



# Policing and Crime Act 2017

## 2017 CHAPTER 3

### PART 2

#### POLICE COMPLAINTS, DISCIPLINE AND INSPECTION

### CHAPTER 4

#### POLICE DISCIPLINE

## **29 Disciplinary proceedings: former members of police forces and former special constables**

- (1) The Police Act 1996 is amended as follows.
- (2) In section 50 (regulations for police forces), after subsection (3) (regulations concerning disciplinary proceedings) insert—

“(3A) Regulations under this section may provide for the procedures that are established by or under regulations made by virtue of subsection (3) to apply (with or without modifications) in respect of the conduct, efficiency or effectiveness of any person where—

- (a) an allegation relating to the conduct, efficiency or effectiveness of the person comes to the attention of a chief officer of police, a local policing body or the Independent Police Complaints Commission,
- (b) at the time of the alleged misconduct, inefficiency or ineffectiveness the person was a member of a police force, and
- (c) condition A, B or C is satisfied in relation to the person.

(3B) Condition A is that the person ceases to be a member of a police force after the allegation first comes to the attention of a person mentioned in subsection (3A)

(a).

(3C) Condition B is that the person had ceased to be a member of a police force before the allegation first came to the attention of a person mentioned in

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subsection (3A)(a) but the period between the person having ceased to be a member of a police force and the allegation first coming to the attention of a person mentioned in subsection (3A)(a) does not exceed the period specified in regulations under this section.

(3D) Condition C is that—

- (a) the person had ceased to be a member of a police force before the allegation first came to the attention of a person mentioned in subsection (3A)(a),
- (b) the period between the person having ceased to be a member of a police force and the allegation first coming to the attention of a person mentioned in subsection (3A)(a) exceeds the period specified for the purposes of condition B, and
- (c) the alleged misconduct, inefficiency or ineffectiveness is such that, if proved, the person could have been dealt with by dismissal if the person had still been a member of a police force.

(3E) Regulations made by virtue of subsection (3A) as they apply in a case where condition C is satisfied in relation to a person must provide that disciplinary proceedings may be taken against the person in respect of the alleged misconduct, inefficiency or ineffectiveness only if the Independent Police Complaints Commission determines that taking such proceedings would be reasonable and proportionate having regard to—

- (a) the seriousness of the alleged misconduct, inefficiency or ineffectiveness,
- (b) the impact of the allegation on public confidence in the police, and
- (c) the public interest.

(3F) Regulations made by virtue of subsection (3A) may make provision about matters to be taken into account by the Independent Police Complaints Commission for the purposes of subsection (3E)(a) to (c).

(3G) Regulations made by virtue of subsection (3A) must provide that disciplinary proceedings which are not the first disciplinary proceedings to be taken against the person in respect of the alleged misconduct, inefficiency or ineffectiveness may be taken only if they result from a re-investigation of the allegation (whether carried out under regulations under this section or under the Police Reform Act 2002) that begins within the period specified in the regulations.

The period specified must begin with the date when the person ceased to be a member of a police force.”

(3) In section 51 (regulations for special constables), after subsection (2A) (regulations concerning disciplinary proceedings) insert—

“(2B) Regulations under this section may provide for the procedures that are established by or under regulations made by virtue of subsection (2A) to apply (with or without modifications) in respect of the conduct, efficiency or effectiveness of any person where—

- (a) an allegation relating to the conduct, efficiency or effectiveness of the person comes to the attention of a chief officer of police, a local policing body or the Independent Police Complaints Commission,

