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STATUTORY INSTRUMENTS

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**2020 No. 2**

**The Police (Complaints and Misconduct) Regulations 2020**

**PART 1**

Preliminary

**Citation, commencement, interpretation and application**

1.—(1) These Regulations may be cited as the Police (Complaints and Misconduct) Regulations 2020 and come into force on 1st February 2020.

(2) In these Regulations—

“the 2002 Act” means the Police Reform Act 2002;

“the Conduct Regulations” means the Police (Conduct) Regulations 2020(1);

“designated police volunteer” means a person designated as a community support volunteer or policing support volunteer under section 38(1A) of the 2002 Act (police powers for civilian staff and volunteers)(2);

“disciplinary action” has the same meaning as in the Conduct Regulations;

“disciplinary proceedings”—

(a) in relation to a member of a police force or a special constable, means any proceedings under the Conduct Regulations, other than under Part 6 of those Regulations (reflective practice review process), and

(b) in relation to a person serving with the police who is not a member of a police force or a special constable, means any proceedings or management process during which the conduct (as opposed to the performance) of such a person is considered in order to determine whether a sanction or punitive measure is to be imposed against that person in relation to that conduct,

but this definition does not apply in relation to regulation 47 (definition of “disciplinary proceedings” for the purposes of Part 2 of the 2002 Act in relation to police staff members and designated police volunteers);

“interested person” means a person who has an interest in being kept properly informed about the handling of a complaint, conduct matter or DSI matter in accordance with section 21 of the 2002 Act (duty to provide information for other persons)(3);

“performance proceedings”—

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(1) [S.I. 2020/4](#).

(2) Section 38(1A) was substituted by section 38(1) and (2) of the Policing and Crime Act 2017.

(3) Section 21 was amended by paragraphs 1 and 7 of the Serious Organised Crime and Police Act 2005 and paragraphs 1 and 4 of Schedule 4, and paragraphs 15 and 27 of Schedule 9, to the Policing and Crime Act 2017; there are further amendments to section 21 but none is relevant.

- (a) in relation to a member of a police force or a special constable, means unsatisfactory performance procedures within the meaning of the Police (Performance) Regulations 2020(4), and
- (b) in relation to a person serving with the police who is not a member of a police force or a special constable, means any proceedings or management process during which the performance of such a person is considered in order to determine whether it is unsatisfactory and whether, as a result, any action is to be taken in relation to it;

“police staff member” means—

- (a) a civilian employee of a police force, or
- (b) an employee of the Common Council who is under the direction and control of a chief officer;

“reflective practice review process” means the process set out in Part 6 of the Conduct Regulations;

“relevant document” means a document relating to any complaint or matter under investigation (and includes a document containing suggestions as to lines of inquiry to be pursued or witnesses to be interviewed), but this definition does not apply in relation to regulation 27 (report on investigation);

“a relevant offence” means—

- (a) an offence for which the sentence is fixed by law, or
- (b) an offence for which a person of 18 years or over (not previously convicted) may be sentenced to imprisonment for a term of seven years or more or might be so sentenced but for the restrictions imposed by section 33 of the Magistrates’ Courts Act 1980 (maximum penalties on summary conviction in pursuance of section 22)(5);

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

“Schedule 3” means Schedule 3 to the 2002 Act (handling of complaints and conduct matters etc.);

“section 13A notice” means a notice given by a local policing body that maintains a police force to the chief officer of that force under section 13A(1) of the 2002 Act (local policing bodies: functions in relation to complaints)(6);

“section 28A direction” means a direction under section 28A(1) or (4) of the 2002 Act (application of Part 2 to old cases)(7);

“senior officer” means a member of a police force holding a rank above that of chief superintendent;

“severity assessment” means, in relation to conduct, an assessment as to—

- (a) whether the conduct, if proved, would amount to misconduct that is so serious as to justify disciplinary action or gross misconduct(8), and
- (b) if the conduct were to become the subject of disciplinary proceedings, the form which those proceedings would be likely to take;

(4) S.I. 2020/3.

(5) 1980 c. 43. Section 33 was amended by section 17 of, and Part II of Schedule 4 to, the Criminal Justice Act 1991 (c. 53), section 2 of the Aggravated Vehicle-Taking Act 1992 (c. 11), paragraph 65 of Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) and paragraphs 25 and 27 of Schedule 32 to the Criminal Justice Act 2003 (c. 44).

(6) Section 13A was inserted by section 13 of the Policing and Crime Act 2017.

(7) Section 28A was inserted by section 2(1) and (2) of the Police (Complaints and Conduct) Act 2012 (c. 22) and amended by paragraphs 15 and 39 of Schedule 9 to the Policing and Crime Act 2017.

(8) Paragraph 29 of Schedule 3 to the 2002 Act defines “misconduct” as a breach of the Standards of Professional Behaviour and “gross misconduct” as a breach of the Standards of Professional Behaviour that is so serious as to justify dismissal.

