

2008 No.

POLICE, ENGLAND AND WALES

**The Police (Complaints and Misconduct) (Amendment)
Regulations 2008**

Made ***

Laid before Parliament ***

Coming into force - - *1st December 2008*

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 13, 23(1), 23(2)(g), 23(2)(r) and 105(4) of, and paragraphs 19B(7), 19B(10), 19C(2)(b), 19D, 22(7) and 29 of Schedule 3 to, the Police Reform Act 2002(a).

In accordance with section 24 of the Police Reform Act 2002(b), the Secretary of State has consulted with the Independent Police Complaints Commission, the Association of Police Authorities, the Association of Chief Police Officers and such other persons as she thinks fit.

In accordance with section 63(3) of the Police Act 1996(c), the Secretary of State supplied a draft of these Regulations to the Police Advisory Board of England and Wales and has taken into consideration their representations before making these Regulations.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Police (Complaints and Misconduct) (Amendment) Regulations 2008 and shall come into force on 1st December 2008.

(2) In these Regulations, “the 2004 Regulations” means the Police (Complaints and Misconduct) Regulations 2004(d).

Transitional provisions

2. These Regulations apply only to allegations in respect of conduct by a person concerned which comes to the attention of either the appropriate authority or the Commission on or after the commencement of these Regulations.

Amendments to the 2004 Regulations

3.—(1) The 2004 Regulations shall be amended as follows.

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- (a) 2002 c.30, as amended by section 160 of and Schedule 12 to the Serious Organised Crime and Police Act 2005 (c.15) and section 127 of and Schedule 23 to the Criminal Justice and Immigration Act 2008 (c.4).
- (b) Section 24 was amended by section 6 of and paragraph 12 of Schedule 4 to the Police and Justice Act 2006 (c.48).
- (c) 1996 c.16. Relevant amendments to section 63 were made by paragraph 78 of Schedule 4 to the Serious Organised Crime and Police Act 2008 (c.15) and paragraph 6 of Schedule 22 to the Criminal Justice and Immigration Act 2008 (c.4).
- (d) SI 2004/643, as amended by SI 2005/3311; there are other amending instruments but none is relevant.

(2) In regulation 1(2) (citation, commencement and interpretation) the following definitions are inserted in the appropriate alphabetical places—

- ““Conduct Regulations” means the Police (Conduct) Regulations 2008(a);
- “appeal hearing” has the same meaning as in the Conduct Regulations;
- “appeal meeting” has the same meaning as in the Conduct Regulations;
- “investigator” means a person appointed or designated to investigate under paragraph 16, 17, 18 or 19 of Schedule 3 to the 2002 Act (investigations);
- “misconduct hearing” has the same meaning as in the Conduct Regulations;
- “misconduct meeting” has the same meaning as in the Conduct Regulations;
- “misconduct proceedings” means a misconduct meeting or misconduct hearing;
- “police friend” means a person chosen by the person concerned in accordance with regulation 14B;
- “police officer” means a member of a police force or special constable;
- “police staff member” means an employee of a police authority who is under the direction and control of a chief officer of police;
- “special case hearing” has the same meaning as in the Conduct Regulations;
- “Standards of Professional Behaviour” has the same meaning as in the Conduct Regulations;”.

(3) After regulation 14 (copies of complaints etc) insert—

“14A Written notices

(1) For the purposes of paragraph 19B(7) of Schedule 3 to the 2002 Act (assessment of seriousness of conduct under investigation) the notification given by the investigator to the person concerned must be in writing and state—

- (a) the conduct that is the subject matter of the allegation and how that conduct is alleged to fall below the Standards of Professional Behaviour;
- (b) that there is to be an investigation into the matter and the identity of the investigator;
- (c) the investigator’s assessment of whether that conduct, if proved, would amount to misconduct or gross misconduct;
- (d) whether, if the matter were to be referred to misconduct proceedings, those would be likely to be a misconduct meeting or a misconduct hearing;
- (e) that if the likely form of any misconduct proceedings to be held changes, further notice (with reasons) will be given;
- (f) that he has the right to seek advice from his staff association or any other body and of the effect of regulation 14B(1);
- (g) the effect of regulation 14C and paragraph 19C of Schedule 3 to the 2002 Act (duty to consider submissions from person whose conduct is being investigated) and regulations 7(1) to (3) of the Conduct Regulations (legal or other representation); and
- (h) that whilst he does not have to say anything it may harm his case if he does not mention when interviewed or when providing any information under regulation 14C or regulation 22(2) or (3) of the Conduct Regulations (procedure on receipt of notice of referral to misconduct proceedings) something which he later relies on in any misconduct proceedings, special case hearing, an appeal meeting or appeal hearing.

