



Home Office

CONSULTATION ON THE DRAFT ELECTED LOCAL POLICING BODY (COMPLAINTS AND MISCONDUCT) REGULATIONS

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SUMMARY INFORMATION

SCOPE OF THE CONSULTATION

Topic of this consultation: Handling of complaints against Police and Crime Commissioners (PCCs), the Mayor of London in his capacity as the holder of the Mayor's Office for Policing and Crime (MOPC) and deputies appointed by PCCs and the MOPC.

Scope of this consultation: The consultation seeks views on draft regulations which will set out how allegations of criminal behaviour (that will be referred to the Independent Police Complaints Commission) and allegations of non-criminal behaviour (that will be resolved informally by the Police & Crime Panel) will be handled. The power to make regulations is in the Police Reform and Social Responsibility Act 2011.

Geographical scope: This consultation welcomes views from all with an interest in policing in England and Wales.

Impact assessment (IA): The system for handling complaints against PCCs, the MOPC and their deputies is part of the Government's wider proposal to replace police authorities with these directly elected individuals. An impact assessment for PCCs is available on the Home Office website.

BASIC INFORMATION

To: We would like to hear from anyone who has an interest in policing and community safety.

Duration: This consultation ends on 21st October.

You can respond at: policetransparency@homeoffice.gsi.gov.uk

Additional ways to become involved: Details of this consultation are available on the Home Office website. This includes a PDF consultation document that can be downloaded. Please contact the Home Office (as above) if you require information in

any other format, such as Braille, large font or audio.

After the consultation: Responses to this consultation will be considered with policing partners as part of developing the regulations.

BACKGROUND

Getting to this stage: A PCC Transition Programme has been established, overseen by Rt Hon. Nick Herbert MP (Minister of State for Policing and Criminal Justice), to support a coherent and seamless transition. The draft regulations contained in this consultation document have been developed as part of this programme of work.

Previous engagement: Some of the main delivery partners who will be affected by the proposals set out in this document have been involved in developing the proposals. These organisations are:

- The Association of Police Authorities.
- The Association of Police Authority Chief Executives.
- The Association of Chief Police Officers.
- The Local Government Group.
- The Independent Police Complaints Commission.

INTRODUCTION

The replacement of police authorities with directly elected PCCs is at the heart of the Government's plan to cut crime. PCCs will reconnect the public and the police, and replace bureaucratic accountability to Whitehall with democratic accountability to local communities.

Each police force in England and Wales (with the exception of those in London and the non-Home Office police forces e.g. British Transport Police) will have a PCC. The first elections for PCCs will be in November 2012. The PCC will have responsibility for:

- Appointing the Chief Constable and holding them to account for the running of their force.
- Setting out a 5 year police and crime plan determining local policing priorities.
- Setting the annual local precept and annual force budget.
- Making community safety grants to local organisations (including but not limited to Community Safety Partnerships).

The PCC will be scrutinised by a Police and Crime Panel (PCP) within each force area. The PCP will scrutinise the PCC's exercise of statutory functions and can require the PCC to attend a public hearing to respond to any concerns they have. Outside of London these panels will comprise of at least one representative from each local authority in the force area, with a minimum of 10 councillors and 2 co-opted independent members, and a maximum total membership of 20. In London, the London Assembly will form a separate committee to act as the PCP.

PCCs will be required to appoint a chief executive and a chief finance officer. The chief executive will be responsible for employing the PCC's administrative staff and the chief financial officer will be responsible

for advising the PCC about their financial obligations and the impact of their financial decisions.

In London, the Mayor in his capacity as MOPC will take over responsibility for policing governance from the Metropolitan Police Authority. It is expected that he will appoint a Deputy Mayor for Policing and Crime who will carry out the duties of the MOPC on a day-to-day basis. PCCs outside London will also be able to appoint deputies.

Schedule 7 of the Police Reform and Social Responsibility Act provides for regulations to set out the way in which complaints or conduct matters about PCCs, the MOPC and their deputies will be handled. These regulations will be laid before Parliament in November to allow time for them to be debated under the affirmative resolution procedure before they come into force. This consultation seeks the views of the public and Home Office delivery partners on these draft regulations. The draft regulations have been put together by the Home Office working with delivery partners who will have a key part to play in administering the complaints system.

HOW COMPLAINTS AGAINST PCCS, THE MOPC AND THEIR DEPUTIES WILL BE HANDLED: POLICY CONSIDERATION AND CONSULTATION QUESTIONS

It is expected that PCCs, the MOPC and their deputies will uphold the highest standards of public office. However, in the event that there is a complaint or an allegation against one of them, it is important that this is handled effectively to ensure public confidence in policing is maintained.

Schedule 7 of the Police Reform and Social Responsibility Act requires the regulations to provide for allegations of criminal behaviour against these office holders to be referred to the Independent Police Complaints Commission (IPCC). The main reason for requiring such an allegation to be referred to the IPCC is that, otherwise, the office holder may be (or may be perceived to be) at an advantage in relation to the police investigation because of his or her responsibilities for holding their police force to account. There would also be a potential conflict of interests between the office holder and their local force. The IPCC has extensive experience of handling sensitive, complex and high profile cases and will provide independent scrutiny to the handling and investigation of allegations of criminal behaviour in this context. Where a complaint is not serious enough to require investigation by or under the management of the IPCC, Schedule 7 requires the regulations to provide for it to be resolved informally by the PCP.

The draft regulations at annex A set out how criminal and non-criminal allegations will be handled. The text below sets out some of the policy considerations which underpin these draft regulations. The term “relevant office holder” is used in the draft regulations to refer to a PCC, the MOPC or their deputies, and this term is used in the same way below.

