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STATUTORY INSTRUMENTS

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**2017 No. 1134**

**POLICE, ENGLAND AND WALES**

**The Police (Conduct, Complaints and Misconduct  
and Appeal Tribunal) (Amendment) Regulations 2017**

<i>Made</i>	- - - -	<i>22nd November</i> <i>2017</i>
<i>Laid before Parliament</i>		<i>24th November 2017</i>
<i>Coming into force</i>	- -	<i>15th December 2017</i>

The Secretary of State, in exercise of the powers conferred by sections 50(2)(e), (3) to (3G), 51(2)(ba) and (2A) to (2H), 84 and 85 of the Police Act 1996(1), sections 23(1) and (2) and 29(1) of the Police Reform Act 2002(2) and section 29(7) of the Policing and Crime Act 2017(3), makes the following Regulations.

In accordance with section 63(3)(a) and (b) of the Police Act 1996(4), the Secretary of State has supplied the Police Advisory Board for England and Wales with a draft of these Regulations and has taken into consideration the representations of that Board.

In accordance with section 24 of the Police Reform Act 2002(5), the Secretary of State has consulted with the Independent Police Complaints Commission, such persons as appear to her to represent the views of police and crime commissioners, the Mayor's Office for Policing and Crime, the Common Council, the National Police Chiefs' Council and such other persons as she thinks fit.

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- (1) 1996 c. 16; subsection (3) of section 50 was substituted by paragraphs 1 and 3 of Schedule 22 to the Criminal Justice and Immigration Act 2008 (c. 4) ("the 2008 Act"); subsections (3A) to (3G) of section 50 and subsections (2B) to (2H) of section 51 were inserted by section 29(1) to (3) of the Policing and Crime Act 2017 (c. 3) ("the 2017 Act"); subsection (2)(ba) of section 51 was inserted by section 35 of the Police Reform Act 2002 (c. 30) and amended by paragraphs (1) and (2) of Schedule 22 to the 2008 Act; subsection (2A) of section 51 was inserted by paragraphs 1 and 4 of Schedule 22 to the 2008 Act; section 84 was substituted by paragraphs 1 and 7 of Schedule 22 to the 2008 Act and amended by paragraphs 1 and 40 of Schedule 16 to the Police Reform and Social Responsibility Act 2011 (c. 13) and section 29(1) and (4) of the 2017 Act; section 85 was substituted by paragraphs 1 and 8 of Schedule 22 to the 2008 Act and amended by section 29(1) and (5) of the 2017 Act.
- (2) 2002 c. 30; section 23(2) was amended by paragraphs 1 and 2 of Schedule 23 to the Criminal Justice and Immigration Act 2008; there are other amendments to section 23(2), and amendments to section 29(1), but none are relevant.
- (3) 2017 c. 3.
- (4) Section 63(3) was amended by paragraphs 1 and 6 of Schedule 22 to the Criminal Justice and Immigration Act 2008 and section 10(3)(b) of the Policing and Crime Act 2009 (c. 26); there are other amendments but none are relevant.
- (5) Section 24 was amended by paragraph 12 of Schedule 4 to the Police and Justice Act 2006 (c. 48), paragraphs 277 and 289 of Schedule 16 to the Police Reform and Social Responsibility Act 2011 and paragraphs 6 and 7(e) of Schedule 14 to the Policing and Crime Act 2017.

## PART 1

### General

#### Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Police (Conduct, Complaints and Misconduct and Appeal Tribunal) (Amendment) Regulations 2017 and come into force on 15th December 2017.

(2) In these Regulations—

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

“the 2012 Rules” means the Police Appeals Tribunals Rules 2012<sup>(6)</sup>;

“the Conduct Regulations” means the Police (Conduct) Regulations 2012<sup>(7)</sup>;

“the Complaints and Misconduct Regulations” means the Police (Complaints and Misconduct) Regulations 2012<sup>(8)</sup>.

#### Transitional and saving provisions

2.—(1) Where an allegation in relation to a person came to the attention of an appropriate authority before 15th December 2017 but after 21st November 2012, and the person ceases to be a member of a police force or a special constable (as the case may be) on or after 15th December 2017, these Regulations apply.

(2) Where a complaint or recordable conduct matter relates to the conduct of a person who ceased to be a person serving with the police before 15th December 2017, the Complaints and Misconduct Regulations continue to have effect without the amendments made by regulations 31 and 33 of these Regulations.

(3) In this regulation—

“acting chief officer” means—

(a) a person exercising or performing functions of a chief constable in accordance with section 41 of the Police Reform and Social Responsibility Act 2011<sup>(9)</sup>;

(b) a person exercising powers or duties of the Commissioner of Police of the Metropolis in accordance with section 44 or 45(4) of that Act; or

(c) a person exercising duties of the Commissioner of Police for the City of London in accordance with section 25 of the City of London Police Act 1839<sup>(10)</sup>;

“allegation” means an allegation relating to a complaint or conduct matter;

“appropriate authority” means where the person concerned was—

(a) the chief officer of police or acting chief officer of any police force at the relevant time, the local policing body for the force’s area;

(b) any other member of a police force or a special constable at the relevant time, the chief officer of police of the police force concerned;

“police force concerned” means—

(a) where the person concerned was a member of a police force at the relevant time, the police force of which that person was a member at that time;

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<sup>(6)</sup> S.I. 2012/2630.

<sup>(7)</sup> S.I. 2012/2632.

<sup>(8)</sup> S.I. 2012/1204.

<sup>(9)</sup> 2011 c. 13.

<sup>(10)</sup> 2 & 3 Vict. c. xciv.

- (b) where the person concerned was a special constable at the relevant time, the police force maintained for the police area for which that person was appointed at that time;
- “relevant time” means the time immediately before the person concerned ceased to be a member of a police force or a special constable.

## PART 2

### Amendment of the Conduct Regulations

#### Amendment of the Conduct Regulations

3. The Conduct Regulations are amended in accordance with this Part.

#### Amendment of regulation 3 (interpretation and delegation)

4. In regulation 3(1)(11), in the appropriate places, insert the following definitions—
- ““barred list report” means a report under section 88A(1) of the 1996 Act(12);”;
- ““police barred list” means the list referred to in section 88B(2) of the 1996 Act(13);”.

#### Amendment of regulation 5 (application)

5. In regulation 5—
- (a) after paragraph (1), insert—
- “(2) Except as set out in paragraph (6), these Regulations also apply, with the modifications set out in Schedule 3(14), where—
- (a) an allegation comes to the attention of a relevant body which indicates that the conduct of a person who at the time of the alleged conduct was a police officer (“P”) may amount to gross misconduct; and
- (b) condition A, B or C is satisfied.
- (3) Condition A is that P ceased to be a police officer after the allegation first came to the attention of a relevant body.
- (4) Condition B is that—
- (a) P ceased to be a police officer before the allegation first came to the attention of a relevant body; and
- (b) the period between the date P ceased to be a police officer and the date the allegation first came to the attention of the relevant body did not exceed 12 months.
- (5) Condition C is that—
- (a) P ceased to be a police officer before the allegation first came to the attention of a relevant body;

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(11) Regulation 3(1) has been amended but the amendments are not relevant to these Regulations.

(12) Section 88A was inserted by section 30(1) of, and Schedule 8 to, the Policing and Crime Act 2017.

(13) Section 88B was inserted by section 30(1) of, and Schedule 8 to, the Policing and Crime Act 2017.

(14) See sections 50(3A) to (3G) and 51(2B) to (2H) of the Police Act 1996 as inserted by section 29(1) to (3) of the Policing and Crime Act 2017.

- (b) the period between the date P ceased be a police officer and the date the allegation first came to the attention of the relevant body exceeded 12 months; and
  - (c) the Commission has made a Condition C special determination under Part 1A of these Regulations (as modified by paragraph (2) and Schedule 3) that taking disciplinary proceedings against P in respect of the alleged gross misconduct would be reasonable and proportionate.
- (6) Paragraph (2) does not apply—
- (a) in relation to a person who ceased to be a police officer before 15th December 2017;
  - (b) where the disciplinary proceedings would not be the first disciplinary proceedings to be taken against P in respect of the alleged gross misconduct unless they result from a re-investigation of the allegation (whether carried out under these Regulations or under the 2002 Act) that begins not later than 12 months after the date on which P ceased to be a police officer.”;
- (b) paragraph (2) becomes paragraph (7) and in that paragraph, after “police officer” insert “or person in relation to whom these Regulations apply by virtue of paragraph (2)”;
- (c) after paragraph (7), insert—
- “(8) In this regulation, “relevant body” means—
    - (a) a chief officer of police;
    - (b) a local policing body; or
    - (c) the Commission.”.

**Omission of regulation 10A (appropriate authority consent to notice of intention to resign or retire)**

6. Omit regulation 10A(15).

**Amendment of regulation 15 (written notices)**

7. In regulation 15(1), after sub-paragraph (e) insert—
- “(ea) that if he is dismissed at misconduct proceedings, his full name and a description of the conduct which led to his dismissal will be added to the police barred list and may be subject to publication for a period of up to five years;”.

**Amendment of regulation 29 (participation of Commission and investigator at misconduct proceedings)**

8. In regulation 29(5), for “5(2)” substitute “5(7)”.

**Amendment of regulation 35 (outcome of misconduct proceedings)**

9. In regulation 35(16), at the end insert—
- “(15) Paragraph (16) applies where an officer is dismissed (with or without notice) at a misconduct hearing.

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(15) Regulation 10A was inserted by regulation 2 of S.I. 2014/3347 and amended by regulations 2 and 4 of S.I. 2015/626.

(16) Paragraphs (12) to (14) of regulation 35 were inserted by regulations 2 and 11 of S.I. 2015/626.

(16) The chair of the panel which conducted the misconduct hearing may provide any information to the appropriate authority that the chair considers ought to be included by virtue of regulation 3(2)(l) of the Police Barred List and Advisory List Regulations 2017(17) in the barred list report relating to the officer concerned (information relating to whether exemptions to requirement to publish the barred list entry apply).”.

#### **Amendment of regulation 55 (outcome of special case hearing)**

**10.** In regulation 55(18), at the end insert—

“(14) Paragraph (15) applies where an officer is dismissed without notice at a special case hearing.

(15) The person who conducted or chaired the special case hearing may provide any information to the appropriate authority that the person considers ought to be included by virtue of regulation 3(2)(l) of the Police Barred List and Advisory List Regulations 2017 in the barred list report relating to the officer concerned (information relating to whether exemptions to requirement to publish the barred list entry apply).”.

