of paragraph 2 or 3 of Schedule 1, or
 - (ii) that a complaint about such conduct is vexatious, oppressive or otherwise an abuse of the procedures for dealing with complaints, or
 - (iii) that it is not reasonably practicable to complete the investigation of a complaint about such conduct, within the meaning of paragraph 4 of Schedule 1, and
- (b) that, in all the circumstances, the requirements of the provisions of Part 7 of the 1998 Act, the preceding provisions of this Part, and subsequent Parts of these regulations, to the extent that they have not already been satisfied, should be dispensed with,

the Ombudsman may dispense with the said requirements as respects the complaint.

(2) Where a complaint about the relevant conduct of a designated person has been referred to the Chief Constable under section 54(3)(b) of the 1998 Act, the Chief Constable may, in accordance with paragraph (3), request the Ombudsman to exercise his power under paragraph (1).

(3) The request, which shall be made in writing, shall be accompanied by—

- (a) a copy of the complaint;
- (b) a memorandum from the Chief Constable explaining the reasons why he is of the opinion that the conditions in paragraph (1)(a) and (b) are satisfied in relation to the complaint;

- (c) where the complaint is a repetitious complaint and the previous complaint has been informally resolved in accordance with regulation 11, a copy of the record of the outcome of the informal resolution procedure, and
- (d) where the Chief Constable is of the opinion that the complaint is a repetitious complaint and the previous complaint has been withdrawn in accordance with regulation 24, a copy of the notification given under that regulation.

(4) If, after considering a request under this regulation, the Ombudsman shares the opinion of the Chief Constable, he may dispense with the requirements mentioned in paragraph (1), but he shall not reject such a request except after consultation with the Chief Constable.

(5) The Ombudsman shall, as soon as possible, notify the Chief Constable in writing of his decision on such a request and, where he dispenses with the requirements mentioned in paragraph (1), shall inform the complainant of his action unless—

- (a) the complaint is an anonymous one, or
- (b) it otherwise appears to him to be not reasonably practicable so to inform him within a period which is reasonable in all the circumstances of the case.

(6) The Ombudsman—

- (a) shall inform the designated person concerned, where known, in writing of his decision to dispense with the requirements mentioned in paragraph (1), and
- (b) in the case of a designated person employed by a contractor, shall so inform the contractor concerned.

PART V

DESIGNATED PERSON EMPLOYED BY A CONTRACTOR

Employee of contractor: determination of Ombudsman

27.—(1) Section 59 of the 1998 Act (steps to be taken after investigation — disciplinary proceedings) shall not apply in relation to a report under section 56(6) or 57(8) of that Act concerning the relevant conduct of a designated person employed by a contractor.

(2) Where—

- (a) a report under section 56(6) or 57(8) of the 1998 Act concerning the relevant conduct of a designated person employed by a contractor is submitted to the Ombudsman, and
- (b) paragraph (3) or (4) applies to the relevant conduct,

the Ombudsman shall consider whether he is satisfied that, on the balance of probabilities, the relevant conduct failed to meet the appropriate standard.

(3) This paragraph applies to the relevant conduct of a designated person if the report mentioned in paragraph (2) is sent to the Director under section 58(2) of the 1998 Act, and—

- (a) the Director decides not to initiate criminal proceedings against the designated person concerned in relation to the subject matter of the report, or
- (b) criminal proceedings initiated by the Director against the designated person concerned in relation to the subject matter of the report have been concluded.

