Draft Regulations laid before Parliament under section 84(9) of the Police Act 1996, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2008 No.

POLICE, ENGLAND AND WALES

The Police (Conduct) Regulations 2008

Made - - - -

Coming into force - - 1st December 2008

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 50, 51 and 84 of the Police Act 1996(**1**).

In accordance with section 63(3)(**2**) of that Act, she 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 84(9)(**3**) of that Act, a draft of these Regulations was laid before Parliament and approved by a resolution of each House of Parliament.

PART 1

Preliminary

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Police (Conduct) Regulations 2008 and shall come into force on 1st December 2008.

(2) These Regulations extend to England and Wales.

(**1**) 1996 c.16, Section 50 was amended by paragraph 95 of Schedule 27 to the Greater London Authority Act 1999 (c.29) and section 125 of the Criminal Justice and Police Act 2001 (c.16). It is also amended by paragraph 3 of Schedule 22 to the Criminal Justice and Immigration Act 2008 (c.4). Section 51 was amended by section 128 of the Police Act 1997 (c.50) and section 35 of the Police Reform Act 2002 (c.30). It is also amended by paragraph 4 of Schedule 22 to the Criminal Justice and Immigration Act 2008 (c. 4). Section 84 was amended by section 125 of the Criminal Justice and Police Act 2001 and paragraph 119 of Schedule 21 to the Legal Services Act 2007 (c.29). It is also amended by paragraph 7 of Schedule 22 to the Criminal Justice and Immigration Act 2008 (c. 4).

(**2**) Relevant amendments to section 63 were made by paragraph 78 of Schedule 4 to the Serious Organised Crime and Police Act 2005 (c. 15). Section 63 is also amended by paragraph 6 of Schedule 22 to the Criminal Justice and Immigration Act 2008 (c.4)

(**3**) Section 84(9) is inserted by paragraph 7 of Schedule 22 to the Criminal Justice and Immigration Act 2008 (c.4)

Revocation and transitional provisions

2.—(1) Subject to paragraph (2), the Police (Conduct) Regulations 2004(**4**) are revoked.

(2) Where an allegation in respect of conduct by a police officer came to the attention of an appropriate authority before 1st December 2008 nothing in these Regulations shall apply and the Police (Conduct) Regulations 2004 shall continue to have effect.

Interpretation and delegation

3.—(1) In these Regulations—

"the 1996 Act" means the Police Act 1996;

"the 2002 Act" means the Police Reform Act 2002;

"the Police Regulations" means the Police Regulations 2003(**5**);

"the Complaints Regulations" means the Police (Complaints and Misconduct) Regulations 2004(**6**);

"the Performance Regulations" means the Police (Performance) Regulations 2008(**7**);

"allegation" means an allegation relating to a complaint or conduct matter;

"appropriate authority" means—

(a) where the officer concerned is a senior officer of any police force, the police authority for the force's area;

(b) in any other case, the chief officer of police of the police force concerned;

"appeal hearing" means an appeal to a police appeals tribunal in accordance with the Police Appeals Tribunals Rules 2008(**8**);

"appeal meeting" means a meeting held in accordance with regulation 39 following a misconduct meeting;

"bank holiday" means a day which is a bank holiday under the Banking and Financial Dealings Act 1971(**9**) in England and Wales;

"complainant" means the person referred to at section 12(1)(a) to (c) (as the case may be) of the 2002 Act (complaints, matters and persons to which Part 2 applies);

"complaint" has the meaning given to it by section 12(1) of the 2002 Act;

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

"conduct matter" has the meaning given to it by section 12(2) of the 2002 Act;

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

"criminal proceedings" means—

(a) any prospective criminal proceedings; or

(b) all criminal proceedings brought which have not been brought to a conclusion (apart from the bringing and determination of any appeal other than an appeal against conviction to the Crown Court);

"disciplinary action" means, in order of seriousness starting with the least serious action—

(**4**) S.I. 2004/645, as amended by S.I. 2006/549.
(**5**) S.I.2003/527, as amended by S.I.2005/2834 and S.I.2006/3449.
(**6**) S.I. 2004/643, as amended by S.I.2008/xxx
(**7**) S.I. 2008/xxx
(**8**) S.I. 2008/xxx
(**9**) 1971 c.80.

(a) management advice;

(b) a written warning;

(c) a final written warning;

(d) an extension to a final written warning as described in regulation 35(6)(b);

(e) dismissal with notice; or

(f) dismissal without notice.

"disciplinary proceedings" means, other than in paragraph (7) or (8) of this regulation, any proceedings under these Regulations and any appeal from misconduct proceedings or a special case hearing dealt with under the Police Appeals Tribunals Rules 2008;

"document" means anything in which information of any description is recorded and includes any recording of a visual image or images;

"gross misconduct" means a breach of the Standards of Professional Behaviour so serious that dismissal would be justified;

"harm test" has the meaning given to it in regulation 4;

"HMCIC" means Her Majesty's Chief Inspector of Constabulary appointed under section 54(1) of the 1996 Act (appointment and functions of inspectors of constabulary);

"human resources professional" means a police officer or police staff member who has specific responsibility for personnel matters relating to members of a police force;

"informant" means a person who provides information to an investigation on the basis that his identity is not disclosed during the course of the disciplinary proceedings;

"interested party" means a person whose appointment could reasonably give rise to a concern as to whether he could act impartially under these Regulations;

