STATUTORY RULES OF NORTHERN IRELAND

2008 No. 242

POLICE

Police Powers for Designated Staff (Complaints and Misconduct) Regulations (Northern Ireland) 2008

Made - - - -	*4th June 2008*
To be laid before Parliament	
Coming into operation	*1st July 2008*

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 34 of the Police (Northern Ireland) Act 2003(**1**).

In accordance with subsection (4) of that section, the Secretary of State has consulted the Police Ombudsman for Northern Ireland, the Northern Ireland Policing Board, the Chief Constable of the Police Service of Northern Ireland, and the Police Association for Northern Ireland:

PART I

INTRODUCTORY

Citation and commencement

1.—(1) These regulations may be cited as the Police Powers for Designated Staff (Complaints and Misconduct) Regulations (Northern Ireland) 2008.

(2) These regulations shall come into operation on 1st July 2008.

Interpretation

2.—(1) In these regulations, except where the context otherwise requires—

"the 1998 Act" means the Police (Northern Ireland) Act 1998(**2**);

(**1**) 2003 c. 6. Relevant amendments were made by Articles 6 and 7 of the Policing (Miscellaneous Provisions) (Northern Ireland) Order 2007 (NI 6).

(**2**) 1998 c. 32. Relevant amendments were made to Part 7 by sections 62 to 65 of, and paragraph 23(5) of Schedule 6 to, the Police (Northern Ireland) Act 2000 (c. 32), section 13 of the Police (Northern Ireland) Act 2003 (c. 6), section 6 of the Justice (Northern Ireland) Act 2004 (c .4), section 55 of the Serious Organised Crime and Police Act 2005 (c. 15), Schedule 2 to the Police and Criminal Evidence (Amendment) (Northern Ireland) Order 2007 (NI 2) and Article 11(2) of the Policing (Miscellaneous Provisions) (Northern Ireland) Order 2007 (NI 6).

"the 2000 Act" means the Police (Northern Ireland) Act 2000(**3**);

"the 2003 Act" means the Police (Northern Ireland) Act 2003;

"allegation" includes a matter referred to the Ombudsman under section 55 of the 1998 Act;

"appointed officer" means an officer—

(i) appointed under regulation 29(1) to prepare a report on a case concerning the relevant conduct of a designated person employed by a contractor, or

(ii) appointed under regulation 35(1) to investigate a case concerning the relevant conduct of a designated person who is a member of the police support staff, or

(iii) appointed by the Ombudsman to investigate a case concerning the relevant conduct of a designated person under section 56 or 57 of the 1998 Act;

"the appropriate officer" means an Assistant Chief Constable;

"the appropriate standard" means the standard of conduct contained in the code of ethics;

"the Board" means the Northern Ireland Policing Board;

"the code of ethics" means the code of ethics issued by the Board under section 52 of the 2000 Act, and applied to designated persons by virtue of the Police Powers for Designated Staff (Code of Ethics) Order (Northern Ireland) 2008(**4**);

"contractor" means a person with whom the Chief Constable, on behalf of and in the name of the Board, has entered into a contract under section 5A of the 2000 Act for the provision of services relating to the detention or escort of persons who have been arrested or are otherwise in custody;

"the contractor concerned" means, in relation to a designated person, the contractor responsible for supervising the designated person in the carrying out of the functions to which the relevant conduct related;

"copy of a complaint", in the case of a complaint made orally, includes a copy of the record of the complaint;

"designated person" means a person designated under section 30, 30A or 31 of the 2003 Act;

"the designated person concerned" means the designated person in relation to whose conduct there has been a report, complaint or allegation;

"designation" means, in relation to a designated person, his designation under section 30, 30A or 31 of the 2003 Act;

"the Director" means the Director of Public Prosecutions for Northern Ireland;

"an interested party", in relation to a case, means a witness or any person involved in the conduct which is the subject of the case or who otherwise has a direct interest in the case;

"misconduct proceedings" means proceedings under Part VII;

"Ombudsman" means the Police Ombudsman for Northern Ireland established by section 51 of the 1998 Act;

"other matter" means a matter (not being a complaint) which the Ombudsman may investigate under section 55 of the 1998 Act (as it applies by virtue of regulation 14);

"police force in Great Britain" means a police force within the meaning of the Police Act 1996(**5**) or the Police (Scotland) Act 1967(**6**);

(**3**) 2000 c. 32.
(**4**) S.R. 2008 No. 243
(**5**) 1996 c. 16.
(**6**) 1967 c. 77.

"presenting officer" means, in relation to a case, a police officer appointed under regulation 50(1) to present the case;

"register" includes the holding of information by electronic means;

"relevant conduct" means, in relation to a designated person, conduct relating to the carrying out of a function for the purpose of which any power or duty is conferred or imposed on him by his designation;

"supervising member" has the meaning given by regulation 28 or (as the case may be) regulation 34.

(2) Other expressions used in these regulations and in the 2000 Act have the same meanings in these regulations as they have in that Act.

(3) Any reference in these regulations to a complaint, except in regulation 5(1) or (2), 8(1), 28 or 34, is a reference to a complaint in relation to which the Ombudsman has made a determination under section 52(8) of the 1998 Act, as it applies by virtue of regulation 8, that it—

(a) is about the relevant conduct of a designated person, and

(b) is made by, or on behalf of, a member of the public.

Delegation of functions by Chief Constable

3.—(1) The Chief Constable may not delegate any function conferred on him under or by virtue of these regulations, except to—

(a) a police officer of at least the rank of chief inspector, or

(b) an employee holding an appropriate position in the police support staff.

(2) A person who has conducted an investigation in a case, or who has acted in relation to it in pursuance of an attempt to resolve it by way of informal resolution shall not, as respects that case, exercise any function in pursuance of a delegation under paragraph (1).

