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STATUTORY INSTRUMENTS

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**2020 No. 4**

**The Police (Conduct) Regulations 2020**

**PART 1**

**Preliminary**

**Citation and commencement**

1. These Regulations may be cited as the Police (Conduct) Regulations 2020 and come into force on 1st February 2020.

**Interpretation and delegation**

2.—(1) In these Regulations—

“the 1996 Act” means the Police Act 1996;

“the 2002 Act” means the Police Reform Act 2002;

“the Complaints and Misconduct Regulations” means the Police (Complaints and Misconduct Regulations) 2020(1);

“the Performance Regulations” means the Police (Performance) Regulations 2020(2);

“the Police Regulations” means the Police Regulations 2003(3);

“accelerated misconduct hearing” means a hearing to which the officer concerned is referred under regulation 49 after the case has been certified as one where the special conditions are satisfied;

“acting chief officer” means—

- (a) a person exercising or performing functions of a chief constable in accordance with section 41 of the Police Reform and Social Responsibility Act 2011(4) (power of deputy to exercise functions of chief constable);
- (b) a person exercising powers or duties of the Commissioner of Police of the Metropolis in accordance with section 44 (functions of Deputy Commissioner of Police of the Metropolis) or 45(4) (Assistant Commissioners of Police of the Metropolis) of that Act, or
- (c) a person exercising duties of the Commissioner of Police for the City of London in accordance with section 25 of the City of London Police Act 1839(5);

“allegation” means an allegation relating to a complaint, conduct matter or practice requiring improvement;

“appeal meeting” means a meeting held in accordance with regulation 46;

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(1) S.I. 2020/2.

(2) S.I. 2020/3.

(3) S.I. 2003/527. Amendments are cited elsewhere in these Regulations, where relevant.

(4) 2011 c. 13.

(5) 2&3 Vict. c. xciv.

“appropriate authority” means, subject to regulation 26(3)—

- (a) where the officer concerned is the chief officer or acting chief officer of any police force, the local policing body<sup>(6)</sup> for the force’s area;
- (b) in any other case, the chief officer of police of the police force concerned;

“complainant” has the meaning given to it by section 29(2) of the 2002 Act (interpretation of Part 2)(7);

“complaint” has the meaning given to it by section 12 of the 2002 Act (complaints, matters and persons to which Part 2 applies)(8);

“conduct” includes acts, omissions, statements and decisions (whether actual, alleged or inferred);

“conduct matter” has the meaning given to it by section 12 of the 2002 Act (complaints, matters and persons to which Part 2 applies)(9);

“criminal proceedings” means—

- (a) any prospective criminal proceedings, or
- (b) all criminal proceedings brought which have not been brought to a conclusion (apart from the bringing and determination of any appeal other than an appeal against conviction to the Crown Court);

“Director General” means the Director General of the Independent Office for Police Conduct, established under section 9 of the 2002 Act (the Independent Office for Police Conduct)(10);

“disciplinary action” means, in order of seriousness starting with the least serious action—

- (a) a written warning;
- (b) a final written warning;
- (c) reduction in rank, or
- (d) dismissal without notice;

“disciplinary proceedings” means—

- (a) misconduct proceedings under Part 4 of these Regulations;
- (b) an accelerated misconduct hearing under Part 5 of these Regulations, or
- (c) an appeal from misconduct proceedings or from an accelerated misconduct hearing under the Police Appeals Tribunals Rules 2020(11),

but, for the purposes of the following provisions, “disciplinary proceedings” only includes misconduct proceedings mentioned in paragraph (a) and a hearing mentioned in paragraph (b) of this definition—

- (i) paragraph (a) of the definition of “disciplinary proceedings” in section 87(5) of the 1996 Act (guidance concerning disciplinary proceedings etc.)(12);

(6) See section 101(1) of the Police Act 1996 for the definition of local policing body.

(7) Section 29(2) was amended by paragraph 6 of Schedule 4 to the Policing and Crime Act 2017.

(8) Section 12(1) to (1B) was substituted for section 12(1) by section 14(2) of the Policing and Crime Act 2017.

