

POLICE REFORM ACT 2002

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Part 3: Removal, suspension and disciplining of police officers

Section 30: Resignation in the interests of efficiency and effectiveness

167. At present, under the 1996 Act a chief officer can be called on to step down in the interests of efficiency and effectiveness of the force by retirement. At a time when chief officers may be well below normal retirement age, this section provides for the option of resignation as an alternative to retirement.
168. *Subsection (1)* applies these new arrangements to the Metropolitan Police.
169. *Subsection (2)* applies them to forces outside London.

Section 31: Procedural requirements for removal of senior officers

170. This section adds procedural requirements for the exercise of the power of a police authority to remove a chief officer in the interests of efficiency or effectiveness. It requires that where a police authority exercises this power, it must give the officer concerned its reasons for removal in writing, afford him the opportunity to make representations in person at a hearing, and consider any representations made by or on behalf of the officer.
171. *Subsection (1)* applies these requirements to the Metropolitan Police Authority.
172. *Subsection (2)* applies them to police authorities outside London.

Section 32: Suspension of senior officers

173. This section introduces a new power for police authorities, on their own initiative or when required to do so by the Secretary of State (for the latter of which, see also section 33), to suspend chief officers who are or may be called on to retire or resign in the interests of the efficiency and effectiveness of their force. As a safeguard against arbitrary or unfair use by the police authority, the approval of the Secretary of State is required.
174. *Subsection (1)* gives the suspension power to the Metropolitan Police Authority in respect of the Commissioner and Deputy Commissioner of Police of the Metropolis. It does this by inserting a new subsection (2A) in section 9E of the 1996 Act: that section contains the powers to call on the Commissioner or the Deputy Commissioner to retire.
175. *Subsection (2)* introduces the suspension power for police authorities outside London in respect of chief constables in their forces. In those cases, the subsection inserts a parallel new subsection (3A) in section 11 of the 1996 Act.

176. *Subsections (3), (4) and (5)* make equivalent provision for suspension of Assistant Commissioners, Deputy Assistant Commissioners and Commanders in the Metropolitan Police, and deputy chief constables and assistant chief constables for forces outside London, with the difference that the Secretary of State will not be able require the police authority to exercise its power to suspend these ranks.

Section 33: Removal of senior officers at the instance of the Secretary of State

177. This section sets out revised powers for intervention by the Secretary of State. He will be able to require a police authority to call on the chief constable of a force outside London or the Commissioner or Deputy Commissioner of the Metropolitan Police to retire or resign in the interests of efficiency or effectiveness. He will also be able to require suspension of officers in certain circumstances. The section introduces further safeguards regarding the use of the removal powers and also streamlines the process where the removal of a senior officer is initiated under these powers.
178. *Subsection (2)* contains the intervention powers. These are introduced by the insertion of a series of new subsections in section 42 of the 1996 Act. New *section 42(1)* allows the Secretary of State to require a police authority to call on a senior police officer to retire or resign in the interests of efficiency or effectiveness. New *section 42(1A)* allows the Secretary of State to require suspension of those officers in certain circumstances set out in new *section 42(1B)*. New *section 42(2)* introduces the further safeguards. It makes it a requirement for the Secretary of State to give an officer formal written notice of his intention to exercise the section 42(1) power to require the police authority concerned to take action against the officer, explaining the grounds for so doing. The purpose is to ensure that the officer is made directly aware of the Secretary of State's intention and the reasons behind it. This is in addition to the requirement for an officer to be able to make representations to the Secretary of State, which this subsection re-enacts. *Section 42(2B)* requires the Secretary of State to consider any representations made to him by the officer concerned. *Section 42(2A)* ensures that the relevant police authority is also kept informed of the Secretary of State's actions. If the Secretary of State intends to exercise his powers under this section, he will be required, as now, to appoint an inquiry to report to him on the proposal. The officer and police authority concerned are entitled to make representations to this inquiry – the officer being explicitly allowed to do so in person (revised *section 42(3)*, and new sections *42(3A)* and *42(3B)*).
179. *Subsection (6)* effects the removal of unnecessary stages in two ways. Firstly, it removes the requirement for a police authority, which has been required by the Secretary of State under section 42 to take action against an officer, subsequently to seek the Secretary of State's approval – which would be axiomatic. Secondly, following exercise by the Secretary of State of his section 42 power, the subsequent consideration by him of representations by the officer concerned and the holding of an inquiry, there is currently a duplicating requirement for the police authority also to hear representations: this duplication is removed. Similarly, this subsection ensures that in these circumstances there is no duplication by the police authority of the new requirement for the Secretary of State to provide a written explanation of his grounds for calling upon the officer to retire or resign. The changes are made by the insertion of new subsection (4A) in section 42 of the 1996 Act.

