

2004 No. 671

POLICE, ENGLAND AND WALES

**The Independent Police Complaints Commission
(Transitional Provisions) Order 2004**

Made - - - - - *9th March 2004*

Laid before Parliament *11th March 2004*

Coming into force - - *1st April 2004*

The Secretary of State, in exercise of the powers conferred on him by sections 28 and 105(4) of the Police Reform Act 2002(a), hereby makes the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Independent Police Complaints Commission (Transitional Provisions) Order 2004 and shall come into force on 1st April 2004.

(2) In this Order—

- (a) “the 2002 Act” means the Police Reform Act 2002;
- (b) “the Authority” means the Police Complaints Authority; and
- (c) “the Commission” means the Independent Police Complaints Commission.

Transitional arrangements connected with establishing the Commission etc.

2.—(1) Where a complaint was received before 1st April 2004 in respect of conduct by a member of a police force or by a member of the National Criminal Intelligence Service or of the National Crime Squad, paragraphs (2) to (4) apply.

(2) Nothing in or made under Part 2 of the 2002 Act shall apply in relation to that complaint.

(3) Notwithstanding the repeal of Chapter 1 of Part 4 of the Police Act 1996(b), and subject to paragraph (4), that Chapter shall continue to have effect in relation to that complaint as if there had been no such repeal.

(4) The functions of the Authority under that Chapter in relation to that complaint shall be carried out by the Commission instead of by the Authority.

Conduct by certain persons occurring before 1st April 2004

3. Where a complaint is received, or a conduct matter comes to the attention of an appropriate authority, about conduct—

- (a) by a person falling within section 12(7)(b) or (c) of the 2002 Act (employees of a police authority and special constables), or designated under section 39(2) of that Act (police powers for contracted-out staff);

(a) 2002 c. 30.

(b) 1996 c. 16; Chapter 1 of Part 4 is prospectively repealed by section 107(2) of and Schedule 8 to the 2002 Act.

(b) which occurred before 1st April 2004,
nothing in or made under Part 2 of the 2002 Act shall apply in relation to that complaint or
conduct matter.

Repeated complaints

4.—(1) No complaint shall be recorded by a police authority or chief officer under paragraph 2(6) of Schedule 3 to the 2002 Act if that authority or officer is satisfied that the subject-matter of the complaint was previously submitted to the appropriate authority under section 67 of the Police Act 1996, and as respects that complaint, either—

- (a) the requirements of section 74 or 75 of the Police Act 1996 (steps to be taken after investigation) were complied with;
- (b) the complaint was informally resolved in accordance with the Police (Complaints) (Informal Resolution) Regulations 1985(a) or regulation 19 of the National Crime Squad (Complaints) Regulations 1998(b);
- (c) the Authority, under regulation 3 of the Police (Anonymous, Repetitious Etc. Complaints) Regulations 1985(c) or regulation 4 of the National Crime Squad (Dispensation from Requirement to Investigate Complaints) Regulations 2003(d) dispensed with the requirements of Chapter 1 of Part 4 of the Police Act 1996;
- (d) the complainant gave notification that he withdrew the complaint; or
- (e) the appropriate authority concluded that the complaint did not fall to be recorded under section 68(1) of the Police Act 1996.

(2) Paragraph 3(3) of Schedule 3 to the 2002 Act (right to appeal to the Commission against a failure by the police authority or chief officer to record anything etc) shall not apply in relation to a complaint which falls within paragraph (1) of this article.

Transfer of employees

5.—(1) Every person who—

- (a) immediately before 1st April 2004 is employed by the Authority;
- (b) but for the provisions of this Order would continue to be so employed; and
- (c) whose name is mentioned on the Independent Police Complaints Commission designated list,

shall, on that date, transfer to and become an employee of, the Commission.

(2) The contract of employment of a person who is transferred by virtue of this article shall not terminate on the date of the transfer but shall have effect as if originally made between that employee and the Commission.

(3) In this article “the Independent Police Complaints Commission designated list” means the list marked “Police Reform Act 2002 (Staff Transfer) Independent Police Complaints Commission designated list” which is signed on behalf of the Secretary of State, one copy of which is deposited with the Commission and one copy of which is deposited in the offices of the Secretary of State.

