

## SCHEDULES

### SCHEDULE 5

#### COMPLAINTS, CONDUCT MATTERS AND DSI MATTERS: PROCEDURE

#### PART 3

##### INVESTIGATIONS AND SUBSEQUENT PROCEEDINGS

- 9 Schedule 3 to the Police Reform Act 2002 (handling of complaints and conduct matters etc) is further amended as follows.
- 10 (1) Paragraph 5 (duties of Commission on references under paragraph 4: complaints) is amended as follows.
- (2) After sub-paragraph (1) insert—
- “(1A) The Secretary of State may by regulations provide that the Commission must determine that it is necessary for complaints referred to it that relate to the conduct of a chief officer or the Deputy Commissioner of Police of the Metropolis to be investigated.
- (1B) Regulations under sub-paragraph (1A) may provide that the duty on the Commission applies only in relation to complaints relating to the conduct of a chief officer or the Deputy Commissioner of Police of the Metropolis that are of a description specified in the regulations.
- (1C) Regulations under sub-paragraph (1A) may also provide that, where the Commission is required by the regulations to determine that it is necessary for a complaint to be investigated, paragraph 15 is to apply in relation to the complaint as if sub-paragraphs (4)(a), (4A) and (5A)(b) were omitted.”
- (3) In sub-paragraph (2), for the words from “, it may” to the end of the sub-paragraph substitute “—
- (a) in a case where the complaint is already being investigated by the appropriate authority on its own behalf (and notwithstanding the Commission’s determination), the Commission must refer the complaint back to the appropriate authority for the investigation to be completed, and
- (b) in any other case, the Commission may, if it thinks fit, refer the complaint back to the appropriate authority to be dealt with by that authority in accordance with paragraph 6.”
- (4) In sub-paragraph (3)(b), for “a possible future investigation of the complaint” substitute “an investigation of the complaint (whether an existing investigation or a possible future one)”.
- 11 In paragraph 6 (handling of complaints by the appropriate authority), in sub-paragraph (2)(a), for “5” substitute “5(2)(b)”.

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- 12 In paragraph 13 (reference of conduct matters to the Commission), in sub-paragraph (6)(b), for “a possible future investigation of that matter” substitute “an investigation of that matter (whether an existing investigation or a possible future one)”.
- 13 (1) Paragraph 14 (duties of Commission on references under paragraph 13: recordable conduct matters) is amended as follows.
- (2) After sub-paragraph (1) insert—
- “(1A) The Secretary of State may by regulations provide that the Commission must determine that it is necessary for recordable conduct matters referred to it that relate to the conduct of a chief officer or the Deputy Commissioner of Police of the Metropolis to be investigated.
- (1B) Regulations under sub-paragraph (1A) may provide that the duty on the Commission applies only in relation to recordable conduct matters relating to the conduct of a chief officer or the Deputy Commissioner of Police of the Metropolis that are of a description specified in the regulations.
- (1C) Regulations under sub-paragraph (1A) may also provide that, where the Commission is required by the regulations to determine that it is necessary for a recordable conduct matter to be investigated, paragraph 15 is to apply in relation to the matter as if sub-paragraphs (4)(a), (4A) and (5A)(b) were omitted.”
- (3) In sub-paragraph (2), for the words from “, it may” to the end of the sub-paragraph substitute “—
- (a) in a case where the recordable conduct matter is already being investigated by the appropriate authority on its own behalf (and notwithstanding the Commission’s determination), the Commission must refer the matter back to the appropriate authority for the investigation to be completed, and
- (b) in any other case, the Commission may, if it thinks fit, refer the matter back to the appropriate authority to be dealt with by that authority in such manner (if any) as that authority may determine.”
- (4) In sub-paragraph (3)(b), for “a possible future investigation of that matter” substitute “an investigation of that matter (whether an existing investigation or a possible future one)”.
- 14 (1) Paragraph 14D (duties of Commission on references under paragraph 14C: DSI matters) is amended as follows.
- (2) After sub-paragraph (1) insert—
- “(1A) The Secretary of State may by regulations provide that the Commission must determine that it is necessary for DSI matters referred to it in relation to which the relevant officer is a chief officer or the Deputy Commissioner of Police of the Metropolis to be investigated.
- (1B) Regulations under sub-paragraph (1A) may provide that the duty on the Commission applies only in relation to DSI matters in relation to which the relevant officer is a chief officer or the Deputy Commissioner of Police of the Metropolis that are of a description specified in the regulations.