"interested person" has the meaning given to it by section 21(5) of the 2002 Act (duty to provide information to other persons);

"investigator" means a person—

(a) appointed under regulation 13; or

(b) appointed or designated under paragraph 16, 17, 18 or 19 of Schedule 3 (handling of complaints and conduct matters) to the 2002 Act (investigations),

as the case may be;

"management action" means action or advice intended to improve the conduct of the officer concerned;

"management advice" means management action imposed following misconduct proceedings or an appeal meeting;

"misconduct" means a breach of the Standards of Professional Behaviour;

"misconduct hearing" means a hearing to which the officer concerned is referred under regulation 19 and at which he may be dealt with by disciplinary action up to and including dismissal;

"misconduct meeting" means a meeting to which the officer concerned is referred under regulation 19 and at which he may be dealt with by disciplinary action up to and including a final written warning;

"misconduct proceedings" means a misconduct meeting or misconduct hearing;

"the officer concerned" means the police officer in relation to whose conduct there has been an allegation;

"personal record" means a personal record kept under regulation 15 of the Police Regulations (contents of personal records);

"police force concerned" means—

(a) where the officer concerned is a member of a police force, the police force of which he is a member; and

(b) where the officer concerned is a special constable, the police force maintained for the police area for which he is appointed;

"police friend" means a person chosen by the officer concerned in accordance with regulation 6;

"police officer" means a member of a police force or special constable;

"police staff member" means an employee of a police authority who is under the direction and control of a chief officer of police;

"proposed witness" means a witness whose attendance at the misconduct proceedings the officer concerned or the appropriate authority (as the case may be) wishes to request of the person conducting or chairing those proceedings;

"relevant lawyer" has the same meaning as in section 84(4) of the 1996 Act, subject to the provisions of paragraph 35 of Schedule 27 to the Criminal Justice and Immigration Act 2008;

"senior officer" means a member of a police force holding a rank above that of chief superintendent;

"special case hearing" means a hearing to which the officer concerned is referred under regulation 41 after the case has been certified as a special case;

"special case proceedings" means the referral of a case to a special case hearing and any proceedings at or in connection with such a hearing;

"staff association" means—

(a) in relation to a member of a police force of the rank of chief inspector or below, the Police Federation of England and Wales;

(b) in relation to a member of a police force of the rank of superintendent or chief superintendent, the Police Superintendents' Association of England and Wales; and

(c) in relation to a member of a police force who is a senior officer, the Chief Police Officers' Staff Association;

"Standards of Professional Behaviour" means the standards of professional behaviour contained in the Schedule; and

"working day" means any day other than a Saturday or Sunday or a day which is a bank holiday or a public holiday in England and Wales.

(2) In these Regulations—

(a) a reference to an officer other than a senior officer shall include a reference to a special constable, regardless of his level of seniority;

(b) a reference to a copy of a statement shall, where it was not made in writing, be construed as a reference to a copy of an account of that statement;

(c) the "special conditions" are that—

(i) there is sufficient evidence, in the form of written statements or other documents, without the need for further evidence, whether written or oral, to establish on the balance of probabilities that the conduct of the officer concerned constitutes gross misconduct; and

(ii) it is in the public interest for the officer concerned to cease to be a police officer without delay.

(3) For the purposes of these Regulations—

(a) a written warning shall remain in force for a period of 12 months from the date on which it takes effect; and

(b) subject to regulations 35(6)(b) and 55(2)(b), a final written warning shall remain in force for a period of 18 months from the date on which it takes effect.

(4) The reference to the period of—

(a) 12 months in paragraph (3)(a); and

(b) 18 months in paragraph (3)(b) and regulations 35(7) and 55(3),

shall not include any time when the officer concerned is taking a career break (under regulation 33(12) of the Police Regulations (leave) and the determination of the Secretary of State made under that regulation).

(5) Where the appropriate authority is a chief officer of police, he may, subject to paragraph (6), delegate any of his functions under these Regulations to a—

(a) member of a police force of at least the rank of chief inspector; or

(b) police staff member who, in the opinion of the chief officer is of at least a similar level of seniority to a chief inspector.

(6) Where the appropriate authority delegates its functions under regulation 10 or 41, the decisions shall be authorised by a senior officer.

(7) Any proceedings under these Regulations are disciplinary proceedings for the purposes of section 87(5) of the 1996 Act (guidance concerning disciplinary proceedings)(**10**).

(8) Any proceedings under these Regulations are disciplinary proceedings for the purposes of section 29(1) of the 2002 Act (interpretation of Part 2).

The harm test

4. Information in documents which are stated to be subject to the harm test under these Regulations shall not be supplied to the officer concerned in so far as the appropriate authority considers that preventing disclosure to him is —

(a) necessary for the purpose of preventing the premature or inappropriate disclosure of information that is relevant to, or may be used in, any criminal proceedings;

(b) necessary in the interests of national security;

(c) necessary for the purpose of the prevention or detection of crime, or the apprehension or prosecution of offenders;

(d) necessary for the purpose of the prevention or detection of misconduct by other police officers or police staff members or their apprehension for such matters;

(e) justified on the grounds that providing the information would involve disproportionate effort in comparison to the seriousness of the allegations against the officer concerned;

(f) necessary and proportionate for the protection of the welfare and safety of any informant or witness; or

(g) otherwise in the public interest.

(**10**) Section 87 of the 1996 Act was amended by section 107(1) of and paragraph 18 of Schedule 7 to the 2002 Act.