

2000 No. 318

POLICE

Royal Ulster Constabulary (Complaints etc.) Regulations 2000

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Coming into operation 6th November 2000

To be laid before Parliament

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SCHEDULE — Complaints which are anonymous, repetitious or incapable of investigation

The Secretary of State, in pursuance of Section 64 of the Police (Northern Ireland) Act 1998 and after consulting the Ombudsman, the Police Authority and the Police Association for Northern Ireland, in accordance with Section 64(4) of that Act, hereby makes the following regulations:—

Citation, commencement and revocation

1.—(1) These regulations may be cited as the Royal Ulster Constabulary (Complaints etc) Regulations 2000 and shall come into operation on 6th November 2000.

(2) The Royal Ulster Constabulary (Complaints, etc) Regulations 1988 are hereby revoked.

Interpretation

2. The following expressions have the meanings hereby respectively assigned to them, that is to say:—

“Chief Constable” shall be construed as including a reference to an officer discharging the functions of the Chief Constable, and references to “the appropriate authority” shall be construed accordingly;

“complainant” means the person by or on behalf of whom a complaint is submitted;

“complaint” means a complaint to which Section 50 of the Act of 1998 applies and “copy of a complaint”, in the case of a complaint made orally, shall include a copy of the record of the complaint;

“member” means a member of the Royal Ulster Constabulary, or of the Royal Ulster Constabulary Reserve;

“member concerned”, in relation to a complaint, means the member about whose conduct the complaint is made;

“Register” includes the holding of information by electronic means
“senior officer” means an officer of the rank of chief constable, deputy chief constable or assistant chief constable.
“the Act of 1998” means the Police (Northern Ireland) Act 1998;
“the appropriate authority” means—
 (a) in relation to a senior officer, the Police Authority;
 (b) in relation to any other member, the Chief Constable;
“the Director” means the Director of Public Prosecutions for Northern Ireland
“the Ombudsman” means the Police Ombudsman for Northern Ireland established by Section 51 of the Act of 1998;

Application of regulations

3. Subject to regulation 21 these regulations shall apply—

(a) to any complaint made on or after 6 November 1999, under the Act of 1998; and

(b) to any other matter the investigation of which the Ombudsman is required to, or determines to investigate under Section 55 of that Act,

being a complaint or matter where the conduct complained of or to which it relates occurred, or is alleged to have occurred, on or after 6th November 1999.

Making complaints

4.—(1) A complainant may make a complaint to the Ombudsman, the Police Authority or the Chief Constable; or

(2) A complainant may have a complaint registered on his behalf by a third party providing the complainant gives his consent, either in writing or orally, or is incapable of giving consent.

Definition of a complaint

5. It is for the Ombudsman to determine what constitutes a complaint under Section (52)(8) of the Act of 1998, subject to the following exceptions;

(a) a complaint in so far as it relates to the direction and control of the police force by the Chief Constable; or

(b) a complaint about members not on duty, unless the fact of being a member is relevant to the complaint; or

(c) a complaint about a civilian employed at police establishments;

shall not constitute a complaint under Section (52)(8) of the Act of 1998.

Police Ombudsman to notify the appropriate authority, the complainant and the member concerned

6.—(1) Where the Ombudsman has recorded a complaint against a member, the Ombudsman shall, as soon as practicable, send a copy of, or a record of the complaint to the appropriate authority and the complainant.

(2) Where the Ombudsman has received a complaint against a member, or the Ombudsman is to investigate any other matter under Section 55 of the Act of 1998 he shall, as soon as practicable, send a copy of, or a record of the complaint to the member, unless to do so would impede the investigation or any other investigation of the matter.

Procedures for notification of matters relating to suspension

7.—(1) Where the Ombudsman determines during the course of an investigation that the investigation indicates that the conduct of a member did not meet the appropriate standard, the Ombudsman shall immediately notify the appropriate authority, and provide all relevant material, to enable the appropriate authority to consider suspension.

(2) Where the appropriate authority suspends a member, during the course of an investigation under Part VII of the Act of 1998, it shall notify the Ombudsman.