(9) Section 12(2) was amended by section 2(3)(a) of the Police (Complaints and Conduct) Act 2012 (c.22) and paragraph 8(6) (a) of Schedule 14 to the Police Reform and Social Responsibility Act 2011.

(10) Section 9 of the 2002 Act established a body corporate known as the Independent Police Complaints Commission (IPCC). Section 9 was amended by section 33(2) and (4) of the Policing and Crime Act 2017 to provide that the body corporate known as the IPCC would continue to exist and would be known instead as the Independent Office for Police Conduct (IOPC). There are further amendments to section 9 but none are relevant.

(11) S.I. 2020/1.

(12) Section 87(5) of the 1996 Act provides that for the purposes of section 87 “disciplinary proceedings” in relation to a member (or former member) of a police force or a special constable (or former special constable) means any proceedings under regulations under section 50 or 51 that are identified as disciplinary proceedings by those regulations.

(ii) paragraph (a) of the definition of “disciplinary proceedings” in section 29(1) of the 2002 Act (interpretation of Part 2)(13);

(iii) section 36(2) of the 2002 Act (conduct of disciplinary proceedings)(14);

“document” means anything in which information of any description is recorded;

“gross misconduct” means a breach of the Standards of Professional Behaviour that is so serious as to justify dismissal;

“harm test” has the meaning given to it in regulation 6;

“HMCIC” means Her Majesty’s Chief Inspector of Constabulary appointed under section 54(1) of the 1996 Act (appointment and functions of inspectors of constabulary);

“human resources professional” means a police officer or police staff member who has specific responsibility for personnel matters relating to members of a police force;

“informant” means a person who provides information to an investigation on the basis that the person’s identity is not disclosed during the course of the disciplinary proceedings;

“interested party” means a person whose appointment could reasonably give rise to a concern as to whether the person could act impartially under these Regulations;

“interested person” means a person who has an interest in being kept properly informed about the handling of a complaint or conduct matter in accordance with section 21 of the 2002 Act (duty to provide information for other persons)(15);

“investigator” means a person—

(a) appointed under regulation 15, or

(b) appointed or designated under paragraph 16, 18 or 19 of Schedule 3 to the 2002 Act (investigations)(16), as the case may be;

“line manager” means the police officer or the police staff member who has immediate supervisory responsibility for the officer concerned;

“misconduct”, other than in regulation 23(2)(a) and the first reference to “misconduct” in regulation 23(2)(b), means a breach of the Standards of Professional Behaviour that is so serious as to justify disciplinary action;

“misconduct hearing” means a hearing to which the officer concerned has been referred under regulation 23 to determine whether the conduct of the officer amounts to misconduct or gross misconduct or neither and whether disciplinary action should be imposed;

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(13) Section 29(1) of the 2002 Act provides that for the purposes of Part 2 of that Act “disciplinary proceedings” in relation to a member of a police force or a special constable means proceedings under any regulations made by virtue of section 50 or 51 of the 1996 Act and identified as disciplinary proceedings by those regulations (paragraph (a) of the definition of “disciplinary proceedings”). There are amendments to section 29(1) but none are relevant.

(14) Section 36(2) of the 2002 Act provides that in section 36 “disciplinary proceedings” means any proceedings under any regulations made under section 50 or, as the case may be, section 51 of the 1996 Act which are identified as disciplinary proceedings by those regulations.

(15) Section 21 was amended by paragraphs 1 and 7 of Schedule 12 to the Serious Organised Crime and Police Act 2005 (c. 15), section 15 of the Policing and Crime Act 2017 and paragraphs 1 and 4 of Schedule 4 to, paragraph 47(d) of Schedule 5 to, and paragraphs 15 and 27 of Schedule 9 to that Act.

