

SCHEDULE 2

Regulation 33

Modifications to Part 2 of the 2002 Act and to the Complaints and Misconduct Regulations

“SCHEDULE

Regulation 27

Modifications to Part 2 of the 2002 Act and to these Regulations

PART 1

Modifications to Part 2 of the 2002 Act

Modification to section 29 (interpretation of Part 2)

1. Section 29 is to be read as if, in subsection (1) in the definition of “disciplinary proceedings”, for “50 or 51” there were substituted “50(3A) to (3G) or 51(3B) to (3H)”.

Modifications to Part 3 of Schedule 3

2.—(1) Part 3 of Schedule 3 to the 2002 Act is modified as follows.

(2) Paragraph 19B(1) (assessment of seriousness of conduct under investigation) is to be read as if for sub-paragraph (4) there were substituted—

“(4) For the purposes of this paragraph a “severity assessment”, in relation to conduct, means an assessment as to whether the conduct, if proved, would amount to gross misconduct.”.

(3) Paragraph 20A(2) (accelerated procedure in special cases) is to be read as if—

(a) in sub-paragraph (2), after “15” there were inserted “or the person to whose conduct the investigation relates is a Condition C person”;

(b) for sub-paragraph (7)(c) there were substituted—

“(c) it is in the public interest for the person to be included in the police barred list without delay.”.

(4) Part 3 of Schedule 3 to the 2002 Act is to be read as if after paragraph 20A there were inserted—

“Condition C special determination in special cases

20AA.—(1) This paragraph applies where—

(a) a statement and special report on an investigation are sent to the Commission under paragraph 20A(2) or (3); and

(b) the investigation relates to the conduct of a Condition C person.

(2) The Commission shall make a Condition C special determination in respect of the Condition C person and notify the person investigating the complaint or recordable conduct matter and the appropriate authority of it.

(3) If the Commission’s Condition C special determination is that it is reasonable and proportionate to take disciplinary proceedings against the Condition C person, the appropriate

(1) Paragraphs 19A to 19E of Schedule 3 were inserted by paragraphs 1, 3 and 5 of Schedule 23 to the Criminal Justice and Immigration Act 2008 (c.4).

(2) Paragraph 20A of Schedule 3 was inserted by section 159 of, and paragraphs 1 and 3 of Schedule 11 to, the Serious Organised Crime and Police Act 2005 (c.15). Paragraph 20A(7)(c) was amended by paragraphs 1, 3 and 6(1) and (4)(b) of Schedule 23 to the Criminal Justice and Immigration Act 2008.

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

authority shall, when making its determination under paragraph 20B(2) or 20E(2), determine that the special condition mentioned at paragraph 20A(7)(c) is satisfied in respect of that person.

(4) If the Commission’s Condition C special determination is that it is not reasonable and proportionate to take disciplinary proceedings against the Condition C person, the appropriate authority shall not make a determination under paragraph 20B(2) or 20E(2) in respect of that person.”.

(5) Paragraph 20B(3) (investigations managed or carried out by Commission: action by appropriate authority) is to be read as if—

(a) in sub-paragraph (2), at the beginning, there were inserted “Subject to paragraph 20AA,”;

(b) in sub-paragraph (3)(a), for “50(3) or 51(2A)” there were substituted “50 or 51”.

(6) Paragraph 20C(4) (investigations managed or carried out by Commission: action by Commission) is to be read as if after sub-paragraph (2)(a), there were inserted—

“(aa) the determination (if any) by the Commission under paragraph 20AA(2);”.

(7) Paragraph 20E(5) (other investigations: action by appropriate authority) is to be read as if—

(a) in sub-paragraph (2), at the beginning, there were inserted “Subject to paragraph 20AA,”;

(b) in sub-paragraph (3)(a), for “50(3) or 51(2A)” there were substituted “50 or 51”.

(8) Paragraph 20F(6) (notification of certification as to special conditions) is to be read as if after sub-paragraph (2)(a), there were inserted—

“(aa) the determination (if any) by the Commission under paragraph 20AA(2);”.

(9) Paragraph 20H(7) (special cases: recommendation or direction of Commission) is to be read as if in sub-paragraph (3)—

(a) at the end of sub-paragraph (a), “and” were omitted;

(b) after sub-paragraph (a) there were inserted—

“(aa) the determination (if any) by the Commission under paragraph 20AA(2); and”.