(3) Any reference in the following provisions of these regulations to the Chief Constable shall be construed as including a reference to a person discharging the functions of the Chief Constable.

PART II

PART 7 OF THE 1998 ACT

Part 7 of the 1998 Act

4.—(1) Part 7 of the 1998 Act shall apply with respect to designated persons, subject to the limitations and modifications set out in these regulations.

(2) In section 60A of that Act (Ombudsman's power to investigate current practice and policy) as it applies by virtue of paragraph (1), any reference to a practice or policy of the police shall include a reference to a practice or policy concerning the relevant conduct of designated persons.

(3) In section 63(1)(d) of that Act (restriction on disclosure of information) as it applies by virtue of paragraph (1), the proceedings for the purposes of which an exception is made to the restriction on disclosure of information shall include misconduct proceedings under these regulations.

(4) In section 65 of that Act (guidance concerning discipline, complaints etc.) as it applies by virtue of paragraph (1), the power of the Secretary of State to issue guidance includes power to issue guidance concerning the discharge of functions under these regulations.

(5) Any provision of Part 7 of the 1998 Act applying with respect to designated persons by virtue of these regulations shall be construed in accordance with—

(a) section 50 of that Act, and

(b) regulation 2.

PART III

SUSPENSION, MODIFICATION AND WITHDRAWAL OF DESIGNATIONS

Suspension

5.—(1) Where there has been a report, complaint or allegation which indicates that the relevant conduct of a designated person did not meet the appropriate standard—

(a) the Chief Constable may suspend his designation, whether or not the matter has been investigated, and

(b) during any period of suspension of that person's designation, he shall be suspended from duty as an officer described in section 30(1), 30A(1) or 31(2) of the 2003 Act.

(2) The Chief Constable may exercise his powers under paragraph (1) at any time from the time of the receipt of the report, complaint or allegation until the conclusion of the case.

(3) Any period of suspension under paragraph (1) shall continue until the conclusion of the case or until the Chief Constable decides that the suspension shall cease, whichever first occurs.

(4) Where a designated person who is suspended from duty is, at the conclusion of the case, given notice of dismissal or required to resign, he shall remain suspended from duty during the period of his notice.

(5) Any reference in this regulation to the conclusion of a case is, in relation to the case of a designated person, to the time when the first of these events occurs—

(a) the supervising member decides not to refer the case to a hearing, or

(b) the notification of a finding that the conduct of the designated person concerned did meet the appropriate standard, or

(c) (in the case of a member of the police support staff) the time limit for giving notice of intention to seek a review under regulation 62 has expired, or

(d) (in the case of a member of the police support staff) any review under regulation 63 has been completed.

Notification of matters relating to suspension

6.—(1) Where the Ombudsman determines during the course of an investigation under any provision of the 1998 Act that the investigation indicates that the conduct of a designated person did not meet the appropriate standard, the Ombudsman shall immediately notify the Chief Constable, and provide all relevant material, to enable the Chief Constable to consider suspending that person's designation.

(2) Where the Chief Constable suspends a person's designation during the course of an investigation under any provision of the 1998 Act, he shall notify the Ombudsman.

(3) Where the Ombudsman is investigating under section 56 of the 1998 Act a complaint against a designated person, or any other matter concerning that person, and that person's designation has been suspended, the Ombudsman shall—

(a) keep the Chief Constable informed of the progress of that investigation to allow him to consider whether suspension remains appropriate, and

(b) immediately inform the Chief Constable of any matter which indicates that the Chief Constable should reconsider the suspension.

Notices in relation to designations

7.—(1) Where the Chief Constable receives a recommendation under regulation 32(1) or 60(3) that he modify or withdraw the designation of a designated person, and the Chief Constable decides —

(a) not to modify or withdraw the designation, or

(b) to modify or withdraw the designation otherwise than in accordance with the recommendation,

he shall notify the designated person concerned and (in the case of a designated person employed by a contractor) the contractor concerned.

(2) Where the Ombudsman sends a memorandum to the Chief Constable under regulation 27(5) or under section 59(2) of the 1998 Act concerning the relevant conduct of a designated person, and the Chief Constable decides to withdraw or modify the designation of that person—

(a) he shall notify the designated person concerned in accordance with section 33(4) of the 2003 Act,

(b) he shall (in the case of a designated person employed by a contractor) notify the contractor concerned in accordance with section 33(5) of that Act,

(c) he shall notify the Ombudsman, and

(d) the Ombudsman shall notify the complainant.

(3) Where the Ombudsman sends a memorandum to the Chief Constable under regulation 27(5) or under section 59(2) of the 1998 Act recommending that the designation of a person be modified or withdrawn, and the Chief Constable decides—

(a) not to modify or withdraw the designation, or

(b) to modify or withdraw the designation otherwise than in accordance with the recommendation,

he shall notify the Ombudsman in writing of his decision and the reasons for his decision.

(4) Where the Chief Constable notifies the Ombudsman of a decision in accordance with paragraph (3), the Ombudsman—

(a) shall notify the complainant, and

(b) may furnish the complainant with such relevant information in explanation thereof, if any, as appears to the Ombudsman to be appropriate.

(5) The Ombudsman shall be relieved of the duty of notifying the complainant as mentioned in paragraph (4) if compliance therewith appears to him to be not reasonably practicable.

PART IV

COMPLAINTS AND OTHER MATTERS

Complaints: making and receipt

8.—(1) Subsections (1) to (3) of section 52 of the 1998 Act (receipt of complaints) shall apply in relation to complaints about designated persons as they apply in relation to complaints about the police, with the following modifications—