“special conditions”, other than in regulations 25(3)(a) and 26(3)(a) (accelerated procedure: certification for the purposes of the Conduct Regulations), means the conditions mentioned in paragraph 20A(2) of Schedule 3 (accelerated procedure in special cases)(9);

“Standards of Professional Behaviour” has the same meaning as in the Conduct Regulations;

“working day” means any day other than—

- (a) a Saturday or Sunday;
- (b) Christmas Day or Good Friday, or
- (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971(10) in England and Wales.

(3) The provisions of these Regulations apply in relation to any re-investigation in pursuance of a determination under—

- (a) section 13B of the 2002 Act (power of the Director General to require a re-investigation)(11), or
- (b) paragraph 26 of Schedule 3 (re-investigations following a review)(12),

as they apply in relation to any investigation in pursuance of a determination under paragraph 15 of Schedule 3 (power of the Director General to determine the form of an investigation)(13).

## **Revocation and transitional and saving provisions**

2.—(1) Subject to the following provisions of this regulation, the following are revoked—

- (a) the Police (Complaints and Misconduct) Regulations 2012(14);
- (b) the Police (Complaints and Misconduct) (Old Cases) Regulations 2013(15);
- (c) the Police (Complaints and Misconduct) (Amendment) Regulations 2014(16);
- (d) the Police (Complaints and Misconduct) (Amendment) Regulations 2017(17), and
- (e) the following provisions of the Police (Conduct, Complaints and Misconduct and Appeal Tribunal) (Amendment) Regulations 2017(18)—
  - (i) regulation 1 in so far as it applies to the Police (Complaints and Misconduct) Regulations 2012 (citation, commencement and interpretation);
  - (ii) regulation 2(2) (transitional provision);
  - (iii) Part 4 (amendment of the Police (Complaints and Misconduct) Regulations 2012);
  - (iv) Schedule 2 (modifications to the Police (Complaints and Misconduct) Regulations 2012).

(2) The Regulations and provisions mentioned in paragraph (1) continue to have effect and these Regulations do not apply where—

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(9) Paragraph 20A(2) was substituted by paragraphs 9 and 23 of Schedule 5 to the Policing and Crime Act 2017.

(10) 1971 c. 80.

(11) Section 13B was inserted by section 18(1) of the Policing and Crime Act 2017 and amended by paragraphs 15 and 20 of Schedule 9 to that Act.

(12) Paragraph 26 was amended by paragraphs 29 and 37 of Schedule 5, and paragraphs 15 and 56 of Schedule 9, to the Policing and Crime Act 2017.

(13) Paragraph 15 was amended by paragraphs 1, 11 and 13 of Schedule 12 to the Serious Organised Crime and Police Act 2005 and paragraphs 9 and 15 of Schedule 5, and paragraphs 15 and 56 of Schedule 9, to the Policing and Crime Act 2017.

(14) S.I. 2012/1204, amended by S.I. 2014/2406, 2015/431, 2017/575, 2017/1134 and 2017/1250.

(15) S.I. 2013/1778, amended by S.I. 2017/1250.

(16) S.I. 2014/2406.

(17) S.I. 2017/575.

(18) S.I. 2017/1134.

- (a) a complaint was made, or a conduct matter or DSI matter came to the attention of an appropriate authority, before 1st February 2020 (“a pre-commencement complaint”, “a pre-commencement conduct matter” or “a pre-commencement DSI matter”);
  - (b) a complaint is made, or a conduct matter or DSI matter comes to the attention of an appropriate authority, on or after 1st February 2020 which—
    - (i) relates to—
      - (aa) a matter in respect of which a pre-commencement complaint was made;
      - (bb) a pre-commencement conduct matter, or
      - (cc) a pre-commencement DSI matter, and
    - (ii) at the time the complaint is made, or the conduct matter or DSI matter comes to the attention of an appropriate authority, that pre-commencement complaint, pre-commencement conduct matter or pre-commencement DSI matter is being handled in accordance with Schedule 3.
- (3) But these Regulations, except paragraph (2), apply where the Director General—
- (a) determines under section 13B of the 2002 Act (power of the Director General to require a re-investigation) that a complaint, recordable conduct matter or DSI matter is to be re-investigated, or
  - (b) makes a section 28A direction in relation to a matter on or after 1st February 2020,
- regardless of when the complaint was made or the matter came to the attention of the appropriate authority.
- (4) The Regulations mentioned in paragraph (1) continue to have effect for the purposes of—
- (a) the National Crime Agency (Complaints and Misconduct) Regulations 2013<sup>(19)</sup>, and
  - (b) the Independent Police Complaints Commission (Complaints and Misconduct) (Contractors) Regulations 2015<sup>(20)</sup>.

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<sup>(19)</sup> S.I. 2013/2325, amended by S.I. 2017/1250.

<sup>(20)</sup> S.I. 2015/431, amended by S.I. 2017/1250 and 2018/682.