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- (b) at the time of the alleged misconduct, inefficiency or ineffectiveness the person was a special constable, and
  - (c) condition A, B or C is satisfied in relation to the person.
- (2C) Condition A is that the person ceases to be a special constable after the allegation first comes to the attention of a person mentioned in subsection (2B) (a).
- (2D) Condition B is that the person had ceased to be a special constable before the allegation first came to the attention of a person mentioned in subsection (2B) (a) but the period between the person having ceased to be a special constable and the allegation first coming to the attention of a person mentioned in subsection (2B)(a) does not exceed the period specified in regulations under this section.
- (2E) Condition C is that—
  - (a) the person had ceased to be a special constable before the allegation first came to the attention of a person mentioned in subsection (2B) (a),
  - (b) the period between the person having ceased to be a special constable and the allegation first coming to the attention of a person mentioned in subsection (2B)(a) exceeds the period specified for the purposes of condition B, and
  - (c) the alleged misconduct, inefficiency or ineffectiveness is such that, if proved, the person could have been dealt with by dismissal if the person had still been a special constable.
- (2F) Regulations made by virtue of subsection (2B) as they apply in a case where condition C is satisfied in relation to a person must provide that disciplinary proceedings may be taken against the person in respect of the alleged misconduct, inefficiency or ineffectiveness only if the Independent Police Complaints Commission determines that taking such proceedings would be reasonable and proportionate having regard to—
  - (a) the seriousness of the alleged misconduct, inefficiency or ineffectiveness,
  - (b) the impact of the allegation on public confidence in the police, and
  - (c) the public interest.
- (2G) Regulations made by virtue of subsection (2B) may make provision about matters to be taken into account by the Independent Police Complaints Commission for the purposes of subsection (2F)(a) to (c).
- (2H) Regulations made by virtue of subsection (2B) must provide that disciplinary proceedings which are not the first disciplinary proceedings to be taken against the person in respect of the alleged misconduct, inefficiency or ineffectiveness may be taken only if they result from a re-investigation of the allegation (whether carried out under regulations under this section or under the Police Reform Act 2002) that begins within the period specified in the regulations.

The period specified must begin with the date when the person ceased to be a special constable.”

- (4) In section 84 (representation etc at disciplinary and other proceedings)—

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- (a) in subsection (1)—
    - (i) after “50(3)” insert “ or (3A) ”;
    - (ii) after “51(2A)” insert “ or (2B) ”;
  - (b) in subsection (4)—
    - (i) in the definition of “the officer concerned”, after “constable” insert “ or, as the case may be, the former member of a police force or the former special constable, ”;
    - (ii) in the definition of “relevant authority”, after “authority” insert “ , in relation to proceedings conducted under regulations made in pursuance of section 50(3) or section 51(2A), ”;
    - (iii) after the definition of “relevant authority” insert—
      - ““relevant authority”, in relation to proceedings conducted under regulations made in pursuance of section 50(3A) or section 51(2B), means—
      - (a) where the officer concerned is a former member of a police force (other than a former chief officer of police), or a former special constable, the chief officer of police of the police force of which the officer was last a member, or for which the officer was last appointed as a special constable;
      - (b) where the officer concerned is a former chief officer of police, the local policing body for the police force of which the officer was last a member;”.
- (5) In section 85 (appeals against dismissal etc), in subsection (1), after “constable” insert “ , or a former member of a police force or a former special constable, ”.
- (6) In Schedule 6 (appeals to Police Appeals Tribunals), in paragraph 10—
- (a) in paragraph (b), before “means” insert “ , except in relation to an appeal under section 85 that relates to proceedings conducted under regulations made in pursuance of section 50(3A) or section 51(2B), ”;
  - (b) after paragraph (b) insert—
    - “(ba) the relevant local policing body”, in relation to an appeal under section 85 that relates to proceedings conducted under regulations made in pursuance of section 50(3A) or section 51(2B), means the local policing body which maintains—
      - (i) the police force of which the appellant was last a member, or
      - (ii) the police force for the area for which the appellant was last appointed as a special constable,
 as the case may be.”
- (7) Regulations made in pursuance of section 50(3A) or 51(2B) of the Police Act 1996 (as inserted by subsections (2) and (3))—
- (a) may not make provision in relation to a person who ceases to be a member of a police force or a special constable (as the case may be) before the coming into force of subsections (2) and (3);
  - (b) may make provision in relation to a person who ceases to be a member of a police force or a special constable (as the case may be) after the coming

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into force of this section even though the alleged misconduct, inefficiency or ineffectiveness occurred at a time before the coming into force of subsections (2) and (3), but only if the alleged misconduct, inefficiency or ineffectiveness is such that, if proved, there could be a finding in relation to the person in disciplinary proceedings that the person would have been dismissed if the person had still been a member of a police force or a special constable.

- (8) Schedule 7 makes amendments of the Ministry of Defence Police Act 1987, the Railways and Transport Safety Act 2003 and the Energy Act 2004 which produce an equivalent effect to the amendments made by this section.

