

## SCHEDULES

### SCHEDULE 23

Section 127

#### INVESTIGATION OF COMPLAINTS OF POLICE MISCONDUCT ETC.

1 The Police Reform Act 2002 (c. 30) has effect subject to the following amendments.

2 In section 23(2) (regulations) after paragraph (q) insert—

“(r) for enabling representations on behalf of a person to whose conduct an investigation relates to be made to the Commission by a person who is not that person’s legal representative but is of a description specified in the regulations.”

3 Schedule 3 (handling of complaints and conduct matters etc.) is amended as follows.

4 In paragraph 6(4) (handling of complaints by appropriate authority: use of local resolution procedures) in each of paragraphs (a)(ii) and (b)(ii), for the words from “, a requirement to resign” to the end substitute “or the giving of a final written warning.”

5 After paragraph 19 insert—

*“Special procedure where investigation relates to police officer or special constable*

19A Paragraphs 19B to 19E apply to investigations of complaints or recordable conduct matters in cases where the person concerned (see paragraph 19B(11)) is a member of a police force or a special constable.

*Assessment of seriousness of conduct under investigation*

19B (1) If, during the course of an investigation of a complaint, it appears to the person investigating that there is an indication that a person to whose conduct the investigation relates may have—

- (a) committed a criminal offence, or
- (b) behaved in a manner which would justify the bringing of disciplinary proceedings,

the person investigating must certify the investigation as one subject to special requirements.

(2) If the person investigating a complaint certifies the investigation as one subject to special requirements, the person must, as soon as is reasonably practicable after doing so, make a severity assessment in relation to the conduct of the person concerned to which the investigation relates.

(3) The person investigating a recordable conduct matter must make a severity assessment in relation to the conduct to which the investigation relates—

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- (a) as soon as is reasonably practicable after his appointment or designation, or
  - (b) in the case of a matter recorded in accordance with paragraph 21A(5) or 24B(2), as soon as is reasonably practicable after it is so recorded.
- (4) For the purposes of this paragraph a “severity assessment”, in relation to conduct, means an assessment as to—
  - (a) whether the conduct, if proved, would amount to misconduct or gross misconduct, and
  - (b) if the conduct were to become the subject of disciplinary proceedings, the form which those proceedings would be likely to take.
- (5) An assessment under this paragraph may only be made after consultation with the appropriate authority.
- (6) On completing an assessment under this paragraph, the person investigating the complaint or matter must give a notification to the person concerned that complies with sub-paragraph (7).
- (7) The notification must—
  - (a) give the prescribed information about the results of the assessment;
  - (b) give the prescribed information about the effect of paragraph 19C and of regulations under paragraph 19D;
  - (c) set out the prescribed time limits for providing the person investigating the complaint or matter with relevant statements and relevant documents respectively for the purposes of paragraph 19C(2);
  - (d) give such other information as may be prescribed.
- (8) Sub-paragraph (6) does not apply for so long as the person investigating the complaint or matter considers that giving the notification might prejudice—
  - (a) the investigation, or
  - (b) any other investigation (including, in particular, a criminal investigation).
- (9) Where the person investigating a complaint or matter has made a severity assessment and considers it appropriate to do so, the person may revise the assessment.
- (10) On revising a severity assessment, the person investigating the complaint or matter must notify the prescribed information about the revised assessment to the person concerned.
- (11) In this paragraph and paragraphs 19C to 19E—
  - “the person concerned”—
    - (a) in relation to an investigation of a complaint, means the person in respect of whom it appears to the person investigating that there is the indication mentioned in paragraph 19B(1);

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(b) in relation to an investigation of a recordable conduct matter, means the person to whose conduct the investigation relates;

“relevant document”—

(a) means a document relating to any complaint or matter under investigation, and

(b) includes such a document containing suggestions as to lines of inquiry to be pursued or witnesses to be interviewed;

“relevant statement” means an oral or written statement relating to any complaint or matter under investigation.

*Duty to consider submissions from person whose conduct is being investigated*

19C (1) This paragraph applies to—

- (a) an investigation of a complaint that has been certified under paragraph 19B(1) as one subject to special requirements, or
- (b) an investigation of a recordable conduct matter.