#### **New Schedule**

**11.** After Schedule 2 insert Schedule 3 which is set out in Schedule 1 to these Regulations.

## **PART 3**

### **Amendment of the 2012 Rules**

#### **Amendment of the 2012 Rules**

**12.** The 2012 Rules are amended in accordance with this Part.

#### **Amendment of rule 3 (interpretation)**

**13.** In rule 3(1)—

(a) in the appropriate places insert the following definitions—

““the 1996 Act” means the Police Act 1996;”;

““disciplinary action”—

(a) in relation to a police officer, has the same meaning as in the Conduct Regulations;

(b) in relation to a former police officer, means a finding that he would have been dismissed if he had not ceased to be a member of a police force or a special constable;”;

““relevant time” means, in relation to a former police officer, the time immediately before he ceased to be such an officer;”;

(b) in the definition of “appellant” after “officer” insert “or a former police officer”;

(c) in the definition of “relevant local policing body”—

(i) in paragraph (a)—

(aa) after “the appellant” insert “(where the appellant is a police officer)”;;

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(17) S.I. 2017/1135.

(18) Paragraphs (11) to (13) of regulation 55 were inserted by regulations 2 and 18 of S.I. 2015/626.

- (bb) at the end omit “or”;
- (ii) in paragraph (b) after “the appellant” insert “(where the appellant is a police officer)”;
- (iii) after paragraph (b) insert—
  - “(c) the police force of which a former police officer who wishes to appeal to a tribunal, or the appellant (where the appellant is a former police officer), was a member at the relevant time; or
  - (d) the police force for the police area for which a former police officer who wishes to appeal to a tribunal, or the appellant (where the appellant is a former police officer), was appointed as a special constable at the relevant time.”;
- (d) in the definition of “relevant decision” for “4 or 5” substitute “4, 5 or 5A”;
- (e) in the definition of “relevant police force”—
  - (i) at the end of paragraph (a) omit “and”;
  - (ii) after paragraph (b) insert—
    - “(c) where the appellant was a member of a police force at the relevant time, the police force of which he was a member; and
    - (d) where the appellant was a special constable at the relevant time, the police force maintained for the police area for which he was appointed.”.

#### **New rule 5A**

- 14.** After rule 5 (circumstances in which a police officer may appeal to a tribunal) insert—

**“Circumstances in which a former police officer may appeal to a tribunal**

**5A.—**(1) Subject to paragraph (3), a former police officer to whom paragraph (2) applies may appeal to a tribunal in reliance on one or more of the grounds of appeal referred to in paragraph (4) against—

- (a) the finding referred to in paragraph (2)(a) or (b) made under the Conduct Regulations; or
- (b) any decision to impose disciplinary action under the Conduct Regulations in consequence of that finding,

or both.

(2) This paragraph applies to—

- (a) a former police officer against whom a finding of misconduct or gross misconduct has been made at a misconduct hearing; or
- (b) former police officer against whom a finding of gross misconduct has been made at a special case hearing.

(3) A former police officer may not appeal to a tribunal against the finding referred to in paragraph (2)(a) or (b) where that finding was made following acceptance by the former officer that his conduct amounted to misconduct or gross misconduct (as the case may be).

(4) The grounds of appeal under this rule are—

- (a) that the finding or decision to impose disciplinary action was unreasonable;
- (b) that there is evidence that could not reasonably have been considered at the original hearing which could have materially affected the finding or decision to impose disciplinary action; or

- (c) that there was a breach of the procedures set out in the Conduct Regulations, the Police (Complaints and Misconduct) Regulations 2012 or Schedule 3 to the 2002 Act, or other unfairness which could have materially affected the finding or decision to impose disciplinary action.”.

#### **Amendment of rule 6 (notice of appeal)**

**15.** In rule 6—

- (a) in paragraph (1) after “officer” insert “or a former police officer”;
- (b) in paragraph (3) after “officer” insert “or former officer”.

#### **Amendment of rule 7 (notice of appeal)**

**16.** In rule 7—

- (a) in paragraph (1) after “officer” insert “or a former police officer”;
- (b) in paragraph (2)—
  - (i) after “officer” insert “or a former police officer”;
  - (ii) after “officer’s” insert “or former officer’s”.

#### **Amendment of rule 8 (the respondent)**

**17.** In rule 8—

- (a) in paragraph (1)—
  - (i) in sub-paragraph (a) after “police” insert “or a former police officer who was a chief officer of police at the relevant time”;
  - (ii) in sub-paragraph (b) after “officer” insert “or a former police officer who was an acting chief officer at the relevant time”;
- (b) in paragraph (2) after “officer” insert “or other former police officer”.

#### **Amendment of rule 9 (procedure on notice of appeal)**

**18.** In rule 9—

- (a) in paragraph (5)(a) after “4(4)(b)” insert “, 5A(4)(b)”;
- (b) in paragraph (9) after “4(4)(b)”, in both places where it appears, insert “, 5A(4)(b)”.

#### **Amendment of rule 14 (notice of the hearing)**

**19.** In rule 14(19)—

- (a) in paragraph (2) after “4(4)(b)” insert “, 5A(4)(b)”;
- (b) in paragraph (4)(a) for “officer concerned” substitute “appellant”;
- (c) in paragraph (9) after “4” insert or “5A”.

#### **Amendment of rule 15 (legal and other representation)**

**20.** In rule 15(4) after “officer of the” insert “relevant”.

**Amendment of rule 18 (attendance at hearing)**

21. In rule 18(1)(20) after “4” insert “or 5A”.

**Amendment of rule 19 (attendance of complainant at hearing)**

22. In rule 19(7)(21) after “4” insert “or 5A”.

**Amendment of rule 20 (attendance of IPCC at hearing)**

23. In rule 20(4)(22) after “4” insert “or 5A”.

**Amendment of rule 21 (exclusion from hearing)**

24. In rule 21(3)(23) after “4” insert “or 5A”.

**Amendment of rule 22 (statement of tribunal’s determination)**

25. In rule 22(24)—

(a) in paragraph (2) for “or rule 5(6)(b) or (c)” substitute “, rule 5(6)(b) or (c) or rule 5A(4)(b) or (c)”;

(b) after paragraph (5) insert—

“(5A) Paragraph (5B) applies in a case where information in relation to the appellant which is included in the police barred list has been published by the College of Policing under section 88G(2) of the Police Act 1996(25).

(5B) The chair may include in the written statement any representations that the chair considers it appropriate to make in relation to the appellant and the question mentioned in regulation 11(2) of the Police Barred List and Advisory List Regulations 2017.”;

(c) in paragraph (6) before “local” insert “relevant”;

(d) after paragraph (13) insert—

“(13A) In any case where the appellant is a former police officer and disciplinary action was imposed under the Conduct Regulations, if on determination of the appeal the tribunal’s decision results in disciplinary action no longer being imposed, the relevant local policing body shall notify the College of Policing of the decision of the tribunal.”;

(e) for paragraph (14) substitute—

“(14) Paragraphs (9) to (13A) do not apply to an appeal brought in accordance with rule 5.”.

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(20) Rule 18 was substituted by rules 2 and 5 of S.I. 2015/625.

(21) Paragraph (7) was inserted by rules 2 and 6(b) of S.I. 2015/625.

(22) Paragraph (4) was inserted by rules 2 and 7(b) of S.I. 2015/625.

(23) Paragraph (3) was inserted by rules 2 and 8 of S.I. 2015/625.

(24) Paragraphs (9) to (14) were inserted by rules 2 and 9(b) of S.I. 2015/625. There is another amendment of this rule but it is not relevant to these Regulations.

(25) 1996 c.16. Section 88G was inserted by section 30 of, and Schedule 8 to, the Policing and Crime Act 2017.



## PART 4

### Amendment of the Complaints and Misconduct Regulations

#### Amendment of the Complaints and Misconduct Regulations

26. The Complaints and Misconduct Regulations are amended in accordance with this Part.

#### Amendment of regulation 1 (citation, commencement and interpretation)

27. In regulation 1(2)—

- (a) in the definition of “the Conduct Regulations”, for “2008” substitute “2012”;
- (b) after that definition insert the following definition—

““designated police volunteer” means a person designated as a community support volunteer or a policing support volunteer under section 38(1A) of the 2002 Act(26);”;
- (c) in the definition of “the Performance Regulations”, for “2008” substitute “2012”;
- (d) after that definition insert the following definition—

““police barred list” means the list referred to in section 88B(2) of the Police Act 1996;”.

#### Amendment of regulation 16 (written notices)

28. In regulation 16(1) after sub-paragraph (e) insert—

- “(ea) that if he is dismissed at misconduct proceedings, his full name and a description of the conduct which led to his dismissal will be added to the police barred list and may be subject to publication for a period of up to five years;”.

#### Amendment of regulation 17 (police friend)

29. In regulation 17(2)—

- (a) after “police staff member”, in the first place where it appears, insert “or designated police volunteer”;
- (b) in sub-paragraph (b), after “police staff member’s companion” insert “or designated police volunteer’s companion, as the case may be,”;
- (c) in sub-paragraph (e), for “a police staff member” substitute “the police staff member or designated police volunteer, as the case may be,”.

#### Amendment of regulation 24 (appointment of persons to carry out investigations)

30. In regulation 24(4), for “and a police staff member serving in that force” substitute “, a police staff member serving in that force and a designated police volunteer serving in that force”.

#### Substitution of regulation 27 (complaints or conduct matters concerning a person who has subsequently ceased to serve with the police)

31. For regulation 27 substitute—

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(26) Subsection (1A) was inserted by section 38(2) of the Policing and Crime Act 2017.

**“Complaints and conduct matters relating to the conduct of a person who has ceased to be a person serving with the police**

27. Where a complaint or 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, the provisions of Part 2 (complaints and misconduct) of the 2002 Act and these Regulations apply—

- (a) as if the person were still serving in the position in which he last served; and
- (b) with the modifications to Part 2 of the 2002 Act and to these Regulations set out in Parts 1 and 2 of the Schedule respectively.”

**Amendment of regulation 36 (disciplinary proceedings for police staff)**

32. In regulation 36(27) in the heading after “police staff” insert “and designated police volunteers”.

**New Schedule**

33. Insert the Schedule which is set out in Schedule 2 to these Regulations.

22nd November 2017

*Nick Hurd*  
Minister of State  
Home Office

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(27) Regulation 36 has been amended but the amendments are not relevant to these Regulations.