(3) Where a member has been suspended and the Ombudsman is investigating the complaint or any other matter under Section 55 or Section 56 of the Act of 1998 he must keep the appropriate authority informed of the progress of that investigation to allow it to consider whether suspension remains appropriate.

(4) The Ombudsman shall immediately inform the appropriate authority of any matter which indicates that the appropriate authority should reconsider the suspension.

Supply of information to Ombudsman – general

8. The appropriate authority shall supply the Ombudsman with such material as he may require relating to a complaint under Section 52 of the Act of 1998, or investigation under Section 55 of the Act of 1998, whether or not such complaint or matter is the subject of an investigation by the Ombudsman or supervised by the Ombudsman, for the purpose of enabling the Ombudsman to fulfil his functions under the said Act.

Procedures for the Ombudsman to refer complaints to the Chief Constable to investigate

9. Where the Ombudsman decides to forward a complaint to the Chief Constable to investigate under Section 54 of the 1998 Act, he shall do so immediately on making that decision, and forward all relevant material.

Procedures for the Ombudsman to refer complaints to the appropriate authority to resolve by way of informal resolution

10.—(1) Where the Ombudsman decides to forward the complaint to the appropriate authority to resolve by informal resolution under Section 53 of the 1998 Act, he shall do so immediately and forward all relevant material.

(2) Where the appropriate authority determines that it is not possible to resolve the complaint by informal resolution, or, the appropriate authority determines that the evidence uncovered shows that the complaint is not

suitable for informal resolution, it shall notify the Ombudsman immediately and shall forward all relevant material and the reasons for that decision.

(3) A complaint is not suitable for informal resolution where the Ombudsman is satisfied that the conduct complained of, if proved, would justify a criminal charge.

Procedures for complaints being formally investigated to be informally resolved

11.—(1) Where the Ombudsman is investigating a complaint under Section 56 of the Act of 1998 and he determines that the evidence uncovered shows that the complaint is suitable for informal resolution, he may refer it to the appropriate authority to informally resolve under Section 53 of the Act.

(2) Where the Chief Constable is investigating a complaint under Section 57 of the Act of 1998 and he determines that the evidence uncovered shows that the complaint is suitable for informal resolution, he may seek permission from the Ombudsman to informally resolve the complaint and if he agrees, informally resolve the complaint under Section 53 of the Act.

Procedures for the Ombudsman to forward complaints to the Chief Constable to initiate unsatisfactory performance procedures

12.—(1) Where the Ombudsman in consultation with the Chief Constable considers the complaint to be a matter of unsatisfactory performance rather than misconduct, the Ombudsman shall notify the Chief Constable and forward all relevant material.

(2) Where the Ombudsman forwards the complaint to the Chief Constable to deal with under the Royal Ulster Constabulary (Unsatisfactory Performance) Regulations 2000, the requirements of Part VII of the Act to the extent that they have not already been satisfied should be dispensed with and he shall notify the member concerned and the complainant accordingly.

Notification of supervision

13.—(1) Where the Ombudsman has referred a complaint to the Chief Constable to investigate under Section 54 of the Act of 1998, if the Ombudsman determines to supervise an investigation he shall notify the Chief Constable when he forwards the complaint for investigation.

(2) If during the course of the investigation the Ombudsman determines to relinquish supervision of the investigation, he shall notify the Chief Constable immediately of that decision.

Power of Ombudsman to impose requirements in relation to investigations

14.—(1) Without prejudice to the Ombudsman's powers in relation to the appointment of an investigating officer under Section 57 of the 1998 Act, the Ombudsman may, where he undertakes the supervision of an investigation of a complaint, issue directions imposing such additional requirements as to the conduct of the investigation as appear to him to be necessary.

(2) The Ombudsman shall not, under paragraph (1) above, impose any requirement relating to the resources to be made available by the Chief

Constable for the purposes of an investigation without first consulting him and having regard to any representations he may make.