(a) S.I. 2008/xxxx

(2) For the purposes of paragraph 19B(10) of Schedule 3 to the 2002 Act (assessment of seriousness of conduct under investigation), if following service of the notice under paragraph (1), the investigator revises his assessment of the conduct in accordance with paragraph 19B(9) of Schedule 3 to the 2002 Act or his determination of the likely form of any misconduct proceedings to be taken, the investigator shall as soon as practicable, give the person concerned further written notice of—

- (a) the assessment of whether the conduct, if proved, would amount to misconduct or gross misconduct as the case may be and the reason for that assessment;
- (b) whether, if the case were to be referred to misconduct proceedings, those would be likely to be a misconduct meeting or a misconduct hearing and the reason for this.

(3) The notice whether given in accordance with paragraph (1) or (2) shall be—

- (a) given to the person concerned in person;
- (b) left with some person at, or sent by recorded delivery to, the person concerned's last known address; or
- (c) given to him in person by his police friend where the police friend has agreed with the appropriate authority to deliver the notice.

14B Police friend

(1) Where the person concerned is a police officer he may choose—

- (a) a police officer;
- (b) a police staff member; or
- (c) where the officer concerned is a member of a police force, a person nominated by his staff association,

who is not otherwise involved in the matter to act as his police friend.

(2) Where the person concerned is a police staff member he may choose—

- (a) a person employed by a trade union of which he is an official within the meaning of sections 1 and 119 of the Trade Union and Labour Relations (Consolidation) Act 1992 (meaning of trade union) (a);
- (b) an official of a trade union (within that meaning) whom the union has reasonably certified in writing as having experience of, or as having received training in, acting as a police staff member's companion at disciplinary proceedings;
- (c) a police officer;
- (d) a police staff member; or
- (e) any other person nominated by the person concerned and approved by the chief officer of the force in which a police staff member is serving,

who is not otherwise involved in the matter to act as his police friend.

(3) A police friend may—

- (a) provide any relevant document to the investigator in accordance with paragraph 19C(2)(b) of Schedule 3 to the 2002 Act (power to prescribe persons who may provide submissions to the investigator);
- (b) accompany the officer concerned to any interview conducted under regulation 14D;
- (c) advise the person concerned throughout proceedings under these Regulations; and
- (d) make representations to the Commission concerning any aspect of the proceedings under these Regulations.

(a) 1992 (c. 52) to which there are amendments not relevant to these Regulations.

(4) Where a police friend is a police officer or a police staff member, the chief officer of police of the force of which the police friend is a member shall permit him to use a reasonable amount of duty time for the purposes referred to in paragraph (3).

(5) The reference in paragraph (4) to the force of which the police friend is a member shall include a reference to the force maintained for the police area for which a special constable is appointed and the force in which a police staff member is serving.

14C Representations to the investigator

For the purposes of paragraph 19B(7)(c) of Schedule 3 to the 2002 Act (time limits for providing documents to the investigator), the person concerned or police friend shall have 10 working days starting with the day after which the notice is given under regulation 14A(1) (unless this period is extended by the investigator) to provide any relevant statement or relevant document as the case may be.

14D Interviews during investigation

(1) For the purposes of paragraph 19D(1) of Schedule 3 to the 2002 Act (interview of person whose conduct is being investigated), where an investigator wishes to interview the person concerned as part of his investigation, he shall, if reasonably practicable, agree a date and time for the interview with the person concerned.

(2) Where no date and time is agreed under paragraph (1), the investigator shall specify a date and time for the interview.

