STATUTORY INSTRUMENTS

2017 No. 1135

POLICE, ENGLAND AND WALES

The Police Barred List and Police Advisory List Regulations 2017

Made - - - -	*22nd November 2017*
Laid before Parliament	*24th November 2017*
Coming into force - -	*15th December 2017*

The Secretary of State, in exercise of the powers conferred by sections 88A(2), (4)(b) and (7), 88B(3) and (4), 88F(1)(d), (3), (5), (6) and (8), 88G, 88I(3) and (7), 88J(3) and (4) and 88L(3), (6) to (8) and (10) of the Police Act 1996(**1**), makes the following Regulations:

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Police Barred List and Police Advisory List Regulations 2017 and come into force on 15th December 2017.

Interpretation

2.—(1) In these Regulations—

"advisory list" means the police advisory list(**2**);

"barred list" means the police barred list(**3**);

"the College" means the College of Policing;

"former police officer" means a former member of a police force or a former special constable;

"police force concerned", in relation to a person ("P") who at the relevant time—

(**1**) 1996 c.16. Sections 88A to 88M were inserted by section 30 of, and Schedule 8 to, the Policing and Crime Act 2017 (c.3).
(**2**) "Police advisory list" is defined in section 88J of the Police Act 1996.
(**3**) "Police barred list" is defined in section 88B of the Police Act 1996.

(a) was a member of a police force, means the police force of which P was a member at that time;

(b) was a former member of a police force, means the police force of which P was last a member;

(c) was a special constable, means the police force for which P was appointed as a special constable at that time;

(d) was a former special constable, means the police force for which P was last appointed as a special constable;

(e) was a civilian police employee, means—

(i) the police force of which P was a member of the civilian staff at that time; or

(ii) if P was a civilian police employee at that time by virtue of being employed by the Common Council of the City of London, the City of London police force;

(f) was a former civilian police employee, means—

(i) the police force for which P was last employed as a member of the civilian staff; or

(ii) if P was last employed as a civilian police employee by the Common Council of the City of London, the City of London police force;

(g) was a community support volunteer or a policing support volunteer, means the police force of the chief officer of police by whom P was designated under section 38 of the Police Reform Act 2002(**4**);

"police officer" means a member of a police force or a special constable;

"relevant dismissal", in relation to a person ("P") whom the relevant authority is required to report to the College under section 88A(1)(a) or (c), means the dismissal of P by virtue of which that requirement applies;

"relevant event", in relation to a person ("P") whom the relevant authority is required to report to the College under section 88I(1), means—

(a) if paragraph (a) of section 88I(1) applies, P ceasing to be a person serving with the police as mentioned in that paragraph;

(b) if paragraph (b) of section 88I(1) applies, the relevant allegation about P coming to the attention of the relevant authority;

(c) if paragraph (c) of section 88I(1) applies, the withdrawal of P's designation as mentioned in that paragraph;

(d) if paragraph (d) of section 88I(1) applies, P's decision to stop volunteering as mentioned in that paragraph;

"relevant finding", in relation to a person ("P") whom the relevant authority is required to report to the College under section 88A(1)(b) or (d), means the finding by virtue of which that requirement applies;

"relevant time", in relation to a person ("P") whom the relevant authority is required to report to the College under section 88A(1) or 88I(1), means the time immediately before the relevant dismissal, the relevant event or the relevant finding (as the case may be);

"Standards of Professional Behaviour" has the same meaning as in the Police (Conduct) Regulations 2012(**5**);

(**4**) 2002 c.30. Section 38 was amended by section 38 of the Policing and Crime Act 2017. There are other amendments to section 38 which are not relevant for the purposes of these Regulations.

(**5**) S.I. 2012/2632. See regulation 3, which was amended by S.I. 2015/626.

"working day" means a day other than a Saturday or a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971(**6**).

(2) In these Regulations, and for the purposes of section 88A(4)(b), "disciplinary proceedings" in relation to a former civilian police employee ("P") means any proceedings or management process during which P's conduct while a civilian police employee is considered in order to determine whether a finding should be made that P would have been dismissed if P had still been such an employee.

(3) A reference in these Regulations to any provision of an Act is (unless expressly provided otherwise) a reference to a provision of the Police Act 1996.

PART 2

The Barred List

Report by relevant authority to College under section 88A: timing and content

3.—(1) Where the relevant authority(**7**) is required to report a person ("P") to the College under section 88A(1), the authority must do so before the end of 5 working days beginning with—

(a) where paragraph (a) or (c) of section 88A(1) applies to P, the date of the relevant dismissal;

(b) where paragraph (b) or (d) of section 88A(1) applies to P, the date of the relevant finding.

