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STATUTORY INSTRUMENTS

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**1995 No. 2993 (N.I. 17)**

**The Police (Amendment) (Northern Ireland) Order 1995**

- - - - - 23rd November 1995

**PART I**

**Introductory**

**Title and commencement**

1.—(1) This Order may be cited as the Police (Amendment) (Northern Ireland) Order 1995.

(2) This Order shall come into operation on such day or days as the Secretary of State may by order appoint<sup>F1</sup>.

(3) An order under paragraph (2) may make such transitional provisions and savings as appear to the Secretary of State to be necessary or expedient in connection with any provision brought into operation by the order.

**F1** partly exercised by SR 1996/316

**Interpretation**

2.—(1) The Interpretation Act (Northern Ireland) 1954<sup>F2</sup> shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

*Definition rep by 1998 c. 32*

<sup>F3</sup>“the 1987 Order” means the Police (Northern Ireland) Order 1987<sup>F4</sup>;

“the 1989 Order” means the Police and Criminal Evidence (Northern Ireland) Order 1989<sup>F5</sup>.

**F2** 1954 c. 33 (NI)

**F3** prosp. rep. by 1998 c. 32

**F4** 1987 NI 10

**F5** 1989 NI 12

## PART II

### Police Powers

#### **Application of 1989 Order to persons taken to police station from custodial establishments.**

3.—(1) In Article 2(3) of the 1989 Order (circumstances in which a person is in police detention for the purpose of that Order) after sub-paragraph (b) there shall be added “or

(c) he is arrested at a police station after being taken to the station in pursuance of a direction under section 16 of the Prison Act (Northern Ireland) 1953.”.

(2) Article 31 of the 1989 Order shall be renumbered as paragraph (1) of that Article and at the end of that Article there shall be added the following paragraph—

“(2) Where—

(a) a person is taken to a police station in pursuance of a direction under section 16 of the Prison Act (Northern Ireland) 1953; and

(b) while he is there it appears to a constable that he is liable to arrest for an offence, he shall be arrested for that offence.”.

(3) In Article 35 of the 1989 Order in paragraph (2) for the words “paragraph (4)” there shall be substituted the words “paragraphs (4) and (4A)” and after paragraph (4) there shall be inserted the following paragraph—

“(4A) Nothing in this Part requires the release of a person who was arrested after being taken to a police station from a custodial establishment in pursuance of a direction under section 16 of the Prison Act (Northern Ireland) 1953 and this Part shall have effect in relation to such a person as if references to a person being released (either on bail or without bail) were references to a person being returned to the custody of the governor of the custodial establishment from which he was taken to the police station.”.

(4) In Article 42(2)(b) of the 1989 Order after head (ii) there shall be inserted “or

(iii) is taken to a police station in pursuance of a direction under section 16 of the Prison Act (Northern Ireland) 1953;”.

#### **Entry to arrest a person unlawfully at large**

4. In Article 19(1) of the 1989 Order (entry for purpose of arrest) after sub-paragraph (c) there shall be inserted the following sub-paragraphs—

“(ca) of recapturing a person who is, or is deemed for any purpose to be, unlawfully at large while liable to be detained in a prison, young offenders centre, training school, remand centre or remand home or in any other place in pursuance of section 73 of the Children and Young Persons Act (Northern Ireland) 1968;

(cb) of arresting a person in pursuance of section 49(1) of the Prison Act 1952 or section 40(1) of the Prisons (Scotland) Act 1989;”.

#### **Extension of powers to search persons' mouths**

5.—(1) In Article 34 of the 1989 Order (powers of search upon arrest) in paragraph (4), at the end, there shall be added the words “but they do authorise a search of a person's mouth”.

(2) In Article 53 of the 1989 Order (interpretation) after the definition of “intimate sample” there shall be inserted the following definition—

““intimate search” means a search which consists of the physical examination of a person's body orifices other than the mouth;”.

### Police detention after charge

6.—(1) Article 39 of the 1989 Order (which requires an arrested person charged with an offence to be released except in specified circumstances) shall be amended as follows.

(2) In paragraph (1)(a) after head (i) there shall be inserted the following head—

“(ia) in the case of a person arrested for an imprisonable offence, the custody officer has reasonable grounds for believing that the detention of the person arrested is necessary to prevent him from committing an offence;”.

(3) After paragraph (1) there shall be inserted the following paragraph

“(1A) In paragraph (1) “imprisonable offence” means an offence for which a person over the age of 21 years is liable, on first conviction, to a term of imprisonment.”.

### Power for police to arrest for failure to answer police bail

7.—(1) After Article 47 of the 1989 Order there shall be inserted the following Article—

#### “Power of arrest for failure to answer to police bail

47A.—(1) A constable may arrest without a warrant any person who, having been released on bail under this Part subject to a duty to attend at a police station, fails to attend at that police station at the time appointed for him to do so.