(16) Paragraph 16 was amended by paragraphs 11 and 14 of Schedule 12 to the Serious Organised Crime and Police Act 2005, paragraphs 1, 11 and 12 of Schedule 14 to the Police Reform and Social Responsibility Act 2011, paragraphs 8 and 17 of Schedule 6 to the Crime and Courts Act 2013 (c. 22) and paragraphs 9 and 16 of Schedule 5 to the Policing and Crime Act 2017; paragraph 18 was amended by paragraphs 1, 11 and 16 of Schedule 12 to the Serious Organised Crime and Police Act 2005 and by paragraphs 9, 15, 18 and 19 of Schedule 5 to the Policing and Crime Act 2017; paragraph 19 was amended by paragraphs 1, 11 and 17 of Schedule 12 to the Serious Organised Crime and Police Act 2005 and paragraphs 9, 15, 20 and 56 of Schedule 9 to the Policing and Crime Act 2017. There are further amendments to paragraphs 16, 18 and 19 but none are relevant.

“misconduct meeting” means a meeting to which the officer concerned has been referred under regulation 23 to determine whether the conduct of the officer amounts to misconduct or not and whether disciplinary action should be imposed;

“misconduct proceedings” means a misconduct meeting or misconduct hearing;

“officer concerned” means the police officer in relation to whose conduct there has been an allegation;

“originating authority” has the meaning given to it in regulation 26(3);

“personal record” means a personal record kept under regulation 15 of the Police Regulations (contents of personal records)(17);

“police barred list” means the list referred to in section 88B(2) of the 1996 Act (duty to maintain police barred list)(18);

“police force concerned” means—

- (a) the police force of which the officer concerned is a member, or
- (b) where the officer concerned is a special constable, the police force maintained for the police area for which the officer is appointed;

“police friend” means a person chosen by the officer concerned in accordance with regulation 7;

“police officer” means a member of a police force or special constable;

“police staff member” means—

- (a) a member of the civilian staff of a police force, within the meaning of section 102(4) and (6) of the Police Reform and Social Responsibility Act 2011 (interpretation of Part 1), or
- (b) an employee of the Common Council of the City of London who is under the direction and control of a chief officer;

“practice requiring improvement” means underperformance or conduct not amounting to misconduct or gross misconduct, which falls short of the expectations of the public and the police service as set out in the “Code of Ethics” issued by the College of Policing under section 39A of the Police Act 1996 (codes of practice for chief officers)(19);

“pre-commencement allegation” means an allegation against a police officer which came to the attention of a local policing body or a chief officer of police before 1st February 2020;

“proposed witness” means a witness whose attendance at the misconduct proceedings the officer concerned or the appropriate authority, as the case may be, wishes to request of the person conducting or chairing those proceedings;

“reflective practice review process” means the process set out in Part 6;

“relevant lawyer” has the meaning given to it by section 84(4) of the 1996 Act (representation etc. at disciplinary and other proceedings)(20);

“senior officer” means a member of a police force holding a rank above that of chief superintendent;

“severity assessment” has the meaning given to it in regulation 14;

“special conditions” has the meaning given to it in regulation 49;

(17) Regulation 15 was amended by S.I. 2005/2834, 2006/3449 and 2008/2865.

(18) Section 88B was inserted by Schedule 8 to the Policing and Crime Act 2017.

(19) The Code of Ethics (A Code of Practice for the Principles and Standards of Professional Behaviour for the Policing Profession of England and Wales), July 2014. This publication is available for download at: <http://www.college.police.uk/en/20989.htm>. A copy of this publication can be obtained from the College of Policing. Section 39A was inserted by section 2 of the 2002 Act and was amended by paragraphs 1 and 30 of Schedule 16 to the Police Reform and Social Responsibility Act 2011 and section 124 of the Anti-social Behaviour, Crime and Policing Act 2014.

(20) Section 84(4) of the 1996 Act was amended but none of the amendments are relevant.

“staff association” means—

- (a) in relation to a member of a police force of the rank of chief inspector or below, the Police Federation of England and Wales;
- (b) in relation to a member of a police force of the rank of superintendent or chief superintendent, the Police Superintendents’ Association, and
- (c) in relation to a member of a police force who is a senior officer, the Chief Police Officers’ Staff Association;

“Standards of Professional Behaviour” has the meaning given in regulation 5 and references in these Regulations to the Standards of Professional Behaviour are to be construed accordingly<sup>(21)</sup>;

“working day” means any day other than—

- (a) a Saturday or Sunday;
- (b) Christmas Day or Good Friday, or
- (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971<sup>(22)</sup> in England and Wales.