Procedures for the Ombudsman to continue investigations which have previously been conducted by the Chief Constable

15.—(1) Where the Chief Constable is conducting an investigation under Section 57 of the Act of 1998, and the Ombudsman determines to assume the investigation—

- (a) the Ombudsman shall notify the Chief Constable of his decision immediately;
- (b) the Chief Constable shall immediately furnish the Ombudsman with all relevant material relating to the investigation.

(2) Where the Chief Constable is conducting an investigation, the Chief Constable shall notify the Ombudsman of any information revealed during an investigation which may suggest that it is in the public interest for the Ombudsman to continue the investigation in accordance with Section 56 of the Act of 1998.

Procedures for the Ombudsman to refer an investigation which he has been conducting to the Chief Constable to continue

16. Where the Ombudsman is conducting an investigation under Section 56 of the Act of 1998 and he determines to refer the complaint to the Chief Constable to investigate under Section 57 of the Act of 1998—

- (a) the Ombudsman shall notify the Chief Constable immediately of his decision; and
- (b) the Ombudsman shall immediately furnish the Chief Constable with all relevant material.

Conduct of Investigations

17. Investigations under Section 56 or 57 of the Act of 1998 shall be conducted without undue delay.

Functions of Ombudsman as to criminal proceedings

18.—(1) Where the Ombudsman considers any report under Section 58 of the Act of 1998 he shall deal with the report without undue delay and shall, as soon as practicable, take such decisions as appear to him appropriate.

(2) Where the Ombudsman determines that the report indicates that a criminal offence may have been committed by a member he shall:

- (a) forward the report to the Director without undue delay; and
- (b) notify the appropriate authority without undue delay.

Functions of Ombudsman as to disciplinary charges

19.—(1) Where the Ombudsman considers disciplinary proceedings under Section 59 of the Act of 1998 he shall deal with the case without undue delay and shall, as soon as practicable, and send all relevant material, and a memorandum with such particulars as specified in Section 59(2) of the Act

of 1998 concerning such disciplinary proceedings as appear to him appropriate .

(2) Where the appropriate authority agrees to bring disciplinary proceedings, it shall notify the Ombudsman and the member.

(3) Where the appropriate authority agrees to bring disciplinary proceedings the Ombudsman shall notify the complainant.

(4) Where the Chief Constable has not preferred disciplinary charges or does not propose to do so and the Ombudsman accepts his decision he shall—

(a) so inform the Chief Constable forthwith, and

(b) notify the complainant of the decision and of its acceptance thereof, and may furnish the complainant with such relevant information in explanation thereof, if any, as appears to the Ombudsman to be appropriate.

(5) Where the Chief Constable withdraws a disciplinary charge with the leave of the Ombudsman given in pursuance of Section 59 of the Act, the Ombudsman shall notify the complainant that the charge has been withdrawn with its leave and furnish him with such relevant information in explanation of the withdrawal as appears to the Ombudsman appropriate and copy it to the member concerned.

(6) The Ombudsman shall be relieved of the duty of notifying the complainant as mentioned in paragraphs (3), 4(b) or (5) if compliance therewith appears to it to be not reasonably practicable.

(7) Where the Chief Constable has, under the Royal Ulster Constabulary (Conduct) Regulations 2000, delegated the duty of deciding whether a member should be charged with a disciplinary offence, the references in paragraphs (2), (4) and (5) to the Chief Constable shall be taken as references to the officer to whom the duty is delegated.

Supply of report on the investigation of matters not the subject of a complaint

20. At the end of an investigation of a matter investigated under Section 55 of the Act of 1998, the Ombudsman shall send a copy of the report on the investigation to:

(i) the Police Authority and the Chief Constable unless they have already received a copy of the report under regulation 18; and

(ii) the Secretary of State.

Copies of complaints

21.—(1) Subject to paragraph (2), a copy of the complaint shall be supplied by the Ombudsman to—

(a) the complainant, or

(b) the member concerned,

where either of them so requests in writing.