(2) A person who is arrested under this Article shall be taken to the police station appointed as the place at which he is to surrender to custody as soon as practicable after the arrest.

(3) For the purposes of—

(a) Article 32 (subject to the obligation in paragraph (2), and

(b) Article 33,

an arrest under this Article shall be treated as an arrest for an offence.”.

<sup>F6</sup>(2) In Article 35 of the 1989 Order (limitations on police detention) after paragraph (7) there shall be added the following paragraph—

“(8) For the purposes of this Part a person who returns to a police station to answer to bail or is arrested under Article 47A shall be treated as arrested for an offence and the offence in connection with which he was granted bail shall be deemed to be that offence.”.

(3) In consequence of the foregoing amendments the 1989 Order shall be amended as follows—

(a) in Article 38(1), sub-paragraph (b) shall be omitted;

(b) in Articles 42(7), 43(10) and 44(18), at the end, there shall be inserted the words “; but this paragraph does not prevent an arrest under Article 47A.”; and

(c) in Article 48(11), at the end, there shall be inserted the words “; but this paragraph does not apply to a person who is arrested under Article 47A or has attended a police station in accordance with the grant of bail (and who accordingly is deemed by Article 35(8) to have been arrested for an offence).”.

(4) This Article applies whether the person released on bail was granted bail before or after the coming into operation of this Article.

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**Samples: intimate and non-intimate, etc.**

8.—(1) Article 53 of the 1989 Order (which contains definitions of intimate and non-intimate samples and other relevant definitions) shall be amended as follows.

(2) For the definition of “intimate sample” there shall be substituted—

““intimate sample” means—

- (a) a sample of blood, semen or any other tissue fluid, urine or pubic hair;
- (b) a dental impression;
- (c) a swab taken from a person's body orifice other than the mouth;”.

(3) For the definition of “non-intimate sample” there shall be substituted—

““non-intimate sample” means—

- (a) a sample of hair other than pubic hair;
- (b) a sample taken from a nail or from under a nail;
- (c) a swab taken from any part of a person's body including the mouth but not any other body orifice;
- (d) saliva;
- (e) a footprint or a similar impression of any part of a person's body other than a part of his hand;”.

(4) After the definition of “non-intimate sample” there shall be inserted the following definitions—

““registered dentist” has the same meaning as in the Dentists Act 1984;

“speculative search”, in relation to a person's fingerprints or samples, means such a check against other fingerprints or samples or against information derived from other samples as is referred to in Article 63A(1);

“sufficient” and “insufficient”, in relation to a sample, means sufficient or insufficient (in point of quantity or quality) for the purpose of enabling information to be produced by the means of analysis used or to be used in relation to the sample.”.

**Fingerprinting**

9.—(1) Article 61 of the 1989 Order (which regulates the taking of fingerprints) shall be amended as follows.

(2) After paragraph (7) there shall be inserted the following paragraph—

“(7A) If a person's fingerprints are taken at a police station, whether with or without the appropriate consent—

- (a) before the fingerprints are taken, an officer shall inform him that they may be the subject of a speculative search; and
- (b) the fact that the person has been informed of this possibility shall be recorded as soon as is practicable after the fingerprints have been taken.”

(3) In paragraph (8), after the word “them” there shall be inserted the words “and, in the case falling within paragraph (7A), the fact referred to in sub-paragraph (b) of that paragraph”.

*Para. (4) rep. by 1996 c.22*

## **Powers of police to take intimate body samples**

**10.**—(1) Article 62 of the 1989 Order (regulation of taking of intimate samples) shall be amended as follows.

(2) After paragraph (1) there shall be inserted the following paragraph—

“(1A) An intimate sample may be taken from a person who is not in police detention but from whom, in the course of the investigation of an offence, two or more non-intimate samples suitable for the same means of analysis have been taken which have proved insufficient—

- (a) if a police officer of at least the rank of superintendent authorises it to be taken; and
- (b) if the appropriate consent is given.”.

(3) In paragraph (2)—

- (a) after the word “authorisation” there shall be inserted the words “under paragraph (1) or (1A)”; and
- (b) in sub-paragraph (a), for the words “serious arrestable offence” there shall be substituted the words “recordable offence”.

(4) In paragraph (3), after the words “paragraph (1)” there shall be inserted the words “or (1A)”.

(5) After paragraph (7) there shall be inserted the following paragraph—

“(7A) If an intimate sample is taken from a person at a police station—

- (a) before the sample is taken, an officer shall inform him that it may be the subject of a speculative search; and
- (b) the fact that the person has been informed of this possibility shall be recorded as soon as practicable after the sample has been taken.”.

(6) In paragraph (8) after the words “paragraph (7)” there shall be inserted the words “or (7A)”.

(7) In paragraph (9)—

- (a) after the word “urine” there shall be inserted the words “or a dental impression”; and
- (b) at the end there shall be inserted the words “and a dental impression may only be taken by a registered dentist”.