(2) In these Regulations—

- (a) a reference to an officer other than a senior officer includes a reference to a special constable, regardless of the officer’s level of seniority;
- (b) a reference to a copy of a statement, where it was not made in writing, is to be construed as a reference to a copy of an account of that statement.

(3) Where the appropriate authority is a chief officer of police, the chief officer may, subject to paragraph (4), delegate any functions under these Regulations to a—

- (a) member of a police force of at least the rank of inspector, or
- (b) police staff member who, in the opinion of the chief officer, is of at least a similar level of seniority to an inspector.

(4) Where the appropriate authority delegates its functions under regulation 11 or 49, the following decisions must be authorised by a senior officer—

- (a) a decision under regulation 11 to suspend an officer or to continue or end such a suspension;
- (b) a decision under regulation 49 as to whether to certify a case as one where the special conditions are satisfied.

(5) For the purposes of these Regulations, the making of a protected disclosure by a police officer is not a breach of the Standards of Professional Behaviour.

(6) In paragraph (5), “protected disclosure” has the meaning given by section 43A of the Employment Rights Act 1996 (meaning of protected disclosure)<sup>(23)</sup>.

### **Revocations and transitional provisions**

3.—(1) Subject to paragraph (2), the following are revoked—

- (a) the Police (Conduct) Regulations 2012<sup>(24)</sup> (“the 2012 Regulations”);

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(21) Paragraph 29 of Schedule 3 to the 2002 Act provides that, for the purposes of Part 3 of that Schedule, the Standards of Professional Behaviour are the standards described in and established by regulations made by the Secretary of State.

(22) 1971 c. 80.

(23) 1996 c. 18. Section 43A was inserted by section 1 of the Public Interest Disclosure Act 1998 (c. 23).

(24) S.I. 2012/2632, amended by S.I. 2014/3347, 2015/626, 2017/1134 and 2017/1250.

- (b) the Police (Conduct) (Amendment) Regulations 2014<sup>(25)</sup>;
- (c) the Police (Conduct) (Amendment) Regulations 2015<sup>(26)</sup>;
- (d) the following provisions of the Police (Conduct, Complaints and Misconduct and Appeal Tribunal) (Amendment) Regulations 2017<sup>(27)</sup>—
  - (i) regulation 1 in so far as it applies to the 2012 Regulations;
  - (ii) regulation 2(1) and (3) (transitional provision);
  - (iii) Part 2 (amendment of the 2012 Regulations);
  - (iv) Schedule 1 (modifications to the 2012 Regulations).

(2) Subject to regulation 4(7), the Regulations and provisions mentioned in paragraph (1) and regulations 2(1) and 10(1)(a) of the Police Barred List and Police Advisory List Regulations 2017<sup>(28)</sup> as in force immediately before these Regulations come into force continue to have effect in relation to—

- (a) a pre-commencement allegation;
- (b) an allegation against a police officer which comes to the attention of a local policing body or a chief officer of police on or after 1st February 2020 and which relates to a matter in respect of which a pre-commencement allegation against that person was made, if at the time the allegation is made the pre-commencement allegation is being handled in accordance with—
  - (i) any of the Regulations and provisions in paragraph (1), or
  - (ii) Part 2 of the 2002 Act.

### Application

4.—(1) Subject to paragraph (6), these Regulations apply where an allegation comes to the attention of an appropriate authority which indicates that the conduct of a police officer may amount to misconduct, gross misconduct or practice requiring improvement.

(2) Except as set out in paragraph (8), these Regulations also apply, with the modifications set out in Schedule 1, where—

- (a) an allegation comes to the attention of a relevant body which indicates that the conduct of a person who at the time of the alleged conduct was a police officer (“P”) may amount to gross misconduct<sup>(29)</sup>, and
- (b) condition A, B or C is satisfied.

(3) Condition A is that P ceased to be a police officer after the allegation first came to the attention of a relevant body.

(4) Condition B is that—

- (a) P ceased to be a police officer before the allegation first came to the attention of a relevant body, and

<sup>(25)</sup> S.I. 2014/3347.

