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## STATUTORY INSTRUMENTS

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### 2012 No. 62

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

### PART 3

#### Investigation of Serious Complaints and Conduct Matters

##### **Power to determine the form of an investigation**

- 18.**—(1) This regulation applies where—
- (a) a complaint or conduct matter is referred to the Commission; and
  - (b) the Commission determines that it is necessary for the complaint or matter to be investigated.
- (2) It shall be the duty of the Commission to determine the form which the investigation should take.
- (3) In making a determination under paragraph (2) the Commission shall have regard to the following factors—
- (a) the seriousness of the case; and
  - (b) the public interest.
- (4) The only forms which the investigation may take in accordance with a determination made under this regulation are—
- (a) an investigation by a police force selected by the Commission, under the management of the Commission;
  - (b) an investigation by the Commission itself.
- (5) The Commission may at any time make a further determination under this regulation to replace an earlier one.
- (6) Where a determination under this regulation replaces an earlier determination under this regulation the Commission may give the relevant police force such directions as the Commission considers appropriate for the purpose of giving effect to the new determination.
- (7) It shall be the duty of a person to whom a direction is given under paragraph (6) to comply with it.
- (8) The Commission shall notify the police and crime panel of any determination that it makes under this regulation in relation to a particular complaint or conduct matter.

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##### **Commencement Information**

**II** Reg. 18 in force at 16.1.2012, see [reg. 1](#)

### Investigations managed by the Commission

**19.**—(1) This regulation applies where the Commission has determined that it should manage the investigation by a selected police force of any complaint or conduct matter.

(2) On being given notice of that determination, the chief officer of police of the selected police force shall, if he has not already done so, appoint a person serving with the police (whether under the direction and control of that chief officer of police or the chief officer of another force) to investigate the complaint or matter.

(3) No person shall be appointed to carry out an investigation under paragraph (2)—

- (a) unless he has an appropriate level of knowledge, skills and experience to plan and manage the investigation;
- (b) if he is a person whose involvement in the role could reasonably give rise to a concern as to whether he could act impartially under these Regulations.

(4) The Commission may require that no appointment is made under paragraph (2) unless it has given notice to the chief officer of police of the relevant police force that it approves the person whom that chief officer of police proposes to appoint.

(5) Where a person has already been appointed to investigate the complaint or matter, or is selected under this paragraph for appointment, and the Commission is not satisfied with that person, the Commission may require the chief officer of police, as soon as reasonably practicable after being required to do so—

- (a) to select another person serving with the police (whether under the direction and control of that chief officer of police or the chief officer of another force) to investigate the complaint or matter; and
- (b) to notify the Commission of the person selected.

(6) Where a selection made in pursuance of a requirement under paragraph (5) has been notified to the Commission, the chief officer of police shall appoint that person to investigate the complaint or matter if, but only if, the Commission notifies the chief officer of police that it approves the appointment of that person.

(7) The person appointed to investigate the complaint or matter shall, in relation to that investigation, be under the direction and control of the Commission.

#### Commencement Information

**I2** Reg. 19 in force at 16.1.2012, see [reg. 1](#)

### Investigations by the Commission itself

**20.**—(1) This regulation applies where the Commission has determined that it should itself carry out the investigation of a complaint or conduct matter.

(2) The Commission shall designate—

- (a) a member of the Commission’s staff to take charge of the investigation on behalf of the Commission, and
- (b) such other members of the Commission’s staff as are required by the Commission to assist him.

(3) Paragraph 19(4), (5), (7) and (8) of Schedule 3 to the 2002 Act (powers of constable for Commission staff) shall apply in relation to an investigation under this regulation, with the modification that the reference in paragraph 19(4)(a) to a member of the Commission’s staff

designated under paragraph 19(2) shall have effect as a reference to a member of the Commission's staff designated under paragraph (2) of this regulation.

(4) Any order made under section 19 of, or paragraph 19(6) of Schedule 3 to, the 2002 Act (use of investigatory powers by or on behalf of the Commission; application of provisions of Police and Criminal Evidence Act 1984<sup>(1)</sup> to investigations conducted by Commission staff) shall apply in relation to an investigation under this regulation, with the modification that any reference in the order to a member of the Commission's staff designated under paragraph 19(2) of Schedule 3 to the 2002 Act shall have effect as a reference to a member of the Commission's staff designated under paragraph (2) of this regulation.

#### Commencement Information

**I3** Reg. 20 in force at 16.1.2012, see [reg. 1](#)

### Combining and splitting investigations

**21.—**(1) Subject to paragraph (2), where the Commission is managing or carrying out an investigation it may—

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

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

(2) The Commission shall not take any action under paragraph (1) in relation to an investigation managed by the Commission under regulation 19 except after consulting the chief officer of police of the police force carrying out the investigation.

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

- (a) where an investigation is split into two or more separate investigations, those investigations may take different forms;
- (b) two or more separate investigations which take different forms may be combined into a single investigation.

