

SCHEDULE 2

Regulation 42(1)(b)

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(1)(1) is to be read as if, in the definition of “disciplinary proceedings”, for “50 or 51” there were substituted “50(3A) to (3G) or 51(2B) to (2H)”.

Modifications to Part 3 of Schedule 3 (investigations and subsequent proceedings)

2.—(1) Part 3 of Schedule 3 is modified as follows.

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

- (a) in sub-paragraph (1), at the beginning there were inserted “Except in the case of a Condition C person,”, and
- (b) in sub-paragraph (2)(b), for the words from “to cease” to the end there were substituted “to be included in the list referred to in section 88B(2) of the Police Act 1996 (police barred list) without delay.”.

(3) Paragraph 22(10)(a) (purposes for which appropriate authority may request items from person investigating)(3) is to be read as if for “50(3) or 51(2A)” there were substituted “50 or 51”.

(4) Paragraph 23(5A) (action by the Director General in relation to an investigation report)(4) is to be read as if—

- (a) in paragraph (a)(i)—
 - (i) for “person” there were substituted “member of a police force or special constable”, and
 - (ii) “misconduct or”, in the first place it appears, were omitted;
- (b) for paragraph (a)(ii) there were substituted—
 - “(ii) whether, if there is no such case to answer, there nevertheless may have been a breach of the Standards of Professional Behaviour that would have justified the bringing of disciplinary proceedings had the person not ceased to be a member of a police force or a special constable.”;
- (c) in paragraph (b)—
 - (i) at the beginning, there were inserted “except in the case of a Condition C person,”, and
 - (ii) in sub-paragraph (ii)—
 - (aa) for “person” there were substituted “member of a police force or special constable”, and

(1) There are amendments to section 29(1) but none is relevant.

(2) Paragraph 20A was substituted by paragraphs 9 and 23 of Schedule 5 to the Policing and Crime Act 2017 and amended by paragraphs 15 and 56 of Schedule 9 to that Act.

(3) Paragraph 22 was substituted by paragraphs 1, 11 and 21 of Schedule 12 to the Serious Organised Crime and Police Act 2005. There are other amendments to paragraph 22 but none is relevant.

(4) Paragraph 23(5A) was inserted by paragraphs 9 and 26 of Schedule 5 to the Policing and Crime Act 2017 and amended by paragraphs 15 and 56 of Schedule 9 to that Act.

Status: This is the original version (as it was originally made).

- (bb) “and, if so, what form the disciplinary proceedings should take” were omitted;
 - (d) after paragraph (b) there were inserted—
 - “(ba) in the case of a Condition C person—
 - (i) having considered the views (if any) of the appropriate authority, make a determination as to the matters described in paragraph (a)(i) and (ii), and
 - (ii) where the Director General has determined that the person has a case to answer in respect of gross misconduct, make a Condition C special determination in respect of that person,”;
 - (e) in paragraph (c), after “paragraph (b)” there were inserted “or (ba), as the case may be,”;
 - (f) in paragraphs (d) and (f), after “paragraph (b)” there were inserted “or determinations under paragraph (ba), as the case may be,”, and
 - (g) in paragraph (e) —
 - (i) “of a form specified in the determination” were omitted, and
 - (ii) for “person” there were substituted “member of a police force or special constable or, in the case of a Condition C person, that the taking of such proceedings would be reasonable and proportionate”.
- (5) Paragraph 24(6) (action by the appropriate authority in response to an investigation report) is to be read as if—
- (a) in paragraph (a)—
 - (i) at the beginning, there were inserted “except in the case of a Condition C person,”;
 - (ii) in sub-paragraph (i), “misconduct or”, in the first place it appears, were omitted, and
 - (iii) 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 that would have justified the bringing of disciplinary proceedings had the person not ceased to be a member of a police force or a special constable,”;
 - (b) after paragraph (a), there were inserted—
 - “(aza) in the case of a Condition C person, determine—
 - (i) whether there may have been a breach of the Standards of Professional Behaviour that would have justified the bringing of disciplinary proceedings had the person not ceased to be a member of a police force or a special constable, and
 - (ii) where the appropriate authority determines that there may have been such a breach, whether the breach is so serious that, had the person not ceased to be a member of a police force or a special constable, it would have justified dismissal,”, and
 - (c) in paragraph (aa), after “paragraph (a)” there were inserted “or (aza), as the case may be,”.
- (6) Paragraph 25 (reviews with respect to an investigation) is to be read as if—
- (a) in each of sub-paragraphs (4C)(c) and (4E)(c)—
 - (i) after “police”, there were inserted “other than a Condition C person”;
 - (ii) “misconduct or”, in the first place it appears, were omitted;
 - (iii) sub-paragraph (ii) were omitted;

