

## SCHEDULES

### SCHEDULE 9

#### INDEPENDENT OFFICE FOR POLICE CONDUCT

##### PART 1

#### AMENDMENTS TO SCHEDULE 2 TO THE POLICE REFORM ACT 2002

##### *Introductory*

- 1 Schedule 2 to the Police Reform Act 2002 is amended in accordance with this Part of this Schedule (see also paragraph 55 below for further minor and consequential amendments).

##### *Director General*

- 2 (1) Paragraph 1 (chairman) is amended as follows.
- (2) For sub-paragraph (1) substitute—
- “(1) The Director General holds office in accordance with the terms of his or her appointment.
- (1A) A person who holds office as Director General must not be an employee of the Office (but may have been such an employee before appointment as the Director General).”
- (3) In sub-paragraph (2) for “chairman of the Commission” substitute “Director General”.
- (4) In sub-paragraph (3)—
- (a) for “chairman of the Commission” substitute “Director General”;
- (b) for “chairman” substitute “Director General”.
- (5) In sub-paragraph (4)—
- (a) for “chairman of the Commission” substitute “Director General”;
- (b) for “chairman” substitute “Director General”.
- (6) In sub-paragraph (5) for “chairman” substitute “Director General”.

##### *Appointment etc of members*

- 3 After paragraph 1 insert—

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*“Appointment of members*

- 1A (1) The non-executive members of the Office are to be appointed by the Secretary of State.
- (2) A person who is a non-executive member must not be an employee of the Office (but may have been such an employee before appointment as a non-executive member).
- 1B (1) The employee members of the Office are to be appointed from the staff of the Office by the non-executive members.
- (2) If the non-executive members propose to appoint an employee member, the Director General must recommend a person to the non-executive members for appointment.
- (3) The Director General may also recommend a person to the non-executive members for appointment as an employee member without any proposal having been made under sub-paragraph (2).
- (4) On a recommendation of a person for appointment under sub-paragraph (2) or (3), the non-executive members may—
- (a) appoint the person, or
  - (b) reject the recommendation.
- (5) If the non-executive members reject a recommendation they may require the Director General to recommend another person for appointment (in which case this sub-paragraph applies again and so on until somebody is appointed).”
- 4 (1) Paragraph 2 (ordinary members of the Commission) is amended as follows.
- (2) In sub-paragraph (1) for “an ordinary” substitute “a non-executive”.
- (3) Omit sub-paragraph (2).
- (4) In sub-paragraph (3) for “an ordinary” substitute “a non-executive”.
- (5) In sub-paragraph (4)—
- (a) for “an ordinary”, in both places, substitute “a non-executive”;
  - (b) for “five” substitute “three”.
- (6) In sub-paragraph (5)—
- (a) for “An ordinary” substitute “A non-executive”;
  - (b) for “his office as a member of the Commission” substitute “from being a non-executive member of the Office”.
- (7) In sub-paragraph (6)—
- (a) for “an ordinary” substitute “a non-executive”;
  - (b) omit paragraph (b).
- (8) Omit sub-paragraph (8).
- 5 After paragraph 2 insert—

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*“Terms of appointment etc: employee members*

- 2A (1) A person holds office as an employee member in accordance with the terms of his or her appointment (subject to the provisions of this Schedule).
- (2) Those terms may not include arrangements in relation to remuneration.
- (3) An appointment as an employee member may be full-time or part-time.
- (4) The appointment of an employee member terminates—
- (a) if the terms of the member’s appointment provides for it to expire at the end of a period, at the end of that period, and
  - (b) in any event, when the member ceases to be an employee of the Office.
- (5) An employee member may resign by giving written notice to the non-executive members.
- (6) The non-executive members may terminate the appointment of an employee member by giving the member written notice if they are satisfied that any of the grounds mentioned in paragraph 2(6)(a) to (g) apply in relation to the employee member.”

6 Omit paragraph 3 (deputy chairmen) (including the italic heading before that paragraph).

7 Omit paragraph 5 (chief executive) (including the italic heading before that paragraph).

*Vacancy or incapacity in office of Director General*

8 After paragraph 3 insert—

*“Director General: vacancy or incapacity*

- 3A (1) This paragraph applies if—
- (a) the office of Director General is vacant, or
  - (b) it appears to the Office that the ability of the Director General to carry out the Director General’s functions is seriously impaired because of ill health (whether mental or physical).
- (2) The Office may, with the agreement of the Secretary of State, authorise an employee of the Office to carry out the functions of the Director General during the vacancy or period of ill health.
- (3) A person who falls within section 9(3) may not be authorised under this paragraph to carry out the functions of the Director General.
- (4) A person who has been sentenced to a term of imprisonment of three months or more may not, at any time in the five years following the day of sentence, be authorised under this paragraph to carry out the functions of the Director General.
- (5) Paragraph 1(6) applies for the purposes of sub-paragraph (4).

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- (6) Authorisation of a person under this paragraph ceases to have effect—
  - (a) at the end of the vacancy or period of ill health,
  - (b) on the Office revoking the authorisation for any reason, or
  - (c) on the Secretary of State withdrawing agreement to the authorisation for any reason.”

#### *Remuneration arrangements*

- 9 (1) Paragraph 4 (remuneration, pensions etc of members) is amended as follows.
  - (2) In sub-paragraph (1), for the words from “the chairman” to the end substitute “the Director General as the Secretary of State may determine”.
  - (3) In sub-paragraph (2)—
    - (a) in paragraph (a), for “chairman, deputy chairman or member of the Commission” substitute “Director General”;
    - (b) in the words after paragraph (b) for “Commission” substitute “Office”.
  - (4) After sub-paragraph (2) insert—
    - “(3) The Secretary of State may make remuneration arrangements in relation to non-executive members of the Office.
    - (4) Remuneration arrangements under sub-paragraph (3)—
      - (a) may make provision for a salary, allowances and other benefits but not for a pension, and
      - (b) may include a formula or other mechanism for adjusting one or more of those elements from time to time.
    - (5) Amounts payable by virtue of sub-paragraph (4) are to be paid by the Office.”

