



# Police Reform Act 2002

## 2002 CHAPTER 30

### PART 2

#### COMPLAINTS AND MISCONDUCT

##### *Guidance and regulations*

## 22 Power of the Commission to issue guidance

- (1) The Commission may issue guidance—
  - (a) to [<sup>F1</sup>local policing bodies] ,
  - (b) to chief officers, and
  - (c) to persons who are serving with the police otherwise than as chief officers, concerning the exercise or performance, by the persons to whom the guidance is issued, of any of the powers or duties specified in subsection (2).
- (2) Those powers and duties are—
  - (a) those that are conferred or imposed by or under this Part; and
  - (b) those that are otherwise conferred or imposed but relate to—
    - (i) the handling of complaints;
    - (ii) the means by which recordable conduct matters [<sup>F2</sup>or DSI matters] are dealt with; or
    - (iii) the detection or deterrence of misconduct by persons serving with the police.
- (3) Before issuing any guidance under this section, the Commission shall consult with—
  - <sup>F3</sup>[<sup>F4</sup>(a) such persons as appear to the Commission to represent the views of police and crime commissioners;
  - (aa) the Mayor's Office for Policing and Crime;
  - (ab) the Common Council;]
  - (b) the Association of Chief Police Officers; and]
  - (c) such other persons as it thinks fit.

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- (4) The approval of the Secretary of State shall be required for the issue by the Commission of any guidance under this section.
- (5) Without prejudice to the generality of the preceding provisions of this section, the guidance that may be issued under this section includes—
- (a) guidance about the handling of complaints which have not yet been recorded and about dealing with recordable conduct matters [<sup>F5</sup>or DSI matters] that have not been recorded;
  - (b) guidance about the procedure to be followed by the appropriate authority when recording a complaint or any recordable conduct matter [<sup>F6</sup>or DSI matter];
  - (c) guidance about—
    - (i) how to decide whether a complaint is suitable for being subjected to local resolution; and
    - (ii) about the information to be provided to a person before his consent to such resolution is given;
  - (d) guidance about how to protect the scene of an incident or alleged incident which—
    - (i) is or may become the subject-matter of a complaint; or
    - (ii) is or may involve a recordable conduct matter [<sup>F6</sup>or DSI matter];
  - (e) guidance about the circumstances in which it is appropriate (where it is lawful to do so)—
    - (i) to disclose to any person, or to publish, any information about an investigation of a complaint [<sup>F7</sup>, conduct matter or DSI matter]; or
    - (ii) to provide any person with, or to publish, any report or other document relating to such an investigation;
  - (f) guidance about the matters to be included in a memorandum under paragraph 23 or 25 of Schedule 3 and about the manner in which, and the place at which, such a memorandum is to be delivered to the Commission.
- (6) Nothing in this section shall authorise the issuing of any guidance about a particular case.
- (7) It shall be the duty of every person to whom any guidance under this section is issued to have regard to that guidance in exercising or performing the powers and duties to which the guidance relates.
- (8) 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 or on any appeal from a decision taken in any such proceedings.

#### Textual Amendments

- F1** Words in s. 22(1)(a) substituted (16.1.2012) by [Police Reform and Social Responsibility Act 2011 \(c. 13\), s. 157\(1\), Sch. 16 para. 287\(2\)](#); S.I. 2011/3019, art. 3, Sch. 1
- F2** Words in s. 22(2)(b)(ii) inserted (1.7.2005) by [Serious Organised Crime and Police Act 2005 \(c. 15\), ss. 160, 178, Sch. 12 para. 8\(2\)](#); S.I. 2005/1521, art. 3(1)(w)
- F3** S. 22(3)(a)(b) substituted (1.4.2007) by [Police and Justice Act 2006 \(c. 48\), ss. 6, 53, Sch. 4 para. 11; S.I. 2007/709, art. 3\(d\)](#) (subject to arts. 6, 7)
- F4** S. 22(3)(a)-(ab) substituted for s. 22(3)(a) (16.1.2012) by [Police Reform and Social Responsibility Act 2011 \(c. 13\), s. 157\(1\), Sch. 16 para. 287\(3\)](#); S.I. 2011/3019, art. 3, Sch. 1 (with Sch. 2 para. 65)

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- F5** Words in s. 22(5)(a) inserted (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 160, 178, **Sch. 12 para. 8(3)(a)**; S.I. 2005/1521, **art. 3(1)(w)**
- F6** Words in s. 22(5)(b)(d)(ii) inserted (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 160, 178, **Sch. 12 para. 8(3)(b)**; S.I. 2005/1521, **art. 3(1)(w)**
- F7** Words in s. 22(5)(e)(i) substituted (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 160, 178, **Sch. 12 para. 8(3)(c)**; S.I. 2005/1521, **art. 3(1)(w)**