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- (1C) Regulations under sub-paragraph (1A) may also provide that, where the Commission is required by the regulations to determine that it is necessary for a DSI matter to be investigated, paragraph 15 is to apply in relation to the matter as if sub-paragraphs (4)(a), (4A) and (5A)(b) were omitted.”
- (3) In sub-paragraph (2), for the words from “, it may” to the end of the sub-paragraph substitute “—
- (a) in a case where the DSI matter is already being investigated by the appropriate authority on its own behalf (and notwithstanding the Commission’s determination), the Commission must refer the matter back to the appropriate authority for the investigation to be completed, and
  - (b) in any other case, the Commission may, if it thinks fit, refer the matter back to the appropriate authority to be dealt with by that authority in such manner (if any) as that authority may determine.”
- 15 (1) Paragraph 15 (power of the Commission to determine the form of an investigation) is amended as follows.
- (2) In sub-paragraph (1)(b), after “determines” insert “under paragraph 5(1), 14(1) or 14D(1)”.
- (3) After sub-paragraph (1) insert—
- “(1A) This paragraph also applies where the Commission determines under paragraph 6A(5)(a) that it is necessary for a complaint to be investigated.”
- (4) Omit sub-paragraph (3).
- (5) In sub-paragraph (4)—
- (a) omit paragraph (b);
  - (b) in paragraph (c), for “management” substitute “direction”.
- (6) After sub-paragraph (4) insert—
- “(4A) In making a determination under sub-paragraph (2) the Commission must first determine whether, having regard to the seriousness of the case and the public interest, it is appropriate for the investigation to take the form of an investigation by the appropriate authority on its own behalf and if it is the Commission must determine that the investigation is to take that form.
- (4B) Where, in accordance with sub-paragraph (4A), the Commission determines that it is not appropriate for the investigation to take the form of an investigation by the appropriate authority on its own behalf, the Commission must determine that the investigation is to take the form of an investigation by the Commission unless sub-paragraph (4C) applies.
- (4C) This sub-paragraph applies where the Commission determines that it would be more appropriate for the investigation to take the form of an investigation by the appropriate authority under the direction of the Commission, in which case the Commission must determine that the investigation is to take that form.”
- (7) For sub-paragraph (5) substitute—

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“(5) Where the Commission determines under sub-paragraph (4C) or (5B) that an investigation is to take the form of an investigation by the appropriate authority under the direction of the Commission, the Commission must keep under review whether that form of investigation continues to be the most appropriate form of investigation.

(5A) If, on such a review, the Commission determines that—

- (a) it would be more appropriate for the investigation to take the form of an investigation by the Commission, the Commission must make a further determination under this paragraph (to replace the earlier one) that the investigation is instead to take that form;
- (b) having regard to the seriousness of the case and the public interest, it would be more appropriate for the investigation to take the form of an investigation by the appropriate authority on its own behalf, the Commission may make a further determination under this paragraph (to replace the earlier one) that the investigation is instead to take that form.

(5B) Subject to sub-paragraph (5A), if at any time the Commission determines that, were it to apply sub-paragraphs (4A) to (4C) again, the form of the investigation would be different, the Commission may make a further determination under this paragraph (to replace the earlier one) such that the investigation takes that different form.”

(8) In sub-paragraph (8), at the end insert “and of its reasons for making the determination”.

(9) After sub-paragraph (8) insert—

“(9) The Commission shall also notify the following of any determination that it makes under this paragraph in relation to a particular complaint, recordable conduct matter or DSI matter and of its reasons for making the determination—

- (a) every person entitled to be kept properly informed in relation to the complaint or matter under section 21;
- (b) where the determination is made in relation to a complaint, the complainant;
- (c) the person to whose conduct the investigation will relate.

(10) The duty imposed by sub-paragraph (9) on the Commission in relation to a complaint, recordable conduct matter or DSI matter shall have effect subject to such exceptions as may be provided for by regulations made by the Secretary of State.