(2) If before the expiry of the appropriate time limit notified in pursuance of paragraph 19B(7)(c)—

- (a) the person concerned provides the person investigating the complaint or matter with a relevant statement or a relevant document, or
- (b) any person of a prescribed description provides that person with a relevant document,

that person must consider the statement or document.

*Interview of person whose conduct is being investigated*

19D (1) The Secretary of State may by regulations make provision as to the procedure to be followed in connection with any interview of the person concerned which is held during the course of an investigation within paragraph 19C(1)(a) or (b) by the person investigating the complaint or matter.

(2) Regulations under this paragraph may, in particular, make provision—

- (a) for determining how the time at which an interview is to be held is to be agreed or decided,
- (b) about the information that must be provided to the person being interviewed,
- (c) for enabling that person to be accompanied at the interview by a person of a prescribed description.

*Duty to provide certain information to appropriate authority*

19E (1) This paragraph applies during the course of an investigation within paragraph 19C(1)(a) or (b).

(2) The person investigating the complaint or matter must supply the appropriate authority with such information in that person’s possession

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as the authority may reasonably request for the purpose mentioned in sub-paragraph (3).

- (3) That purpose is determining, in accordance with regulations under section 50 or 51 of the 1996 Act, whether the person concerned should be, or should remain, suspended—
- (a) from office as constable, and
  - (b) where that person is a member of a police force, from membership of that force.”

- 6 (1) Paragraph 20A (accelerated procedure in special cases) is amended as follows.
- (2) In sub-paragraph (1) (application of paragraph) for “a person appointed or designated to investigate” substitute “the person investigating”.
- (3) In sub-paragraph (6) (investigation to continue after submission of report) for “appointed or designated to investigate” substitute “investigating”.
- (4) In sub-paragraph (7) (definition of special conditions)—
- (a) for paragraphs (a) and (b) substitute—
    - “(a) there is sufficient evidence, in the form of written statements or other documents, to establish on the balance of probabilities that conduct to which the investigation relates constitutes gross misconduct;”;
  - (b) in paragraph (c), for “is the subject matter of the investigation” substitute “it is”.
- (5) Omit sub-paragraph (8) (interpretation).
- 7 (1) Paragraph 20B (investigations managed or carried out by Commission: action by appropriate authority) is amended as follows.
- (2) For sub-paragraphs (3) and (4) (action to be taken where special conditions are satisfied) substitute—
- “(3) If the appropriate authority determines that the special conditions are satisfied then, unless it considers that the circumstances are such as to make it inappropriate to do so, it shall—
- (a) certify the case as a special case for the purposes of regulations under section 50(3) or 51(2A) of the 1996 Act; and
  - (b) take such steps as are required by those regulations in relation to a case so certified.”
- (3) Omit sub-paragraph (5) (appropriate authority to notify DPP if special conditions are satisfied).
- 8 In paragraph 20D(2) (action by Commission on receipt of memorandum) for “appointed under paragraph 18 or designated under paragraph 19” substitute “investigating the complaint or matter”.
- 9 (1) Paragraph 20E (other investigations: action by appropriate authority) is amended as follows.
- (2) For sub-paragraphs (3) and (4) (action to be taken where special conditions are satisfied) substitute—