#### Commencement Information

**I4** Reg. 21 in force at 16.1.2012, see [reg. 1](#)

### Suspension and resumption of an investigation

**22.—**(1) The Commission may suspend any investigation or other procedure under these Regulations which would, if it were to continue, prejudice any criminal proceedings.

(2) Where the whole or part of the investigation of a complaint has been suspended until the conclusion of criminal proceedings, and the complainant has failed to indicate after the conclusion of those proceedings that he wishes the investigation to start or be resumed, the Commission shall take the steps set out in paragraph (3).

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

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

(1) 1984 c. 60.

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(5) If the complainant indicates that he does not wish the investigation to start or be resumed, or if he fails to reply within 21 days to a letter sent to him by the Commission, the Commission shall determine whether it is in the public interest for the investigation to start or be resumed.

(6) If the Commission determines that it is not in the public interest for the investigation to start or be resumed, the provisions of these Regulations shall cease to apply to the complaint.

(7) If the Commission determines that it is in the public interest for the investigation to start or be resumed, the Commission shall treat the complaint as if it was a conduct matter referred to the Commission by a police and crime panel in accordance with these Regulations.

(8) The Commission shall notify the person complained against if paragraph (6) or (7) applies.

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

#### Commencement Information

**I5** Reg. 22 in force at 16.1.2012, see [reg. 1](#)

### Restrictions on proceedings pending the conclusion of an investigation

**23.** Paragraph 20 of Schedule 3 to the 2002 Act shall apply in relation to a matter which is the subject of an investigation under this Part, modified so that it has effect as follows—

#### “Restrictions on proceedings pending the conclusion of an investigation

**20.—(1)** No criminal proceedings shall be brought in relation to any matter which is the subject of an investigation in accordance with the provisions of Part 3 of the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2011 (“the 2011 Regulations) until a report on that investigation has been submitted to the Commission under regulation 25 (final reports on investigations).

(2) Nothing in this paragraph shall prevent the bringing of criminal proceedings in respect of any conduct at any time after the discontinuance, in accordance with the provisions of Part 3 of the 2011 Regulations, of the investigation which relates to that conduct.

(3) The restrictions imposed by this paragraph in relation to the bringing of criminal proceedings shall not apply to the bringing of criminal proceedings by the Director of Public Prosecutions in any case in which it appears to him that there are exceptional circumstances which make it undesirable to delay the bringing of such proceedings.”.

#### Commencement Information

**I6** Reg. 23 in force at 16.1.2012, see [reg. 1](#)

### Power to discontinue an investigation

**24.—(1)** If at any time it appears to the Commission (whether on an application by a chief officer of police made in accordance with paragraph (3) or otherwise) that a complaint or conduct matter that is being investigated under the management of the Commission is of a description specified in paragraph (2), the Commission may by order require the discontinuance of the investigation.

- (2) The descriptions of complaints or matters specified for the purposes of paragraph (1) are any complaint or matter—
- (a) in which the complainant refuses to co-operate to the extent that the Commission considers that it is not reasonably practicable to continue the investigation;
  - (b) which the Commission considers should be handled in accordance with Part 4 (resolution of other complaints);
  - (c) which the Commission considers is vexatious, oppressive or otherwise an abuse of the procedures for dealing with complaints or conduct matters;
  - (d) which is repetitive, as defined in regulation 15(4); or
  - (e) which the Commission otherwise considers is such as to make it not reasonably practicable to proceed with the investigation.
- (3) Any application by a chief officer of police to the Commission for an order under paragraph (1) shall be in writing and shall be accompanied by—
- (a) a copy of the complaint, and
  - (b) a memorandum from the chief officer of police containing a summary of the investigation undertaken so far and explaining the reasons for the application to discontinue the investigation.
- (4) The chief officer of police shall—
- (a) send the complainant a copy of any such application on the same day as the day on which the application is sent to the Commission; and
  - (b) supply any further information requested by the Commission for the purpose of considering that application.
- (5) The Commission shall not require the discontinuance of an investigation in a case where there has been no application to do so by the chief officer of police under paragraph (3) unless it has consulted with that chief officer of police.
- (6) The Commission shall not discontinue any investigation that is being carried out by the Commission itself except in a case where the complaint or conduct matter under investigation falls within paragraph (2).
- (7) Where the Commission makes an order under paragraph (1) or discontinues an investigation being carried out by the Commission itself, it shall give notification of the discontinuance—
- (a) to the police and crime panel; and
  - (b) to every person entitled to be kept properly informed in relation to the subject matter of the investigation under regulation 32(3).
- (8) Where an investigation of a complaint or conduct matter is discontinued in accordance with this regulation—
- (a) the Commission may give the chief officer of police or the police and crime panel directions to do anything specified in paragraph (9);
  - (b) the Commission may itself take any such steps of a description specified in paragraph (10) as it considers appropriate for purposes connected with the discontinuance of the investigation; and
  - (c) subject to sub-paragraphs (a) and (b), neither the panel nor the Commission shall take any further action under these Regulations in relation to that complaint or matter.
- (9) A direction under paragraph (8)(a) may—