*Para. (8) rep. by 2000 c. 11*

## **Powers of police to take non-intimate body samples**

**11.**—(1) Articles 63 of the 1989 Order (regulation of taking of non-intimate samples) shall be amended as follows.

(2) After paragraph (3), there shall be inserted the following paragraphs—

“(3A) A non-intimate sample may be taken from a person (whether or not he falls within paragraph (3)(a)) without the appropriate consent if—

- (a) he has been charged with a recordable offence or informed that he will be reported for such an offence; and
- (b) either he has not had a non-intimate sample taken from him in the course of the investigation of the offence by the police or he has had a non-intimate sample taken from him but either it was not suitable for the same means of analysis or, though so suitable, the sample proved insufficient.

(3B) A non-intimate sample may be taken from a person without the appropriate consent if he has been convicted of a recordable offence.”.

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(3) In paragraph (4), in sub-paragraph (a), for the words “serious arrestable offence” there shall be substituted the words “recordable offence”.

(4) After paragraph (8), there shall be inserted the following paragraphs—

“(8A) In a case where by virtue of paragraph (3A) or (3B) a sample is taken from a person without the appropriate consent—

- (a) he shall be told the reason before the sample is taken; and
- (b) the reason shall be recorded as soon as practicable after the sample is taken.

(8B) If a non-intimate sample is taken from a person at a police station, whether with or without the appropriate consent—

- (a) before the sample is taken, an officer shall inform him that it may be the subject of a speculative search; and
- (b) the fact that the person has been informed of this possibility shall be recorded as soon as practicable after the sample has been taken.”

(5) In paragraph (9), after the words “paragraph (8)” there shall be inserted the words. “(8A) or (8B)”.

(6) For paragraph (10) there shall be substituted the following paragraph—

“(10) Paragraph (3B) shall not apply to persons convicted before the date on which that paragraph comes into operation.”.

*Para. (7) rep. by 2000 c. 11*

### **Fingerprints and samples: supplementary provisions**

12. The following Article shall be inserted after Article 63 of the 1989 Order—

#### **“Fingerprints and samples: supplementary provisions**

**63A.**—(1) Fingerprints or samples or the information derived from samples taken under any power conferred by this Part from a person who has been arrested on suspicion of being involved in a recordable offence may be checked against other fingerprints or samples or the information derived from other samples contained in records held by or on behalf of the police or held in connection with or as a result of an investigation of an offence.

(2) Where a sample of hair other than pubic hair is to be taken the sample may be taken either by cutting hairs or by plucking hairs with their roots so long as no more are plucked than the person taking the sample reasonably considers to be necessary for a sufficient sample.

(3) Where any power to take a sample is exercisable in relation to a person the sample may be taken in a custodial establishment.

(4) Any constable may, within the allowed period, require a person who is neither in police detention nor held in custody by the police on the authority of a court to attend a police station in order to have a sample taken where—

- (a) the person has been charged with a recordable offence or informed that he will be reported for such an offence and either he has not had a sample taken from him in the course of the investigation of the offence by the police or he has had a sample so taken from him but either it was not suitable for the same means of analysis or, though so suitable, the sample proved insufficient, or
- (b) the person has been convicted of a recordable offence and either he has not had a sample taken from him since the conviction or he has had a sample taken from

him (before or after his conviction) but either it was not suitable for the same means of analysis or, though so suitable, the sample proved insufficient.

(5) The period allowed for requiring a person to attend a police station for the purpose specified in paragraph (4) is—

- (a) in the case of a person falling within sub-paragraph (a), one month beginning with the date of the charge or one month beginning with the date on which the appropriate officer is informed of the fact that the sample is not suitable for the same means of analysis or has proved insufficient, as the case may be;
- (b) in the case of a person falling within sub-paragraph (b), one month beginning with the date of the conviction or one month beginning with the date on which the appropriate officer is informed of the fact that the sample is not suitable for the same means of analysis or has proved insufficient, as the case may be.

(6) A requirement under paragraph (4)—

- (a) shall give the person at least 7 days within which he must so attend; and
- (b) may direct him to attend at a specified time of day or between specified times of day.

(7) Any constable may arrest without a warrant a person who has failed to comply with a requirement under paragraph (4).

(8) In this Article “the appropriate officer” is—

- (a) in the case of a person falling within paragraph (4)(a), the officer investigating the offence with which that person has been charged or as to which he was informed that he would be reported;
- (b) in the case of a person falling within paragraph (4)(b), the officer in charge of the police station from which the investigation of the offence of which he was convicted was conducted.”.

### **Retention of samples in certain cases**

**13.**—(1) Article 64 of the 1989 Order (which prescribes the situations in which fingerprints and samples must be destroyed) shall be amended as follows.

(2) In paragraphs (1), (2) and (3), after the words “they must” there shall be inserted the words “, except as provided in paragraph (3A),”.