#### *Staff*

- 10 (1) Paragraph 6 (staff) is amended as follows.
  - (2) For sub-paragraph (1) substitute—
    - “(1) The Office may appoint staff.”
  - (3) In sub-paragraph (2) for “Commission”, in both places, substitute “Office”.
  - (4) In sub-paragraph (3)—
    - (a) for “Commission” substitute “Office”;
    - (b) after “staffing” insert “(including arrangements in relation to terms and conditions and management of staff)”;
    - (c) for “it” substitute “the Director General”.
  - (5) In sub-paragraph (4)—
    - (a) for “Commission”, in the first place, substitute “Office”;
    - (b) for “Commission”, in the second place, substitute “Director General”.
  - (6) After sub-paragraph (4) insert—

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“(4A) The powers under this paragraph are exercisable only by the Director General acting on behalf of the Office (subject to the power under paragraph 6A(1)).”

(7) In sub-paragraph (5) for “by the Commission of its” substitute “of the”.

### *Delegation of functions*

11 After paragraph 6 insert—

#### *“Delegation of functions*

- 6A (1) The Director General may authorise a person within sub-paragraph (2) to exercise on the Director General’s behalf a function of the Director General.
- (2) The persons within this sub-paragraph are—
- (a) employee members of the Office;
  - (b) employees of the Office appointed under paragraph 6;
  - (c) seconded constables within the meaning of paragraph 8.
- (3) The reference in sub-paragraph (1) to a function of the Director General is to any function that the Director General has under this Act or any other enactment.
- (4) A person (“A”) who is authorised under sub-paragraph (1) to exercise a function may authorise another person within sub-paragraph (2) to exercise that function (but only so far as permitted to do so by the authorisation given to A).
- (5) An authorisation under this paragraph may provide for a function to which it relates to be exercisable—
- (a) either to its full extent or to the extent specified in the authorisation;
  - (b) either generally or in cases, circumstances or areas so specified;
  - (c) either unconditionally or subject to conditions so specified.
- (6) Provision under sub-paragraph (5) may (in particular) include provision for restricted persons not to exercise designated functions.
- (7) For the purposes of sub-paragraph (6)—
- (a) “designated functions” are any functions of the Director General that are designated by the Director General for the purposes of this paragraph (and such functions may in particular be designated by reference to the position or seniority of members of staff);
  - (b) “restricted persons” are, subject to any determination made under sub-paragraph (8), persons who fall within section 9(3).
- (8) The Director General may, in such circumstances as the Director General considers appropriate, determine that persons are not to be treated as restricted persons so far as relating to the exercise of designated

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functions (whether generally or in respect of particular functions specified in the determination).

- (9) The Director General must publish a statement of policy about how the Director General proposes to exercise the powers conferred by sub-paragraphs (7)(a) and (8).
- (10) The statement must in particular draw attention to any restrictions on the carrying out of functions imposed by virtue of their designation under sub-paragraph (7)(a) and explain the reasons for imposing them.
- (11) The exercise of the powers conferred by sub-paragraphs (7)(a) and (8) is subject to any regulations under section 23(1) of the kind mentioned in section 23(2)(g) (regulations limiting persons who may be appointed to carry out investigations etc).
- (12) An authorisation under this paragraph does not prevent the Director General from exercising the function to which the authorisation relates.
- (13) Anything done or omitted to be done by or in relation to a person authorised under this paragraph in, or in connection with, the exercise or purported exercise of the function to which the authorisation relates is to be treated for all purposes as done or omitted to be done by or in relation to the Director General.
- (14) Sub-paragraph (13) does not apply for the purposes of any criminal proceedings brought in respect of anything done or omitted to be done by the authorised person.”

*Protection from personal liability*

12 After paragraph 7 insert—

*“Liability for acts of the Director General*

- 7A (1) A person holding office as the Director General has no personal liability for an act or omission done by the person in the exercise of the Director General’s functions unless it is shown to have been done otherwise than in good faith.
- (2) The Office is liable in respect of unlawful conduct of the Director General in the carrying out, or purported carrying out, of the Director General’s functions in the same way as an employer is liable in respect of any unlawful conduct of employees in the course of their employment.
- (3) Accordingly, the Office is to be treated, in the case of any such unlawful conduct which is a tort, as a joint tortfeasor.”

*Regional offices*

13 For paragraph 9 (power of Commission to set up regional offices) substitute—

- “9 (1) The Office may set up regional offices in places in England and Wales.

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- (2) But the power under sub-paragraph (1) is exercisable only by the Director General acting on behalf of the Office (subject to the power in paragraph 6A(1)).
- (3) The power under sub-paragraph (1) may be exercised—
  - (a) only with the consent of the Secretary of State, and
  - (b) only if it appears to the Director General necessary to do so for the purpose of ensuring that the functions of the Director General, or those of the Office, are carried out efficiently and effectively.”

### *Proceedings*

- 14 In paragraph 10 (proceedings), after sub-paragraph (1) insert—
- “(1A) But the arrangements must include provision for—
    - (a) the quorum for meetings to be met only if a majority of members present are non-executive members of the Office, and
    - (b) an audit committee of the Office to be established to perform such monitoring, reviewing and other functions as are appropriate.
  - (1B) The arrangements must secure that the audit committee consists only of non-executive members of the Office.”