(2) The report must include the following information—

(a) P's full name;

(b) the police force concerned;

(c) P's date of birth;

(d) whether P was a police officer, a former police officer, a civilian police employee or a former civilian police employee at the relevant time;

(e) where P was a police officer at the relevant time—

(i) P's rank at that time; and

(ii) any number used at that time to identify P as a police officer (for example a warrant number);

(f) where P was a former police officer at the relevant time—

(i) P's rank when P was last a police officer; and

(ii) any number used when P was last a police officer to identify P as such (for example a warrant number);

(g) where P was a civilian police employee at the relevant time, any number used at that time to identify P as such an employee;

(h) where P was a former civilian police employee at the relevant time, any number used when P was last a civilian police employee to identify P as such;

(i) the reasons for the relevant dismissal or the relevant finding, including (where applicable) —

(i) a description of P's conduct which led to the relevant dismissal or the relevant finding; and

(**6**) 1971 c.80. See section 1 of, and Schedule 1 to, that Act.
(**7**) "Relevant authority" in relation to the police barred list, is defined in section 88A(3) of the Police Act 1996.

(ii) any provision of the Standards of Professional Behaviour breached by P;

(j) the date of the relevant dismissal or the relevant finding;

(k) where the relevant authority was required to report P to the College under section 88I(1)(a) or (b), that fact, the date of the report and whether P resigned or retired;

(l) any information which the relevant authority considers it appropriate to include for the purpose of assisting the College in considering whether regulation 10(4) applies in relation to information contained the report.

Information to be included in the police barred list

4. The information that must be included in the barred list in relation to a person reported to the College under section 88A(1) is the information contained in the report by virtue of regulation 3(2)(a) to (k).

Further report by relevant authority to College under section 88F: timing and content

5.—(1) Where the relevant authority is required to make a further report to the College under section 88F(2) in relation to a person ("P"), the relevant authority must do so before the end of 5 working days beginning with the date on which the removal condition is satisfied in relation to P.

(2) The further report must include the following information in relation to P—

(a) the information mentioned in regulation 3(2)(a) to (c);

(b) the date on which the removal condition was satisfied;

(c) where paragraph (a) or (b) of section 88F(1) applies to P, the nature of the proceedings mentioned in the applicable paragraph;

(d) where paragraph (c) of section 88F(1) applies to P, the nature of the complaint under section 111 of the Employment Rights Act 1996(**8**) and a summary of the finding mentioned in that paragraph;

(e) where paragraph (d) of section 88F(1) applies to P, the nature of the appeal proceedings, and the finding made in those proceedings.

(3) For the purposes of this regulation, "the removal condition" is satisfied in relation to P—

(a) where paragraph (a) of section 88F(1) applies to P, when P is reinstated as mentioned in that paragraph;

(b) where paragraph (b) or (d) of section 88F(1) applies to P, when the finding mentioned in that paragraph is set aside as so mentioned;

(c) where paragraph (c) of section 88F(1) applies to P, when the finding mentioned in that paragraph is made.

(4) For the purposes of paragraph (2)(e), "appeal proceedings" means any internal review or appeal during which a decision taken in disciplinary proceedings in relation to P is considered and may be set aside.

Removal from barred list following review or appeal

6.—(1) If regulation 5 does not apply, this regulation applies where—

(a) a person ("P") has been included in the barred list in consequence of a report made in relation to P under section 88A(1);

(**8**) 1996 c.18. Section 111 was amended by section 1 of the Employment Rights (Dispute Resolution) Act 1998 (c.8). There are other amendments to section 111 which are not relevant for the purposes of these Regulations.

(b) one of the following applies—

(i) P is reinstated as a police officer or a civilian police employee following the decision of any court or tribunal;

(ii) the relevant dismissal is found to have been an unfair dismissal by any court or tribunal;

(iii) the relevant finding is set aside following an internal review or appeal.

(2) The relevant authority must give the College notice of the decision or finding referred to in paragraph (1)(b) before the end of five working days beginning with the date on which the finding or decision was made.

(3) That notice must contain the following information—

(a) the information mentioned in regulation 3(2)(a) to (c);

(b) the nature of the internal review or appeal, or the application to a court or tribunal, and the decision or finding made;

(c) the date of the decision or finding referred to in paragraph (1)(b).

(4) On receipt of notice under paragraph (2) in relation to P, the College must remove P from the barred list.

Removal from barred list on application of barred person

7.—(1) Paragraph (2) applies where a person ("P") has been included in the barred list for the relevant minimum period or longer.