(3) After paragraph (3), there shall be inserted the following paragraphs—

“(3A) Samples which are required to be destroyed under paragraph (1), (2) or (3) need not be destroyed if they were taken for the purpose of the same investigation of an offence of which a person from whom one was taken has been convicted, but the information derived from the sample of any person entitled (apart from this paragraph) to its destruction under paragraph (1), (2) or (3) shall not be used—

- (a) in evidence against the person so entitled; or
- (b) for the purposes of any investigation of an offence.

(3B) Where samples are required to be destroyed under paragraph (1), (2) or (3), and paragraph (3A) does not apply, information derived from the sample of any person entitled to its destruction under paragraph (1), (2) or (3) shall not be used—

- (a) in evidence against the person so entitled; or
- (b) for the purposes of any investigation of an offence.”

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## PART IV

### POLICE COMPLAINTS

#### Interpretation of Part IV

- <sup>F7</sup>**16.**—(1) In this Part—
- “the appropriate authority” means—
- (a) in relation to a senior officer, the Police Authority;
  - (b) in relation to any other member of the police force, the Chief Constable;
- “the Commission” means the Independent Commission for Police Complaints for Northern Ireland established by Article 3 of the 1987 Order;
- “complaint” means any complaint about the conduct of a member of the police force which is submitted by, or on behalf of, a member of the public;
- “complainant” means the person by or on behalf of whom a complaint is submitted;
- “disciplinary proceedings” means—
- (a) in relation to a member of the Royal Ulster Constabulary, proceedings identified as such by regulations under section 25 of the principal Act;
  - (b) in relation to a reserve constable, proceedings identified as such by regulations under section 26 of the principal Act;
- “prescribed” means prescribed by regulations made by the Secretary of State.
- (2) Any word or expression given a meaning for the purposes of the principal Act has the same meaning in this Part as in that Act.

**F7** prosp. rep. by [1998 c. 32](#)

#### Preliminary handling of complaints by Chief Constable

- <sup>F8</sup>**17.**—(1) Where a complaint is submitted to the Chief Constable, it shall be his duty to take any steps that appear to him to be desirable for the purpose of obtaining or preserving evidence relating to the conduct complained of.
- (2) After performing the duties imposed on him by paragraph (1), the Chief Constable shall determine whether he is the appropriate authority in relation to the member of the police force against whom the complaint was made.
- (3) If he determines that he is not the appropriate authority, it shall be his duty
- (a) to send the complaint or, if it was made orally, particulars of it, to the Police Authority; and
  - (b) to give notice that he has done so to the complainant.
- (4) Nothing in this Part has effect in relation to a complaint in so far as it relates to the direction or control of the police force by the Chief Constable.
- (5) If any conduct to which a complaint wholly or partly relates is or has been the subject of criminal or disciplinary proceedings, none of the provisions of this Part which relate to the recording and investigation of complaints have effect in relation to the complaint in so far as it relates to that conduct.

**F8** prosp. rep. by [1998 c. 32](#)



### Investigation of complaints against officers, other than senior officers

<sup>F9</sup>18.—(1) If the chief Constable determines that he is the appropriate authority in relation to a member of the police force about whose conduct a complaint has been made and who is not a senior officer, he shall—

- (a) record the complaint; and
- (b) refer the complaint to the Commission not later than the end of such period as may be prescribed.

(2) After recording the complaint under paragraph (1)(a) the Chief Constable shall consider whether the complaint is suitable for informal resolution and may appoint a member of the police force to assist him.

(3) If it appears to the Chief Constable that the complaint is not suitable for informal resolution, he shall appoint a member of the police force or a member of another United Kingdom police force to investigate it formally.

(4) If it appears to him that it is suitable for informal resolution, he shall seek to resolve it informally and may appoint a member of the police force to do so on his behalf.

(5) If it appears to the Chief Constable, after attempts have been made to resolve a complaint informally—

- (a) that informal resolution of the complaint is impossible; or
- (b) that the complaint is for any other reason not suitable for informal resolution,

he shall appoint a member of the police force or a member of another United Kingdom police force to investigate it formally.

(6) A member of the police force may not be appointed to investigate a complaint formally if he has previously been appointed to act in relation to it under paragraph (4).

(7) Unless an investigation under this Article is supervised by the Commission under Article 21, the person appointed under paragraph (3) or (5) shall submit his report on the investigation to the Chief Constable.

(8) A complaint is not suitable for informal resolution unless—

- (a) the complainant gives his consent; and
- (b) the Chief Constable is satisfied that the conduct complained of, even if proved, would not justify criminal or disciplinary proceedings.

**F9** prosp. rep. by [1998 c. 32](#)

### Investigation of complaints against senior officers

<sup>F10</sup>19.—(1) Where a complaint about the conduct of a senior officer—

- (a) is submitted to the Police Authority; or
- (b) is sent to the Police Authority under Article 17(3),

it shall be the Authority's duty—

- (i) to record the complaint;
- (ii) to refer the complaint to the Commission not later than the end of such period as may be prescribed; and
- (iii) subject to paragraph (2), to investigate it.