#### Commencement Information

- I1** S. 29 in force for specified purposes at Royal Assent, see s. 183
- I2** S. 29(1)-(7) in force at 15.12.2017 in so far as not already in force by S.I. 2017/1139, reg. 2(a) (as amended by S.I. 2017/1162, reg. 2)
- I3** S. 29(8) in force at 15.12.2017 for specified purposes by S.I. 2017/1139, reg. 2(b) (as amended by S.I. 2017/1162, reg. 2)

### 30 Police barred list and police advisory list

- (1) After Part 4 of the Police Act 1996, insert the Part set out in Schedule 8 to this Act.
- (2) In consequence of the new Part 4A of the Police Act 1996 (as inserted by Schedule 8), the Police Reform and Social Responsibility Act 2011 is amended as follows.
- (3) In section 42 (appointment of Commissioner of Police of the Metropolis), after subsection (3A) insert—
- “(3AA) But a person who would be eligible for appointment by virtue of subsection (3A) is not eligible for appointment at a time when the person is included in the police barred list maintained under section 88B of the Police Act 1996.”
- (4) In section 43 (Deputy Commissioner of Police of the Metropolis), after subsection (3) insert—
- “(3A) The Secretary of State may not recommend to Her Majesty that She appoint a person as the Deputy Commissioner of Police of the Metropolis unless that person is eligible for appointment.
- (3B) A person is not eligible for appointment at a time when the person is included in the police barred list maintained under section 88B of the Police Act 1996.”
- (5) In Part 1 of Schedule 8 (appointment of Chief Constables), in paragraph 1—
- (a) the existing text becomes sub-paragraph (1);
- (b) after that sub-paragraph insert—
- “(2) The police and crime commissioner also has duties under section 88C of the Police Act 1996 (effect of inclusion in police barred list) in relation to the appointment of a chief constable.”
- (6) The Secretary of State may by regulations made by statutory instrument make provision that—

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- (a) corresponds or is similar to that made by or under Part 4A of the Police Act 1996 (as inserted by Schedule 8), and
  - (b) relates to a person who is, or has been, employed or appointed by a person with functions of a public nature exercisable in, or in relation to, England and Wales that relate to policing or law enforcement (other than a chief officer of police or a local policing body, within the meaning of the Police Act 1996).
- (7) A statutory instrument containing regulations under subsection (6) is subject to annulment in pursuance of a resolution of either House of Parliament.

#### Commencement Information

- I4** S. 30 in force for specified purposes at Royal Assent, see s. 183
- I5** S. 30 in force at 15.12.2017 in so far as not already in force by S.I. 2017/1139, reg. 2(c) (as amended by S.I. 2017/1162, reg. 2)

### 31 Appeals to Police Appeals Tribunals

- (1) Schedule 6 to the Police Act 1996 (appeals to Police Appeals Tribunals) is amended as follows.
- (2) In paragraph 1 (appeal by a senior officer), in sub-paragraph (1), in the words before paragraph (a), for “Secretary of State” substitute “relevant person”.
- (3) In paragraph 2 (appeal by a member of a police force other than a senior officer or by a special constable), in sub-paragraph (1)—
  - (a) in the words before paragraph (a), for “relevant local policing body” substitute “relevant person”;
  - (b) omit paragraph (d);
  - (c) at the end insert—
    - “(e) one shall be a lay person.”
- (4) After paragraph 2 insert—
  - “2A
  - (1) For the purposes of paragraphs 1 and 2, “the relevant person” means the person determined in accordance with rules made by the Secretary of State.
  - (2) Rules under sub-paragraph (1) may make—
    - (a) different provision for different cases and circumstances;
    - (b) provision for the relevant person to be able to delegate the power to appoint the members of a tribunal.
  - (3) A statutory instrument containing rules under sub-paragraph (1) is subject to annulment in pursuance of a resolution of either House of Parliament.”
- (5) In paragraph 10 (interpretation)—
  - (a) after paragraph (a) insert—
    - “(aa) lay person” means a person who is not, and has never been—
      - (i) a member of a police force or a special constable,
      - (ii) a member of the civilian staff of a police force, including the metropolitan police force, within the