(10) Paragraph 22(8) (final reports on investigations: complaints, conduct matters and certain DSI matters) is to be read as if in sub-paragraph (10)(a) for “50(3) or 51(2A)” there were substituted “50 or 51”.

(11) Paragraph 23(9) (action by the Commission in response to an investigation report under paragraph 22) is to be read as if—

(3) Paragraph 20B of Schedule 3 was inserted by section 159 of, and paragraphs 1 and 3 of Schedule 11 to, the Serious Organised Crime and Police Act 2005. Paragraph 20B(3) was substituted for paragraph 20B(3) and (4) by paragraphs 1, 3 and 7(1) and (2) of Schedule 23 to the Criminal Justice and Immigration Act 2008.

(4) Paragraph 20C of Schedule 3 was inserted by section 159 of, and paragraphs 1 and 3 of Schedule 11 to, the Serious Organised Crime and Police Act 2005.

(5) Paragraph 20E of Schedule 3 was inserted by section 159 of, and paragraphs 1 and 3 of Schedule 11 to, the Serious Organised Crime and Police Act 2005. Paragraph 20E(3) was substituted for paragraph 20E(3) and (4) by paragraphs 1, 3 and 9(1) and (2) of Schedule 23 to the Criminal Justice and Immigration Act 2008.

(6) Paragraph 20F of Schedule 3 was inserted by section 159 of, and paragraphs 1 and 3 of Schedule 11 to, the Serious Organised Crime and Police Act 2005.

(7) Paragraph 20H of Schedule 3 was inserted by section 159 of, and paragraphs 1 and 3 of Schedule 11 to, the Serious Organised Crime and Police Act 2005.

(8) Paragraph 22 of Schedule 23 was substituted by section 160 of, and paragraphs 1, 11 and 21 of Schedule 12 to, the Serious Organised Crime and Police Act 2005. Sub-paragraphs (7) to (10) were inserted by paragraphs 1, 3 and 12(1) and (4) of Schedule 23 to the Criminal Justice and Immigration Act 2008.

(9) The heading of paragraph 23 of Schedule 3 was amended by section 160 of, and paragraphs 1, 11 and 22(1) of Schedule 12 to, the Serious Organised Crime and Police Act 2005 (“the 2005 Act”). Sub-paragraphs (6) and (7) were substituted by paragraphs 1, 3 and 13(1) and (5) of Schedule 23 to the Criminal Justice and Immigration Act 2008. Sub-paragraph (6)(a)(ia) was inserted by section 95 of, and paragraphs 1 and 14(1) and (2) of Schedule 14 to, the Police Reform and Social Responsibility Act 2011. Sub-paragraph (13) was inserted by section 160 of, and paragraphs 1, 11 and 22(3) of Schedule 12 to, the 2005 Act.

- (a) in sub-paragraph (6)(a)—
 - (i) in sub-paragraph (i), “misconduct or”, in the first place where it appears, were omitted;
 - (ii) for sub-paragraph (ia) there were substituted—
 - “(ia) where the appropriate authority determines that there is no such case to answer, whether there nevertheless may have been a breach of the Standards of Professional Behaviour, and”;
- (b) after sub-paragraph (6) there were inserted—
 - “(6A) Where any person to whose conduct the investigation related is a Condition C person, following receipt of the Commission’s notification under sub-paragraph (6) the appropriate authority shall—
 - (a) determine whether the person has a case to answer in respect of gross misconduct or has no case to answer; and
 - (b) submit a memorandum to the Commission which sets out the determination it has made.
 - (6B) On receipt of a memorandum under sub-paragraph (6A) which sets out a determination that a person has a case to answer in respect of gross misconduct, the Commission shall make a Condition C special determination in respect of that person and notify the appropriate authority of it.
 - (6C) But the requirement in sub-paragraph (6A) shall not apply where the Commission has made a Condition C special determination that it is reasonable and proportionate to take disciplinary proceedings against the Condition C person under paragraph 20AA(2).”;
- (c) in sub-paragraph (7)—
 - (i) for “a notification under sub-paragraph (6)” there were substituted “the relevant notification”;
 - (ii) for “those determinations” there were substituted “any determinations required by the Commission’s notification under sub-paragraph (6) that the appropriate authority has not already made”;
- (d) in sub-paragraph (8)—
 - (i) after “the memorandum” there were inserted “(and any memorandum submitted under sub-paragraph (6A))”;
 - (ii) for “under”, in the second place where it appears, there were substituted “mentioned in”;
 - (iii) after “27” there were inserted “and whether there may have been a breach of the Standards of Professional Behaviour”;
- (e) in sub-paragraph (10) after paragraph (a) there were inserted—
 - “(aa) where the Commission makes a Condition C special determination under sub-paragraph (6B), that determination;”;
- (f) after sub-paragraph (13) there were inserted—
 - “(14) In sub-paragraph (7), “the relevant notification” means a notification under sub-paragraph (6) or, where the Commission is required to notify the appropriate authority of a Condition C special determination under sub-paragraph (6B), a notification under that sub-paragraph.”.