(4) This article has effect without prejudice to the Transfer of Undertakings (Protection of Employment) Regulations 1981(e).

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- (a) S.I. 1985/671; these Regulations have effect as if made under section 81 of the Police Act 1996.
 - (b) S.I. 1998/638; regulation 19 was inserted by S.I. 1999/1266; these Regulations are revoked from 1st April 2004 by regulation 29(5)(a) of the Police (Complaints and Misconduct) Regulations 2004 (S.I. 2004/643).
 - (c) S.I. 1985/672 as amended by S.I. 1990/1301; these Regulations have effect as if made under section 81 of the Police Act 1996 and by virtue of S.I. 1990/1301 they may be cited as the Police (Dispensation from Requirement to Investigate Complaints) Regulations 1985.
 - (d) S.I. 2003/2601; these Regulations are revoked from 1st April 2004 by regulation 29(5)(e) of the Police (Complaints and Misconduct) Regulations 2004.
 - (e) S.I. 1981/1794; as amended by sections 33(2) and 51 of, and Schedule 10 to, the Trade Union Reform and Employment Rights Act 1993 (c. 19), by section 1(2)(a) of the Employment Rights (Dispute Resolution) Act 1998 (c. 8), and by S.I. 1987/442, 1995/2587, 1999/925 and 1999/2402.

Transfer of property

- 6.—(1) As soon as practicable, the Secretary of State shall—
- (a) use his best endeavours to determine whether it is fair and reasonable to make any transfers of property, rights and liabilities from the Authority to the Commission or, as the case may be, to the Crown; and
 - (b) give notice in writing to the Commission and the Authority specifying any such transfers and the date or dates on which they are to take effect under article 7.
- (2) A notice under paragraph (1) above may—
- (a) indicate that there are matters specified therein about which a determination is still to be made; or
 - (b) provide for a variation in the transfer of property, rights or liabilities in circumstances specified in the notice.
- (3) In this article, references to the transfer of property, rights and liabilities mean—
- (a) the transfer from the Authority to the Commission or, as the case may be, to the Crown, or the apportionment between them of any property and of rights and liabilities relating to it;
 - (b) such transfer or apportionment of any other rights and liabilities; and
 - (c) the creation of any rights and liabilities between any of them.

Transfer of property etc.

7. This article shall have effect to—
- (a) transfer from the Authority to the Commission or, as the case may be, the Crown—
 - (i) such property;
 - (ii) such rights and liabilities relating thereto; and
 - (iii) such other rights and liabilities,as may be specified in a written notice from the Secretary of State under article 6(1)(b);
 - (b) apportion between any of them—
 - (i) such property;
 - (ii) such rights and liabilities relating thereto; and
 - (iii) such other rights and liabilities,as may be so specified; and
 - (c) create between them such rights and liabilities as may be so specified;
- on such date or dates as may be so specified.

Home Office
9th March 2004

Hazel Blears
Minister of State

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes transitional provision in connection with the coming into force on 1st April 2004 of Part 2 of the Police Reform Act 2002 which provides for a new system of handling complaints against the police.

Article 2 provides that where an investigation into a complaint is ongoing on 1st April 2004, that complaint will continue to be handled under the Police Act 1996, but the Independent Police Complaints Commission will perform the functions of the Police Complaints Authority under that Act.

Article 3 provides that where a complaint is received after 1st April 2004 about conduct which occurred before that date by a civilian employee of the police, a special constable or a person designated as a detention officer or escort officer, then the complaint will not be covered by Part 2 of the Police Reform Act. These persons are thus treated differently from regular police officers and members of NCIS and the National Crime Squad, in relation to whom complaints and conduct matters which are recorded on or after 1st April will be handled under the new system, regardless of when the incident took place.

Article 4 provides that complaints which have already been recorded and closed under the old system, or which were held not to qualify for recording under that system (for example, because they related to the direction or control of a police force by its chief officer) cannot be reopened under the new system. There will be no right of appeal to the Independent Police Complaints Commission against a decision not to record such a complaint.

Article 5 provides for the transfer of employees from the Police Complaints Authority to the Independent Police Complaints Commission.

Articles 6 and 7 provide for the transfer of property from the Authority to the Commission or to the Crown.

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