STATUTORY INSTRUMENTS

2017 No. 1134

POLICE, ENGLAND AND WALES

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

Made - - - -	*22nd November 2017*
Laid before Parliament	*24th November 2017*
Coming into force - -	*15th December 2017*

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.

(**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(**6**);

"the Conduct Regulations" means the Police (Conduct) Regulations 2012(**7**);

"the Complaints and Misconduct Regulations" means the Police (Complaints and Misconduct) Regulations 2012(**8**).

Transitional and saving provisions

2.—(1) Where an allegation in relation to a person came to the attention of an appropriate authority before 15thDecember 2017 but after 21stNovember 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(**9**);

(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(**10**);

"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;

(**6**) S.I. 2012/2630.
(**7**) S.I. 2012/2632.
(**8**) S.I. 2012/1204.
(**9**) 2011 c. 13.
(**10**) 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;

(**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.

(**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)";

(**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.