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

(12) Paragraph 24(10) (action by the appropriate authority in response to an investigation report under paragraph 22) is to be read as if—

(a) in sub-paragraph (6)(a), for sub-paragraphs (i) and (ia) there were substituted—

“(i) whether any person other than a Condition C person to whose conduct the investigation related—

(aa) has a case to answer in respect of gross misconduct or has no case to answer;

(bb) where the appropriate authority determines that there is no such case to answer, nevertheless may have breached the Standards of Professional Behaviour; and

(ia) whether—

(aa) any Condition C person to whose conduct the investigation related may have breached the Standards of Professional Behaviour;

(bb) where the appropriate authority’s opinion is that there may have been such a breach, the breach is so serious that, were the person still to be serving with the police, it would have justified dismissal; and”.

(13) Paragraph 25(11) (appeals with respect to an investigation) is to be read as if—

(a) in sub-paragraph (3)—

(i) in paragraph (za), “misconduct or”, in the first place where it appears, were omitted;

(ii) paragraph (zb) were omitted;

(b) in sub-paragraph (5)(c)(i) “or (zb)” were omitted;

(c) in sub-paragraph (9), after “person” there were inserted “other than a Condition C person” and the words from “or determines”, in the first place where they appear, to “unsatisfactory,” were omitted.

(14) Paragraph 27(12)(duties with respect to disciplinary proceedings etc) is to be read as if—

(a) in sub-paragraph (3)—

(i) after “police” there were inserted “(other than a Condition C person where the memorandum mentioned in sub-paragraph (1)(b) was submitted, or is required to be submitted, under paragraph 25)”;

(10) The heading of paragraph 24 of Schedule 3 was amended by section 160 of, and paragraphs 1, 11 and 23(1) of Schedule 12 to, the Serious Organised Crime and Police Act 2005. Sub-paragraph (6) was substituted by paragraphs 1, 3 and 14(1) and (6) of Schedule 23 to the Criminal Justice and Immigration Act 2008. Sub-paragraph (6)(a)(ia) was inserted by section 95 of, and paragraphs 1 and 14(1) and (3) of, Schedule 14 to the Police Reform and Social Responsibility Act 2011.

(11) The heading of paragraph 25 of Schedule 3 was amended by section 95 of, and paragraphs 1, 15 and 20(1) of Schedule 14 to, the Police Reform and Social Responsibility Act 2011 (“the 2011 Act”). Sub-paragraph (3)(za) was inserted by paragraphs 1, 3 and 17(1) and (3)(a) of Schedule 23 to the Criminal Justice and Immigration Act 2008 (“the 2008 Act”). Sub-paragraph (3)(zb) was inserted by section 95 of, and paragraphs 1, and 14(1) and (4)(b) of Schedule 14 to the 2011 Act. Sub-paragraph (5)(c) was substituted for sub-paragraph (3)(a) and (b), as originally enacted, by paragraphs 1, 3 and 17(1) and (3)(b) of Schedule 23 to the 2008 Act and amended by Part 8 of Schedule 28 to that Act. Paragraphs (c) and (d) of sub-paragraph (5) were substituted for sub-paragraph (5)(c), as originally enacted, by paragraphs 1, 3 and 17(1) and (4)(b) of Schedule 23 to the 2008 Act. Sub-paragraph (5)(c)(i) was amended by section 95 of, and paragraphs 1, 14(1) and (4)(c), 15 and 20(2) and (5) of Schedule 14 to the 2011 Act. Sub-paragraph (9) was amended by section 95 of, and paragraphs 1, 14(1) and (4)(d), 15 and 20(2) and (9)(a) and (b) of Schedule 14 to, the 2011 Act and by paragraphs 1, 3 and 17(1) and (5) of Schedule 23 to the 2008 Act.