**Modifications etc. (not altering text)**

- C1** S. 22 applied (with modifications) (28.12.2005) by The Revenue and Customs (Complaints and Misconduct) Regulations 2005 (S.I. 2005/3311), **reg. 3(2)(6)**, Sch. 1
- C2** S. 22 applied (with modifications) (5.8.2009) by The UK Border Agency (Complaints and Misconduct) Regulations 2009 (S.I. 2009/2133), **reg. 4**
- C3** S. 22 applied (with modifications) (7.4.2010) by The UK Border Agency (Complaints and Misconduct) Regulations 2010 (S.I. 2010/782), **reg. 4**
- C4** S. 22 applied (with modifications) (5.8.2010) by The Revenue and Customs (Complaints and Misconduct) Regulations 2010 (S.I. 2010/1813), **reg. 5** (with reg. 11)
- C5** S. 22 applied (with modifications) (16.1.2012) by The Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012 (S.I. 2012/62), regs. 1, **4** (with reg. 3(6))

## 23 Regulations

- (1) The Secretary of State may make regulations as to the procedure to be followed under any provision of this Part.
- (2) Without prejudice to the generality of the power conferred by subsection (1) or of any other power to make regulations conferred by any provision of this Part, the Secretary of State may also by regulations provide—
- (a) for the appropriate authority, in the case of a complaint against any person, to be required, in accordance with procedures provided for in the regulations—
- (i) to supply the person complained against with a copy of the complaint; and
- (ii) to supply the complainant with a copy of the record made of that complaint;
- (b) for the matters to be taken into account in making any determination as to which procedure to adopt for handling complaints and dealing with recordable conduct matters [<sup>F8</sup>and DSI matters];
- (c) for any procedure for the purposes of this Part to be discontinued where—
- (i) a complaint is withdrawn;
- (ii) the complainant indicates that he does not wish any further steps to be taken; or
- (iii) the whole or part of the investigation of the complaint has been postponed until the conclusion of criminal proceedings and the complainant fails to indicate after the conclusion of those proceedings that he wishes the investigation to be resumed;
- and for the manner in which any such withdrawal or indication is to be effected or given, and for the circumstances in which it is to be taken as effected or given;
- (d) for requiring the subject-matter of a complaint that has been withdrawn to be treated for the purposes of this Part, in the cases and to the extent specified in the regulations, as a recordable conduct matter;

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- (e) for the manner in which any procedure for the purposes of this Part is to be discontinued in a case where it is discontinued in accordance with the regulations, and for the consequences of any such discontinuance;
- (f) for the circumstances in which any investigation or other procedure under this Part may be or must be suspended to allow any other investigation or proceedings to continue, and for the consequences of such a suspension;
- (g) for the regulation of the appointment of persons to carry out investigations under this Part or to assist with the carrying out of such investigations, for limiting the persons who may be appointed and for the regulation of the carrying out of any such investigation;
- [<sup>F9</sup>(h) for combining into a single investigation the investigation of any complaint, conduct matter or DSI matter with the investigation or investigations of any one or more, or any combination, of the following—
  - (i) complaints (whether or not relating to the same conduct),
  - (ii) conduct matters, or
  - (iii) DSI matters,
 and for splitting a single investigation into two or more separate investigations;]
- (i) for the procedure to be followed in cases in which the Commission relinquishes the supervision or management of any investigation and for the consequences of its doing so;
- (j) for the manner in which any reference of a complaint [<sup>F10</sup>, conduct matter or DSI matter] to the Commission is to be made;
- (k) for applying the provisions of this Part with such modifications as the Secretary of State thinks fit in cases where a complaint or recordable conduct matter relates to the conduct of a person who has ceased to be a person serving with the police since the time of the conduct;
- (l) for applying the provisions of this Part with such modifications as the Secretary of State thinks fit in cases where a complaint or conduct matter relates to the conduct of a person—
  - (i) whose identity is unascertained at the time at which a complaint is made or a conduct matter is recorded;
  - (ii) whose identity is not ascertained during, or subsequent to, the investigation of a complaint or recordable conduct matter;
- (m) for the Commission—
  - (i) to be required to notify actions and decisions it takes in consequence of the receipt of a memorandum under paragraph 23 or 25 of Schedule 3; and
  - (ii) to be authorised to provide information in relation to the matters notified;
- (n) for the records to be kept by [<sup>F11</sup>local policing bodies] and chief officers—
  - (i) with respect to complaints and purported complaints;
  - (ii) with respect to recordable conduct matters [<sup>F12</sup>or DSI matters] ; and
  - (iii) with respect to the exercise and performance of their powers and duties under this Part;
- (o) for the Commission to be required to establish and maintain a register of such information provided to it in accordance with this Part as may be of a description specified in the regulations and for regulating the extent to which

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information stored on that register may be published or otherwise disclosed to any person by the Commission;

- (p) for chief officers to have power to delegate the exercise or performance of powers and duties conferred or imposed on them by or under this Part;
- (q) for the manner in which any notification for the purposes of any provision of this Part is to be given and the time at which, or period within which, any such notification must be given.
- [<sup>F13</sup>(r) for enabling representations on behalf of a person to whose conduct an investigation relates to be made to the Commission by a person who is not that person's legal representative but is of a description specified in the regulations.]