(2) P may apply to the College to be removed from the barred list if—

(a) the application is P's first application under this regulation; or

(b) in any other case, the condition set out in paragraph (3) is met.

(3) The condition is met if P makes the application—

(a) on or after the date specified by the College under paragraph (7) when dismissing P's most recent application; or

(b) if no date was specified under paragraph (7), after the expiry of the relevant minimum period beginning with the date on which the College dismissed P's most recent application.

(4) An application under paragraph (2)—

(a) must be made in the form and manner determined by the College; and

(b) may contain any information or be accompanied by any other documents that P considers relevant to the application.

(5) If, on considering P's application, the College is satisfied that it is appropriate for P to be removed from the barred list, the College must remove P from the list; otherwise the College must dismiss the application.

(6) In determining whether it is appropriate for P to be removed from the barred list the College may have regard (among other things) to—

(a) the extent to which P has shown that P is suitable to be employed or otherwise appointed by a person mentioned in section 88C(5) (policing positions)(**9**);

(b) the circumstances of the relevant dismissal or which led to the relevant finding;

(c) the impact on public confidence in the police of removing P from the barred list.

(**9**) Section 88C(5) was amended by section paragraph 65 of Schedule 9 to the Policing and Crime Act 2017 (c.3).

(7) If the College dismisses P's application, the College may specify a date (being no later than the last day of the relevant minimum period beginning with the date on which the application is dismissed) before which no further application may be made by P under this regulation.

(8) Before making a decision under paragraph (5) or (7), the College may request further representations, information or documents from P or the relevant authority; and the relevant authority must comply with any such request.

(9) The College must give P and the relevant authority notice of its decision on P's application before the end of 5 working days beginning with the date of the decision.

(10) In this regulation the "relevant minimum period"—

(a) where P was included in the barred list by virtue of being reported under section 88A(1)(a) or 88A(1)(c) and the reason for P's dismissal related (or one of the reasons for the dismissal related) to a finding that P's performance constituted gross incompetence, means three years;

(b) in any other case, means 5 years.

(11) For the purposes of paragraph (10), "gross incompetence"—

(a) where P is a police officer, has the meaning given in regulation 4 of the Police (Performance) Regulations 2012(**10**);

(b) where P is a civilian police employee, means a serious inability or serious failure of P to perform the duties of the role P is currently undertaking to a satisfactory standard or level (otherwise than by reason of P's attendance), to the extent that dismissal would be justified.

Automatic removal from the barred list

8.—(1) A person ("P") must be removed from the barred list if paragraphs (2) and (3) apply.

(2) This paragraph applies if P was included in the barred list by virtue of being reported under section 88A(1)(a) or (c), and the reason for P's dismissal related to P's unsatisfactory performance (not amounting to gross incompetence) or unsatisfactory attendance.

(3) This paragraph applies if P has been included in the barred list for a period of at least twelve months.

Removal from barred list on death

9. Where the College is satisfied that a person who is included in the barred list has died, the College must remove the person from the list.

Publication of information in barred list

10.—(1) Section 88G applies to any person who is included in the barred list by virtue of being reported under section 88A(1)(a) or (b) and—

(a) where the report was made under section 88A(1)(a), the person was dismissed at proceedings under the Police (Conduct) Regulations 2012(**11**) (police officer dismissed on grounds of conduct); or

(b) where the report was made under section 88A(1)(b), the relevant finding was made at proceedings under those Regulations (former police officer: finding of grounds for dismissal for conduct).

(**10**) S.I. 2012/2631.
(**11**) S.I. 2012/2632.

(2) Subject to paragraph (4), the information included in the barred list which the College must publish in relation to a person ("P") to whom section 88G applies is the information in relation to P mentioned in regulation 3(2)(a), (b), (d), (e)(i), (f)(i), (i) and (j) ("the specified information").

(3) The specified information must be published no later than the last working day of the month following the month in which P was included in the barred list.

(4) But the College must not publish any of the specified information in relation to P if to publish some or all of that information—

(a) would be against the interests of national security;

(b) might prejudice the investigation or prosecution of a criminal offence or any civil proceedings; or

(c) would result in a significant risk of harm to any person (including P).

(5) In considering whether paragraph (4) applies, the College must have regard (among other things) to—

(a) any information in the report on P under section 88A which was included by virtue of regulation 3(2)(l);

(b) the extent to which (and manner in which) any of the specified information in relation to P has already been made available to the public.

(6) If, after the College has decided not to publish specified information under paragraph (4), it becomes aware that the circumstances in paragraph (4) which led to that decision no longer apply, the College must publish the information in question.

Review of publication

11.—(1) This regulation applies where the specified information in relation to a person ("P") who is included in the barred list is published by the College under section 88G.