(4) This paragraph applies to the relevant conduct of a designated person if the Ombudsman determines that the report mentioned in paragraph (2) does not indicate that a criminal offence may have been committed by the designated person concerned and—

- (a) he determines that the complaint is not suitable for resolution through mediation under section 58A; or
 - (b) he determines that the complaint is suitable for resolution through mediation under that section but—
 - (i) the complainant or the designated person concerned does not agree to attempt to resolve it in that way; or
 - (ii) attempting to resolve the complaint in that way has been unsuccessful.
- (5) Where the Ombudsman considers under paragraph (2) whether the relevant conduct of a designated person failed to meet the appropriate standard, he shall send the Chief Constable a memorandum containing—
- (a) his determination as to whether the conduct failed to meet the appropriate standard, and
 - (b) a written statement of his reasons for making that determination, and
 - (c) if he thinks fit, any recommendation as to the withdrawal or modification of the designation of the designated person concerned.
- (6) Where the Ombudsman considers under paragraph (2) whether the relevant conduct of a designated person failed to meet the appropriate standard, he shall deal with the case without undue delay and shall, as soon as practicable, send the Chief Constable all relevant material and a memorandum such as is described in paragraph (5).
- (7) In a case such as is mentioned in paragraph (4)(b), the Ombudsman shall, in considering whether to make a recommendation under paragraph (5)(c), take into account the conduct of the designated person concerned in relation to the proposed resolution of the complaint through mediation.
- (8) The Chief Constable shall advise the Ombudsman of what action he has taken in response to any recommendation in a memorandum sent to him under paragraph (5).

Employee of contractor: supervising member

28. A case which arises from a complaint, report or allegation which indicates that the relevant conduct of a designated person employed by a contractor did not meet the appropriate standard may be referred for examination to a police officer of at least the rank of superintendent, who must not be an interested party (“the supervising member”).

Employee of contractor: appointed officer

29.—(1) Where a case concerning the relevant conduct of a designated person employed by a contractor is referred to a supervising member under regulation 28, the supervising member may appoint a police officer (“the appointed officer”) of at least the rank of inspector, who must not be serving in the same district or branch as the designated person concerned and must not be an interested party, to prepare a report on the case.

(2) Where an officer is appointed under paragraph (1) to prepare a report on a case concerning the relevant conduct of a designated person employed by a contractor, he shall submit his report in writing to the supervising member.

Notice to designated person employed by contractor

30.—(1) An appointed officer shall, as soon as is practicable (without prejudicing the preparation of his report under regulation 29(1) or any investigation of the matter) cause the designated person concerned to be given written notice—

- (a) that he is preparing a report on the case,

- (b) that where he is investigating a case arising as a result of a complaint, the investigation will be carried out under section 56 or 57 of the 1998 Act, as applicable,
- (c) of the nature of the report, complaint or allegation,
- (d) informing him that he has the right to seek advice from his trade union, and
- (e) informing him that he has the right to be accompanied as set out in paragraph (2).

(2) A designated person employed by a contractor may be accompanied to any meeting or interview by a person selected by him, who is not an interested party, and who is—

- (a) a police officer,
- (b) a member of a police force in Great Britain,
- (c) a member of the police support staff,
- (d) a representative of a trade union,
- (e) the contractor concerned, or
- (f) an employee of the contractor concerned.

(3) Where an appointed officer causes notice to be given under paragraph (1) to a designated person employed by a contractor, he shall at the same time cause the contractor concerned to be given written notice of the matters set out in paragraphs (1)(a) to (e) and (2) (without prejudicing the preparation of his report or any investigation of the matter).

Employee of contractor: question of appropriate standard of conduct

31.—(1) The supervising member shall review any report submitted to him under regulation 29(2) and shall consider whether or not the conduct of the designated person concerned met the appropriate standard.

(2) The supervising member shall not find that the relevant conduct of the designated person concerned failed to meet the appropriate standard unless—

- (a) the conduct is admitted by the designated person concerned, or
- (b) the supervising member is satisfied on the balance of probabilities that it failed to meet that standard.

(3) Where a case concerning the relevant conduct of a designated person employed by a contractor is referred to a supervising member under regulation 28 and falls to be investigated under section 56 or 57 of the 1998 Act, no finding may be made under this regulation about the relevant conduct until the Chief Constable receives a memorandum from the Ombudsman in respect of the relevant conduct under regulation 27(5).

(4) The supervising member shall give notice in writing of his finding under this regulation to the designated person concerned and to the contractor concerned within three working days of the finding.