Section 34: Regulations concerning procedure for removal of senior officers

180. This section introduces (in a new section 42A of the 1996 Act) a regulation-making power in respect of procedural matters in the hearing of representations and other aspects of considering proceedings taken under the 1996 Act's powers to call on an officer to retire or resign in the interests of efficiency or effectiveness. Before making any regulations under this section, the Secretary of State must consult those whom he considers represent the interests of police authorities and chief officers of police. Where this formulation occurs in existing legislation, the Secretary of State currently consults

the APA and ACPO and/or CPOSA. The Secretary of State may also consult anyone else he chooses. The regulations will be subject to the negative resolution procedure.

Section 35: Disciplinary proceedings for special constables

181. This section enables the Secretary of State to make regulations under section 51 of the 1996 Act as to the handling of alleged misconduct of special constables. At present, there is no statutory mechanism for taking disciplinary action against special constables. This provision, which will include a code of conduct for special constables, will mean special constables will be on a similar footing to regular officers in regards to the handling of misconduct and disciplinary proceedings.

Section 36: Conduct of disciplinary proceedings

182. As with the handling of complaints, the handling of disciplinary proceedings could make or break public confidence and trust in the police. This section deals with regulations that can be made by the Secretary of State under sections 50 and 51 of the 1996 Act. In addition to the existing powers to make regulations under these sections, this section allows regulations to cover the rights of the IPCC in regards to disciplinary proceedings and the right of specified persons to participate in or to be present at disciplinary proceedings, and to provide for inference to be drawn from a failure to mention a fact when questioned or charged in police disciplinary proceedings.
183. The complainant and the general public need to be assured that evidence in a disciplinary hearing will be presented fully and robustly. There is a possibility of this not happening, particularly when the IPCC does not accept the disciplinary proposals from an appropriate authority and directs it to vary the proposals in a specified way, as provided in paragraph 27 of Schedule 3. To avoid this, *subsection (1)(a)* of this section enables the creation of regulations to ensure that the IPCC will have the right to bring and conduct, or otherwise participate or intervene in, any disciplinary proceedings arising from a complaint or other conduct matter.
184. To ensure greater openness in the disciplinary process, *subsection (1)(b)* allows regulations to update procedures regarding persons able to participate in or attend disciplinary proceedings. The current intention is that up to three supporters of the complainant will be able to attend in all cases. The presiding officer of the hearing may allow more in special circumstances, and he will be expected to be even-handed in the treatment of the officer facing the charge. It would be possible for regulations to allow members of the general public to have access to disciplinary hearings in certain appropriate cases.
185. *Subsection (1)(c)* enables regulations to provide for inference to be drawn from a failure to mention a fact when questioned or charged in police disciplinary proceedings. This would bring the regulations on police conduct into line with those in criminal proceedings, where the change was made as a result of provision made under section 34 of the Criminal Justice and Public Order Act 1994.

Section 37: Protected disclosures by police officers

186. This section, along with the consequential repeals in the Employment Rights Act 1996 and the Public Interest Disclosure Act 1998 in Schedule 8, affords protection to police officers who make protected disclosures. A 'protected disclosure' includes disclosures that a criminal offence has been committed, that a person has failed to comply with a legal obligation to which he or she is subject, or that there has been a miscarriage of justice. In the context of police conduct, protected disclosures would include disclosures that an officer had breached the Code of Conduct for police officers, which is the minimum standard of behaviour for police officers set out in secondary legislation. Thus, the purpose of these changes is to ensure that police officers will be able to report wrongdoing by other officers with the assurance of full protection if

*These notes refer to the Police Reform Act 2002
(c.30) which received Royal Assent on 24 July 2002*

they are subsequently discriminated against or suffer detriment for doing so. In such circumstances, they will be able to make a claim to an Employment Tribunal.

187. Police officers, seconded police officers, cadets, special constables, officers in constabularies maintained otherwise than by a police authority, and police members of the National Criminal Intelligence Service and the National Crime Squad who report wrongdoing will have the same rights as other employees. And police officers will cease to be excluded from the provisions about protected disclosures in the Employment Rights Act 1996.