(2) The College must consider any matter which comes to its attention (including by way of representations made in a written statement under rule 22(5B) of the Police Appeals Tribunals Rules 2012(**12**)) which may be relevant to the question of whether the continued publication of some or all of the specified information in relation to P—

(a) is against the interests of national security;

(b) might prejudice the investigation or prosecution of a criminal offence or any civil proceedings; or

(c) is resulting in a significant risk of harm to any person (including P).

(3) If, having considered the matter, the College determines that continuing to publish some or all of the specified information in relation to P has any of the effects mentioned in paragraph (2), the College must cease to publish all of the specified information in relation to P.

(4) Where the College is required to cease publishing specified information under paragraph (3), it must do so before the end of 5 working days beginning with the date on which it makes the determination under that paragraph.

(5) If, after the College has ceased publication of specified information under paragraph (3), it becomes aware that the circumstances in paragraph (2) which required the College to cease publishing that information no longer apply, the College must republish the information in question for the remainder of the required period.

(6) If the College has decided, following consideration under paragraph (2), that continued publication of specified information would not have the effects described in that paragraph in a

(**12**) S.I. 2012/2630. Rule 22(5B) was inserted by the Police (Conduct, Complaints and Misconduct and Appeal Tribunal) (Amendment) Regulations 2017 (S.I. 2017/1134).

particular case, the College is not required to review that decision if there has been no material change in the circumstances which led to that decision.

(7) If the College removes a person from the barred list, the College must cease to publish all of the specified information in relation to P.

(8) In this regulation—

"required period" means the period for which the College is required to publish the specified information under section 88G(3)(c), ending on the date five years after the date on which that information was first published by the College under section 88G(2);

"specified information" has the meaning given in regulation 10(2).

PART 3

The Advisory List

Report by relevant authority under section 88I: timing and content

12.—(1) Where the relevant authority(**13**) is required to report a person ("P") to the College under section 88I(1), the authority must do so before the end of 5 working days beginning with—

(a) where any of paragraphs (a) to (c) of section 88I(1) applies to P, the date of the relevant event;

(b) where paragraph (d) of section 88I(1) applies to P, the date the relevant event comes to the attention of the relevant authority.

(2) The report must include the following information—

(a) P's full name;

(b) the police force concerned;

(c) P's date of birth;

(d) where paragraph (a) of section 88I(1) applies to P—

(i) whether P was a police officer or a civilian police employee at the relevant time;

(ii) where P was a police officer at that time, P's rank at that time and any number used at that time to identify P as a police officer (for example a warrant number);

(iii) where P was a civilian police employee at that time, any number used at that time to identify P as such an employee;

(iv) the date of the relevant event;

(v) a summary of the relevant allegation;

(vi) in a case where disciplinary proceedings have been brought, the form of those proceedings;

(e) where paragraph (b) of section 88I(1) applies to P—

(i) P's rank when P was last a police officer and any number used at that time to identify P as such (for example a warrant number);

(ii) the date on which P ceased to be a police officer and whether P resigned or retired;

(iii) the date of the relevant event;

(iv) a summary of the relevant allegation;

(**13**) "Relevant authority" is defined for the purposes of the police advisory list in section 88I(4) of the Police Act 1996.

(f) where paragraph (c) of section 88I(1) applies to P—

(i) whether P was a community support volunteer or a policing support volunteer at the relevant time;

(ii) any number used at that time to identify P as such a volunteer;

(iii) the date of the relevant event;

(iv) a summary of the reasons for the withdrawal of P's designation as referred to in that paragraph (c);

(g) where paragraph (d) of section 88I(1) applies to P—

(i) whether P was a community support volunteer or a policing support volunteer at the relevant time;

(ii) any number used at that time to identify P as such a volunteer;

(iii) the date the relevant event came to the attention of the relevant authority;

(iv) a summary of the relevant allegation.

Information to be included in the advisory list

13. The information that must be included in the advisory list in relation to a person reported to the College under section 88I is the information contained in the report by virtue of regulation 12(2).

Further report by relevant authority to College under section 88L: timing and content

14.—(1) Where the relevant authority is required to make a further report to the College under section 88L(2) in relation to a person ("P"), the relevant authority must do so before the end of 5 working days beginning with the date on which the removal condition is satisfied in relation to P.

(2) The further report must include the following information in relation to P—

(a) the information mentioned in regulation 12(2)(a) to (c);

(b) the date on which the removal condition was satisfied;

(c) a summary of the circumstances which gave rise to the satisfaction of the removal condition.