Employee of contractor: recommendation to Chief Constable

32.—(1) Where the supervising member finds under regulation 31 that the conduct of the designated person concerned did not meet the appropriate standard, he may recommend to the Chief Constable that he modify or withdraw the designation of that person under section 33(4) of the 2003 Act.

(2) Where the supervising member is considering the question of the recommendation to be made under paragraph (1)—

- (a) the designated person concerned shall be afforded an opportunity to make oral or, if appropriate, written representations as respects the question or to adduce evidence relevant thereto, and
- (b) the supervising member may receive evidence from any witness whose evidence would, in the opinion of the supervising member or designated person concerned, assist in determining the question.

PART VI

INVESTIGATION OF POLICE SUPPORT STAFF

Police support staff: misconduct proceedings

33.—(1) Section 59 of the 1998 Act (steps to be taken after investigation — disciplinary proceedings) shall apply in relation to the relevant conduct of a designated person who is a member of the police support staff as it applies in relation to the conduct of a police officer who is not a senior officer, but for every reference in that section to disciplinary proceedings substitute a reference to misconduct proceedings.

(2) Where under section 59 of the 1998 Act the Ombudsman considers misconduct proceedings against a designated person, he shall—

- (a) deal with the case without undue delay, and
- (b) as soon as practicable, send to the Chief Constable—
 - (i) all relevant material, and
 - (ii) a memorandum with such particulars as may be specified in subsection (2) of that section concerning such misconduct proceedings as appear to him appropriate.

(3) Where the Chief Constable agrees to bring misconduct proceedings against a designated person, he shall notify the Ombudsman and the designated person concerned.

(4) Where the Chief Constable agrees to bring misconduct proceedings against a designated person, the Ombudsman shall notify the complainant.

(5) Where a memorandum sent to the Chief Constable under section 59(2) of the 1998 Act recommends misconduct proceedings against a designated person, but the Chief Constable is unwilling to bring such proceedings, he shall inform the Ombudsman in writing of the reason for his decision.

(6) Where the Chief Constable has not brought misconduct proceedings against a designated person or does not propose to do so and the Ombudsman accepts his decision he shall—

- (a) so inform the Chief Constable forthwith, and
- (b) notify the complainant of the decision and of his acceptance thereof,

and may furnish the complainant with such relevant information in explanation thereof, if any, as appears to the Ombudsman to be appropriate.

(7) Where the Chief Constable discontinues misconduct proceedings against a designated person with the leave of the Ombudsman given in pursuance of section 59 of the 1998 Act, the Ombudsman shall—

- (a) notify the complainant that the charge has been withdrawn with his leave, and
- (b) furnish the complainant with such relevant information in explanation of the withdrawal as appears to the Ombudsman appropriate and copy it to the designated person concerned.

(8) The Ombudsman shall be relieved of the duty of notifying the complainant as mentioned in paragraph (4), (6)(b) or (7) if compliance therewith appears to him to be not reasonably practicable.

Police support staff: supervising member

34. A case which arises from a complaint, report or allegation which indicates that the relevant conduct of a designated person who is a member of the police support staff did not meet the appropriate standard may be referred for examination to a police officer of at least the rank of superintendent, who must not be an interested party (“the supervising member”).

Officer appointed to investigate case

35.—(1) Where a case concerning the relevant conduct of a designated person who is a member of the police support staff is referred to a supervising member under regulation 34, the supervising member may appoint a police officer (“the appointed officer”) of at least the rank of inspector, who must not be serving in the same district or branch as the designated person concerned and must not be an interested party, to investigate the case.

(2) Where an officer is appointed under paragraph (1) to investigate a case concerning the relevant conduct of a designated person who is a member of the police support staff, he shall, at the end of his investigation, submit a written report on the case to the supervising member.

Notice to designated person in the police support staff

36.—(1) An appointed officer shall, as soon as is practicable (without prejudicing his or any other investigation of the matter or the preparation of any report under regulation 29(1)) cause the designated person concerned to be given written notice—

- (a) that he is investigating the case,
- (b) that where he is investigating a case arising as a result of a complaint, the investigation will be carried out under section 56 or 57 of the 1998 Act, as applicable,
- (c) of the nature of the report, complaint or allegation,
- (d) informing him that he has the right to seek advice from his trade union, and
- (e) informing him that he has the right to be accompanied as set out in paragraph (2).