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(2) The Police Authority may deal with the complaint according to the Authority's discretion, if satisfied that the conduct complained of, even if proved, would not justify criminal or disciplinary proceedings.

(3) In any other case the Police Authority shall appoint a member of the police force or a member of another United Kingdom police force to investigate the complaint.

(4) The Chief Constable shall provide a member of the police force to be appointed, if a request is made to him for one to be appointed under paragraph (3).

(5) No member of the police force may be appointed under paragraph (3) unless he is of at least the rank of the member against whom the complaint is made.

(6) Unless an investigation under this Article is supervised by the Commission under Article 21, the person appointed under paragraph (3) shall submit his report on the investigation to the Police Authority.

**F10** prosp. rep. by [1998 c. 32](#)

#### Reference of other matters to Commission

**F11**20.—(1) The appropriate authority may refer to the Commission any matter which—

- (a) appears to the appropriate authority to indicate that a member of the police force may have—
  - (i) committed a criminal offence; or
  - (ii) behaved in a manner which would justify disciplinary proceedings; and
- (b) is not the subject of a complaint, if it appears to the appropriate authority that it ought to be referred by reason
  - (i) of its gravity; or
  - (ii) of exceptional circumstances.

(2) The appropriate authority shall refer to the Commission any matter which appears to the appropriate authority to indicate that conduct of a member of the police force may have resulted in the death of some other person.

(3) The Secretary of State or the Police Authority may refer to the Commission any matter which—

- (a) appears to the Secretary of State or the Authority to indicate that a member of the police force may have—
  - (i) committed a criminal offence; or
  - (ii) behaved in a manner which would justify disciplinary proceedings; and
- (b) is not the subject of a complaint, if it appears to the Secretary of State or the Authority that it is desirable in the public interest that the Commission should supervise the investigation of the matter.

(4) The Commission may draw to the attention of the Secretary of State any matter in relation to which it appears to the Commission to be appropriate for the Secretary of State to exercise his powers under paragraph (3).

**F11** prosp. rep. by [1998 c. 32](#)

## Supervision of investigations by Commission

<sup>F12</sup>**21.**—(1) Subject to any regulations made under Article 29(2)(f), the Commission shall supervise the investigation—

- (a) of any complaint alleging that the conduct of a member of the police force resulted in the death of or serious injury to some other person; and
- (b) of any other description of complaint prescribed for the purposes of this Article;

and in sub-paragraph (a) “serious injury” means a fracture, damage to an internal organ, impairment of bodily function, a deep cut or a deep laceration.

(2) Subject to any regulations made under Article 29(2)(f), the Commission shall supervise the investigation of any matter referred to it under Article 20(3) if required to do so by the Secretary of State or the Police Authority.

(3) The Commission may supervise the investigation—

- (a) of any complaint the investigation of which it is not required to supervise under paragraph (1); and
- (b) of any matter referred to it under Article 20(1) or (2),

if the Commission considers that it is desirable in the public interest that it should supervise that investigation.

(4) Where the Commission decides to supervise an investigation under paragraph (3), it shall be the duty of the Commission to notify the appropriate authority to that effect.

(5) Where an investigation is to be supervised by the Commission it may require—

- (a) that not appointment of a person to conduct the investigation shall be made unless the Commission has given notice to the appropriate authority that it approves the person whom that authority proposes to appoint; or
- (b) if such an appointment has already been made and the Commission is not satisfied with the person appointed that—
  - (i) the appropriate authority shall, as soon as is reasonably practicable, select another member of the police force or member of another United Kingdom police force and notify the Commission that it proposes to appoint him; and
  - (ii) the appointment shall not be made unless the Commission gives notice to the appropriate authority that it approves that person.

(6) It shall be the duty of the Secretary of State by regulations to provide that the Commission shall have power, subject to any prescribed restrictions or conditions, to impose requirements as to a particular investigation additional to any requirements imposed by virtue of paragraph (5); and it shall be the duty of a member of the police force or a member of another United Kingdom police force to comply with any requirement imposed on him by virtue of the regulations.

(7) At the end of an investigation which the Commission has supervised the person appointed to conduct the investigation—

- (a) shall submit a report on the investigation to the Commission; and
- (b) shall send a copy to the appropriate authority.

(8) After considering a report submitted to it under paragraph (7), the Commission shall submit to the appropriate authority a statement—

- (a) whether the investigation was or was not conducted to the Commission's satisfaction;
- (b) specifying any respect in which it was not so conducted; and
- (c) dealing with any such other matters as the Secretary of State may by regulations prescribe.

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(9) If it is practicable to do so, the Commission, when submitting the statement under paragraph (8), shall send a copy to the member of the police force whose conduct has been investigated.

(10) If—

- (a) the investigation related to a complaint; and
- (b) it is practicable to do so,

the Commission shall also send a copy of the statement under paragraph (8) to the complainant.