- (iv) in sub-paragraph (iii), “of the form specified in the recommendation” were omitted, and
 - (v) in each of sub-paragraphs (iii) and (iv), “, efficiency or effectiveness” were omitted, and
 - (b) after each of sub-paragraphs (4C)(c) and (4E)(c) there were inserted—
 - “(ca) in the case of a Condition C person, make a determination (in place of the determination of the appropriate authority) as to—
 - (i) whether there may have been a breach of the Standards of Professional Behaviour that would have justified the bringing of disciplinary proceedings had the person not ceased to be a member of a police force or a special constable, and
 - (ii) if so, whether the breach is so serious that, had the person not ceased to be a member of a police force or a special constable, it would have justified dismissal;”.
- (7) Paragraph 29 (minor definitions)(5) is to be read as if in the appropriate places there were inserted—
- ““Condition C person” means a person in relation to whom regulation 4(2)(a) and (5)(a) and (b) of the Police (Conduct) Regulations 2020 is satisfied;”, and
 - ““Condition C special determination” means a determination in accordance with Part 1A of the Police (Conduct) Regulations 2020 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;”.

PART 2

Modifications to these Regulations

Modification to regulation 1 (citation, commencement, interpretation and application)

3. Regulation 1(2) is to be read as if—
- (a) in the appropriate places there were inserted—
 - ““Condition C person” means a person in relation to whom regulation 4(2)(a) and (5)(a) and (b) of the Conduct Regulations is satisfied;”;
 - (b) the definition of “disciplinary action” were omitted;
 - (c) in paragraph (a) of the definition of “disciplinary proceedings”, for “any proceedings” to the end there were substituted “any misconduct hearing or accelerated misconduct hearing under the Conduct Regulations;”, and
 - (d) in the definition of “severity assessment”, for paragraphs (a) and (b) there were substituted “whether the conduct, if proved, would amount to gross misconduct;”.

(5) Paragraph 29 was inserted by paragraphs 1, 3 and 19 of Schedule 23 to the Criminal Justice and Immigration Act 2008. There is an amendment to that paragraph not relevant to these Regulations.

Modification to regulation 16 (special procedure: severity assessment)

4. Regulation 16 is to be read as if—
- (a) in paragraph (1), for “22 (special procedure)” there were substituted “21A (special procedure: notice of enquiry)”, and
 - (b) in paragraph (2)(a), for paragraphs (i) and (ii), there were substituted “whether the conduct of the person concerned, if proved, would amount to gross misconduct;”.

Modification to regulation 17 (special procedure: notification of severity assessment etc.)

5. Regulation 17(1) is to be read as if—
- (a) for sub-paragraph (d), there were substituted—
 - “(d) that if the allegation of gross misconduct is proved, the person concerned may be subject to a finding that the person would have been dismissed if the person had not ceased to be a member of a police force or a special constable;
 - (da) that if the person concerned is subject to such a finding, information including the person’s full name and a description of the conduct which would have led to the person’s dismissal will be added to the list referred to in section 88B(2) of the Police Act 1996 (police barred list) and may be subject to publication for a period of up to five years;”;
 - (b) after sub-paragraph (g), “and” were omitted and there were inserted—
 - “(ga) that it may harm the person’s case if the person fails to attend an interview of which the person has been given notice under regulation 21(6)(a) (special procedure: interview of the person concerned), and”, and
 - (c) in sub-paragraph (h), after “20”, there were inserted “, regulation 21A (special procedure: notice of enquiry)”.