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- “(3) If the appropriate authority determines that the special conditions are satisfied then, unless it considers that the circumstances are such as to make it inappropriate to do so, it shall—
- (a) certify the case as a special case for the purposes of regulations under section 50(3) or 51(2A) of the 1996 Act; and
  - (b) take such steps as are required by those regulations in relation to a case so certified.”
- (3) Omit sub-paragraph (5) (appropriate authority to notify DPP if special conditions are satisfied).
- (4) In sub-paragraph (7) (appropriate authority to notify person investigating if special conditions are not satisfied) for “appointed under paragraph 16 or 17” substitute “investigating the complaint or matter”.
- 10 Omit paragraph 20G (special cases: Director of Public Prosecutions) and the cross-heading immediately preceding it.
- 11 (1) Paragraph 21A (procedure where conduct matter is revealed in course of investigation of DSI matter) is amended as follows.
- (2) In sub-paragraph (5) (DSI matter is to be recorded as conduct matter) omit the words from “(and the other provisions” to the end.
- (3) After sub-paragraph (5) insert—
- “(6) Where a DSI matter is recorded under paragraph 11 as a conduct matter by virtue of sub-paragraph (5)—
- (a) the person investigating the DSI matter shall (subject to any determination made by the Commission under paragraph 15(5)) continue the investigation as if appointed or designated to investigate the conduct matter, and
  - (b) the other provisions of this Schedule shall apply in relation to that matter accordingly.”
- 12 (1) Paragraph 22 (final reports on investigations) is amended as follows.
- (2) In sub-paragraph (1) (cases where paragraph 22 applies)—
- (a) after paragraph (a) insert “or”;
  - (b) omit paragraph (c).
- (3) In sub-paragraph (4) (meaning of appropriate authority in the case of a conduct matter which was formerly a DSI matter) for the words from “a DSI matter” to “or (4)” substitute “a matter that was formerly a DSI matter but has been recorded as a conduct matter in pursuance of paragraph 21A(5)”.
- (4) At the end insert—
- “(7) The Secretary of State may by regulations make provision requiring a report on an investigation within paragraph 19C(1)(a) or (b)—
- (a) to include such matters as are specified in the regulations;
  - (b) to be accompanied by such documents or other items as are so specified.
- (8) A person who has submitted a report under this paragraph on an investigation within paragraph 19C(1)(a) or (b) must supply the

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appropriate authority with such copies of further documents or other items in that person's possession as the authority may request.

(9) The appropriate authority may only make a request under sub-paragraph (8) in respect of a copy of a document or other item if the authority—

- (a) considers that the document or item is of relevance to the investigation, and
- (b) requires a copy of the document or the item for either or both of the purposes mentioned in sub-paragraph (10).

(10) Those purposes are—

- (a) complying with any obligation under regulations under section 50(3) or 51(2A) of the 1996 Act which the authority has in relation to any person to whose conduct the investigation related;
- (b) ensuring that any such person receives a fair hearing at any disciplinary proceedings in respect of any such conduct of his.”

13 (1) Paragraph 23 (action by Commission in response to investigation report) is amended as follows.

(2) In sub-paragraph (2) (action to be taken on receipt of report)—

- (a) for paragraph (b) substitute—
  - “(b) shall determine whether the conditions set out in sub-paragraphs (2A) and (2B) are satisfied in respect of the report.”;
- (b) in paragraph (c), for “the report does so indicate” substitute “those conditions are so satisfied”;
- (c) in paragraph (d), after “appropriate authority” insert “and the persons mentioned in sub-paragraph (5)”.

(3) After sub-paragraph (2) insert—

“(2A) The first condition is that the report indicates that a criminal offence may have been committed by a person to whose conduct the investigation related.

(2B) The second condition is that—

- (a) the circumstances are such that, in the opinion of the Commission, it is appropriate for the matters dealt with in the report to be considered by the Director of Public Prosecutions, or
- (b) any matters dealt with in the report fall within any prescribed category of matters.”

(4) In sub-paragraph (5) (persons to be notified) for “Those” substitute “The”.

(5) For sub-paragraphs (6) and (7) substitute—

“(6) On receipt of the report, the Commission shall also notify the appropriate authority that it must—

- (a) in accordance with regulations under section 50 or 51 of the 1996 Act, determine—