(3) For the purposes of this regulation, "the removal condition" is satisfied in relation to P—

(a) where paragraph (a) of section 88L(1) applies to P, when the determination mentioned in that paragraph is made;

(b) where paragraph (b) of section 88L(1) applies to P, when the proceedings mentioned in that paragraph are withdrawn;

(c) where paragraph (c) of section 88L(1) applies to P, when the proceedings mentioned in that paragraph are concluded as so mentioned.

Removal from advisory list on application of listed person

15.—(1) Paragraph (2) applies where a person ("P") has been included in the advisory list for 5 years or more.

(2) P may apply to the College for P to be removed from the advisory list if—

(a) the application is P's first application under this regulation; or

(b) in any other case, the condition set out in paragraph (3) is met.

(3) The condition is met if P makes the application—

(a) on or after the date specified by the College under paragraph (6) when dismissing P's most recent application; or

(b) if no date was specified under paragraph (6), after the expiry of the 5 year period beginning with the date on which the College dismissed P's most recent application.

(4) An application under paragraph (2)—

(a) must be made in the form and manner determined by the College; and

(b) may contain any information or be accompanied by any other documents that P considers relevant to the application.

(5) If, on considering P's application, the College is satisfied that it is appropriate for P to be removed from the advisory list, the College must remove P from the list; otherwise the College must dismiss the application.

(6) If the College dismisses the application, the College may specify a date (being no later than the last day of the period of five years beginning with the date on which the application is dismissed), before which no further application may be made by P under this regulation.

(7) Before making a decision under paragraph (5) or (6), the College may request further representations, information or documents from P or the relevant authority; and the relevant authority must comply with any such request.

(8) The College must give P and the relevant authority notice of its decision on P's application before the end of 5 working days beginning with the date of the decision.

Automatic removal from the advisory list

16.—(1) A person ("P") must be removed from the advisory list if paragraphs (2) and (3) apply.

(2) This paragraph applies if P was included in the advisory list by virtue of being reported under section 88I, and the reason for the report did not relate to P's conduct.

(3) This paragraph applies if P has been included in the advisory list for a period of at least five years.

Removal from advisory list on death

17. Where the College is satisfied that any person who is included in the advisory list has died, the College must remove the person from the list.

Nick Hurd
Minister of State
Home Office

22nd November 2017

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under Part 4A of the Police Act 1996 (the "1996 Act"), which was inserted by section 30 of, and Schedule 8 to, the Policing and Crime Act 2017. Part 4A of the 1996 Act requires the College of Policing to maintain two lists; the police barred list (see section 88B) and the police advisory list (see section 88J). These Regulations are made under various powers in Part 4A to make provision supplementing the regime established under that Part.

Regulation 3 sets out the information that must be included in a report on a person under section 88A(1) of the 1996 Act and the time period within which the report must be made. A person reported under that provision is recorded in the police barred list. Regulation 12 makes similar provision in relation to reports under section 88I(1) of the 1996 Act. A person reported under that provision is recorded in the police advisory list.

Regulations 4 and 13 specify the information from that relevant report under section 88A(1) or 88I(1) of the 1996 Act which must be included in the police barred list and the police advisory list.

Regulation 5 sets out the information that must be included in a further report under section 88F(1) on a person who is recorded in the barred list when one of the events set out in that provision occurs and the time period within which the report must be made. The effect of the further report is to trigger a requirement for the College of Policing to remove the person from the police barred list. Regulation 14 makes similar provision in relation to the police advisory list.

Regulation 6 makes provision for a person to be removed from the police barred list in other cases where the event which led to that person's inclusion has been set aside overturned following a review or appeal.

Regulations 7 and 15 specify the circumstances in which a person on the police barred list or the police advisory list can apply to the College of Policing to be removed from the list. Regulations 8 and 16 set out the circumstances in which a person must automatically be removed from the police barred list and the police advisory list. Regulations 9 and 17 provide for the College to remove a person's name from either list if the person has died.

Regulation 10 provides that where a person recorded in the police barred list is a police officer or former police officer (as opposed to a police civilian employee or former police civilian employee) the College must publish the entry relating to that person. Regulation 10(4) provides that in certain limited circumstances an entry on the list may be exempt from the publication requirement.

Regulation 11 provides that the College must consider whether an entry on the barred list should continue to be published if a matter comes to the College's attention which is relevant to any of the exemptions available from the publication requirement.

An impact assessment of the effect the Policing and Crime Act 2017, and the secondary legislation to be made under it (including these Regulations) will have on the costs of business, the voluntary sector and the public sector is available from the Home Office at 2 Marsham Street, London SW1P 4DF or on the internet at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/499355/Impact_Assessment_-_Reform_of_the_Discipline_System.pdf.