(11) The power to issue a statement under paragraph (8) includes power to issue separate statements in respect of the disciplinary and criminal aspects of an investigation.

(12) No disciplinary proceedings shall be brought before the statement under paragraph (8) is submitted to the appropriate authority.

(13) Subject to paragraph (14), neither the appropriate authority nor the Director of Public Prosecutions for Northern Ireland shall bring criminal proceedings before the statement under paragraph (8) is submitted to the appropriate authority.

(14) The restriction imposed by paragraph (13) does not apply if it appears to the Director that there are exceptional circumstances which make it undesirable to wait for the submission of the statement under paragraph (8).

**F12** prosp. rep. by [1998 c. 32](#)

### Steps to be taken after investigation

<sup>F13</sup>**22.**—(1) It shall be the duty of the Police Authority, on receiving—

- (a) a report concerning the conduct of a senior officer which is submitted to it under Article 19(6); or
- (b) a copy of a report concerning the conduct of a senior officer which is sent to it under Article 21(7),

to send a copy of the report to the Director of Public Prosecutions for Northern Ireland unless the report satisfies the Authority that no criminal offence has been committed.

(2) Nothing in the following provisions of this Article or in Article 23 or 24 has effect in relation to senior officers.

(3) On receiving—

- (a) a report concerning the conduct of an officer who is not a senior officer which is submitted to him under Article 18(7); or
- (b) a copy of a report concerning the conduct of such an officer which is sent to him under Article 21(7),

it shall be the duty of the Chief Constable—

- (i) to determine whether the report indicates that a criminal offence may have been committed by a member of the police force; and
- (ii) if he determines that it does, to consider whether the offence indicated is such that the member of the police force ought to be charged with it.

(4) If the Chief Constable—

- (a) determines that the report does indicate that a criminal offence may have been committed by a member of the police force; and
- (b) considers that the offence indicated is such that the officer ought to be charged with it,

he shall send a copy of the report to the Director of Public Prosecutions for Northern Ireland.

(5) Except in such cases as may be prescribed, after the Director has dealt with the question of criminal proceedings, the Chief Constable shall send the Commission a memorandum, signed by him and stating whether he has brought (or proposes to bring) disciplinary proceedings in respect of the conduct which was the subject of the investigation and, if not, giving his reasons.

(6) Except in such cases as may be prescribed, if the Chief Constable—

(a) determines that the report does indicate that a criminal offence may have been committed by a member of the police force; and

(b) considers that the offence indicated is not such that the officer ought to be charged with it,

he shall send the Commission a memorandum to that effect, signed by him and stating whether he has brought (or proposes to bring) disciplinary proceedings in respect of the conduct which was the subject of the investigation and, if not, giving his reasons.

(7) Except in such cases as may be prescribed, if the Chief Constable considers that the report does not indicate that a criminal offence may have been committed by a member of the police force, he shall send the Commission a memorandum to that effect, signed by him and stating whether he has brought (or proposes to bring) disciplinary proceedings in respect of the conduct which was the subject of the investigation and, if not, giving his reasons.

(8) A memorandum under this Article—

(a) shall give the prescribed particulars in relation to any disciplinary proceedings which the Chief Constable has brought or proposes to bring in respect of the conduct which was the subject of the investigation; and

(b) shall state his opinion of the complaint or other matter to which it relates.

(9) Where the investigation—

(a) related to conduct which was the subject of a complaint; and

(b) was not supervised by the Commission,

the Chief Constable shall send the Commission a copy of the report of the investigation at the same time as he sends it the memorandum.

(10) Subject to Article 24(6)—

(a) if the Chief Constable's memorandum states that he proposes to bring disciplinary proceedings, it shall be his duty to bring and proceed with them; and

(b) if such a memorandum states that he has brought such proceedings, it shall be his duty to proceed with them.

**F13** prosp. rep. by [1998 c. 32](#)

### **Powers of Commission to direct reference of reports, etc. to Director of Public Prosecutions**

<sup>F14</sup>**23.**—(1) When the Chief Constable has performed all duties imposed on him by Article 22 in relation to the report of an investigation concerning the conduct of a member of the police force who is not a senior officer, it shall be the duty of the Commission—

(a) to determine whether the report indicates that a criminal offence may have been committed by that member; and

(b) if so, to consider whether the offence is such that the member ought to be charged with it.

(2) If the Commission considers that the member of the police force ought to be charged, it shall be its duty to direct the Chief Constable to send the Director of Public Prosecutions for Northern Ireland a copy of the report.

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(3) When the Commission gives a direction under paragraph (2) it may also direct the Chief Constable to send the Director the information contained in the memorandum under Article 22.

(4) If the investigation was an investigation of a complaint, the Commission shall direct the Chief Constable to send the Director a copy of the complaint or of the record of the complaint.

(5) It shall be the duty of the Chief Constable to comply with any direction under this Article.

(6) Article 22 shall apply where a copy of a report is sent to the Director under this Article as it applies where a copy is sent to him under paragraph (4) of that Article.