(3) Where a date and time is specified under paragraph (2) and—

- (a) the person concerned or his police friend will not be available at that time; and
- (b) the person concerned proposes an alternative time which satisfies subsection (4),

the interview shall be postponed to the time proposed by the person concerned.

(4) An alternative time must—

- (a) be reasonable; and
- (b) fall before the end of the period of 5 working days beginning with the first working day after the day specified by the investigator.

(5) The person concerned shall be given written notice of the date, time and place of the interview.

(6) The investigator shall, in advance of the interview, provide the person concerned with such information as the investigator considers appropriate in the circumstances of the case to enable the person concerned to prepare for the interview.

(7) The person concerned shall attend the interview.

(8) A police friend may not answer any questions asked of the person concerned during the interview.

14E Report of investigation

(1) For the purposes of paragraph 22(7) of Schedule 3 to the 2002 Act (final reports on investigations), on completion of an investigation the investigator's report shall—

- (a) provide an accurate summary of the evidence;
- (b) attach or refer to any relevant documents; and
- (c) indicate the investigator's opinion as to whether there is a case to answer in respect of misconduct or gross misconduct or whether there is no case to answer."

(4) In regulation 18 (appointment of persons to carry out investigations)—

- (a) In paragraph (1)(a) for "conduct the investigation and to manage the resources that will be required during that process" substitute "manage the investigation";
- (b) For paragraph (1)(b) substitute the following sub-paragraph—

- “(b) if he is a person whose involvement in the role could reasonably give rise to a concern as to whether he could act impartially under these Regulations;”
- (c) For paragraph (1)(d) substitute the following sub-paragraph—
- “(d) in a case where the officer concerned is a senior officer, if he is—
- (i) the chief officer of police of the police force concerned;
- (ii) a member of the same force as the officer concerned, or where the officer concerned is a member of the Metropolitan Police Force, serving in the same division as the officer concerned.”;
- (d) Omit paragraph (2);
- (e) In paragraph (3)(a) for “senior police officer” substitute “senior officer”;
- (f) In paragraph (3)(b) omit “(other than in paragraph (1)(d))” and after “special constable” insert “appointed for the area of that force and a police staff member serving in that force;”.

Home Office

Minister of State

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Police (Complaints and Misconduct) Regulations 2004 by adding new regulations 14A to E and accompanying definitions. The provisions are intended to mirror the provisions in the Police (Conduct) Regulations 2008 for notifying the person under investigation of the severity of his alleged conduct, if proved, supplying the investigator with documents, carrying out interviews during the investigation, and providing certain information in the investigation report.

Regulation 14A inserted by these Regulations requires an investigator handling an investigation subject to special requirements or a recordable conduct matter as defined in paragraphs 19B(1) and 11 of Schedule 3 to the Police Reform Act 2002 respectively to notify the person under investigation of his severity assessment and various other information such as the person concerned’s right to legal representation. A severity assessment involves an assessment as to whether the conduct if proved would amount to misconduct or gross misconduct and the form any disciplinary proceedings would be likely to take.

Regulation 14B explains who can be a police friend and their role in proceedings. In particular, a police friend may provide the investigator with relevant documents in accordance with regulation 14C and may attend the interview conducted as part of the assessment by the investigator as to whether there is a case to answer.

Regulation 14C specifies that the time limit for supplying relevant documents or a statement from the person concerned to the investigator for the purposes of paragraph 19C(2) of Schedule 3 to the Police Reform Act 2002 is 10 working days after the day on which the notice of the severity assessment is given.

Regulation 14D prescribes the procedure for the investigator to arrange and hold an interview with the person concerned during his investigations. Regulation 19E specifies what details an investigator must include in his investigation report where the investigation is subject to special requirements or is a recordable conduct matter.

Regulation 18 of the Police (Complaints and Misconduct) Regulations 2004 is amended to mirror regulation 13 of the Police (Conduct) Regulations 2008 and, in particular, to ensure that a police

staff member is not excluded from being able to be appointed to investigate a case under paragraph 16, 17 or 18 of Schedule 3 to the 2002 Act.