Draft Regulations laid before Parliament under section 154(2) of the Police Reform and Social Responsibility Act 2011, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2011 No.

POLICE, ENGLAND AND WALES

The Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2011

Made - - - - ***

Coming into force - - *16th January 2012*

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 31 and 154(5) of, and Schedule 7 to, the Police Reform and Social Responsibility Act 2011(**1**).

In accordance with section 154(2) of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2011 and shall come into force on 16th January 2012.

Interpretation

2.—(1) In these Regulations—

"2002 Act" means the Police Reform Act 2002(**2**);

"2004 Regulations" means the Police (Complaints and Misconduct) Regulations 2004(**3**);

"2011 Act" means the Police Reform and Social Responsibility Act 2011;

(**1**) 2011 c. 13.
(**2**) 2002 c. 30.
(**3**) S.I. 2004/643, as amended by S.I. 2005/3389, S.I. 2006/1406 and S.I. 2008/2866.

"the Commission" means the Independent Police Complaints Commission established under section 9(1) of the 2002 Act;

"complainant", in relation to anything which is or purports to be a complaint, means the person by whom the complaint or purported complaint was made, but where any person is acting on the complainant's behalf for the purposes of any complaint or purported complaint, anything that is to be or may be done under these Regulations by or in relation to the complainant may be done, instead, by or in relation to that person;

"complaint" means a qualifying complaint within the meaning of section 31(1)(a) of the 2011 Act;

"conduct" includes acts, omissions, statements and decisions (whether actual, alleged or inferred);

"conduct matter" has the same meaning as in section 31(1)(b) of the 2011 Act;

"criminal offence" means any offence triable in England and Wales;

"document" means anything in which information of any description is recorded;

"information" includes estimates and projections, and statistical analyses;

"person complained against", in relation to a complaint, means the relevant office holder whose conduct is the subject matter of the complaint;

"police and crime panel" means—

(a) in relation to a police and crime commissioner or deputy police and crime commissioner for a police area listed in Schedule 1 to the Police Act 1996(**4**), the police and crime panel established for that police area under section 28(1) of the 2011 Act;

(b) in relation to the Mayor's Office for Policing and Crime or the Deputy Mayor for Policing and Crime, the committee established under section 32 of the 2011 Act;

"relevant office" means—

(a) police and crime commissioner;

(b) deputy police and crime commissioner;

(c) the Mayor's Office for Policing and Crime;

(d) the Deputy Mayor for Policing and Crime;

"relevant office holder" means the holder of a relevant office, and in relation to any conduct includes a person who—

(a) holds the relevant office at the time of the conduct but subsequently ceases to hold that office; or

(b) holds the relevant office at the time when a complaint or conduct matter comes to the attention of the police and crime panel, but did not hold that office at the time of the conduct;

"serious complaint" has the same meaning as in paragraph 2(6) of Schedule 7 to the 2011 Act.

(2) References in these Regulations to the investigation of any serious complaint or conduct matter under the management of the Commission or by the Commission itself shall be construed as references to its investigation in accordance with regulation 19 or 20 as the case may be.

(3) References in these Regulations to a person serving with the police shall be construed in accordance with sections 12(7) and 29 of the 2002 Act.

(**4**) 1996 c. 16. Schedule 1 is amended by section 129(a) of the Police Act 1997 (c. 50) and by S.I. 1997/1377, S.I. 1997/1844, S.I. 1997/1845, S.I. 1997/1846, S.I. 1997/1847, S.I. 1987/1849, S.I. 1987/1850, S.I. 1997/1855, S.I. 1987/1857 and S.I. 2009/119.

General functions of the Commission

3.—(1) Subject to paragraph (6), the functions of the Commission in relation to relevant office holders and police and crime panels shall be—

(a) to secure the maintenance by the Commission itself, and by relevant office holders and police and crime panels, of suitable arrangements with respect to the matters mentioned in paragraph (2);

(b) to keep under review all arrangements maintained with respect to those matters;

(c) to secure that arrangements maintained with respect to those matters comply with the requirements of these Regulations, are efficient and effective and contain and manifest an appropriate degree of independence;

(d) to secure that public confidence is established and maintained in the existence of suitable arrangements with respect to those matters and with the operation of the arrangements that are in fact maintained with respect to those matters;

(e) to make such recommendations, and to give such advice, for the modification of the arrangements maintained with respect to those matters, as appear, from the carrying out by the Commission of its other functions, to be necessary or desirable.

(2) Those matters are—

(a) the handling of complaints;

(b) the recording of conduct matters;

(c) the manner in which any serious complaints and conduct matters are investigated or otherwise handled and dealt with,

in accordance with these Regulations.

(3) Subject to paragraph (6), it shall be the duty of the Commission—

(a) to exercise the powers and perform the duties conferred on it by the following provisions of these Regulations in the manner that it considers best calculated for the purposes of securing the proper carrying out of its functions under paragraph (1); and

(b) to secure that arrangements exist which are conducive to, and facilitate, the reporting of misconduct by relevant office holders.