(12) The heading of paragraph 27 of Schedule 3 was amended by section 181(1) of, and paragraph 95(1) and (9)(a) of Schedule 11 to, the Anti-social Behaviour, Crime and Policing Act 2014 (c.12). Sub-paragraph (3)(za) was inserted by paragraphs 1, 3 and 18(1) and (3)(a) of Schedule 23 to the Criminal Justice and Immigration Act 2008 (“the 2008 Act”). Sub-paragraph (3)(zb) was inserted by section 95 of, and paragraphs 1 and 14(1) and (5)(a) of Schedule 14 to, the Police Reform and Social Responsibility Act 2011 (“the 2011 Act”). Sub-paragraph (3)(a) was substituted by paragraphs 1, 3 and 18(1) and (3)(b) of Schedule 23 to the 2008 Act and amended by section 95 of, and paragraphs 1 and 14(1) and (5)(b) of Schedule 14 to, the 2011 Act. Sub-paragraph (3)(b) was amended by paragraphs 1, 3 and 18(1) and (3)(c) of Schedule 23 to the 2008 Act and by section 95 of, and paragraphs 1 and 14(1) and (5)(c) of Schedule 14 to, the 2011 Act.

- (ii) in paragraph (za), “misconduct or”, in the first place where it appears, were omitted;
- (iii) paragraph (zb) were omitted;
- (iv) in paragraphs (a) and (b) “, efficiency or effectiveness” were omitted;
- (b) after sub-paragraph (5) there were inserted—

“(5A) In sub-paragraphs (3), (4) and (5), where—

- (a) the appropriate authority has made a determination under paragraph 23(6A) that a Condition C person has no case to answer in respect of gross misconduct; and
- (b) the Commission makes a recommendation to the appropriate authority under paragraph (3) that that person has such a case to answer,

“the steps” include the step in sub-paragraph (5B) and are subject to any Condition C special determination made by the Commission under sub-paragraph (5C).

(5B) The step mentioned in sub-paragraph (5A) is that if the appropriate authority accepts the Commission’s recommendation or is directed by the Commission under sub-paragraph (4)(a) to take steps to secure that full effect is given to the recommendation, the appropriate authority shall submit a memorandum to the Commission which sets out that fact.

(5C) On receipt of a memorandum under sub-paragraph (5B), the Commission shall make a Condition C special determination in respect of that person and notify the appropriate authority of it.

(5D) But sub-paragraph (5A) does not apply where the Commission has made a Condition C special determination that it is reasonable and proportionate to take disciplinary proceedings against the Condition C person under paragraph 20AA(2).”.

- (15) Paragraph 29(13) (minor definitions) is to be read as if in the appropriate places, there were inserted—

““Condition C special determination” means a determination in accordance with Part 1A of the Conduct Regulations as to whether the taking of disciplinary proceedings against a Condition C person in respect of alleged gross misconduct would be reasonable and proportionate having regard to—

- (a) the seriousness of the alleged gross misconduct;
- (b) the impact of the allegation on public confidence in the police; and
- (c) the public interest;”;

““Condition C person” means a person in relation to whom regulation 5(2)(a) and (5)(a) and (b) of the Conduct Regulations is satisfied;”;

““Conduct Regulations” means the Police (Conduct) Regulations 2012;”;

““police barred list” means the list referred to in section 88B(2) of the Police Act 1996;”.

PART 2

Modifications to these Regulations

Modification to regulation 1 (citation, commencement and application)

- 3.** Regulation 1 is to be read as if, in paragraph (2), in the definition of “misconduct proceedings”, “misconduct meeting or” were omitted.

(13) Paragraph 29 was inserted by paragraphs 1, 3 and 19 of Schedule 23 to the Criminal Justice and Immigration Act 2008.