SCHEDULE 1

Regulation 11

Modifications to the Conduct Regulations

“SCHEDULE 3

Regulation 5(2)

Modifications to these Regulations in their application to former officers

**Modification to regulation 3 (interpretation and delegation)**

1. Regulation 3 is to be read as if—

(a) in paragraph (1)—

(i) the following definitions were inserted in the appropriate places—

““Condition C person” means a person in relation to whom regulation 5(2)(a) and (5)(a) and (b) is satisfied;”;

““Condition C special determination” has the meaning given in regulation 4A(2);”;

““relevant time” means the time immediately before the officer concerned ceased to be a member of a police force or a special constable;”;

(ii) the definitions of “appeal meeting”, “human resources professional”, “management action”, “management advice”, “misconduct meeting” and “misconduct proceedings” were omitted;

(iii) for the definition of “appropriate authority” there were substituted—

““appropriate authority” means where the officer concerned was—

(a) the chief officer or acting chief officer of any police force at the relevant time, the local policing body for the force’s area;

(b) any other police officer at the relevant time, the chief officer of police of the police force concerned;”;

(iv) for the definition of “disciplinary action” there were substituted—

““disciplinary action” means a finding that the officer concerned would have been dismissed if he had not ceased to be a member of a police force or a special constable;”;

(v) in the definition of “disciplinary proceedings”, for “misconduct proceedings” there were substituted “a misconduct hearing”;

(vi) in the definition of “misconduct hearing”, “up to and including dismissal” were omitted;

(vii) for the definition of “police force concerned” there were substituted—

““police force concerned” means—

(a) where the officer concerned was a member of a police force at the relevant time, the police force of which he was a member at that time;

(b) where the officer concerned was a special constable at the relevant time, the police force maintained for the police area for which he was appointed at that time;”;

(viii) for the definition of “police officer”, except in its application to regulation 5, there were substituted—

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- ““police officer” and “officer” mean a person who has ceased to be a member of a police force or a special constable;”;
- (ix) in the definition of “proposed witness”, for “proceedings”, in the first place where it appears, there were substituted “hearing” and for the words from “conducting” to the end there were substituted “chairing that hearing;”;
- (x) for the definition of “senior officer” there were substituted—
- ““senior officer” means a member of a police force who held a rank above that of chief superintendent at the relevant time;”;
- (xi) for the definition of “staff association” there were substituted—
- ““staff association” means—
- (a) in relation to an officer who was a member of a police force of the rank of chief inspector or below at the relevant time, the Police Federation of England and Wales;
- (b) in relation to an officer who was a member of a police force of the rank of superintendent or chief superintendent at the relevant time, the Police Superintendents’ Association of England and Wales; and
- (c) in relation to an officer who was a senior officer at the relevant time, the Chief Police Officers’ Staff Association;”;
- (b) in paragraph (2)—
- (i) in sub-paragraph (a) after “special constable” there were inserted “at the relevant time”;
- (ii) for sub-paragraph (c)(ii) there were substituted—
- “(ii) it is in the public interest for the officer concerned to be included in the police barred list without delay.”;
- (c) paragraphs (3) and (4) were omitted.

**Modification: insertion of Part 1A**

2. These Regulations apply as if after regulation 4 there were inserted—

**“PART 1A**

**Condition C special determination**

**Condition C special determination: matters to be taken into account**

**4A.**—(1) This Part applies where the Commission is required under paragraph 20AA(2) or 23(6B) of Schedule 3 to the 2002 Act (as applied with modifications by regulation 27 of, and the Schedule to, the Police (Complaints and Misconduct) Regulations 2012) to make a Condition C special determination.

(2) A Condition C special determination is a determination by the Commission as to whether the taking of disciplinary proceedings against a Condition C person in respect of alleged gross misconduct would be reasonable and proportionate having regard to—

- (a) the seriousness of the alleged gross misconduct;
- (b) the impact of the allegation on public confidence in the police; and
- (c) the public interest.

(3) When assessing the seriousness of the alleged gross misconduct for the purposes of paragraph (2)(a), the matters which the Commission must take into account are—

- (a) whether it appears that the alleged gross misconduct amounts to a criminal offence;
- (b) whether it appears that a complainant or other person has been harmed (whether physically or psychologically) by the alleged gross misconduct and, if so, the extent and seriousness of the harm;
- (c) where it appears that a complainant or other person has been so harmed, whether that person was a vulnerable person;
- (d) whether it appears that the alleged gross misconduct was intentional;
- (e) whether it appears that the purpose or one of the purposes of the alleged gross misconduct was personal gain or benefit for the officer concerned;
- (f) whether it appears that the alleged gross misconduct is aggravated by discriminatory behaviour on the grounds of a person's race, gender, disability, age, religion or belief, sexual orientation or gender identity;
- (g) whether it appears that the officer concerned acted with one or more other persons serving with the police within the meaning of section 12(7)(a) or (c) of the 2002 Act (member of a police force or special constable under the direction and control of a chief officer);
- (h) the extent to which the alleged gross misconduct involved abuse of a position of trust or authority held by the officer concerned;
- (i) whether it appears that the officer concerned has taken steps to prevent the alleged gross misconduct being identified or to obstruct investigations into it, other than lawful steps to defend himself;
- (j) whether it appears that the alleged gross misconduct has had an adverse effect on community relations;
- (k) whether it appears that there are mitigating circumstances arising out of the health (whether physical or mental) of the officer concerned at the time of the alleged gross misconduct; and
- (l) any other matters that the Commission considers relevant.

(4) When assessing the impact of the allegation on public confidence in the police for the purposes of paragraph (2)(b), the matters which the Commission must take into account are—

- (a) whether it appears that the alleged gross misconduct has had an effect on relations between the public and the police, including relations between the members of the community where the alleged gross misconduct occurred and the police force concerned;
- (b) the extent of any apparent harm to public confidence in the police and, in particular, in the police force concerned;
- (c) the effect that a decision not to take disciplinary proceedings might have on public confidence in the police; and
- (d) any other matters that the Commission considers relevant.

(5) When assessing the public interest for the purposes of paragraph (2)(c), the matters which the Commission must take into account are—

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- (a) whether it appears that the officer concerned should be prevented from future employment or appointment by a person mentioned in section 88C(5) of the 1996 Act<sup>(28)</sup>;
  - (b) where it appears that the officer concerned should be so prevented, whether disciplinary proceedings are necessary for this purpose;
  - (c) the length of time since the alleged gross misconduct occurred;
  - (d) whether it appears that the officer concerned will be held to account in respect of the alleged gross misconduct through other means, such as criminal or other proceedings;
  - (e) where it appears that a complainant or other person has been harmed (whether physically or psychologically) by the alleged gross misconduct, whether it appears that a decision not to take disciplinary proceedings would adversely affect that person;
  - (f) whether it appears that the officer concerned is unfit to be subject to or to participate in disciplinary proceedings by reason of disability or ill-health; and
  - (g) any other matters that the Commission considers relevant.
- (6) In paragraph (3)(c), “vulnerable person” means a person who, by reason of age, disability or ill-health, is, or may be, unable to—
- (a) take care of himself; or
  - (b) protect himself against harm or exploitation.

#### **Condition C special determination: procedure**

**4B.**—(1) Before making a Condition C special determination the Commission must give a notification in writing to—

- (a) any complainant;
  - (b) any interested person; and
  - (c) the officer concerned.
- (2) A notification under paragraph (1) must—
- (a) state that the Commission is to make a Condition C special determination and the consequences under Schedule 3 to the 2002 Act of such a determination;
  - (b) explain the effect of regulation 4A;
  - (c) explain that—
    - (i) if disciplinary proceedings are taken and the allegation of gross misconduct is proved, the officer concerned may be subject to a finding that he would have been dismissed if he had not ceased to be a member of a police force or a special constable; and
    - (ii) if he is subject to such a finding, he will be included in the police barred list;
  - (d) subject to the harm test, set out any findings relating to the conduct to which the investigation relates in any special report or investigation report submitted to the Commission under Schedule 3 to the 2002 Act;
  - (e) set out the person’s rights under paragraph (3);
  - (f) in the case of the officer concerned, state that he has the right to seek advice from his staff association or any other body and the effect of regulation 6(1) and (2).

<sup>(28)</sup> 1996 c.16. Section 88C was inserted by section 30 of, and Schedule 8 to, the Policing and Crime Act 2017.

(3) A person given a notification under paragraph (1) may, within the period of 21 days beginning with the day on which the notice is given or such longer period as the Commission may agree, provide a written statement and any document which the person wishes the Commission to take into account for the purposes of the Condition C special determination.

(4) Before making a Condition C special determination the Commission may consult any other person it thinks fit.

(5) When making a Condition C special determination the Commission must take into account in addition to the matters specified in regulation 4A—

- (a) any written statement or document provided under paragraph (3);
- (b) any response to a consultation carried out under paragraph (4);
- (c) any findings relating to the conduct to which the investigation relates in any special report or investigation report submitted to the Commission under Schedule 3 to the 2002 Act; and
- (d) any other relevant evidence.

(6) The Commission must give notification in writing of a Condition C special determination and the consequences under Schedule 3 to the 2002 Act of the determination to the persons mentioned in paragraph (1).”.

#### **Modification to regulation 6 (police friend)**

3. Regulation 6 is to be read as if—

- (a) in paragraph (1)—
  - (i) at the end of sub-paragraph (b), “or” were omitted;
  - (ii) for sub-paragraph (c), there were substituted—
    - “(c) where the officer concerned is a member of his staff association, a person nominated by his staff association; or
    - (d) where the officer concerned is not a member of his staff association, any other person nominated by the officer concerned and approved by the chief officer of the police force concerned,”;
- (b) in paragraph (2)—
  - (i) in sub-paragraph (b), for “proceedings” there were substituted “hearing” and “or appeal meeting” were omitted;
  - (ii) in sub-paragraph (d), “, meeting” were omitted.

#### **Modification to regulation 7 (legal and other representation)**

4. Regulation 7 is to be read as if—

- (a) in paragraph (2), for “he may be dismissed or” there were substituted “disciplinary action may be imposed in relation to him or he may”;
- (b) in paragraph (3)—
  - (i) for “misconduct proceedings” there were substituted “a misconduct hearing”;
  - (ii) “or an appeal meeting” were omitted;
- (c) in paragraph (4)—
  - (i) for “misconduct proceedings” there were substituted “a misconduct hearing”;
  - (ii) “or an appeal meeting” and in sub-paragraph (b) “only,” and the words before it were omitted;

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- (d) in paragraph (5)—
  - (i) “Subject to paragraph (6),”, “person or” and “or appeal meeting” were omitted;
  - (ii) for “proceedings” there were substituted “hearing”;
- (e) paragraph (6) were omitted.