(11) Subsections (6) to (8) of section 20 apply for the purposes of sub-paragraph (10) as they apply for the purposes of that section.”

16 (1) Paragraph 16 (investigations by the appropriate authority on its own behalf) is amended as follows.

(2) Before sub-paragraph (1) insert—

“(A1) This paragraph applies if the appropriate authority, acting in accordance with paragraph 6(2A) or in response to a recommendation under

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paragraph 6A(6)(b), is to make arrangements for a complaint to be investigated by the appropriate authority on its own behalf.”

- (3) In sub-paragraph (1)—
- (a) in the words before paragraph (a), after “paragraph” insert “also”;
  - (b) omit paragraph (a) and the “or” following it.
- 17 Omit paragraph 17 (investigations supervised by the Commission) and the italic heading before that paragraph.
- 18 In the italic heading before paragraph 18, for “managed” substitute “directed”.
- 19 (1) Paragraph 18 (investigations managed by the Commission) is amended as follows.
- (2) In sub-paragraph (1), for “manage” substitute “direct”.
- (3) For sub-paragraph (2) substitute—
- “(2) On being given notice of that determination, the appropriate authority shall, if it has not already done so, appoint—
- (a) a person serving with the police (whether under the direction and control of the chief officer of police of the relevant force or of the chief officer of another force), or
  - (b) a National Crime Agency officer,
- to investigate the complaint or matter.
- (2A) The Commission may require that no appointment is made under sub-paragraph (2) unless it has given notice to the appropriate authority that it approves the person whom that authority proposes to appoint.
- (2B) Where at any time the Commission is not satisfied with the person investigating, the Commission may require the appropriate authority, as soon as reasonably practicable after being required to do so—
- (a) to select another person falling within sub-paragraph (2)(a) or (b) to investigate the complaint or matter, and
  - (b) to notify the Commission of the person selected.
- (2C) Sub-paragraph (2B) applies whether the person investigating was appointed—
- (a) before the appropriate authority was given notice of the Commission’s determination that it should direct the investigation by the appropriate authority,
  - (b) under sub-paragraph (2) (including where the appointment was approved by the Commission in accordance with sub-paragraph (2A)), or
  - (c) under sub-paragraph (2D)(a).
- (2D) Where a selection made in pursuance of a requirement under sub-paragraph (2B) has been notified to the Commission—
- (a) the appropriate authority shall appoint that person to investigate the complaint or matter if, but only if, the Commission notifies the authority that it approves the appointment of that person;
  - (b) if the Commission notifies the authority that it does not approve the appointment of that person, the appropriate authority must make another selection in accordance with sub-paragraph (2B).

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(2E) A person appointed under this paragraph to investigate any complaint or conduct matter—

- (a) in the case of an investigation relating to any conduct of a chief officer, must not be a person under that chief officer’s direction and control, and
- (b) in the case of an investigation relating to any conduct of the Commissioner of Police of the Metropolis or of the Deputy Commissioner of Police of the Metropolis, must be a person nominated by the Secretary of State for appointment under this paragraph (and approved for appointment in accordance with sub-paragraph (2A) (if required) or (2D)(a)).

(2F) A person appointed under this paragraph to investigate any DSI matter—

- (a) in relation to which the relevant officer is a chief officer, must not be a person under that chief officer’s direction and control, and
- (b) in relation to which the relevant officer is the Commissioner of Police of the Metropolis or the Deputy Commissioner of Police of the Metropolis, must be a person nominated by the Secretary of State for appointment under this paragraph (and approved for appointment in accordance with sub-paragraph (2A) (if required) or (2D)(a)).”

(4) After sub-paragraph (3) insert—

“(4) The person appointed to investigate the complaint or matter shall keep the Commission informed of the progress of the investigation.”

20 In paragraph 19 (investigations by the Commission itself), in sub-paragraph (7), omit paragraph (aa) and the “or” following it.

21 For paragraphs 19A to 19E (special procedure where investigation relates to police officer or special constable) substitute—

“19A (1) This paragraph applies to an investigation where condition A, B or C is satisfied.