<sup>(26)</sup> S.I. 2015/626.

<sup>(27)</sup> S.I. 2017/1134.

<sup>(28)</sup> S.I. 2017/1135.

<sup>(29)</sup> Section 29(7)(b) of the Policing and Crime Act 2017 provides that regulations made under section 50(1A) and 51(2B) of the 1996 Act, as inserted by section 29(2) and (3) of the Policing and Crime Act 2017, may, in respect of a person who ceased to be a police officer after section 29(2) and (3) of the 2017 Act came into force but whose alleged misconduct, inefficiency or ineffectiveness took place before that date, only make provision if the alleged misconduct, inefficiency or ineffectiveness is such that if proved there could be a finding in disciplinary proceedings that the person would have been dismissed had they still been a police officer. Where there is an indication that the person’s conduct amounts to gross misconduct, the person will be at risk of dismissal if the allegation is proved.

(b) the period between the date P ceased to be a police officer and the date the allegation first came to the attention of the relevant body did not exceed 12 months.

(5) Condition C is that—

(a) P ceased to be a police officer before the allegation first came to the attention of a relevant body;

(b) the period between the date P ceased be a police officer and the date the allegation first came to the attention of the relevant body exceeded 12 months, and

(c) the Director General makes a Condition C special determination under Part 1A of these Regulations (as inserted by way of modification of these Regulations by paragraph (2) and Schedule 1) that taking disciplinary proceedings against P in respect of the alleged gross misconduct would be reasonable and proportionate.

(6) Subject to paragraph (7), these Regulations do not apply in relation to—

(a) a pre-commencement allegation, or

(b) an allegation against a police officer which comes to the attention of a local policing body or a chief officer of police on or after 1st February 2020 and which relates to a matter in respect of which a pre-commencement allegation against that person was made, if at the time the allegation is made the pre-commencement allegation is being handled in accordance with—

(i) any of the Regulations and provisions in regulation 3(1), or

(ii) Part 2 of the 2002 Act.

(7) Where the Director General—

(a) determines, under section 13B of the 2002 Act (power of the Director General to require re-investigation)**(30)** that a complaint or matter is to be re-investigated, or

(b) makes a direction under section 28A(1) or (4) of the 2002 Act (application of Part 2 to old cases)**(31)** in relation to a matter on or after 1st February 2020,

these Regulations apply regardless of when the complaint or matter came to the attention of the appropriate authority.

(8) Paragraph (2) does not apply if—

(a) it relates to a person who ceased to be a police officer before 15th December 2017**(32)**; or

(b) the disciplinary proceedings would not be the first disciplinary proceedings to be taken against P in respect of the alleged gross misconduct unless they result from a re-investigation of the allegation (whether carried out under these Regulations or under the 2002 Act) that begins not later than 12 months after the date on which P ceased to be a police officer.

(9) Where an appropriate authority is considering more than one allegation in relation to the same police officer, or person in relation to whom these Regulations apply by virtue of paragraph (2), the allegations may be taken together and treated as a single allegation for the purposes of any provision of these Regulations which requires a person to make an assessment, finding, determination or decision in connection with conduct which is the subject matter of an allegation.

(10) In this regulation, “relevant body” means—

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**(30)** Section 13B was inserted by section 18(1) of the Policing and Crime Act 2017 and amended by paragraphs 15 and 20 of Schedule 9 to that Act.

**(31)** Section 28A was inserted by section 2(1) and (2) of the Police (Complaints and Conduct) Act 2012 and amended by paragraphs 15 and 39 of Schedule 9 to the Policing and Crime Act 2017.

**(32)** Section 29(7)(a) of the Policing and Crime Act 2017 provides that regulations made under section 50(1A) and 51(2B) of the 1996 Act, as inserted by section 29(2) and (3) of the 2017 Act, may not make provision in relation to a person who ceases to be a police officer (within the meaning of these Regulations) before the coming into force of section 29(2) and (3) of the 2017 Act.

- (a) a chief officer of police;
- (b) a local policing body, or
- (c) the Director General.