(2) A designated person may be accompanied to any meeting, interview or hearing by a person selected by him, who is not an interested party, and who is—

- (a) a police officer,
- (b) a member of a police force in Great Britain,
- (c) a member of the police support staff, or
- (d) a representative of a trade union.

Police support staff: giving of caution

37. An appointed officer who is appointed to investigate a case concerning the relevant conduct of a designated person who is a member of the police support staff shall, as soon as is practicable (without prejudicing his or any other investigation of the matter or the preparation of any report under regulation 29(1))—

- (a) in all cases give the designated person concerned in writing the caution set out in paragraph 1 of Schedule 2; and
- (b) where he reasonably believes that the presence of any object, substance or mark found—
 - (i) on the person of the designated person concerned, or

- (ii) in or on his clothing, footwear or otherwise in his possession, or
- (iii) in any place in which he was present at a time material to the subject matter of the report, complaint or allegation,

may be attributable to the designated person's having breached the code of ethics, inform the designated person concerned that he so believes and give him in writing the caution set out in paragraph 2 of Schedule 2; and

- (c) where he reasonably believes that the presence of the designated person concerned at a place at or about the time a breach of the code of ethics was alleged to have been committed may be attributable to the involvement of the designated person concerned in that breach, inform him that he so believes and give him in writing the caution set out in paragraph 3 of Schedule 2.

Police support staff: question of misconduct proceedings

38.—(1) On receipt of a report under regulation 35(2), the supervising member shall consider whether to refer the case to a hearing under Part VII.

(2) Where a case concerning the relevant conduct of a designated person is referred to a supervising member under regulation 34 and falls to be investigated under section 56 or 57 of the 1998 Act, the case may not be referred to a hearing until the Chief Constable receives a memorandum from the Ombudsman in respect of the relevant conduct under section 59(2) of the 1998 Act.

(3) Where the Chief Constable has a duty to proceed under section 59(6) of the 1998 Act, he shall refer the case to a hearing under Part VII.

(4) Where the designated person concerned has—

- (a) received a written warning about his conduct within the previous twelve months, and
- (b) in a statement made to the appointed officer under a caution given under regulation 37, admitted that his conduct failed to meet the appropriate standard,

the supervising member shall refer the case to a hearing under Part VII.

(5) Where the case is not referred to a hearing no reference to it shall be made on the personal record of the designated person concerned.

Police support staff: special cases

39. If, at any time during an investigation, it appears to the appointed officer that a case concerning a designated person who is a member of the police support staff is one in which the conditions specified in Part 1 of Schedule 3 are likely to be satisfied, he shall, whether or not the investigation is at an end, submit to the supervising member or, in the case of an investigation conducted under section 56 or 57 of the 1998 Act, to the Ombudsman—

- (a) a statement of his belief that the case may be one in which those conditions are satisfied and the grounds for that belief; and
- (b) a written report on the case so far as it has been investigated.

Special cases referred to appropriate officer

40.—(1) This regulation applies to any case in which a report, complaint or allegation is made which indicates that the conduct of a designated person who is a member of the police support staff did not meet the appropriate standard.

(2) Where, on receipt of a report under section 56(6) or 57(8) of the 1998 Act or regulation 39(b), the Ombudsman is of the opinion that the case is one in respect of which the conditions specified in Part 1 of Schedule 3 are likely to be satisfied, he shall refer the case to the appropriate officer.

(3) Where, on receipt of a report under regulation 35(2) or 39(b), the supervising member is of the opinion that the case is one in respect of which the conditions specified in Part 1 of Schedule 3 are likely to be satisfied, he shall refer the case to the appropriate officer.