(4) Subject to the other provisions of these Regulations, the Commission may do anything which appears to it to be calculated to facilitate, or is incidental or conducive to, the carrying out of its functions.

(5) Section 10(7) of the 2002 Act shall apply in relation to recommendations or advice given under paragraph (1)(e), modified so that it has effect as follows—

> "(7) The Commission may, in connection with the making of any recommendation or the giving of any advice to any person for the purposes of carrying out its function under regulation 3(1)(e) of the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2011, impose any such charge on that person for anything done by the Commission for the purposes of, or in connection with, the carrying out of that function as it thinks fit.".

(6) With the exception of regulation 13(1)(b) and (2)(b), nothing in these Regulations shall confer any function on the Commission in relation to any complaint or conduct matter which is—

(a) referred to the Commission under regulation 13 (reference of complaints and conduct matters to the Commission) and for the time being referred back to a police and crime panel under regulation 14(2) (duties of Commission on a reference);

(b) handled by a police and crime panel as permitted by regulation 15(2) (disapplication of requirements of Regulations); or

(c) subjected to resolution under Part 4 (resolution of other complaints).

(7) Regulations made under section 27 of the 2002 Act (conduct of the Commission's staff) shall apply in relation to allegations or indications of misconduct by members of the Commission's staff arising in connection with the exercise of functions conferred on the Commission by these Regulations.

Guidance

4. Section 22 of the 2002 Act (power of the Commission to issue guidance) shall apply in relation to the exercise or performance of the powers or duties conferred or imposed by these Regulations, modified so that it has effect as follows—

"**Power of the Commission and Secretary of State to issue guidance**

22.—(1) The Commission may issue guidance to—

(a) police and crime panels,

(b) relevant office holders, and

(c) chief officers of police,

concerning the exercise or performance by them of any of the powers or duties conferred or imposed by the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2011 ("the 2011 Regulations"), with the exception of regulations 14(2) and 15(2) and Part 4.

(2) Without prejudice to the generality of subsection (1), the guidance that may be issued under that subsection includes—

(a) guidance about the handling of complaints which have not yet been recorded and about dealing with conduct matters that have not been recorded;

(b) guidance about the procedure to be followed by a police and crime panel when recording a complaint or conduct matter;

(c) guidance about the circumstances in which it is appropriate (where it is lawful to do so)—

(i) to disclose to any person, or to publish, any information about an investigation of a serious complaint or conduct matter; or

(ii) to provide any person with, or to publish, any report or other document relating to such an investigation;

(d) guidance about the manner and timing of notifications to be given under the 2011 Regulations.

(3) Before issuing any guidance under subsection (1), the Commission shall consult with—

(a) such persons as appear to the Commission to represent the views of police and crime panels;

(b) such persons as appear to the Commission to represent the views of relevant office holders;

(c) such persons as appear to the Commission to represent the views of chief officers of police; and

(d) such other persons as the Commission thinks fit.

(4) The approval of the Secretary of State shall be required for the issue by the Commission of any guidance under subsection (1).

(5) The Secretary of State may issue guidance to—

(a) police and crime panels,

(b) relevant office holders, and

(c) the Greater London Authority,

concerning the exercise or performance by them of any of the powers or duties conferred or imposed by regulations 14(2) and 15(2) and Part 4 of the 2011 Regulations.

(6) Before issuing any guidance under subsection (5), the Secretary of State shall consult with—

(a) such persons as appear to the Secretary of State to represent the views of police and crime panels;

(b) such persons as appear to the Secretary of State to represent the views of relevant office holders;

(c) the Greater London Authority; and

(d) such other persons as the Secretary of State thinks fit.

(7) Nothing in this section shall authorise the issuing of any guidance about a particular case.

(8) It shall be the duty of every person to whom any guidance under this section is issued to have regard to that guidance in exercising or performing the powers and duties to which the guidance relates.

(9) In this section "police and crime panel", "relevant office holder", "complaint", "serious complaint" and "conduct matter" have the same meaning as in the 2011 Regulations.".

Reports to the Secretary of State

5.—(1) As soon as practicable after the end of each of its financial years, the Commission shall make a report to the Secretary of State on the carrying out of its functions under these Regulations during that year.

(2) The Commission shall also make such reports to the Secretary of State about matters relating generally to the carrying out of its functions under these Regulations as the Secretary of State may, from time to time, require.

(3) The Commission may, from time to time, make such other reports to the Secretary of State as it considers appropriate for drawing the Secretary of State's attention to matters which—

(a) have come to the Commission's notice, and

(b) are matters that it considers should be drawn to the Secretary of State's attention by reason of their gravity or other exceptional circumstances.

(4) The Commission shall prepare such reports containing advice and recommendations as it thinks appropriate for the purpose of carrying out its function under regulation 3(1)(e) (general functions of the Commission).

(5) Where the Secretary of State receives any report under this regulation, the Secretary of State shall—

(a) in the case of every annual report under paragraph (1), and

(b) in the case of any other report, if and to the extent that the Secretary of State considers it appropriate to do so,

lay a copy before Parliament and cause the report to be published.

(6) The Commission shall send a copy of every annual report under paragraph (1) to every police and crime panel.