**Modification to regulation 8 (provision of notices or documents)**

- 5. Regulation 8 is to be read as if—
  - (a) the existing text were paragraph (1);
  - (b) after paragraph (1), there were inserted—
    - “(2) The appropriate authority shall make reasonable enquiries in order to determine the last known address of the officer concerned for the purposes of paragraph (1)(b).”.

**Modification to regulation 9 (outstanding or possible criminal proceedings)**

- 6. Regulation 9 is to be read as if—
  - (a) in paragraph (2)—
    - (i) for “misconduct proceedings”, in the first place where it appears, there were substituted “a misconduct hearing”;
    - (ii) for “misconduct proceedings”, in the second place where it appears, there were substituted “the misconduct hearing”;
  - (b) in paragraph (3)—
    - (i) for “any misconduct proceedings” there were substituted “a misconduct hearing”;
    - (ii) for “misconduct or special case” there were substituted “hearing or”;
  - (c) in paragraph (4), for “misconduct proceedings” there were substituted “a misconduct hearing”.

**Modification: omission of regulation 10 (suspension)**

- 7. These Regulations are to be read as if regulation 10 were omitted.

**Modification to regulation 12 (assessment of conduct)**

- 8. Regulation 12 is to be read as if—
  - (a) in paragraph (1), for the words from “misconduct” to the end there were substituted “gross misconduct.”;
  - (b) in paragraph (2), for the words from “amount” to the end there were substituted “not amount to gross misconduct, it must take no further action.”;
  - (c) paragraph (3) were omitted;
  - (d) in paragraph (4), after “misconduct,” there were inserted “subject to paragraph (5A),”;
  - (e) in paragraph (5), for “misconduct proceedings” there were substituted “a misconduct hearing”;
  - (f) after paragraph (5), there were inserted—
    - “(5A) The appropriate authority shall take no action or no further action under paragraph (1), (4) or (5) if—



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- (a) it is satisfied that the officer concerned is unfit for disciplinary proceedings to be brought against him by reason of disability or ill-health; or
- (b) the appropriate authority has made all reasonable efforts to establish his whereabouts but it has been unsuccessful.”;
- (g) for paragraph (6), there were substituted—
  - “(6) Where the appropriate authority is required by paragraph (2) to take no action or by paragraph (5A)(a) to take no action or no further action, it shall notify the officer concerned in writing as soon as practicable.”.

**Modification to regulation 13 (appointment of investigator)**

9. Regulation 13 is to be read as if—
- (a) in paragraph (3)—
    - (i) for “is” there were substituted “was”;
    - (ii) after “Metropolis”, in the second place that word appears, there were inserted “at the relevant time”;
  - (b) in paragraph (4)—
    - (i) for sub-paragraph (c), there were substituted—
      - “(c) if he worked, directly or indirectly, under the management of the officer concerned at the relevant time; or”;
    - (ii) in sub-paragraph (d)—
      - (aa) for “is a senior officer, if he is” there were substituted “was a senior officer at the relevant time, if he was at that time”;
      - (bb) for “is a member of the metropolitan police force” there were substituted “was a member of the metropolitan police force at the relevant time”.

**Modification to regulation 14 (investigation)**

10. Regulation 14 is to be read as if “misconduct or”, in both places where those words appear, were omitted.

**Modification to regulation 15 (written notices)**

11. Regulation 15 is to be read as if—
- (a) in paragraph (1)—
    - (i) in sub-paragraph (b), “misconduct or” were omitted;
    - (ii) for sub-paragraphs (d) to (ea), there were substituted—
      - “(d) that if the matter were to be referred to proceedings under Part 4—
        - (i) the form of those proceedings would be a misconduct hearing;
        - (ii) if the allegation of gross misconduct is proved, he may be subject to a finding that he would have been dismissed if he had not ceased to be a member of a police force or a special constable; and
        - (iii) if he is subject to such a finding, his full name and a description of the conduct which would have led to his dismissal will be added to the police barred list and may be subject to publication for a period of up to five years;”;

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- (iii) at the end of sub-paragraph (g), “and” were omitted;
  - (iv) after sub-paragraph (g), there were inserted—
    - “(ga) informing him that it may harm his case if he fails to attend an interview of which he has been given notice under regulation 17(5) (interviews during investigation); and”;
  - (v) in sub-paragraph (h), for the words from “regulations” to the end there were substituted “regulation 16(1), 17A(2) or 22(2) or (3) something which he later relies on in any misconduct hearing or special case hearing or at an appeal hearing.”;
- (b) in paragraph (2)—
- (i) “or its determination of the likely form of any misconduct proceedings to be taken” and, after “notice”, “of” were omitted;
  - (ii) in sub-paragraph (a)—
    - (aa) at the beginning, “of” were inserted;
    - (bb) “misconduct or” and “as the case may be” were omitted;
  - (iii) for sub-paragraph (b) there were substituted—
    - “(b) where the assessment is that the conduct, if proved, would not amount to gross misconduct, that if, notwithstanding that assessment, the matter were to be referred to proceedings under Part 4, the form of those proceedings would be a misconduct hearing;
    - (c) where the assessment is that the conduct, if proved, would amount to gross misconduct, that if the matter were to be referred to proceedings under Part 4, the form of those proceedings would be a misconduct hearing.”.

**Modification to regulation 17 (interviews during investigations)**

12. Regulation 17 is to be read as if—
- (a) in paragraph (1), after “practicable” there were inserted “and subject to regulation 17A”;
  - (b) in paragraph (4), for the words from “must” to the end there were substituted “must be reasonable.”.

**Modification: insertion of regulation 17A**

13. These Regulations are to be read as if after regulation 17 there were inserted—

**“Notice of enquiry of police officer during investigation**

**17A.—**(1) Where the investigator is satisfied that, having regard to the circumstances of the officer concerned, it would be unreasonable to require him to attend an interview, the investigator may cause the officer concerned to be given a written notice of enquiry.

(2) A notice of enquiry given under paragraph (1) shall—

- (a) state any question the investigator wishes to ask the officer concerned; and
- (b) request a response to any such question from the officer concerned within a specified period.

(3) The investigator shall make a record of any notice of enquiry and response received under this regulation.”.

**Modification to regulation 18 (report of investigation)**

14. Regulation 18 is to be read as if in paragraph (2)(c), for “whether there is a case” to the end there were substituted—

“whether—

- (i) other than in a case to which sub-paragraph (ii) applies—
  - (aa) there is a case to answer in respect of gross misconduct or there is no case to answer;
  - (bb) where the investigator’s opinion is that there is no such case to answer, there may nevertheless have been a breach of the Standards of Professional Behaviour;
- (ii) where the person to whose conduct the investigation related is a person in relation to whom regulation 5(2)(a) and (5)(a) and (b) is satisfied—
  - (aa) there may have been a breach of the Standards of Professional Behaviour;
  - (bb) where the investigator’s opinion is that there may have been such a breach, the breach is so serious that, if the person had not ceased to be a member of a police force or a special constable, it would have justified dismissal.”.

**Modification to the heading of Part 4 (Misconduct Proceedings)**

15. The heading of Part 4 is to be read as if for “Proceedings” there were substituted “Hearings”.

**Modification to regulation 19 (referral of case to misconduct proceedings)**

16. Regulation 19 is to be read as if—

- (a) in the heading, for “proceedings” there were substituted “hearing”;
- (b) in paragraphs (1) and (2), “misconduct or”, in each case in the first place where those words appear, were omitted;
- (c) in paragraph (3), for the words from “may” to the end there were substituted “must take no further disciplinary action against the officer concerned.”;
- (d) in paragraph (4), for “paragraph (2)” there were substituted “paragraphs (2) and (4A)”;
- (e) after paragraph (4), there were inserted—
  - “(4A) The appropriate authority shall not refer the case to a misconduct hearing if—
    - (a) it is satisfied that the officer concerned is unfit for disciplinary proceedings to be brought against him by reason of disability or ill-health; or
    - (b) the appropriate authority has made all reasonable efforts to establish his whereabouts but it has been unsuccessful.”;
- (f) paragraph (5) were omitted;
- (g) in paragraph (6)—
  - (i) in sub-paragraph (a), “misconduct meeting or a” were omitted;
  - (ii) for “9(3), refer the case to such a meeting or hearing” there were substituted “9(3) and paragraph (4A), refer the case to such a hearing”;
- (h) in paragraph (7), for the words from “fails to” to the end of sub-paragraph (b) there were substituted “fails to make the determination referred to in paragraph (1)”;
- (i) paragraphs (8) and (9) were omitted.

**Modification to regulation 20 (withdrawal of case)**

17. Regulation 20 is to be read as if—

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- (a) in paragraph (1), for “proceedings” there were substituted “hearing”;
- (b) in paragraph (2)—
  - (i) in sub-paragraph (a), for the words from “may” to the end there were substituted “must take no further action against the officer concerned; and”;
  - (ii) in sub-paragraph (b)(i), “ , indicating whether any action will be taken” were omitted.

**Modification to regulation 21 (notice of referral to misconduct proceedings and panel membership)**

**18.** Regulation 21 is to be read as if—

- (a) in the heading, for “proceedings” there were substituted “hearing”;
- (b) in paragraph (1)—
  - (i) for “misconduct proceedings”, where those words first appear, there were substituted “a misconduct hearing”;
  - (ii) in sub-paragraph (a)—
    - (aa) in paragraph (ii), “misconduct or” and “as the case may be” were omitted;
    - (bb) in paragraph (iii), the words from “(in the” to “other case)” and “and” at the end of that paragraph were omitted and for “proceedings” there were substituted “hearing”;
    - (cc) in paragraph (iv) for “form of misconduct proceedings” there were substituted “misconduct hearing”;
    - (dd) after paragraph (iv), there were inserted—
      - “and
      - (v) the matters mentioned in paragraph (1A);”;
    - (iii) in sub-paragraph (c)—
      - (aa) at the end of paragraph (i), “and” were omitted;
      - (bb) after paragraph (i), there were inserted—
        - “(ia) in the case of a Condition C person, any written statement or document provided to the Commission under regulation 4B(3) and any consultation response provided under regulation 4B(4); and”;
  - (c) after paragraph (1) there were inserted—
    - “(1A) The matters referred to in paragraph (1)(a)(v) are the fact that the officer—
      - (a) will be subject to disciplinary proceedings under the Regulations; and
      - (b) if the allegation of gross misconduct is proved, may be subject to a finding that he would have been dismissed if he had not ceased to be a member of a police force or a special constable.”;
  - (d) in paragraph (2)—
    - (i) in sub-paragraph (a), “person or” were omitted and for “proceedings” there were substituted “hearing”;
    - (ii) for sub-paragraph (b) there were substituted—
      - “(b) the persons comprising the panel which is to conduct the misconduct hearing (other than the chair) have been determined.”;
  - (e) in paragraph (3)—
    - (i) in sub-paragraph (a), for “proceedings” there were substituted “hearing”;

- (ii) for sub-paragraph (b) there were substituted—
  - “(b) advise the persons conducting that hearing.”;
- (f) in paragraph (5), for the words from “person or” to the end there were substituted “persons conducting the misconduct hearing.”;
- (g) in paragraph (6) “and (6)” were omitted;
- (h) in paragraph (7), for the words from “person” to “proceedings” there were substituted “persons conducting the misconduct hearing”.