(2) The Ombudsman may, by notice in writing to the person who made the request, refuse to supply a copy of the complaint under paragraph (1) if of the opinion that compliance with the request—

- (a) might prejudice any criminal investigation or proceedings pending at the time the request is made, or
- (b) would be contrary to the public interest and the Secretary of State agrees the request should not be complied with;

and where such notice is given no further request may be made under paragraph (1) within the period of six months beginning with the date of the notice, without prejudice, however, to further such requests being made subsequently.

Complaints register

22. The Ombudsman shall cause a register of complaints against members to be kept in which there shall be recorded the steps taken in dealing with a complaint and their outcome.

Withdrawn complaints

23. The provisions of Part VII of the Act of 1998 shall not apply in respect of a complaint if:

(1) The Ombudsman receives from the complainant notification in writing signed by him or by his solicitor or other authorised agent on his behalf to the effect:

- (a) that he withdraws the complaint, or
- (b) that he does not wish any further steps to be taken in consequence thereof.

(2) Where such notification is given to the Chief Constable where the complaint has been referred to him for investigation under Section 57 of the Act, or to the appropriate authority, it shall be forwarded immediately to the Ombudsman.

(3) Where a complainant gives such notification as is mentioned in paragraph (1) and it relates to a complaint, the Ombudsman shall notify the member, the complainant and the appropriate authority.

(4) Where the complaint is withdrawn the Ombudsman shall record the complaint as withdrawn.

Complaints where the complainant fails to indicate whether he wishes further steps to be taken

24.—(1) Where the complainant fails to indicate whether he wishes further steps to be taken the provisions of Part VII of the Act of 1998 shall not apply in respect of a complaint, where the Ombudsman has written to the complainant by recorded delivery and the complainant has not notified the investigating officer within 21 days that he wishes any further steps to be taken.

(2) Where the complaint has been referred to the Chief Constable to investigate he shall request the Ombudsman write to the complainant inviting them to indicate whether they wish any further steps to be taken.

(3) Where the complainant fails to indicate whether he wishes any further steps to be taken, the member concerned, the appropriate authority and the complainant shall be notified by the Ombudsman accordingly.

Complaints which are anonymous, repetitious, vexatious, oppressive or otherwise an abuse of the procedures for dealing with complaints or incapable of investigation

25.—(1) Where the Ombudsman is of the opinion—

- (a) that a complaint is an anonymous or a repetitious one within the meaning of paragraph 2 or 3 of the Schedule or that a complaint is vexatious, oppressive or otherwise an abuse of the procedures for dealing with complaints or that it is not reasonably practicable to complete the investigation of a complaint, within the meaning of paragraph 4 thereof, or
- (b) that more than 12 months have elapsed between the incident, or the latest incident, giving rise to the complaint and the making of the complaint and either that no good reason for the delay has been shown or that injustice would be likely to be caused by the delay; and
- (c) in either case, that, in all the circumstances, the requirements of Part VII of the Act to the extent that they have not already been satisfied should be dispensed with,

the Ombudsman may dispense with the said requirements as respects the complaint.

(2) Where the complaint has been referred to the Chief constable under Section 54(3)(b), the Chief Constable, may in accordance with this regulation request the Ombudsman to dispense with the requirements under paragraph (1).

(3) The request, which shall be made in writing, shall be accompanied by—

- (a) a copy of the complaint;
- (b) a memorandum from the Chief Constable explaining the reasons for being of the opinion mentioned in paragraph (1);
- (c) where the complaint is a repetitious complaint and the previous complaint has been informally resolved in accordance with the provisions of Section 5 of the Order of 1987 or Regulation 10 of these regulations, a copy of the record of the outcome of the informal resolution procedure, and
- (d) where the Chief Constable is of the opinion that the complaint is a repetitious complaint and the previous complaint has been informally resolved in accordance with the provisions

(4) If, after considering a request under this regulation, the Ombudsman shares the opinion of the Chief Constable, he may dispense with the requirements mentioned in paragraph (1) but he shall not reject such a request except after consultation with the Chief Constable.