(2) Condition A is that—

- (a) the investigation is an investigation of a complaint, and
- (b) during the course of the investigation it appears to the person investigating that there is an indication that a member of a police force, or a special constable, to whose conduct the investigation relates may have committed a criminal offence or behaved in a manner which would justify the bringing of disciplinary proceedings.

(3) Condition B is that—

- (a) the investigation is an investigation of a complaint being carried out by a person appointed under paragraph 18, and
- (b) during the course of the investigation the Commission determines that there is an indication that a member of a police force, or a special constable, to whose conduct the investigation relates may have committed a criminal offence or behaved in a manner which would justify the bringing of disciplinary proceedings.

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- (4) Condition C is that—
    - (a) the investigation is an investigation of a recordable conduct matter, and
    - (b) the investigation relates to the conduct of a member of a police force or a special constable.
  - (5) Where this paragraph applies to an investigation the person investigating must proceed with the investigation in accordance with regulations made by the Secretary of State under this sub-paragraph.
  - (6) Regulations under sub-paragraph (5) may (amongst other things) make provision—
    - (a) as to the procedure to be followed in connection with any interview of the person concerned, including provision requiring the person concerned to attend an interview;
    - (b) requiring the person investigating to supply information to the appropriate authority.
  - (7) In this paragraph “the person concerned”—
    - (a) in relation to an investigation of a complaint, means the person in respect of whom it appears to the person investigating that there is the indication mentioned in sub-paragraph (2)(b) or (as the case may be) the person in respect of whom the Commission determines that there is the indication mentioned in sub-paragraph (3)(b);
    - (b) in relation to an investigation of a recordable conduct matter, means the person to whose conduct the investigation relates.”
- 22 (1) Paragraph 19F (interview of persons serving with the police etc during certain investigations) is amended as follows.
- (2) In sub-paragraph (2)—
    - (a) in paragraph (a), for “, and” substitute “other than, in the case of an investigation to which paragraph 19A applies, a serving officer who is the person concerned in relation to the investigation (within the meaning of paragraph 19A).”;
    - (b) omit paragraph (b).
  - (3) In sub-paragraph (7)—
    - (a) omit the “or” at the end of paragraph (a);
    - (b) after paragraph (a) insert—
      - “(aa) a body required by section 26BA to enter into an agreement with the Commission, or”.
- 23 For paragraphs 20A to 20I (accelerated procedure in special cases) substitute—
- “20A (1) This paragraph applies where—
- (a) at any time before the completion of an investigation of a complaint or recordable conduct matter, the person investigating believes that the appropriate authority would, on consideration of the matter, be likely to consider that the conditions in sub-paragraph (2) are satisfied, or

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- (b) at any time before the completion of an investigation of a complaint or recordable conduct matter being carried out by a person appointed under paragraph 18, the Commission determines that the appropriate authority would, on consideration of the matter, be likely to consider that the conditions in sub-paragraph (2) are satisfied.
  - (2) The conditions in this sub-paragraph are that—
    - (a) there is sufficient evidence, in the form of written statements or other documents, to establish on the balance of probabilities that conduct to which the investigation relates constitutes gross misconduct, and
    - (b) it is in the public interest for the person whose conduct it is to cease to be a member of a police force, or to be a special constable, without delay.
  - (3) Where this paragraph applies the person investigating, the appropriate authority and the Commission must proceed in accordance with regulations made by the Secretary of State.
  - (4) Regulations under sub-paragraph (3) may (amongst other things) make provision—
    - (a) for the person investigating to continue the investigation (whether to its full extent or to such lesser extent as is provided) or to stop investigating;
    - (b) for the person investigating to submit a report on the investigation to a point before its completion (not being a report under paragraph 22);
    - (c) for the conduct to which the investigation relates to be certified for the purposes of paragraph 20(1)(a).”
- 24 Omit paragraph 21 (power to discontinue an investigation) and the italic heading before that paragraph.
- 25 (1) Paragraph 21A (procedure where conduct matter is revealed during investigation of DSI matter) is amended as follows.
- (2) After sub-paragraph (2) insert—
- “(2A) If during the course of an investigation of a DSI matter being carried out by a person appointed under paragraph 18 the Commission determines (without there having been a submission under sub-paragraph (1)) that there is an indication that a person serving with the police (“the person whose conduct is in question”) may have—
- (a) committed a criminal offence, or
  - (b) behaved in a manner which would justify the bringing of disciplinary proceedings,
- it shall notify the appropriate authority in relation to the DSI matter and (if different) the appropriate authority in relation to the person whose conduct is in question of its determination.”
- (3) In sub-paragraph (5)(a), after “(2)” insert “or (2A)”.
- 26 (1) Paragraph 23 (action by the Commission in response to an investigation report under paragraph 22) is amended as follows.