**Modification to regulation 22 (procedure on receipt of notice)**

19. Regulation 22 is to be read as if—

- (a) in paragraph (1)(b), for the words from “conducting” to “proceedings” there were substituted “chairing the misconduct hearing”;
- (b) in paragraph (2)—
  - (i) in sub-paragraphs (a), (b) and (c) for “misconduct or gross misconduct as the case may be” there were substituted “gross misconduct”;
  - (ii) in sub-paragraph (c)(ii), for the words from “the person” to the end there were substituted “the persons conducting the misconduct hearing.”;
- (c) in paragraph (3), for “proceedings” there were substituted “hearing”.

**Modification to regulation 23 (witnesses)**

20. Regulation 23 is to be read as if—

- (a) in paragraph (1), for the words from “conducting” to the end there were substituted “chairing the misconduct hearing.”;
- (b) in paragraph (2), “conducting or” were omitted and for “proceedings”, in both places where it appears, there were substituted “hearing”;
- (c) in paragraph (3)—
  - (i) for the words from “misconduct proceedings”, in the first place where they appear, to “those proceedings” there were substituted “a misconduct hearing unless the person chairing that hearing”;
  - (ii) in sub-paragraphs (a) and (b), for “proceedings” there were substituted “hearing”.

**Modification to regulation 24 (timing and notice of misconduct proceedings)**

21. Regulation 24 is to be read as if—

- (a) in the heading, for “proceedings” there were substituted “hearing”;
- (b) in paragraph (1), for the words from “proceedings” to the end of sub-paragraph (b) there were substituted “hearing shall take place before the end of 30 working days”;
- (c) in paragraphs (2), (3), (4), (5) and (7)(b) for “conducting or chairing the misconduct proceedings” there were substituted “chairing the misconduct hearing”;
- (d) in paragraphs (4), in the second place where it appears, (6), (8) and (9), in all three places where it appears, for “proceedings” there were substituted “hearing”;
- (e) in paragraph (5), for “those proceedings” there were substituted “that hearing”.

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**Modification to regulation 25 (persons conducting misconduct proceedings: officers other than senior officers)**

22. Regulation 25 is to be read as if—
- (a) in the heading, for “proceedings” there were substituted “hearing”;
  - (b) paragraphs (2) and (3) were omitted;
  - (c) in paragraph (4)(b), after “officer concerned” there were inserted “held at the relevant time”.

**Modification to regulation 26 (persons conducting misconduct proceedings: senior officers)**

23. Regulation 26 is to be read as if in the heading and in paragraph (1) for “proceedings” there were substituted “hearing”.

**Modification to regulation 27 (documents to be supplied)**

24. Regulation 27 is to be read as if—
- (a) in paragraph (1)—
    - (i) for “proceedings”, in all three places where it appears, there were substituted “hearing”;
    - (ii) “person or” were omitted;
    - (iii) in sub-paragraph (c), for “misconduct or gross misconduct as the case may be” there were substituted “gross misconduct”;
  - (b) in paragraph (3), for “proceedings” there were substituted “hearing”.

**Modification to regulation 27A (notification of misconduct hearings)**

25. Regulation 27A is to be read as if—
- (a) in paragraph (1)—
    - (i) at the end of sub-paragraph (d), “and” were omitted;
    - (ii) in sub-paragraph (e), for “misconduct or gross misconduct as the case may be” there were substituted “gross misconduct”;
    - (iii) at the end of sub-paragraph (e), there were inserted—
      - “; and
      - (f) where the officer concerned is a Condition C person, the Condition C special determination.”;
  - (b) in paragraph (3)(c)(ii), for “(e)” there were substituted “(f)”.

**Modification to regulation 28 (attendance of officer concerned at misconduct proceedings)**

26. Regulation 28 is to be read as if—
- (a) in the heading and paragraph (1), for “proceedings” there were substituted “hearing”;
  - (b) for paragraph (2) there were substituted—
    - “(2) Where the officer concerned informs the person chairing the misconduct hearing in advance that he is unable to attend on grounds which the person chairing that hearing

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considers reasonable, that person may allow the officer concerned to participate in the hearing by video link or other means.”;

- (c) in paragraph (3)—
  - (i) for “proceedings”, in all four places where it appears, there were substituted “hearing”;
  - (ii) in sub-paragraph (a), for “those” there were substituted “that” and, in paragraph (ii), “in the case of a misconduct hearing, his” were omitted.

**Modification to regulation 29 (participation of Commission and investigator at misconduct proceedings)**

27. Regulation 29 is to be read as if—
- (a) in the heading and in the last place where it appears in paragraph (1), for “proceedings” there were substituted “hearing”;
  - (b) for paragraph (2) there were substituted—
    - “(2) Where the Commission so attends the misconduct hearing—
      - (a) it may instruct a relevant lawyer to represent it;
      - (b) it shall notify the complainant or any interested person prior to that hearing; and
      - (c) the person chairing the misconduct hearing shall notify the officer concerned prior to that hearing.”;
  - (c) in paragraph (3), for the words from “proceedings on” to the end there were substituted “hearing on the request of the person chairing that hearing to answer questions.”;
  - (d) in paragraph (4), for the words from “person or” to the end there were substituted “persons conducting the misconduct hearing.”;
  - (e) in paragraph (5), for “proceedings”, in both places where it appears, there were substituted “hearing”.

**Modification to regulation 30 (attendance of complainant or interested person at misconduct proceedings)**

28. Regulation 30 is to be read as if—
- (a) in the heading, for “proceedings” there were substituted “hearing”;
  - (b) in paragraph (1), for “misconduct proceedings” there were substituted “a misconduct hearing”;
  - (c) in paragraph (2), for “proceedings” there were substituted “hearing”;
  - (d) paragraphs (3) and (4) were omitted;
  - (e) in paragraphs (7) and (8) for “conducting or chairing the misconduct proceedings” there were substituted “chairing the misconduct hearing” and in paragraph (8), for “proceedings”, in the last place where it appears, there were substituted “hearing”.

**Modification to regulation 31 (attendance of others at misconduct proceedings)**

29. Regulation 31 is to be read as if—
- (a) in the heading, for “proceedings” there were substituted “hearing”;
  - (a) paragraphs (2) to (5) were omitted;
  - (c) in paragraph (6)—

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- (i) for “conducting or chairing the misconduct proceedings” there were substituted “chairing the misconduct hearing”;
- (ii) in sub-paragraphs (a) and (b), for “the proceedings” there were substituted “the hearing” and for “those proceedings” there were substituted “that hearing”;
- (d) in paragraph (7), for “proceedings”, in both places where it appears, there were substituted “hearing”.

**Modification to regulation 32 (exclusion from misconduct proceedings)**

**30.** Regulation 32 is to be read as if—

- (a) in the heading, for “proceedings” there were substituted “hearing”;
- (b) for “conducting or chairing the misconduct proceedings” there were substituted “chairing the misconduct hearing” and for “the proceedings” there were substituted “the hearing”.

**Modification to regulation 33 (procedure at misconduct proceedings)**

**31.** Regulation 33 is to be read as if—

- (a) in the heading, for “proceedings” there were substituted “hearing”;
- (b) in paragraph (1), for “conducting or chairing the misconduct proceedings” there were substituted “chairing the misconduct hearing” and for “those proceedings” there were substituted “that hearing”;
- (c) in paragraph (2), for “proceedings”, in the first place where it appears, and “form of misconduct proceedings taking place” there were substituted “hearing”;
- (d) in paragraph (3), for “conducting or chairing the misconduct proceedings” there were substituted “chairing the misconduct hearing” and for “the proceedings” there were substituted “the hearing”;
- (e) in paragraphs (4) and (7), for “proceedings” there were substituted “hearing”;
- (f) in paragraph (5), for “proceedings”, in the first two places where it appears, there were substituted “hearing”;
- (g) in paragraph (6), “(at a misconduct hearing)” were omitted;
- (h) in paragraphs (8) and (9), for “conducting or chairing the misconduct proceedings” there were substituted “chairing the misconduct hearing” and in paragraph (9) for “those proceedings” there were substituted “that hearing”;
- (i) in paragraph (10)—
  - (i) for “proceedings”, in both places where it appears, there were substituted “hearing”;
  - (ii) in sub-paragraph (b)—
    - (aa) after “Act” there were inserted “, regulation 19A(2) (notice of enquiry of person concerned during investigation) of the Police (Complaints and Misconduct) Regulations 2012 (as modified by regulation 27 of, and the Schedule to, those Regulations)”;
    - (bb) after “16(1)” there were inserted “, 17A(2)”;
- (j) after paragraph (10) there were inserted—

“(10A) Where evidence is given or considered at the misconduct hearing that the officer concerned was given written notice of an interview under regulation 17(5) (interviews during investigation) and failed to attend the interview, paragraph (12) applies.”;



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- (k) in paragraphs (12), (13) and (14), for “person or persons conducting the misconduct proceedings” there were substituted “persons conducting the misconduct hearing”;
- (l) in paragraph (13), for the words from “amounts” to the end there were substituted “amounts to misconduct, gross misconduct or neither.”;
- (m) in paragraph (15), for “misconduct proceedings conducted by a panel” there were substituted “a misconduct hearing”;
- (n) in paragraph (16)—
  - (i) for “proceedings”, in all three places where it appears, there were substituted “hearing”;
  - (ii) “meeting or” were omitted;
  - (iii) in sub-paragraph (c), for the words from “misconduct or” to the end there were substituted “gross misconduct, a recommendation as to whether disciplinary action should be imposed; and”;
- (o) in paragraph (17), for “proceedings” there were substituted “hearing”.