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- (i) whether any person to whose conduct the investigation related has a case to answer in respect of misconduct or gross misconduct or has no case to answer, and
      - (ii) what action (if any) the authority is required to, or will in its discretion, take in respect of the matters dealt with in the report, and
    - (b) determine what other action (if any) the authority will in its discretion take in respect of those matters.”
  - (7) On receipt of a notification under sub-paragraph (6) the appropriate authority shall make those determinations and submit a memorandum to the Commission which—
    - (a) sets out the determinations the authority has made, and
    - (b) if the appropriate authority has decided in relation to any person to whose conduct the investigation related that disciplinary proceedings should not be brought against that person, sets out its reasons for so deciding.”
  - (6) In sub-paragraph (8)(a) (action by Commission on receipt of memorandum) for “is proposing to take the action” substitute “has made the determinations under sub-paragraph (6)(a)”.
- 14 (1) Paragraph 24 (action by the appropriate authority in response to investigation report) is amended as follows.
- (2) In sub-paragraph (2) (action to be taken on receipt of report)—
    - (a) for paragraph (a) substitute—
      - “(a) shall determine whether the conditions set out in sub-paragraphs (2A) and (2B) are satisfied in respect of the report.”;
    - (b) in paragraph (b), for “the report does so indicate” substitute “those conditions are so satisfied”;
    - (c) after paragraph (b) insert “and
      - (c) shall notify the persons mentioned in sub-paragraph (5) of its determination under paragraph (a) and of any action taken by it under paragraph (b).”
  - (3) After sub-paragraph (2) insert—
    - “(2A) The first condition is that the report indicates that a criminal offence may have been committed by a person to whose conduct the investigation related.
    - (2B) The second condition is that—
      - (a) the circumstances are such that, in the opinion of the appropriate authority, it is appropriate for the matters dealt with in the report to be considered by the Director of Public Prosecutions, or
      - (b) any matters dealt with in the report fall within any prescribed category of matters.”
  - (4) In sub-paragraph (5) (persons to be notified) for “Those” substitute “The”.
  - (5) After sub-paragraph (5) insert—

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“(5A) In the case of a report falling within sub-paragraph (1)(b) which relates to a recordable conduct matter, the appropriate authority shall also notify the Commission of its determination under sub-paragraph (2)(a).

(5B) On receipt of such a notification that the appropriate authority has determined that the conditions in sub-paragraphs (2A) and (2B) are not satisfied in respect of the report, the Commission—

- (a) shall make its own determination as to whether those conditions are so satisfied, and
- (b) if it determines that they are so satisfied, shall direct the appropriate authority to notify the Director of Public Prosecutions of the Commission’s determination and to send the Director a copy of the report.

(5C) It shall be the duty of the appropriate authority to comply with any direction given to it under sub-paragraph (5B).”

(6) For sub-paragraph (6) substitute—

“(6) On receipt of the report or (as the case may be) copy, the appropriate authority shall also—

- (a) in accordance with regulations under section 50 or 51 of the 1996 Act, determine—
  - (i) whether any person to whose conduct the investigation related has a case to answer in respect of misconduct or gross misconduct or has no case to answer, and
  - (ii) what action (if any) the authority is required to, or will in its discretion, take in respect of the matters dealt with in the report, and
- (b) determine what other action (if any) the authority will in its discretion take in respect of those matters.”

(7) In sub-paragraph (7) (appropriate authority to give notice on making a determination under sub-paragraph (6)) for “a determination” substitute “the determinations”.

(8) In sub-paragraph (8) (contents of notification authority is required to give of its determination) for paragraphs (b) and (c) substitute—

“(b) the determinations the authority has made under sub-paragraph (6);”.

15 In paragraph 24A(2) (final reports on investigations into other DSI matters: obligation to submit report) for the words from “A person appointed” to “paragraph 19” substitute “The person investigating”.

16 (1) Paragraph 24B (action in response to a report on a DSI matter) is amended as follows.

(2) In sub-paragraph (2) (circumstances in which appropriate authority must record matter as a conduct matter) omit the words from “(and the other provisions” to the end.

(3) After sub-paragraph (2) insert—

“(3) Where a DSI matter is recorded under paragraph 11 as a conduct matter by virtue of sub-paragraph (2)—