(4) Where a case is referred to the appropriate officer under paragraph (2) or (3), he shall—

(a) if the conditions specified in Part 1 of Schedule 3 are not satisfied, return the case to the Ombudsman, the supervising member or (as the case may be) the appointed officer;

(b) if the conditions specified in Part 1 of Schedule 3 are satisfied—

(i) certify the case as a special case and refer it to a hearing under Part VII, or

(ii) if the circumstances are such as, in his opinion, make such certification inappropriate, return the case to the Ombudsman, the supervising member or (as the case may be) the appointed officer.

(5) Where a case is referred to a hearing under paragraph (4)(b)(i), Part VII shall, subject to paragraph (6), have effect subject to the modifications specified in Part 2 of Schedule 3.

(6) Where a case has been returned to the Ombudsman, the supervising member or the appointed officer under paragraph (4)(a) or (b)(ii) or in pursuance of any provision of Part VII as modified by Part 2 of Schedule 3, Part VII shall thereafter have effect in relation to the case without modification.

(7) In Part 2 of Schedule 3, any reference to a provision in these regulations shall, unless the contrary intention appears, be construed as a reference to that provision as modified by that Part of that Schedule.

Misconduct proceedings under direction or affected by exceptional circumstances

41.—(1) Where misconduct proceedings are brought by the Chief Constable in response to a direction by the Ombudsman under section 59(5) of the 1998 Act, the hearing in those proceedings shall be conducted in accordance with Part VII, subject to the modifications specified in Schedule 4.

(2) Where a memorandum under section 59(2) of the 1998 Act recommending the bringing of misconduct proceedings contains a statement to the effect that, by reason of exceptional circumstances affecting the case, the Ombudsman considers that special procedures are appropriate, the hearing in those proceedings shall be conducted in accordance with Part VII, subject to the modifications specified in Schedule 4.

PART VII

MISCONDUCT PROCEEDINGS

Outstanding criminal proceedings

42. Where there are criminal proceedings outstanding against a designated person, proceedings under this Part shall not take place against that person unless the Chief Constable believes that in the exceptional circumstances of the case it would be appropriate for them to do so.

Withdrawal of case

43.—(1) At any time before the beginning of the hearing of a case the supervising member may direct that the case be withdrawn, unless—

(a) the case is one to which regulation 38(4) applies, or

(b) the Chief Constable has a duty to proceed under section 59(6) of the 1998 Act.

(2) Where a case is withdrawn it shall be treated as if the Chief Constable or (as the case may be) the supervising member had decided not to refer it to a hearing.

Notice of decision to refer case to hearing

44.—(1) The supervising member shall ensure that—

- (a) as soon as practicable, the designated person concerned is given written notice of a decision to refer the case to a hearing, and
- (b) not less than 28 days before the date of the hearing, the designated person concerned is supplied with copies of—
 - (i) any statement he may have made to the appointed officer, and
 - (ii) any relevant statement, document or other material obtained by the appointed officer.

(2) The notice given under paragraph (1) shall specify the conduct of the designated person concerned which it is alleged failed to meet the appropriate standard and the paragraph of the code of ethics in respect of which the appropriate standard is alleged not to have been met.

(3) In this regulation any reference to a copy of a statement shall, where it was not made in writing, be construed as a reference to a copy of an account thereof.

Notification of hearing

45.—(1) The supervising member shall ensure that at least 28 days in advance the designated person concerned is notified of the time, date and place of the hearing.

(2) In a case to which this paragraph applies the hearing may, if the supervising member considers it appropriate in the circumstances, take place before the expiry of the 28 days referred to in paragraph (1).

(3) Paragraph (2) applies where the designated person concerned is given a written notice under regulation 44(1)(a) of a decision to refer the case to a hearing and—

- (a) at the time he receives such a notice he is detained in pursuance of the sentence of a court in a prison or other institution to which the Prison Act (Northern Ireland) 1953(7) applies, or has received a suspended sentence of imprisonment, and
- (b) he has been supplied under regulation 44(1)(b) with the documents mentioned in that subparagraph.