**Modification to regulation 34 (senior officers: further meeting or hearing)**

**32.** Regulation 34 is to be read as if—

- (a) in the heading, “meeting or” were omitted;
- (b) in paragraph (1), for the words from “shall” to the end there were substituted “shall hold a further hearing for the purpose of considering whether disciplinary action should be imposed.”;
- (c) in paragraph (2), for “to a meeting held under paragraph (1)(a) as if it was a misconduct meeting, and to a hearing under paragraph (1)(b)” there were substituted “to a hearing under paragraph (1)”;
- (d) in paragraph (4), for “conducting or chairing the misconduct proceedings” there were substituted “chairing the misconduct hearing”.

**Modification: substitution of regulation 35 (outcome of misconduct proceedings)**

**33.** These Regulations are to be read as if for regulation 35 there were substituted—

**“Outcome of misconduct hearing**

**35.—**(1) Subject to the provisions of this regulation, the persons conducting a misconduct hearing in the case of an officer other than a senior officer may—

- (a) where they find the conduct amounts to gross misconduct, impose disciplinary action; or
- (b) where they find the conduct amounts to misconduct but not gross misconduct, record a finding of misconduct but take no further action.

(2) Subject to the provisions of this regulation, at a hearing held under regulation 34 in the case of a senior officer, the appropriate authority may—

- (a) where the finding set out in the report is that the conduct amounted to gross misconduct, impose disciplinary action; or
- (b) where the finding set out in the report is that the conduct amounted to misconduct but not gross misconduct, record a finding of misconduct but take no further action.

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(3) Where the question of disciplinary action is being considered, the person or persons considering it—

- (a) shall have regard to the record of police service of the officer concerned as shown on his personal record;
- (b) may receive evidence from any witness whose evidence would, in his or their opinion, assist them in determining the question; and
- (c) shall give—
  - (i) the officer concerned, his police friend or his relevant lawyer; and
  - (ii) in the case of an officer other than a senior officer, the appropriate authority or person appointed to represent the appropriate authority in accordance with regulation 7(4),

an opportunity to make oral or written representations before any such question is determined.

(4) Paragraph (5) applies in the case of an officer in relation to whom disciplinary action is imposed at a misconduct hearing.

(5) The chair of the panel which conducted the misconduct hearing may provide any information to the appropriate authority that the chair considers ought to be included by virtue of regulation 3(2)(1) of the Police Barred List and Advisory List Regulations 2017<sup>(29)</sup> in the barred list report relating to the officer concerned (information relating to whether exemptions to requirement to publish the barred list entry apply).”.

#### **Modification to regulation 36 (notification of outcome)**

**34.** Regulation 36 is to be read as if—

- (a) in paragraph (1)—
  - (i) in sub-paragraph (a), for “person or persons conducting the misconduct proceedings” there were substituted “persons conducting the misconduct hearing”;
  - (ii) in sub-paragraph (b), “meeting or” were omitted;
  - (iii) for “proceedings”, in the last place where it appears, there were substituted “hearing”;
- (b) in paragraph (2), “meeting or” were omitted;
- (c) in paragraph (3), for the words from “include” to the end there were substituted “include notice of the right of the officer concerned to appeal to a police appeals tribunal.”;
- (d) in paragraph (4), “In all cases referred to in paragraph (3)” were omitted;
- (e) in paragraph (12), for the words from “In any case” to “without notice)” there were substituted “Where disciplinary action is imposed”.

#### **Modification to regulation 37 (record of misconduct proceedings)**

**35.** Regulation 37 is to be read as if—

- (a) in the heading, for “proceedings” there were substituted “hearing”;
- (b) for paragraph (1) there were substituted—
  - “(1) A verbatim record of the misconduct hearing shall be taken.”;
- (c) in paragraph (2), for “proceedings”, in the second place where it appears, there were substituted “hearing”.

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<sup>(29)</sup> S.I. 2017/1135.

**Modifications: omission of regulations 38 (appeal from misconduct meeting: officers other than senior officers), 39 (appeal meeting) and 40 (procedure and finding of the appeal)**

36. These Regulations are to be read as if regulations 38 to 40 were omitted.

**Modification to regulation 43 (notice of referral to special case hearing)**

37. Regulation 43(1)(c) is to be read as if—

(a) at the end of paragraph (i), “and” were omitted;

(b) after paragraph (i), there were inserted—

“(ia) in the case of a Condition C person, any written statement or document provided to the Commission under regulation 4B(3) and any consultation response provided under regulation 4B(4); and”.

**Modification to regulation 53 (procedure at special case hearing)**

38. Regulation 53 is to be read as if—

(a) in paragraph (10)(b)—

(i) after “Act” there were inserted “, regulation 19A(2) (notice of enquiry of person concerned during investigation) of the Police (Complaints and Misconduct) Regulations 2012 (as modified by regulation 27 of, and the Schedule to, those Regulations)”;

(ii) after “16(1)” there were inserted “, 17A(2)”;

(b) after paragraph (10) insert—

“(10A) Where evidence is given or considered at the special case hearing that the officer concerned was given written notice of an interview under regulation 17(5) (interviews during investigation) and failed to attend the interview, paragraph (11) applies.”;

(c) in paragraph (16)(c), for “any disciplinary action which in their opinion” there were substituted “whether disciplinary action”.

**Modification to regulation 54 (senior officers: further hearing)**

39. Regulation 54(1) is to be read as if for “what disciplinary action (if any)” there were substituted “whether disciplinary action”.

**Modification: substitution of regulation 55 (outcome of special case hearing)**

40. These Regulations are to be read as if for regulation 55 there were substituted—

**“Outcome of special case hearing**

55.—(1) Subject to the provisions of this regulation, the person or persons conducting the special case hearing in the case of an officer other than a senior officer may—

(a) where he or they find the conduct amounts to gross misconduct, impose disciplinary action; or

(b) where he or they find the conduct amounts to misconduct but not gross misconduct, record a finding of misconduct but take no further action.

(2) Subject to the provisions of this regulation, at a hearing held under regulation 54 the appropriate authority may—

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- (a) where the finding set out in the report under regulation 53(16) is that the conduct amounted to gross misconduct, impose disciplinary action; or
  - (b) where the finding set out in the report is that the conduct amounted to misconduct but not gross misconduct, record a finding of misconduct but take no further action.
- (3) Where the question of disciplinary action is being considered, the person or persons considering it—
- (a) shall have regard to the record of police service of the officer concerned as shown on his personal record;
  - (b) may consider such documentary evidence as would, in his or their opinion, assist him or them in determining the question; and
  - (c) shall give—
    - (i) the officer concerned; and
    - (ii) his police friend or his relevant lawyer,an opportunity to make oral or written representations.
- (4) Paragraph (5) applies in the case of an officer other than a senior officer in relation to whom disciplinary action is imposed at a special case hearing.
- (5) The person who conducted or chaired the special case hearing may provide any information to the appropriate authority that the person considers ought to be included by virtue of regulation 3(2)(l) of the Police Barred List and Advisory List Regulations 2017 in the barred list report relating to the officer concerned (information relating to whether exemptions to requirement to publish the barred list entry apply).”.

**Modification to regulation 56 (notification of outcome)**

**41.** Regulation 56 is to be read as if—

- (a) in paragraph (1)(b), “or any action taken under regulation 55(6) as the case may be” were omitted;
- (b) in paragraph (2), “or any action taken under regulation 55(7), as the case may be,” were omitted;
- (c) in paragraph (11), for the words from “In any case” to “dismissal” there were substituted “Where disciplinary action is imposed”.

## SCHEDULE 2

Regulation 33

Modifications to Part 2 of the 2002 Act and to the Complaints and Misconduct Regulations

## “SCHEDULE

Regulation 27

Modifications to Part 2 of the 2002 Act and to these Regulations

## PART 1

Modifications to Part 2 of the 2002 Act

### **Modification to section 29 (interpretation of Part 2)**

1. Section 29 is to be read as if, in subsection (1) in the definition of “disciplinary proceedings”, for “50 or 51” there were substituted “50(3A) to (3G) or 51(3B) to (3H)”.

### **Modifications to Part 3 of Schedule 3**

2.—(1) Part 3 of Schedule 3 to the 2002 Act is modified as follows.

(2) Paragraph 19B(30) (assessment of seriousness of conduct under investigation) is to be read as if for sub-paragraph (4) there were substituted—

“(4) For the purposes of this paragraph a “severity assessment”, in relation to conduct, means an assessment as to whether the conduct, if proved, would amount to gross misconduct.”.

(3) Paragraph 20A(31) (accelerated procedure in special cases) is to be read as if—

(a) in sub-paragraph (2), after “15” there were inserted “or the person to whose conduct the investigation relates is a Condition C person”;

(b) for sub-paragraph (7)(c) there were substituted—

“(c) it is in the public interest for the person to be included in the police barred list without delay.”.

(4) Part 3 of Schedule 3 to the 2002 Act is to be read as if after paragraph 20A there were inserted—

### **“Condition C special determination in special cases**

**20AA.**—(1) This paragraph applies where—

(a) a statement and special report on an investigation are sent to the Commission under paragraph 20A(2) or (3); and

(b) the investigation relates to the conduct of a Condition C person.

(2) The Commission shall make a Condition C special determination in respect of the Condition C person and notify the person investigating the complaint or recordable conduct matter and the appropriate authority of it.

(3) If the Commission’s Condition C special determination is that it is reasonable and proportionate to take disciplinary proceedings against the Condition C person, the appropriate

(30) Paragraphs 19A to 19E of Schedule 3 were inserted by paragraphs 1, 3 and 5 of Schedule 23 to the Criminal Justice and Immigration Act 2008 (c.4).

(31) Paragraph 20A of Schedule 3 was inserted by section 159 of, and paragraphs 1 and 3 of Schedule 11 to, the Serious Organised Crime and Police Act 2005 (c.15). Paragraph 20A(7)(c) was amended by paragraphs 1, 3 and 6(1) and (4)(b) of Schedule 23 to the Criminal Justice and Immigration Act 2008.

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authority shall, when making its determination under paragraph 20B(2) or 20E(2), determine that the special condition mentioned at paragraph 20A(7)(c) is satisfied in respect of that person.