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- (a) the person investigating the DSI matter shall (subject to any determination made by the Commission under paragraph 15(5)) investigate the conduct matter as if appointed or designated to do so, and
  - (b) the other provisions of this Schedule shall apply in relation to that matter accordingly.”
- 17 (1) Paragraph 25 (appeals to Commission with respect to an investigation) is amended as follows.
  - (2) In sub-paragraph (2) (rights of appeal)—
    - (a) for paragraph (a)(ii) substitute—
      - “(ii) about any determination of the appropriate authority relating to the taking (or not taking) of action in respect of any matters dealt with in the report on the investigation;”;
    - (b) for paragraph (c) substitute—
      - “(ba) a right of appeal against any determination by the appropriate authority that a person to whose conduct the investigation related has a case to answer in respect of misconduct or gross misconduct or has no case to answer;
      - (c) a right of appeal against any determination by the appropriate authority relating to the taking (or not taking) of action in respect of any matters dealt with in the report; and
      - (d) a right of appeal against any determination by the appropriate authority under paragraph 24(2)(a) as a result of which it is not required to send the Director of Public Prosecutions a copy of the report;”.
  - (3) In sub-paragraph (3) (power of Commission to require appropriate authority to submit memorandum on an appeal)—
    - (a) before paragraph (a) insert—
      - “(za) sets out whether the appropriate authority has determined that a person to whose conduct the investigation related has a case to answer in respect of misconduct or gross misconduct or has no case to answer;”;
    - (b) for paragraphs (a) and (b) substitute—
      - “(a) sets out what action (if any) the authority has determined that it is required to or will, in its discretion, take in respect of the matters dealt with in the report;”;
    - (c) in paragraph (c), for “any person whose conduct is the subject-matter of the report” substitute “a person to whose conduct the investigation related”;
    - (d) after paragraph (c) insert “and
      - (d) if the appropriate authority made a determination under paragraph 24(2)(a) as a result of which it is not required to send the Director of Public Prosecutions a copy of the report, sets out the reasons for that determination;”.
  - (4) In sub-paragraph (5) (determinations to be made by Commission on an appeal)—
    - (a) after “shall determine” insert “such of the following as it considers appropriate in the circumstances”;

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(b) for paragraph (c) substitute—

“(c) whether the appropriate authority—

(i) has made such a determination as is mentioned in sub-paragraph (3)(za) that the Commission considers to be appropriate in respect of the matters dealt with in the report, and

(ii) has determined that it is required to or will, in its discretion, take the action (if any) that the Commission considers to be so appropriate; and

(d) whether the conditions set out in paragraph 24(2A) and (2B) are satisfied in respect of the report.”

(5) In sub-paragraph (9) (action to be taken by Commission when it determines appropriate authority is not taking appropriate action) for “is not proposing to take the action in consequence of” substitute “has not made a determination as to whether there is a case for a person to whose conduct the investigation related to answer that the Commission considers appropriate or has not determined that it is required to or will, in its discretion, take the action in respect of the matters dealt with in”.

(6) After sub-paragraph (9) insert—

“(9A) If, on an appeal under this paragraph, the Commission determines that the conditions set out paragraph 24(2A) and (2B) are satisfied in respect of the report, it shall direct the appropriate authority—

(a) to notify the Director of Public Prosecutions of the Commission’s determination, and

(b) to send the Director a copy of the report.”

18 (1) Paragraph 27 (duties with respect to disciplinary proceedings) is amended as follows.

(2) In sub-paragraph (1) (application of paragraph) in each of paragraphs (a) and (b), for “proposing to” substitute “required to or will, in its discretion,”.

(3) In sub-paragraph (3) (recommendations that may be made by Commission in certain circumstances)—

(a) before paragraph (a) insert—

“(za) that the person has a case to answer in respect of misconduct or gross misconduct or has no case to answer in relation to his conduct to which the investigation related;”;

(b) for paragraph (a) substitute—

“(a) that disciplinary proceedings of the form specified in the recommendation are brought against that person in respect of his conduct to which the investigation related;”;

(c) in paragraph (b), for “include such charges” substitute “deal with such aspects of that conduct”.

19 After paragraph 28 insert—

“*Minor definitions*

29 In this Part of this Schedule—

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

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“misconduct” means a breach of the Standards of Professional Behaviour;

“the person investigating”, in relation to a complaint, recordable conduct matter or DSI matter, means the person appointed or designated to investigate that complaint or matter;

“prescribed” means prescribed by regulations made by the Secretary of State;

“the Standards of Professional Behaviour” means the standards so described in, and established by, regulations made by the Secretary of State.”