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

Modification to regulation 16 (written notices)

4. Regulation 16 is to be read as if—

(a) in paragraph (1)—

(i) in sub-paragraph (c), “misconduct or” were omitted;

(ii) for sub-paragraphs (d) to (ea), there were substituted—

“(d) that if the matter were to be referred to misconduct proceedings—

(i) the form of those proceedings would be a misconduct hearing;

(ii) if the allegation of gross misconduct is proved, he may be subject to a finding that he would have been dismissed if he had not ceased to be a member of a police force or a special constable; and

(iii) if he is subject to such a finding, his full name and a description of the conduct which would have led to his dismissal will be added to the police barred list and may be subject to publication for a period of up to five years;”;

(iii) at the end of sub-paragraph (g) “and” were omitted;

(iv) after paragraph (g) there were inserted—

“(ga) that it may harm his case if he fails to attend an interview of which he has been given notice under regulation 19(5) (interviews during investigation); and”;

(b) in paragraph (2)—

(i) “or his determination of the likely form of any misconduct proceedings to be taken” and, after “written notice”, “of” were omitted;

(ii) in sub-paragraph (a)—

(aa) at the beginning “of” were inserted;

(bb) “misconduct or” and “as the case may be” were omitted;

(iii) for sub-paragraph (b), there were substituted—

“(b) where the investigator’s assessment is that the conduct, if proved, would not amount to gross misconduct, that if, notwithstanding that assessment, the matter were to be referred to misconduct proceedings, the form of those proceedings would be a misconduct hearing;

(c) where the investigator’s assessment is that the conduct, if proved, would amount to gross misconduct, that if the matter were to be referred to misconduct proceedings, the form of those proceedings would be a misconduct hearing.”.

Modification to regulation 17 (police friend)

5. Regulation 17 is to be read as if, in paragraph (1)—

(a) at the end of sub-paragraph (b), “or” were omitted;

(b) for sub-paragraph (c), there were substituted—

“(c) where the person concerned is a member of his staff association, a person nominated by his staff association; or

(d) where the person concerned is not a member of his staff association, any other person nominated by the person concerned and approved by the chief officer of the force in which the person is serving.”.

Modification to regulation 19 (interviews during investigation)

6. Regulation 19 is to be read as if—
- (a) in paragraph (1), after “investigated”, there were inserted “and subject to regulation 19A”;
 - (b) in paragraph (4) for the words from “must” to the end there were substituted “must be reasonable.”.

Modification: insertion of regulation 19A

7. These Regulations are to be read as if after regulation 19 there were inserted—

“Notice of enquiry of person concerned during investigation

19A.—(1) Where the investigator is satisfied that, having regard to the circumstances of the person concerned, it would be unreasonable to require him to attend an interview, the investigator may cause the person concerned to be given a written notice of enquiry.

(2) A notice of enquiry given under paragraph (1) shall—

- (a) state any question the investigator wishes to ask the person concerned; and
- (b) request a response to any such question from the person concerned within a specified period.

(3) The investigator shall make a record of any notice of enquiry and response received under this regulation.”.

Modification to regulation 20 (report of investigation)

8. Regulation 20 is to be read as if—
- (a) the existing text were numbered as paragraph (1);
 - (b) in paragraph (1), for the words from “whether there is a case” to the end there were substituted—
 - “whether—
 - (i) other than in a case to which sub-paragraph (ii) applies—
 - (aa) there is a case to answer in respect of gross misconduct or there is no case to answer;
 - (bb) where the investigator’s opinion is that there is no such case to answer, there nevertheless may have been a breach of the Standards of Professional Behaviour;
 - (ii) where the person to whose conduct the investigation related is a Condition C person and the investigation was carried out under paragraph 16 or 17 of Schedule 3 to the 2002 Act—
 - (aa) there may have been a breach of the Standards of Professional Behaviour;
 - (bb) where the investigator’s opinion is that there may have been such a breach, the breach is so serious that, were the person still to be serving with the police, it would have justified dismissal.”;
 - (c) after paragraph (1) there were inserted—
 - “(2) For the purposes of paragraph (1)(c)(ii), a “Condition C person” means a person in relation to whom regulation 5(2)(a) and (5)(a) and (b) of the Conduct Regulations is satisfied.”.

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

Modification to regulation 36 (disciplinary proceedings for police staff)

9. Regulation 36 is to be read as if for “such a person”, in both places where those words appear, there were substituted “a person who has ceased to be a person serving with the police within the meaning of section 12(7)(aa), (b) or (d) of the 2002 Act”.