#### Textual Amendments

- F8** Words in s. 23(2)(b) inserted (1.7.2005) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), ss. 160, 178, [Sch. 12 para. 9\(2\)](#); S.I. 2005/1521, [art. 3\(1\)\(w\)](#)
- F9** S. 23(2)(h) substituted (1.7.2005) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), ss. 160, 178, [Sch. 12 para. 9\(3\)](#); S.I. 2005/1521, [art. 3\(1\)\(w\)](#)
- F10** Words in s. 23(2)(j) substituted (1.7.2005) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), ss. 160, 178, [Sch. 12 para. 9\(4\)](#); S.I. 2005/1521, [art. 3\(1\)\(w\)](#)
- F11** Words in s. 23(2)(n) substituted (16.1.2012) by [Police Reform and Social Responsibility Act 2011 \(c. 13\)](#), s. 157(1), [Sch. 16 para. 288](#); S.I. 2011/3019, art. 3, Sch. 1
- F12** Words in s. 23(2)(n)(ii) inserted (1.7.2005) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), ss. 160, 178, [Sch. 12 para. 9\(5\)](#); S.I. 2005/1521, [art. 3\(1\)\(w\)](#)
- F13** S. 23(2)(r) inserted (3.11.2008) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), ss. 127, 153, [Sch. 23 para. 2](#); S.I. 2008/2712, art. 2, [Sch. para. 17\(a\)](#) (subject to arts. 3, 4)

#### Modifications etc. (not altering text)

- C6** S. 23 applied (with modifications) (28.12.2005) by [The Revenue and Customs \(Complaints and Misconduct\) Regulations 2005 \(S.I. 2005/3311\)](#), [reg. 3\(2\)\(6\)](#), Sch. 1
- C7** S. 23 applied (with modifications) (5.8.2009) by [The UK Border Agency \(Complaints and Misconduct\) Regulations 2009 \(S.I. 2009/2133\)](#), [reg. 4](#)
- C8** S. 23 applied (with modifications) (7.4.2010) by [The UK Border Agency \(Complaints and Misconduct\) Regulations 2010 \(S.I. 2010/782\)](#), [reg. 4](#)
- C9** S. 23 applied (with modifications) (5.8.2010) by [The Revenue and Customs \(Complaints and Misconduct\) Regulations 2010 \(S.I. 2010/1813\)](#), [reg. 5](#) (with reg. 11)

## 24 Consultation on regulations

Before making any regulations under this Part, the Secretary of State shall consult with—

- (a) the Commission;
- [<sup>F14</sup>[<sup>F15</sup>(b) such persons as appear to the Secretary of State to represent the views of police and crime commissioners;
- (ba) the Mayor's Office for Policing and Crime;
- (bb) the Common Council;]
- (c) the Association of Chief Police Officers; and]
- (d) such other persons as he thinks fit.

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#### Textual Amendments

- F14** S. 24(b)(c) substituted (1.4.2007) by [Police and Justice Act 2006 \(c. 48\)](#), ss. 6, 53, **Sch. 4 para. 12**; [S.I. 2007/709](#), **art. 3(d)** (subject to arts. 6, 7)
- F15** S. 24(b)-(bb) substituted for s. 24(b) (16.1.2012) by [Police Reform and Social Responsibility Act 2011 \(c. 13\)](#), s. 157(1), **Sch. 16 para. 289**; [S.I. 2011/3019](#), art. 3, Sch. 1 (with Sch. 2 para. 66)

#### Modifications etc. (not altering text)

- C10** S. 24 applied (with modifications) (28.12.2005) by [The Revenue and Customs \(Complaints and Misconduct\) Regulations 2005 \(S.I. 2005/3311\)](#), **reg. 3(2)(6)**, Sch. 1
- C11** S. 24 applied (with modifications) (5.8.2009) by [The UK Border Agency \(Complaints and Misconduct\) Regulations 2009 \(S.I. 2009/2133\)](#), **reg. 4**
- C12** S. 24 applied (with modifications) (7.4.2010) by [The UK Border Agency \(Complaints and Misconduct\) Regulations 2010 \(S.I. 2010/782\)](#), **reg. 4**
- C13** S. 24 applied (with modifications) (5.8.2010) by [The Revenue and Customs \(Complaints and Misconduct\) Regulations 2010 \(S.I. 2010/1813\)](#), **reg. 5** (with reg. 11)

#### Commencement Information

- I1** S. 24 wholly in force at 15.11.2003; s. 24 not in force at Royal Assent, see s. 108(2); s. 24 in force except for paragraph (a) at 1.10.2002 by [S.I. 2002/2306](#), {art. 2(b)(vi)}; s. 24 in force in so far as not already in force at 15.11.2003 by [S.I. 2003/2593](#), **art. 2(a)**

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