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- (a) require the chief officer of police to produce an investigation report on the discontinued investigation under regulation 25 (final reports on investigations) and to take any subsequent steps under these Regulations;
  - (b) where the investigation concerned a complaint, require the police and crime panel to disapply the requirements of these Regulations as regards that complaint;
  - (c) in a case within paragraph (2)(b), require the police and crime panel to handle the complaint in accordance with Part 4;
  - (d) direct the police and crime panel to handle the matter in whatever manner (if any) that panel thinks fit.
- (10) The steps that may be taken by the Commission under paragraph (8)(b) are—
- (a) to produce an investigation report on the discontinued investigation and take any subsequent steps under these Regulations;
  - (b) where the investigation concerned a complaint, to disapply the requirements of these Regulations as regards that complaint;
  - (c) to handle the matter in whatever manner it thinks fit.
- (11) A chief officer of police or a police and crime panel shall comply with any directions given to him or to it under paragraph (8)(a).

#### Commencement Information

**I7** Reg. 24 in force at 16.1.2012, see [reg. 1](#)

### Reports on investigations

**25.**—(1) This regulation applies on the completion of an investigation of a complaint or conduct matter.

(2) A person appointed under regulation 19 (investigations managed by the Commission) shall submit a report on his investigation to the Commission.

(3) A person designated under regulation 20 (investigations by the Commission itself) as the person in charge of an investigation shall submit a report on it to the Commission.

(4) A person submitting a report under this regulation shall not be prevented by any obligation of secrecy imposed by any rule of law or otherwise from including all such matters in his report as he thinks fit.

#### Commencement Information

**I8** Reg. 25 in force at 16.1.2012, see [reg. 1](#)

### Action in response to an investigation report

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

- (a) a report on an investigation carried out under the management of the Commission is submitted to it under regulation 25(2); or
- (b) a report on an investigation carried out by a person designated by the Commission is submitted to it under regulation 25(3).

(2) On receipt of the report, the Commission—

- (a) shall determine whether the conditions set out in paragraphs (3) and (4) are satisfied in respect of the report;
  - (b) if it determines that those conditions are so satisfied, shall notify the Director of Public Prosecutions of the determination and send him a copy of the report; and
  - (c) shall notify—
    - (i) the police and crime panel, and
    - (ii) every person entitled to be kept properly informed in relation to the investigation under regulation 32(3),of its determination under sub-paragraph (a) and of any action taken by it under sub-paragraph (b).
- (3) The first condition is that the report indicates that a criminal offence may have been committed by the relevant office holder.
- (4) The second condition is that the circumstances are such that, in the opinion of the Commission, it is appropriate for the matters dealt with in the report to be considered by the Director of Public Prosecutions.
- (5) The Director of Public Prosecutions shall notify the Commission of any decision of his to take, or not to take, action in respect of the matters dealt with in any report a copy of which has been sent to him under paragraph (2)(b).
- (6) It shall be the duty of the Commission to notify—
  - (a) the police and crime panel, and
  - (b) every person entitled to be kept properly informed in relation to the investigation under regulation 32(3)if criminal proceedings are brought against any person by the Director of Public Prosecutions in respect of any matters dealt with in a report copied to him under sub-paragraph (2)(b).
- (7) In relation to every report submitted to it under regulation 25, the Commission shall, subject to paragraph (8)—
  - (a) send a copy of the report to the police and crime panel; and
  - (b) publish the report.
- (8) The Commission may delay the sending or publication of a report, or withhold any part of a report from sending or publication, if the Commission considers that it is necessary to do so for the purposes mentioned in regulation 33(1)(a) or (b).

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**Commencement Information**

**19** Reg. 26 in force at 16.1.2012, see [reg. 1](#)

**Changes to legislation:**

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**Changes and effects yet to be applied to :**

- Regulations applied (with modifications) by [S.I. 2017/863 art. 28Sch. 1](#)
- Regulations applied (with modifications) by [S.I. 2021/112 art. 35\(1\)\(2\)Sch. 5 para. 52](#)
- Regulations words substituted by [S.I. 2017/1250 reg. 21\(2\)\(a\)](#)
- Regulations words substituted by [S.I. 2017/1250 reg. 21\(2\)\(b\)](#)
- Regulations words substituted by [S.I. 2017/1250 reg. 21\(2\)\(c\)](#)
- Regulations words substituted by [S.I. 2017/1250 reg. 21\(2\)\(d\)](#)

**Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- reg. 3(4A) inserted by [S.I. 2017/1250 reg. 21\(5\)\(a\)](#)
- reg. 3A3B inserted by [S.I. 2017/1250 reg. 21\(6\)](#)
- reg. 20(2)(2A) substituted for reg. 20(2) by [S.I. 2017/1250 reg. 21\(10\)\(b\)](#)