(2) After sub-paragraph (5) insert—

- “(5A) On receipt of the report, the Commission shall also—
- (a) seek the views of the appropriate authority on—
    - (i) whether any person to whose conduct the investigation related has a case to answer in respect of misconduct or gross misconduct or has no case to answer,
    - (ii) whether or not any such person’s performance is unsatisfactory, and
    - (iii) the other matters (if any) dealt with in the report (but not on whether the conditions in sub-paragraphs (2A) and (2B) are satisfied in respect of the report),
  - (b) having considered the views (if any) of the appropriate authority, make a determination as to—
    - (i) the matters described in paragraph (a)(i) and (ii), and
    - (ii) whether or not disciplinary proceedings should be brought against any person to whose conduct the investigation related and, if so, what form the disciplinary proceedings should take,
  - (c) having considered the views (if any) of the appropriate authority and if the Commission considers it appropriate to do so, make a determination as to any matter dealt with in the report, being a determination other than one that it is required to make under sub-paragraph (2)(b) or paragraph (b) of this sub-paragraph,
  - (d) notify the appropriate authority of its determination under paragraph (b) and any determination under paragraph (c),
  - (e) where the Commission determines that disciplinary proceedings of a form specified in the determination should be brought against a person, direct the appropriate authority to bring those proceedings, and
  - (f) direct the appropriate authority to determine what action (if any) the appropriate authority will in its discretion take, not being action involving the bringing of disciplinary proceedings, in respect of the matters dealt with in the report and having regard to the Commission’s determination under paragraph (b) and any determination under paragraph (c).
- (5B) The appropriate authority must comply with a direction given under sub-paragraph (5A)(e) and must secure that the proceedings, once brought, are proceeded with to a proper conclusion.
- (5C) The Commission may at any time withdraw a direction given under sub-paragraph (5A)(e); and sub-paragraph (5B) shall not impose any obligation in relation to any time after the withdrawal of the direction.
- (5D) The appropriate authority must keep the Commission informed of the action it takes in response to a direction given under sub-paragraph (5A)(e).
- (5E) The appropriate authority must comply with the direction given under sub-paragraph (5A)(f) and must notify the Commission of the determination it makes.

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- (5F) On receipt of the report, where it is a report of an investigation of a complaint, the Commission may also make a recommendation under paragraph 28ZA.”
- (3) Omit sub-paragraphs (6) to (8).
- 27 (1) Paragraph 24 (action by the appropriate authority in response to an investigation report under paragraph 22) is amended as follows.
- (2) In sub-paragraph (6)—
- (a) after paragraph (a) insert—
- “(aa) if it considers it appropriate to do so, make a determination as to any matter dealt with in the report, being a determination other than one that it is required to make by sub-paragraph (2)(a) or paragraph (a) of this sub-paragraph, and”;
- (b) for paragraph (b) substitute—
- “(b) determine what action (if any), in addition to the action mentioned in paragraph (a)(ii), the authority will in its discretion take in respect of the matters dealt with in the report.”
- (3) After sub-paragraph (6) insert—
- “(6A) Where the report is a report of an investigation of a complaint and the appropriate authority is a local policing body, the appropriate authority may also, on receipt of the report, make a recommendation under paragraph 28ZA.”
- 28 In paragraph 24A (final reports on investigations: other DSI matters), at the end insert —
- “(5) On receipt of the report, the Commission shall also, if it considers it appropriate to do so, make a determination as to any matter dealt with in the report, being a determination other than one that it is required to make under sub-paragraph (4) or that the appropriate authority may be required to make by virtue of paragraph 24C(3).”