**F14** prosp. rep. by [1998 c. 32](#)

### **Powers of Commission as to disciplinary proceedings**

<sup>F15</sup>**24.**—(1) Where a memorandum under Article 22 states that the Chief Constable has not brought disciplinary proceedings or does not propose to do so, the Commission may recommend him to bring such proceedings.

(2) Where the Commission makes a recommendation under paragraph (1), it shall furnish the Chief Constable with a written statement of its reasons for doing so.

(3) Subject to paragraph (6), the Chief Constable may not discontinue disciplinary proceedings that he has brought in accordance with a recommendation under paragraph (1).

(4) If after the Commission has made a recommendation under this Article and consulted the Chief Constable he is still unwilling to bring disciplinary proceedings, it may direct him to do so.

(5) Subject to paragraph (6), it shall be the duty of the Chief Constable to comply with such a direction.

(6) The Commission may give the Chief Constable leave—

- (a) not to bring disciplinary proceedings which Article 22(10) or paragraph (5) would otherwise oblige him to bring; or
- (b) to discontinue disciplinary proceedings with which Article 22(10) or paragraph (3) or (5) would otherwise oblige him to proceed.

(7) The Chief Constable shall—

- (a) advise the Commission of what action he has taken in response to a recommendation or direction under this Article; and
- (b) furnish the Commission with such other information as it may reasonably require for the purpose of discharging its functions under this Article.

**F15** prosp. rep. by [1998 c. 32](#)

### **Information as to manner of dealing with complaints, etc.**

<sup>F16</sup>**25.** The Police Authority in carrying out its duty with respect to the maintenance of an adequate and efficient police force shall keep itself informed as to the working of this Part.

**F16** prosp. rep. by [1998 c. 32](#)

## Constabularies not maintained by Police Authority

**F17**26.—(1) An agreement for the establishment in relation to any body of constables maintained by an authority other than the Police Authority of procedures corresponding or similar to any of those established by or by virtue of this Part may, with the approval of the Secretary of State, be made between the Commission and the authority maintaining the body of constables.

(2) Where no such procedures are in force in relation to any body of constables, the Secretary of State may by order establish such procedures.

(3) An agreement under this Article may at any time be varied or terminated with the approval of the Secretary of State.

(4) Before making an order under this Article the Secretary of State shall consult—

(a) the Commission; and

(b) the authority maintaining the body of constables to whom the order would relate.

(5) Orders made under this Article shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.

(6) Nothing in any other statutory provision shall prevent an authority which maintains a body of constables from carrying into effect procedures established by virtue of this Article.

(7) No such procedures shall have effect in relation to anything done by a constable outside Northern Ireland.

(8) Nothing in this Part affects any procedures established by virtue of Article 16 of the 1987 Order before the coming into operation of this Part.

F17 prosp. rep. by [1998 c. 32](#)

## Reports

**F18**27.—(1) The Commission shall, at the request of the Secretary of State, report to him on such matters relating generally to its functions as the Secretary of State may specify, and the Commission may for that purpose carry out research into any such matters.

(2) The Commission may make a report to the Secretary of State on any matters coming to its notice under this Part to which it considers that his attention should be drawn by reason of their gravity or of other exceptional circumstances; and the Commission shall send a copy of any such report to the Police Authority and to the Chief Constable or, if the report concerns any such body of constables as is mentioned in Article 26, to the authority maintaining it and the officer having the direction and the control of it.

(3) As soon as practicable after the end of each calendar year the Commission shall make to the Secretary of State a report on the discharge of its functions during that year.

(4) The Commission shall keep under review the working of this Part and shall make to the Secretary of State a report on it at least once in every three years.

(5) The Secretary of State shall lay before Parliament a copy of every report received by him under this Article and shall cause every such report to be published.

(6) The Commission shall send to the Police Authority—

(a) a copy of every report made by the Commission under paragraph (3); and

(b) any statistical or other general information which relates to the year dealt with by the report and which the Commission considers should be brought to the Police Authority's attention in connection with its functions under Article 25.



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**F18** prosp. rep. by 1998 c. 32

### Restriction on disclosure of information

**F19**<sup>28</sup>—(1) No information received by the Commission in connection with any of its functions under this Part or regulations made by virtue of Article 29 shall be disclosed by any person who is or has been a member, officer or servant of the Commission except—

- (a) to the Secretary of State or to a member, officer or servant of the Commission or, so far as may be necessary for the proper discharge of the functions of the Commission, to other persons;
- (b) for the purposes of any criminal, civil or disciplinary proceedings; or
- (c) in the form of a summary or other general statement made by the Commission which does not identify the person from whom the information was received or any person to whom it relates.