(5) The Ombudsman shall, as soon as possible, notify the appropriate authority, in writing, of his decision on such a request and, where he dispenses with the requirements mentioned in paragraph (1), shall inform the complainant of his action unless the complaint is an anonymous one or it otherwise appears to him to be not reasonably practicable so to inform him within a period which is reasonable in all the circumstances of the case.

(6) The Ombudsman shall inform the member concerned, where known, in writing of his decision to dispense with the requirements mentioned in paragraph (1).

Expenses of complainants and witnesses

26.—(1) The Ombudsman may, if he thinks fit, pay to the person by whom the complaint was made:

(a) sums in respect of expenses properly incurred by them, excluding legal expenses;

(b) allowances by way of compensation for the loss of their time,

in accordance with such scales and subject to such conditions as the Department may determine.

Recommendations on compensation for complainants

27.—(1) Where the Ombudsman is satisfied that a complaint has been substantiated, the Ombudsman may recommend to the Chief Constable that he should pay compensation to the complainant where:

(a) the complainant has suffered measurable financial loss resulting from the action complained of, or

(b) the complainant suffered physical injury, or

(c) the complainant has suffered considerable distress or inconvenience.

(2) The sum recommended for compensation shall not exceed that payable in the small claims court.

(3) It shall not be disclosed in any criminal or disciplinary proceedings that compensation has been recommended or paid.

Directed tribunals

28.—(1) Under Sections 25(3) and 26(3) where the Ombudsman directs the Chief Constable to bring disciplinary proceedings under Section 59(5) of the Act, there will be a special procedure for the disciplinary proceedings:

(a) there shall be a hearing by a panel consisting of a barrister or solicitor, who shall be chairman, a member of appropriate rank and another panel member who is not a serving police officer; and

(b) the Ombudsman shall present the case.

(2) the decision as to whether there was a breach of conduct by the member concerned may be made by a majority decision.

(3) Where the panel determine that there was a breach of conduct the Chairman shall send a report to the Chief Constable and may, after consulting the other members of the panel, make recommendations to the Chief Constable as to any sanctions it considers appropriate.

Exceptional Circumstances

29.—(1) Where the Ombudsman recommends special disciplinary proceedings under Section 59(2)(c) and the Chief Constable agrees:

(a) there shall be a hearing by a panel consisting of a barrister or solicitor, who shall be chairman, a member of appropriate rank and another panel member who is not a serving police officer; and

(b) the Ombudsman shall present the case.

(2) The decision as to whether there was a breach of conduct by the member concerned may be made by a majority decision.

(3) Where the panel determine that there was a breach of conduct the Chairman may, after consulting the other members of the panel, make recommendations to the Chief Constable as to any sanctions it considers appropriate.

Delegation of functions by chief constable

30.—(1) Subject to paragraphs (3) and (4), the Chief Constable may delegate all or any of the functions or duties conferred on him under Part VII the Act of 1998, to the deputy chief constable or an assistant chief constable.

(2) The said functions or duties may be delegated to the deputy chief constable or an assistant chief constable.

(3) Without prejudice to the foregoing, the Chief Constable may delegate all or any of his functions or duties in relation to the informal resolution of complaints to a member of at least the rank of chief inspector.

(4) A member who has conducted an investigation in a case, or who has acted in relation to it in pursuance of an attempt to resolve it by way of informal resolution shall not, as respects that case, exercise any function or duty in pursuance of a delegation under paragraph (1).

Peter Mandelson

One of Her Majesty's Principal
Secretaries of State

Northern Ireland Office
23rd October 2000

Complaints which are anonymous, repetitious or incapable of investigation

1.—(1) In this Schedule any reference to an injured person other than the complainant shall have effect only in the case of a complaint against a member in respect of his conduct towards a person other than the complainant; and, in such a case, any such reference is a reference to that other person.

(2) In this Schedule any reference to action not being reasonably practicable shall include a reference to action which it does not appear reasonably practicable to take within a period which is reasonable in all the circumstances of the case.

2. For the purposes of regulation 25 a complaint is an anonymous one if, and only if, it discloses (or purports to disclose) neither the name and address of the complainant nor that of any other injured person and it is not reasonably practicable to ascertain such a name and address.