Procedure on receipt of notice

46.—(1) The designated person concerned shall be invited to state in writing, within 14 days of the date on which he is notified that the last of the documents required by regulation 44(1)(b) to be supplied to him have been so supplied—

- (a) whether or not he accepts that his conduct did not meet the appropriate standard; and
- (b) whether he proposes to call any witnesses to relevant facts at the hearing and the names and addresses of any such witnesses whose attendance he wishes the supervising member to take steps to secure.

(2) Any witness whose attendance the designated person concerned wishes the supervising member to take steps to secure and who is a police officer shall be ordered to attend at the hearing of the case, and the supervising member, where so requested, shall cause any other such witnesses to be given due notice that their attendance is desired and of the time and place of the hearing.

(3) Nothing in this regulation shall require a hearing to be adjourned where a witness is unable or unwilling to attend the hearing.

Panel conducting the hearing

47.—(1) Where a case is referred to a hearing it shall be heard by a panel consisting of the persons specified in paragraphs (2) and (3), who shall not be interested parties.

(2) Subject to regulation 58, the presiding officer shall be an officer appointed by the Chief Constable, being—

- (a) a police officer of at least the rank of Assistant Chief Constable, or
- (b) a member of a police force in Great Britain of at least the rank of Assistant Chief Constable or commander.

(3) The presiding officer shall be assisted by—

- (a) a police officer or member of a police force in Great Britain, of at least the rank of superintendent, appointed by the Chief Constable, and
- (b) a member of the police support staff, appointed by the supervising member.

(4) In making an appointment under paragraph (3)(b) the supervising member shall have regard to any recommendation made by a senior employee.

Documents to be supplied to the designated person concerned

48.—(1) Where the designated person concerned accepts, in accordance with regulation 46, that his conduct did not meet the appropriate standard, a summary of the facts of the case shall be prepared, a copy of which shall be supplied to the designated person concerned at least 14 days before the hearing.

(2) If the designated person concerned does not agree with the summary of facts he may submit a response within 7 days of receipt of the summary.

(3) Where the designated person concerned does not accept that his conduct did not meet the appropriate standard no summary of facts shall be prepared.

Documents to be supplied to the panel conducting the hearing

49. There shall be supplied to the panel conducting the hearing—

- (a) a copy of the notice given under regulation 44(1)(a); and
- (b) where a summary of the facts has been prepared under regulation 48, a copy of that summary and of any response from the designated person concerned.

Representation

50.—(1) The supervising member shall appoint another police officer to present the case (“the presenting officer”).

(2) The designated person concerned may conduct his case in person or may be represented by an approved person selected by him.

(3) In paragraph (2) an “approved person” means a police officer, a member of a police force in Great Britain, a member of the police support staff or a representative of a trade union.

Conduct of hearing

51.—(1) The panel conducting the hearing may from time to time adjourn if it appears to them to be necessary or expedient to do so for the due hearing of the case.

(2) Any decision of the panel conducting the hearing shall be based on a simple majority, but shall not indicate whether it was taken unanimously or by a majority.

Procedures at hearing

52.—(1) Subject to the provisions of these regulations, the panel conducting the hearing shall determine their own procedures.

(2) The panel conducting the hearing shall review the facts of the case and decide whether or not the conduct of the designated person concerned met the appropriate standard.

(3) The panel conducting the hearing shall not find that the conduct of the designated person concerned failed to meet the appropriate standard unless the conduct is—

- (a) admitted by the designated person concerned; or
- (b) proved by the presenting officer on the balance of probabilities, to have failed to meet that standard.

(4) Where evidence is given that the designated person concerned, while subject to investigation—

- (a) after having been given in writing the caution set out in paragraph 1 of Schedule 2, failed to mention any fact relied on in his defence at the hearing, being a fact which in the circumstances existing at the time he could reasonably have been expected to mention during the investigation, or
- (b) after having been given in writing the caution set out in paragraph 2 of Schedule 2, failed or refused to account for any object, substance or mark, or
- (c) after having been given in writing the caution set out in paragraph 3 of Schedule 2, failed or refused to account for his presence at a particular place,

the panel conducting the hearing may draw such inferences from the failure or refusal as appear proper.