(2) Any person who discloses information in contravention of this Article shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

**F19** prosp. rep. by 1998 c. 32

### Regulations

**F20**<sup>29</sup>—(1) The Secretary of State may make regulations as to the procedure to be followed under this Part.

(2) It shall be the duty of the Secretary of State to provide by regulations—

- (a) that, subject to such exceptions as may be prescribed, the appropriate authority shall furnish, in accordance with such procedure as may be prescribed, a copy of, or of the record of, a complaint against a member of the police force—
  - (i) to the complainant; and
  - (ii) to the member of the police force against whom the complaint was made;
- (b) procedures for the informal resolution of complaints of such descriptions as may be prescribed, and for giving the complainant a record of the outcome of any such procedure if he applies for one within such period as may be prescribed;
- (c) procedures for giving a member of the police force against whom a complaint is made which falls to be resolved informally an opportunity to comment orally or in writing on the
- (d) for cases in which any provision of this Part is not to apply where a complaint, other than a complaint which falls to be resolved by an informal procedure, is withdrawn or the complainant indicates that he does not wish any further steps to be taken;
- (e) for enabling the Commission to dispense with any requirement of this Part;
- (f) for enabling the Commission to relinquish the supervision of the investigation of any complaint or other matter;
- (g) procedures for the reference or submission of complaints or other matters to the Commission;
- (h) for the time within which the Commission is to give a notification under Article 21(4);
- (j) that the Commission shall be supplied with such information or documents of such description as may be prescribed at such time or in such circumstances as may be prescribed;



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(k) that any action or decision of the Commission which it takes in consequence of the receipt of a memorandum under Article 22 shall be notified if it is an action or decision of a prescribed description, to the person concerned and that, in connection with such a notification, the Commission shall have power to furnish him with any relevant information;

(l) that the Chief Constable shall have power to delegate any functions conferred on him by or by virtue of the foregoing provisions of this Part.

(3) Regulations under this Part may authorise the Secretary of State to make provision for any purposes specified in the regulations.

(4) Before making any regulations under this Part, the Secretary of State shall consult the Police Authority, the Police Association for Northern Ireland and the Commission.

<sup>F20</sup>29.—(5) Regulations made under this Part shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946<sup>F21</sup> shall apply accordingly.

**F20** prosp. rep. by [1998 c. 32](#)

**F21** [1946 c. 36](#)

### **Admissibility of statement made for purposes of informal resolution of complaint**

<sup>F22</sup>30.—(1) Subject to paragraph (2), no statement made by any person for the purpose of the informal resolution of a complaint shall be admissible in any subsequent criminal, civil or disciplinary proceedings.

(2) A statement is not rendered inadmissible by paragraph (1) if it consists of or includes an admission relating to a matter which does not fall to be resolved informally.

**F22** prosp. rep. by [1998 c. 32](#)

### **Guidelines concerning discipline, complaints, etc.**

<sup>F23</sup>31.—(1) The Secretary of State may issue guidance to the police Authority, the Chief Constable and other members of the Police force concerning the discharge of their functions—

(a) under this Part;

(b) under regulations made under section 25 of the principal Act in relation to the matters mentioned in subsection (2)(e) of that section; and

(c) under regulations made under section 26 of the principal Act in relation to the matters mentioned in subsection (2)(cc) of that section;

and the Police Authority and members of the police force shall have regard to any such guidance in the discharge of their functions.

(2) Guidance may not be issued under paragraph (1) in relation to the handling of a particular case.

(3) A failure on the part of the Police Authority or a member of the police force to have regard to any guidance issued under paragraph (1) shall be admissible in evidence on any appeal from a decision taken in proceedings under regulations made in accordance with section 25(3) or 26(3) of the principal Act.

(4) In discharging its functions under Article 24 the Commission shall have regard to any guidance given to it by the Secretary of State with respect to such matters as are for the time being the subject of guidance under paragraph (1) and shall have regard in particular, but without prejudice

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to the generality of this paragraph, to any such guidance as to the principles to be applied in cases that involve any question of criminal proceedings.

(5) The report of the Commission under Article 27(3) shall contain a statement of any guidance given to the Commission under paragraph (4) during the year to which the report relates.

(6) This Article applies to members of another United Kingdom police force exercising functions under the principal Act or this Part as it applies to members of the police force.

**F23** prosp. rep. by [1998 c. 32](#)

## PART V

### Supplementary

*Article 32—Amendments and repeals*

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*Schedule 1—Amendments*

*Schedule 2—Repeals*

**Changes to legislation:**

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

- Instrument rev. in pt. (saving) (prosp.) by [1998 c. 32 s.74\(2\)\(3\)Schs.56](#)
- power to applied by [1997 c. 50 s.39\(2\)\(b\)](#)
- power to applied by [1997 c. 50 s.39\(2\)\(b\)](#)
- art.9(4) revoked by [1996 c. 22 s.63\(7\)Sch.7 Pt.II](#)
- art.9(4) revoked by [1996 c. 22 s.63\(7\)Sch.7 Pt.II](#)
- art. 13 repealed by [2013 c. 7 \(N.I.\) Sch. 4 Pt. 3](#)