Modification to regulation 18 (special procedure: police friend)

6. Regulation 18(2) is to be read as if for sub-paragraph (d) there were substituted—
- “(d) 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 21 (special procedure: interview of the person concerned)

7. Regulation 21 is to be read as if—
- (a) in paragraph (1), at the beginning, there were inserted “Subject to regulation 21A (special procedure: notice of enquiry),”, and
 - (b) in paragraph (5), for the words from “must” to the end there were substituted “must be reasonable.”.

Modification: insertion of regulation 21A

8. These Regulations are to be read as if after regulation 21 there were inserted—

“Special procedure: notice of enquiry

21A.—(1) Where in the case of an investigation under—

- (a) paragraph 18 of Schedule 3 (investigations directed by the Director General), or

- (b) paragraph 19 of Schedule 3 (investigations by the Director General) other than by the Director General acting personally,
the Director General indicates that, having regard to the circumstances of the person concerned, it would be unreasonable to require the person to attend an interview and that the person should be given a written notice of enquiry, the person investigating must cause the person to be given a written notice of enquiry.
- (2) Where in the case of an investigation under —
 - (a) paragraph 18 of Schedule 3, or
 - (b) paragraph 19 of Schedule 3 other than by the Director General acting personally, the person investigating forms the opinion that, having regard to the circumstances of the person concerned, it would be unreasonable to require the person to attend an interview, the person investigating must notify the Director General of that opinion.
- (3) Where in any other case the person investigating is satisfied that, having regard to the circumstances of the person concerned, it would be unreasonable to require the person to attend an interview, the person investigating may cause the person to be given a written notice of enquiry.
- (4) A notice of enquiry given under this regulation must—
 - (a) state any question the person investigating or, in the case of an investigation under paragraph 18 of Schedule 3 or paragraph 19 of Schedule 3 other than by the Director General acting personally, the Director General, wishes to ask the person concerned, and
 - (b) request a response to any such question from the person concerned within a specified period.
- (5) The person investigating must make a written record of any notice of enquiry and response received under this regulation.”.

Modification: omission of regulation 22 (special procedure: duty to provide information to appropriate authority)

- 9. These Regulations are to be read as if regulation 22 were omitted.

Modification to regulation 27 (report on investigation)

- 10. Regulation 27 is to be read as if—
 - (a) in paragraph (1)(c), for “paragraph (3)(a), (b) and (e)” there were substituted “paragraph (3)(a) and (c) or (3A), as the case may be”, and
 - (b) for paragraph (3) there were substituted—
 - “(3) Other than in a case to which paragraph (3A) applies, the matters are—
 - (a) whether any person to whose conduct the investigation related has a case to answer in respect of gross misconduct or has no case to answer;
 - (b) whether or not disciplinary proceedings should be brought against any such person;
 - (c) whether, if the opinion is that there is no such case to answer, there nevertheless may have been a breach of the Standards of Professional Behaviour that would have justified the bringing of disciplinary proceedings had the person not ceased to be a member of a police force or a special constable.

Status: This is the original version (as it was originally made).

(3A) Where the person to whose conduct the investigation related is a Condition C person and the investigation was carried out under paragraph 16 of Schedule 3 (investigations by the appropriate authority on its own behalf), the matters are—

- (a) whether there may have been a breach of the Standards of Professional Behaviour that would have justified the bringing of disciplinary proceedings had the person not ceased to be a member of a police force or a special constable;
- (b) whether, if the opinion is that there may have been such a breach, the breach is so serious that, had the person not ceased to be a member of a police force or a special constable, it would have justified dismissal.”.

Modification to regulation 28 (provision of copy of report on investigation etc. to person to whose conduct the investigation related)

11. Regulation 28(1) is to be read as if—

- (a) in sub-paragraph (a), for the words from “neither” to the end there were substituted “a person to whose conduct the investigation related has no case to answer in respect of gross misconduct,”, and
- (b) in sub-paragraph (b), for the words from “it” to the end there were substituted “such a person has no case to answer in respect of gross misconduct,”.

Modification to regulation 30 (recommendation by the Director General or a local policing body)

12. Regulation 30(1) is to be read as if sub-paragraph (c) were omitted.