3.—(1) For the purposes of regulation 25 a complaint is a repetitious one if, and only if—

- (a) it is substantially the same as a previous complaint (whether made by or on behalf of the same or a different complainant);
- (b) it contains no fresh allegations which significantly affect the account of the conduct complained of;
- (c) no fresh evidence, being evidence which was not reasonably available at the time the previous complaint was made, is tendered in support of it; and
- (d) such action as is referred to in regulation 25(2) has been taken, as respects the previous complaint.

(2) The condition in sub-paragraph (1)(d) shall be satisfied if, as respects the previous complaint—

- (a) the requirements of Section 10(5), (6) and (7) of the Order of 1987 were complied with; or
- (b) the requirements of Sections 58 and 59 of the Act of 1998 were complied with; or
- (c) the complainant gave such a notification as is mentioned in regulation 20(1); or
- (d) the Ombudsman, under regulation 25, dispensed with the requirements mentioned in paragraph (1) of that regulation.

4. For the purposes of regulation 25 it shall not be reasonably practicable to complete the investigation of a complaint if, and only if, in the opinion of the Ombudsman:

- (a) it is not reasonably practicable to communicate with the complainant or, as the case may be, the person who submitted the complaint, or any other injured person, notwithstanding that the complaint is not an anonymous one within the meaning of paragraph 2, or
- (b) it is not reasonably practicable to complete a satisfactory investigation in consequence of—
 - (i) a refusal or failure, on the part of the complainant, to make a statement or afford other reasonable assistance for the purposes of the investigation, or

- (ii) a refusal or failure, on the part of an injured person other than the complainant, to support the complaint, evidenced either by a statement in writing (signed by him or by his solicitor or other authorised agent on his behalf) to the effect that he does not support it or by a refusal or failure, on his part, such as is mentioned in sub-paragraph (i) above, or
- (iii) the lapse of time since the event or events forming the subject matter of the complaint.

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These regulations are made under Part VII of the Police (Northern Ireland) Act 1998 and provide procedures for a new police complaints system in Northern Ireland whereby there will be a Police Ombudsman who will have independent control of the police complaints system. The regulations provide procedures to ensure that the Ombudsman shall exercise his powers in such a manner to secure the efficiency, effectiveness and independence of the police complaints system; and the confidence of the public and of members of the police force in that system.

The Ombudsman will be the focal point for complaints about the police. All complaints, and not just those on police conduct, will be made through the Ombudsman in the first instance. Where, however, complaints are against policy or operational instructions, the Ombudsman will pass them to the Chief Constable or Police Authority for action. The Ombudsman will decide how complaints which relate to the conduct of officers should be handled. He will also have the power to intervene in non-complaints cases about police conduct if this is in the public interest. The Ombudsman will be required to investigate cases where it is alleged the conduct of a police officer caused death or serious injury.

He may investigate other complaints as he sees fit or may refer them to the police to investigate, possibly under supervision. The Ombudsman's power to investigate includes examination of both criminal offences and possible disciplinary breaches. Reports on cases where a criminal offence may have been committed by a member of the police force will be sent to the Director of Public Prosecutions, with a recommendation by the Ombudsman. After any criminal aspects have been dealt with, the Ombudsman will then consider the disciplinary aspects of a case. He will make a recommendation to the Chief Constable (or Police Authority for Northern Ireland for a senior officer, above Superintendent). Where the Chief Constable is unwilling to bring disciplinary proceedings, the Ombudsman may direct such proceedings before a special tribunal and the Ombudsman shall present the case. The Ombudsman may also recommend a special tribunal in exceptional circumstances where the severity of the allegation or the public interest merits such a tribunal.

The Ombudsman will also produce an annual report, and such other reports as are requested by the Secretary of State. The Ombudsman's office will also analyse trends in respect of complaints. For example the extent to which specific policing practices or policies, the use of certain types of equipment, etc, tend to increase the occasion for complaint, and to make recommendations on these issues.

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