Non-attendance

53.—(1) The designated person concerned shall be instructed to attend the hearing.

(2) If the designated person concerned fails to attend the hearing it may be proceeded with and concluded in his absence.

(3) Where the designated person concerned informs the presiding officer in advance that he is unable to attend due to ill-health or some other unavoidable reason the hearing may be adjourned.

(4) Where, owing to the absence of the designated person concerned, it is impossible to comply with any of the procedures set out in these regulations, that procedure shall be dispensed with.

Attendance of complainant at hearing

54.—(1) This regulation shall apply where there has been a complaint against the designated person concerned.

(2) Notwithstanding anything in regulation 55, but subject to paragraphs (3) and (4), the complainant—

- (a) shall be allowed to attend the hearing while witnesses are being examined or cross-examined, and

(b) may at the discretion of the presiding officer be accompanied by a friend or relative.

(3) Where the complainant or any person allowed to accompany him is to be called as a witness at the hearing, he and any person allowed to accompany him shall not be allowed to attend before he gives his evidence.

(4) If the complainant or any person allowed to accompany him behaves in a disorderly or abusive manner, or otherwise misconducts himself, the presiding officer may exclude him from the remainder of the hearing.

(5) Except where giving evidence as a witness, or putting questions under paragraph (6), the complainant and any person allowed to accompany him shall neither intervene in, nor interrupt, the hearing.

(6) Where the designated person concerned gives evidence then, after the presenting officer has had an opportunity of cross-examining him, the presiding officer—

- (a) shall put to him any questions which the complainant requests should be so put and might have been properly so put by the presenting officer, or
- (b) at his discretion, may allow the complainant to put such questions to the designated person concerned.

(7) In this regulation a reference to the complainant is a reference to the originator of the complaint notwithstanding that it was transmitted to the Ombudsman by some other person or some other body.

Attendance of others at hearing

55.—(1) The hearing shall be in private, subject to regulation 54(2) and the following provisions of this regulation.

- (2) It shall be within the discretion of the presiding officer to allow—
- (a) any authorised officer of the Ombudsman,
 - (b) any solicitor, or
 - (c) any such other persons as he considers desirable,

to attend the whole or such part of the hearing as he may think fit, subject to the consent of all parties to the hearing.

(3) Where the case of a designated person is to be conducted by a person selected by him under regulation 50(2), he may be accompanied at the hearing by that person.

(4) In any other case, the designated person concerned may be accompanied at the hearing by a person selected by him, being a police officer, a member of a police force in Great Britain, a member of the police support staff or a representative of a trade union.

(5) The presiding officer may allow witnesses to be accompanied at the hearing by a friend or relative.

Exclusion of public from hearing

56. Where it appears to the presiding officer that a witness may, in giving evidence, disclose information which, in the public interest, ought not be disclosed to a member of the public he shall require any member of the public including the complainant and any person allowed to accompany the complainant or any witness to withdraw while the evidence is given.

Evidence at hearing

57.—(1) Any question as to whether any evidence is admissible, or whether any question should or should not be put to a witness, shall be determined by the presiding officer.

(2) With the consent of the designated person concerned the presiding officer may allow any document to be adduced in evidence during the hearing notwithstanding that a copy thereof has not been supplied to the designated person concerned in accordance with regulation 44(1)(b).

Remission of cases

58.—(1) The hearing of the case may be remitted by the presiding officer to a police officer or member of a police force in Great Britain of equivalent rank who, at the presiding officer's request, has agreed to act as the presiding officer in the matter, if, either before or during the hearing, the presiding officer considers remission appropriate.

(2) The hearing of the case shall be so remitted, if the presiding officer is an interested party otherwise than in his capacity as presiding officer.

Record of hearing

59.—(1) A verbatim record of the proceedings at the hearing shall be taken.

(2) The presiding officer shall supply a transcript of the record or a copy thereof to the designated person concerned, if the designated person concerned so requests within the period of 21 days beginning with the date on which he is notified in writing of the finding of the hearing under regulation 60(1)(b).