(4) If the Commission’s Condition C special determination is that it is not reasonable and proportionate to take disciplinary proceedings against the Condition C person, the appropriate authority shall not make a determination under paragraph 20B(2) or 20E(2) in respect of that person.”.

(5) Paragraph 20B(32) (investigations managed or carried out by Commission: action by appropriate authority) is to be read as if—

(a) in sub-paragraph (2), at the beginning, there were inserted “Subject to paragraph 20AA,”;

(b) in sub-paragraph (3)(a), for “50(3) or 51(2A)” there were substituted “50 or 51”.

(6) Paragraph 20C(33) (investigations managed or carried out by Commission: action by Commission) is to be read as if after sub-paragraph (2)(a), there were inserted—

“(aa) the determination (if any) by the Commission under paragraph 20AA(2);”.

(7) Paragraph 20E(34) (other investigations: action by appropriate authority) is to be read as if—

(a) in sub-paragraph (2), at the beginning, there were inserted “Subject to paragraph 20AA,”;

(b) in sub-paragraph (3)(a), for “50(3) or 51(2A)” there were substituted “50 or 51”.

(8) Paragraph 20F(35) (notification of certification as to special conditions) is to be read as if after sub-paragraph (2)(a), there were inserted—

“(aa) the determination (if any) by the Commission under paragraph 20AA(2);”.

(9) Paragraph 20H(36) (special cases: recommendation or direction of Commission) is to be read as if in sub-paragraph (3)—

(a) at the end of sub-paragraph (a), “and” were omitted;

(b) after sub-paragraph (a) there were inserted—

“(aa) the determination (if any) by the Commission under paragraph 20AA(2); and”.

(10) Paragraph 22(37) (final reports on investigations: complaints, conduct matters and certain DSI matters) is to be read as if in sub-paragraph (10)(a) for “50(3) or 51(2A)” there were substituted “50 or 51”.

(11) Paragraph 23(38) (action by the Commission in response to an investigation report under paragraph 22) is to be read as if—

(32) Paragraph 20B of Schedule 3 was inserted by section 159 of, and paragraphs 1 and 3 of Schedule 11 to, the Serious Organised Crime and Police Act 2005. Paragraph 20B(3) was substituted for paragraph 20B(3) and (4) by paragraphs 1, 3 and 7(1) and (2) of Schedule 23 to the Criminal Justice and Immigration Act 2008.

(33) Paragraph 20C of Schedule 3 was inserted by section 159 of, and paragraphs 1 and 3 of Schedule 11 to, the Serious Organised Crime and Police Act 2005.

(34) Paragraph 20E of Schedule 3 was inserted by section 159 of, and paragraphs 1 and 3 of Schedule 11 to, the Serious Organised Crime and Police Act 2005. Paragraph 20E(3) was substituted for paragraph 20E(3) and (4) by paragraphs 1, 3 and 9(1) and (2) of Schedule 23 to the Criminal Justice and Immigration Act 2008.

(35) Paragraph 20F of Schedule 3 was inserted by section 159 of, and paragraphs 1 and 3 of Schedule 11 to, the Serious Organised Crime and Police Act 2005.

(36) Paragraph 20H of Schedule 3 was inserted by section 159 of, and paragraphs 1 and 3 of Schedule 11 to, the Serious Organised Crime and Police Act 2005.

(37) Paragraph 22 of Schedule 23 was substituted by section 160 of, and paragraphs 1, 11 and 21 of Schedule 12 to, the Serious Organised Crime and Police Act 2005. Sub-paragraphs (7) to (10) were inserted by paragraphs 1, 3 and 12(1) and (4) of Schedule 23 to the Criminal Justice and Immigration Act 2008.

(38) The heading of paragraph 23 of Schedule 3 was amended by section 160 of, and paragraphs 1, 11 and 22(1) of Schedule 12 to, the Serious Organised Crime and Police Act 2005 (“the 2005 Act”). Sub-paragraphs (6) and (7) were substituted by paragraphs 1, 3 and 13(1) and (5) of Schedule 23 to the Criminal Justice and Immigration Act 2008. Sub-paragraph (6)(a)(ia) was inserted by section 95 of, and paragraphs 1 and 14(1) and (2) of Schedule 14 to, the Police Reform and Social Responsibility Act 2011. Sub-paragraph (13) was inserted by section 160 of, and paragraphs 1, 11 and 22(3) of Schedule 12 to, the 2005 Act.

- (a) in sub-paragraph (6)(a)—
  - (i) in sub-paragraph (i), “misconduct or”, in the first place where it appears, were omitted;
  - (ii) for sub-paragraph (ia) there were substituted—
    - “(ia) where the appropriate authority determines that there is no such case to answer, whether there nevertheless may have been a breach of the Standards of Professional Behaviour, and”;
- (b) after sub-paragraph (6) there were inserted—
  - “(6A) Where any person to whose conduct the investigation related is a Condition C person, following receipt of the Commission’s notification under sub-paragraph (6) the appropriate authority shall—
    - (a) determine whether the person has a case to answer in respect of gross misconduct or has no case to answer; and
    - (b) submit a memorandum to the Commission which sets out the determination it has made.
  - (6B) On receipt of a memorandum under sub-paragraph (6A) which sets out a determination that a person has a case to answer in respect of gross misconduct, the Commission shall make a Condition C special determination in respect of that person and notify the appropriate authority of it.
  - (6C) But the requirement in sub-paragraph (6A) shall not apply where the Commission has made a Condition C special determination that it is reasonable and proportionate to take disciplinary proceedings against the Condition C person under paragraph 20AA(2).”;
- (c) in sub-paragraph (7)—
  - (i) for “a notification under sub-paragraph (6)” there were substituted “the relevant notification”;
  - (ii) for “those determinations” there were substituted “any determinations required by the Commission’s notification under sub-paragraph (6) that the appropriate authority has not already made”;
- (d) in sub-paragraph (8)—
  - (i) after “the memorandum” there were inserted “(and any memorandum submitted under sub-paragraph (6A))”;
  - (ii) for “under”, in the second place where it appears, there were substituted “mentioned in”;
  - (iii) after “27” there were inserted “and whether there may have been a breach of the Standards of Professional Behaviour”;
- (e) in sub-paragraph (10) after paragraph (a) there were inserted—
  - “(aa) where the Commission makes a Condition C special determination under sub-paragraph (6B), that determination;”;
- (f) after sub-paragraph (13) there were inserted—
  - “(14) In sub-paragraph (7), “the relevant notification” means a notification under sub-paragraph (6) or, where the Commission is required to notify the appropriate authority of a Condition C special determination under sub-paragraph (6B), a notification under that sub-paragraph.”.

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(12) Paragraph 24(39) (action by the appropriate authority in response to an investigation report under paragraph 22) is to be read as if—

(a) in sub-paragraph (6)(a), for sub-paragraphs (i) and (ia) there were substituted—

“(i) whether any person other than a Condition C person to whose conduct the investigation related—

(aa) has a case to answer in respect of gross misconduct or has no case to answer;

(bb) where the appropriate authority determines that there is no such case to answer, nevertheless may have breached the Standards of Professional Behaviour; and

(ia) whether—

(aa) any Condition C person to whose conduct the investigation related may have breached the Standards of Professional Behaviour;

(bb) where the appropriate authority’s opinion is that there may have been such a breach, the breach is so serious that, were the person still to be serving with the police, it would have justified dismissal; and”.

(13) Paragraph 25(40) (appeals with respect to an investigation) is to be read as if—

(a) in sub-paragraph (3)—

(i) in paragraph (za), “misconduct or”, in the first place where it appears, were omitted;

(ii) paragraph (zb) were omitted;

(b) in sub-paragraph (5)(c)(i) “or (zb)” were omitted;

(c) in sub-paragraph (9), after “person” there were inserted “other than a Condition C person” and the words from “or determines”, in the first place where they appear, to “unsatisfactory,” were omitted.

(14) Paragraph 27(41)(duties with respect to disciplinary proceedings etc) is to be read as if—

(a) in sub-paragraph (3)—

(i) after “police” there were inserted “(other than a Condition C person where the memorandum mentioned in sub-paragraph (1)(b) was submitted, or is required to be submitted, under paragraph 25)”;

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(39) The heading of paragraph 24 of Schedule 3 was amended by section 160 of, and paragraphs 1, 11 and 23(1) of Schedule 12 to, the Serious Organised Crime and Police Act 2005. Sub-paragraph (6) was substituted by paragraphs 1, 3 and 14(1) and (6) of Schedule 23 to the Criminal Justice and Immigration Act 2008. Sub-paragraph (6)(a)(ia) was inserted by section 95 of, and paragraphs 1 and 14(1) and (3) of, Schedule 14 to the Police Reform and Social Responsibility Act 2011.

(40) The heading of paragraph 25 of Schedule 3 was amended by section 95 of, and paragraphs 1, 15 and 20(1) of Schedule 14 to, the Police Reform and Social Responsibility Act 2011 (“the 2011 Act”). Sub-paragraph (3)(za) was inserted by paragraphs 1, 3 and 17(1) and (3)(a) of Schedule 23 to the Criminal Justice and Immigration Act 2008 (“the 2008 Act”). Sub-paragraph (3)(zb) was inserted by section 95 of, and paragraphs 1, and 14(1) and (4)(b) of Schedule 14 to the 2011 Act. Sub-paragraph (5)(c) was substituted for sub-paragraph (3)(a) and (b), as originally enacted, by paragraphs 1, 3 and 17(1) and (3)(b) of Schedule 23 to the 2008 Act and amended by Part 8 of Schedule 28 to that Act. Paragraphs (c) and (d) of sub-paragraph (5) were substituted for sub-paragraph (5)(c), as originally enacted, by paragraphs 1, 3 and 17(1) and (4)(b) of Schedule 23 to the 2008 Act. Sub-paragraph (5)(c)(i) was amended by section 95 of, and paragraphs 1, 14(1) and (4)(c), 15 and 20(2) and (5) of Schedule 14 to the 2011 Act. Sub-paragraph (9) was amended by section 95 of, and paragraphs 1, 14(1) and (4)(d), 15 and 20(2) and (9)(a) and (b) of Schedule 14 to, the 2011 Act and by paragraphs 1, 3 and 17(1) and (5) of Schedule 23 to the 2008 Act.