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- meaning of Part 1 of the Police Reform and Social Responsibility Act 2011 (see section 102(4) and (6) of that Act),
- (iii) a person employed by the Common Council of the City of London in its capacity as police authority who is under the direction and control of the Commissioner of Police for the City of London,
  - (iv) a police and crime commissioner,
  - (v) a member of staff of a police and crime commissioner, or of the Mayor's Office for Policing and Crime, within the meaning of Part 1 of the Police Reform and Social Responsibility Act 2011 (see section 102(3) and (5) of that Act),
  - (vi) a constable within the meaning of Part 1 of the Police and Fire Reform (Scotland) Act 2012 (2012 asp 8) (see section 99 of that Act),
  - (vii) a member of the Police Service of Northern Ireland or the Police Service of Northern Ireland Reserve,
  - (viii) a member of the British Transport Police Force or a special constable appointed under section 25 of the Railways and Transport Safety Act 2003,
  - (ix) an employee of the British Transport Police Authority appointed under section 27 of the Railways and Transport Safety Act 2003,
  - (x) a member of the Ministry of Defence Police,
  - (xi) a person (other than a member of the Ministry of Defence Police) who is under the direction and control of the chief constable for the Ministry of Defence Police,
  - (xii) a member of the Civil Nuclear Constabulary, or
  - (xiii) an employee of the Civil Nuclear Police Authority appointed under paragraph 6 of Schedule 10 to the Energy Act 2004, ”;
- (b) omit sub-paragraph (c).
- (6) In consequence of the other provision made by this section—
- (a) in the Criminal Justice and Immigration Act 2008, in Part 1 of Schedule 22, omit paragraph 11(6)(b);
  - (b) in the Police Reform and Social Responsibility Act 2011, in Part 1 of Schedule 16, omit paragraph 47(2)(b).

#### Commencement Information

**I6** S. 31 in force for specified purposes at Royal Assent, see s. 183

## 32 Guidance concerning disciplinary proceedings and conduct etc

- (1) Section 87 of the Police Act 1996 (guidance concerning disciplinary proceedings etc) is amended as follows.

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(2) For subsections (1) to (1A) substitute—

“(1) The Secretary of State may issue guidance as to the discharge of their disciplinary functions to—

- (a) local policing bodies,
- (b) chief officers of police,
- (c) other members of police forces,
- (d) civilian police employees, and
- (e) the Independent Police Complaints Commission.”

(3) Before subsection (2) insert—

“(1B) The College of Policing may, with the approval of the Secretary of State, issue guidance to the persons mentioned in subsection (1)(a) to (c) as to the discharge of their disciplinary functions in relation to members of police forces and special constables and former members of police forces and former special constables.”

(4) After subsection (4) insert—

“(4A) In this section “disciplinary functions” means—

- (a) functions in relation to the conduct, efficiency and effectiveness of, and the maintenance of discipline of, the following persons (including functions in relation to disciplinary proceedings)—
  - (i) members of police forces;
  - (ii) special constables;
  - (iii) civilian police employees;
- (b) functions in relation to disciplinary proceedings against persons who were, but have ceased to be, persons falling within paragraph (a).”

(5) For subsection (5) substitute—

“(5) In this section—

“civilian police employee” means—

- (a) a member of the civilian staff of a police force, including the metropolitan police force (within the meaning of Part 1 of the Police Reform and Social Responsibility Act 2011), or
- (b) a person employed by the Common Council of the City of London in its capacity as police authority who is under the direction and control of the Commissioner of Police for the City of London;

“disciplinary proceedings”—

- (a) in relation to a member of a police force or a special constable, or a former member of a police force or a former special constable, means any proceedings under regulations under section 50 or 51 that are identified as disciplinary proceedings by those regulations;
- (b) in relation to any other person, means any proceedings identified as disciplinary proceedings by regulations made by the Secretary of State for the purposes of this section.”

(6) After subsection (5) insert—



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“(6) A statutory instrument containing regulations under paragraph (b) of the definition of “disciplinary proceedings” in subsection (5) is subject to annulment in pursuance of a resolution of either House of Parliament.”

(7) After section 87 of the Police Act 1996 insert—

**“87A Guidance concerning conduct etc**

- (1) The Secretary of State may issue guidance as to matters of conduct, efficiency and effectiveness to—
  - (a) members of police forces,
  - (b) special constables, and
  - (c) civilian police employees.
- (2) The College of Policing may, with the approval of the Secretary of State, issue guidance of the type described in subsection (1) to the persons mentioned in paragraphs (a) and (b) of that subsection.
- (3) It shall be the duty of every person to whom any guidance under this section is issued to have regard to the guidance.
- (4) A failure by a person to whom guidance under this section is issued to have regard to the guidance shall be admissible in evidence in any disciplinary proceedings brought against the person.
- (5) In this section “civilian police employees” and “disciplinary proceedings” have the same meaning as in section 87.”

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**Commencement Information**

**I7** S. 32 in force for specified purposes at Royal Assent, see s. 183

**Status:**

Point in time view as at 15/12/2017.

**Changes to legislation:**

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