Finding, recommendation and sanction

60.—(1) The designated person concerned—

- (a) shall be informed orally of the finding of the hearing by the presiding officer at the conclusion of the hearing, and
- (b) shall be provided with a written notification and summary of the reasons within three working days.

(2) The presiding officer shall send a report to the Chief Constable of the panel's finding.

(3) Where the panel conducting the hearing decide that the conduct of the designated person concerned did not meet the appropriate standard, then, after consultation with the other members of the panel, the presiding officer—

- (a) may recommend to the Chief Constable that he modify or withdraw the designation of the designated person concerned under section 33(4) of the 2003 Act, and
- (b) may recommend to the Chief Constable that a sanction be imposed under the terms and conditions under which the designated person concerned was appointed under section 4 of the 2000 Act.

(4) Where the Chief Constable receives a report under paragraph (2), he shall send a copy of the report, and a copy of any recommendation made under paragraph (3), to—

- (a) the designated person concerned, and
- (b) the Ombudsman.

(5) Where a recommendation is made under paragraph (3) in relation to the conduct of a designated person, the Chief Constable shall notify the Ombudsman and the designated person concerned—

- (a) of his decision on whether to accept the recommendation, and
- (b) of any sanction imposed on the designated person concerned in relation to that conduct.

Personal record to be considered before recommendation made

61. Where the question of making a recommendation under regulation 60(3) is being considered—

- (a) the members of the panel conducting the hearing shall have regard to the record of the service of the designated person concerned in the police support staff, and
- (b) the panel conducting the hearing may receive evidence from any witness whose evidence would, in the opinion of the members of the panel or the designated person concerned, assist in determining the question, and
- (c) the designated person concerned, or his representative, shall be afforded an opportunity to make oral or, if appropriate, written representations as respects the question or to adduce evidence relevant thereto.

Request for a review

62.—(1) Where the members of the panel conducting the hearing decide that the conduct of the designated person concerned did not meet the appropriate standard, the designated person concerned shall be entitled to request the Chief Constable to review the finding.

(2) A request for a review must be made to the Chief Constable in writing within 14 days of receipt of the written summary of reasons given in accordance with regulation 60(1)(b), or within such longer period as the Chief Constable may, in his discretion, allow, having regard to the circumstances of the case.

(3) A request for a review shall state the grounds on which the review is requested and whether a meeting is requested.

Conduct of the review

63.—(1) On a review requested under regulation 62(1) the Chief Constable shall, subject to paragraph (2), hold a meeting with the designated person concerned if requested to do so.

(2) Where the hearing was conducted by a panel constituted in accordance with Schedule 4 following a direction from the Ombudsman under section 59(5) of the 1998 Act, the review will be conducted by a chief officer of a police force in Great Britain who has agreed to act in that capacity.

(3) Where a meeting is held the designated person concerned may be accompanied by a police officer, a member of a police force in Great Britain, a member of the police support staff or a representative of a trade union.

Finding of the review

64.—(1) The designated person concerned shall be informed of the finding of the Chief Constable in writing within three days of completion of a review.

(2) The Chief Constable shall decide whether or not to confirm the finding of the hearing.

(3) The decision of the Chief Constable shall take effect by way of substitution for the decision of the hearing and as from the date of that hearing.

Hearing of review in absence of the Chief Constable

65.—(1) Subject to paragraph (2), where the Chief Constable is an interested party or the circumstances in section 34(1)(a) or (b) of the 2000 Act apply, the review shall be conducted by the deputy Chief Constable.

(2) Where the deputy Chief Constable is absent or an interested party, the review shall be conducted by the chief officer of a police force in Great Britain who has agreed to act in that capacity.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Record of conduct proceedings

66. The Chief Constable shall cause a book of record to be kept in which shall be entered every case brought against a designated person, together with the finding thereon and a record of the decision in any further proceedings in connection therewith.

Northern Ireland Office
Date 4th June 2008

Paul Goggins
Minister of State