(41) The heading of paragraph 27 of Schedule 3 was amended by section 181(1) of, and paragraph 95(1) and (9)(a) of Schedule 11 to, the Anti-social Behaviour, Crime and Policing Act 2014 (c.12). Sub-paragraph (3)(za) was inserted by paragraphs 1, 3 and 18(1) and (3)(a) of Schedule 23 to the Criminal Justice and Immigration Act 2008 (“the 2008 Act”). Sub-paragraph (3)(zb) was inserted by section 95 of, and paragraphs 1 and 14(1) and (5)(a) of Schedule 14 to, the Police Reform and Social Responsibility Act 2011 (“the 2011 Act”). Sub-paragraph (3)(a) was substituted by paragraphs 1, 3 and 18(1) and (3)(b) of Schedule 23 to the 2008 Act and amended by section 95 of, and paragraphs 1 and 14(1) and (5)(b) of Schedule 14 to, the 2011 Act. Sub-paragraph (3)(b) was amended by paragraphs 1, 3 and 18(1) and (3)(c) of Schedule 23 to the 2008 Act and by section 95 of, and paragraphs 1 and 14(1) and (5)(c) of Schedule 14 to, the 2011 Act.



- (ii) in paragraph (za), “misconduct or”, in the first place where it appears, were omitted;
- (iii) paragraph (zb) were omitted;
- (iv) in paragraphs (a) and (b) “, efficiency or effectiveness” were omitted;
- (b) after sub-paragraph (5) there were inserted—

“(5A) In sub-paragraphs (3), (4) and (5), where—

- (a) the appropriate authority has made a determination under paragraph 23(6A) that a Condition C person has no case to answer in respect of gross misconduct; and
- (b) the Commission makes a recommendation to the appropriate authority under paragraph (3) that that person has such a case to answer,

“the steps” include the step in sub-paragraph (5B) and are subject to any Condition C special determination made by the Commission under sub-paragraph (5C).

(5B) The step mentioned in sub-paragraph (5A) is that if the appropriate authority accepts the Commission’s recommendation or is directed by the Commission under sub-paragraph (4)(a) to take steps to secure that full effect is given to the recommendation, the appropriate authority shall submit a memorandum to the Commission which sets out that fact.

(5C) On receipt of a memorandum under sub-paragraph (5B), the Commission shall make a Condition C special determination in respect of that person and notify the appropriate authority of it.

(5D) But sub-paragraph (5A) does not apply where the Commission has made a Condition C special determination that it is reasonable and proportionate to take disciplinary proceedings against the Condition C person under paragraph 20AA(2).”.

- (15) Paragraph 29(42) (minor definitions) is to be read as if in the appropriate places, there were inserted—

““Condition C special determination” means a determination in accordance with Part 1A of the Conduct Regulations as to whether the taking of disciplinary proceedings against a Condition C person in respect of alleged gross misconduct would be reasonable and proportionate having regard to—

- (a) the seriousness of the alleged gross misconduct;
- (b) the impact of the allegation on public confidence in the police; and
- (c) the public interest;”;

““Condition C person” means a person in relation to whom regulation 5(2)(a) and (5)(a) and (b) of the Conduct Regulations is satisfied;”;

““Conduct Regulations” means the Police (Conduct) Regulations 2012;”;

““police barred list” means the list referred to in section 88B(2) of the Police Act 1996;”.

## PART 2

### Modifications to these Regulations

#### **Modification to regulation 1 (citation, commencement and application)**

- 3.** Regulation 1 is to be read as if, in paragraph (2), in the definition of “misconduct proceedings”, “misconduct meeting or” were omitted.

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(42) Paragraph 29 was inserted by paragraphs 1, 3 and 19 of Schedule 23 to the Criminal Justice and Immigration Act 2008.

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**Modification to regulation 16 (written notices)**

**4. Regulation 16 is to be read as if—**

(a) in paragraph (1)—

(i) in sub-paragraph (c), “misconduct or” were omitted;

(ii) for sub-paragraphs (d) to (ea), there were substituted—

“(d) that if the matter were to be referred to misconduct proceedings—

(i) the form of those proceedings would be a misconduct hearing;

(ii) if the allegation of gross misconduct is proved, he may be subject to a finding that he would have been dismissed if he had not ceased to be a member of a police force or a special constable; and

(iii) if he is subject to such a finding, his full name and a description of the conduct which would have led to his dismissal will be added to the police barred list and may be subject to publication for a period of up to five years;”;

(iii) at the end of sub-paragraph (g) “and” were omitted;

(iv) after paragraph (g) there were inserted—

“(ga) that it may harm his case if he fails to attend an interview of which he has been given notice under regulation 19(5) (interviews during investigation); and”;

(b) in paragraph (2)—

(i) “or his determination of the likely form of any misconduct proceedings to be taken” and, after “written notice”, “of” were omitted;

(ii) in sub-paragraph (a)—

(aa) at the beginning “of” were inserted;

(bb) “misconduct or” and “as the case may be” were omitted;

(iii) for sub-paragraph (b), there were substituted—

“(b) where the investigator’s assessment is that the conduct, if proved, would not amount to gross misconduct, that if, notwithstanding that assessment, the matter were to be referred to misconduct proceedings, the form of those proceedings would be a misconduct hearing;

(c) where the investigator’s assessment is that the conduct, if proved, would amount to gross misconduct, that if the matter were to be referred to misconduct proceedings, the form of those proceedings would be a misconduct hearing.”.

**Modification to regulation 17 (police friend)**

**5. Regulation 17 is to be read as if, in paragraph (1)—**

(a) at the end of sub-paragraph (b), “or” were omitted;

(b) for sub-paragraph (c), there were substituted—

“(c) where the person concerned is a member of his staff association, a person nominated by his staff association; or

(d) where the person concerned is not a member of his staff association, any other person nominated by the person concerned and approved by the chief officer of the force in which the person is serving.”.

**Modification to regulation 19 (interviews during investigation)**

6. Regulation 19 is to be read as if—
- (a) in paragraph (1), after “investigated”, there were inserted “and subject to regulation 19A”;
  - (b) in paragraph (4) for the words from “must” to the end there were substituted “must be reasonable.”.

**Modification: insertion of regulation 19A**

7. These Regulations are to be read as if after regulation 19 there were inserted—

**“Notice of enquiry of person concerned during investigation**

**19A.**—(1) Where the investigator is satisfied that, having regard to the circumstances of the person concerned, it would be unreasonable to require him to attend an interview, the investigator may cause the person concerned to be given a written notice of enquiry.

(2) A notice of enquiry given under paragraph (1) shall—

- (a) state any question the investigator wishes to ask the person concerned; and
- (b) request a response to any such question from the person concerned within a specified period.

(3) The investigator shall make a record of any notice of enquiry and response received under this regulation.”.

**Modification to regulation 20 (report of investigation)**

8. Regulation 20 is to be read as if—
- (a) the existing text were numbered as paragraph (1);
  - (b) in paragraph (1), for the words from “whether there is a case” to the end there were substituted—
    - “whether—
    - (i) other than in a case to which sub-paragraph (ii) applies—
      - (aa) there is a case to answer in respect of gross misconduct or there is no case to answer;
      - (bb) where the investigator’s opinion is that there is no such case to answer, there nevertheless may have been a breach of the Standards of Professional Behaviour;
    - (ii) where the person to whose conduct the investigation related is a Condition C person and the investigation was carried out under paragraph 16 or 17 of Schedule 3 to the 2002 Act—
      - (aa) there may have been a breach of the Standards of Professional Behaviour;
      - (bb) where the investigator’s opinion is that there may have been such a breach, the breach is so serious that, were the person still to be serving with the police, it would have justified dismissal.”;
  - (c) after paragraph (1) there were inserted—
    - “(2) For the purposes of paragraph (1)(c)(ii), a “Condition C person” means a person in relation to whom regulation 5(2)(a) and (5)(a) and (b) of the Conduct Regulations is satisfied.”.

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### **Modification to regulation 36 (disciplinary proceedings for police staff)**

9. Regulation 36 is to be read as if for “such a person”, in both places where those words appear, there were substituted “a person who has ceased to be a person serving with the police within the meaning of section 12(7)(aa), (b) or (d) of the 2002 Act”.

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend the Police (Conduct) Regulations 2012 ([S.I. 2012/2632](#)) (“the Conduct Regulations”), the Police Appeals Tribunals Rules 2012 ([S.I. 2012/2630](#)) (“the 2012 Rules”) and the Police (Complaints and Misconduct) Regulations 2012 ([S.I. 2012/1204](#)) (“the Complaints and Misconduct Regulations”).

Part 2 amends the Conduct Regulations. Regulation 5 amends the application provisions to set out the circumstances in which those Regulations apply, with the modifications set out in new Schedule 3 to those Regulations (inserted by regulation 11 of, and Schedule 1 to, these Regulations), to former members of a police force and former special constables. Regulation 6 removes provisions restricting the circumstances in which members of a police force and special constables can give notice of intention to resign or retire. Regulations 9 and 10 insert provisions to allow the person who conducts or chairs a misconduct hearing following a dismissal at such a hearing to provide certain information to the appropriate authority (as defined in regulation 3 of the Conduct Regulations) for inclusion in the report relating to that officer in the police barred list maintained by the College of Policing (see sections 88(A)(1) and 88B of the Police Act [1996 \(c. 16\)](#)).

Part 3 amends the 2012 Rules. Regulation 14 inserts a new rule setting out the grounds on which former members of a police force and former special constables may appeal to a police appeals tribunal. Regulations 13 and 15 to 25 make further amendments to the 2012 Rules so that they apply to such persons. Regulation 25 also makes provision to allow the chair of a police appeals tribunal to include in the tribunal’s statement of its determination representations in relation to an appellant where information in relation to that appellant has been included in the police barred list and published by the College of Policing.

Part 4 amends the Complaints and Misconduct Regulations. Regulations 27, 29, 30 and 32 amend those Regulations to take into account the fact that designated police volunteers are being brought within the scope of the complaints etc regime set out in Part 2 of the Police Reform Act [2002 \(c. 30\)](#) (see section 41 of the Policing and Crime Act [2017 \(c. 3\)](#)). Regulation 31 substitutes regulation 27 of, and regulation 33 inserts a Schedule into, the Complaints and Misconduct Regulations to provide for modifications to provisions in the 2002 Act relating to the handling of complaints and conduct matters and to the Regulations themselves in relation to persons who have ceased to serve with the police since the time of the conduct in question.

A full Impact Assessment has not been prepared for this instrument as no, or no significant, impact on the private, voluntary or private sector is foreseen.