ALLEGATIONS OF CRIMINAL BEHAVIOUR

The process for dealing with allegations of criminal behaviour will have three main stages – referral, investigation and report.

REFERRAL

The PCP is required to refer any complaint which involves an allegation of a criminal offence to the IPCC. Any allegation of a criminal offence must be referred to the IPCC as soon as practicable, and in any case no later than the end of the day after the day when it becomes clear that the matter must be referred. This is the same as the current referral process for complaints against the police, and the IPCC provides a 24 hour on call facility for referrals.

The regulations apply to allegations of criminal behaviour occurring before a person was elected or appointed to the relevant office, provided that the person holds the relevant office at the time when the allegation comes to light. The regulations will also apply to allegations that come to light after a person has left a relevant office, as long as the criminal behaviour is alleged to have occurred when the person held the relevant office. Allegations that come to light at a time when a person does not hold a relevant office, and which concern criminal behaviour that is alleged to have occurred at a time when the person did not hold such an office either, will not be covered by the regulations. They will be dealt with under the normal procedures for criminal investigation.

Where the allegation relates to criminal behaviour that has taken place outside England and Wales, the PCP will not have to refer this to the IPCC. The main reason for this is to avoid jurisdictional complications relating to whether or not it is an alleged

criminal offence in England and Wales or an alleged criminal offence in the country where the conduct took place. IPCC involvement would also be unnecessary because the office holder's police force would normally not be involved in the investigation so the potential conflict of interests between the office holder and their local force would not arise. In the event that the investigation does involve contact between the investigating police force and the office holder's police force, the IPCC would be able to exercise its call-in power.

1. Do you have any comments on the regulations which set out the way in which allegations of criminal behaviour will be referred to the IPCC?

INVESTIGATION

When an allegation of criminal behaviour is referred to the IPCC they will need to decide whether it should be subject to an independent investigation, an investigation by the police managed by the IPCC or referred back to the PCP to deal with. Where the IPCC decides that an independent investigation is appropriate, the regulations give the IPCC the powers that it will need to carry out the investigation, such as being able to access the premises under the control of the relevant office holder, the powers of police constable for the purposes of conducting an independent investigation, and power to investigate another person if the allegation involves the office holder working with another. The IPCC has the same powers in relation to an investigation of a complaint against the police.

PCPs and Chief Officers of Police will be under a duty to assist the IPCC investigating officer in any investigation and will be required to provide information to the IPCC if it is requested. The IPCC will be under a duty to keep the complainant informed about the progress of an independent investigation.

The regulations also give the IPCC a call-in power - a power to require that allegations against the office holder are referred to it. The reason for giving the IPCC this power is to ensure that the IPCC is able to investigate an allegation that it becomes aware of (either through the media or otherwise), but which is not referred by the PCP. This could potentially undermine public confidence in the complaints system and PCCs and the MOPC more generally, because it could mean the IPCC would be powerless to investigate an allegation that is already in the public domain. The IPCC are strongly in favour of having a call-in power for this reason.

2. Do you have any comments on the regulations which set out the way in which allegations of criminal behaviour against relevant office holders will be investigated by or under the management of the IPCC?

REPORTS

The regulations require the IPCC to publish a report following an investigation. This will be subject to the harm test – information will not be published if, for example, it would compromise national security or ongoing criminal proceedings. The IPCC will be required to provide a copy of its report to the PCP and to the police force within the police force area within which the alleged criminal behaviour took place. The IPCC will be able to determine the timing of the report's publication and will be able to decide the form of the report that is published e.g. if it needs to be a redacted report.

The regulations are not able to make provision for a PCC to be removed from office as a result of a finding of criminal behaviour following an investigation. The mechanism for the removal of a PCC will be the disqualification provisions set out in Chapter 6 of Part 1 of the Act. If the PCC is found to have committed any imprisonable offence (whether or not the PCC is actually sentenced to a term of imprisonment), then

the PCC will be disqualified from continuing to serve, and will be removed from office. In an appropriate case the IPCC will pass its investigation report to the Director of Public Prosecutions to decide whether criminal proceedings should go ahead. It will be for the public to decide at the ballot box in all other circumstances.

3. Do you have any comments on the regulations which set out the way in which the findings of an investigation by or under the management of the IPCC into allegations of criminal behaviour against a relevant office holder will be reported?

ALLEGATIONS OF NON-CRIMINAL BEHAVIOUR

The regulations provide that non-criminal complaints against the Mayor, as MOPC, or the Deputy Mayor for Policing and Crime, if he or she is a member of the London Assembly, should be dealt with in the same way as complaints about the Mayor of London or the London Assembly. This is intended to avoid any potential confusion arising from the MOPC being subject to two different standards procedures. The complaint will be passed to the standards committee of the Greater London Authority and dealt with under established local government procedures. The Localism Bill, currently before Parliament, proposes changes to those procedures – if necessary the draft regulations will be amended in due course to reflect these changes.

In relation to non-criminal complaints against a PCC or deputy PCC, or the DMPC if he or she is not a member of the London Assembly, the regulations give the PCP the freedom to choose who takes forward the informal resolution of the complaint. This could be a sub-committee or a single member of the PCP, or a non-member. In these cases the PCP would be able to recall the complaint to be considered by the PCP as a whole.

It is intended that the Home Secretary will give guidance as to the way in which informal resolution should operate, including approved procedures to be used by the PCP for informal resolution. This guidance will be in general terms and the approved procedures will give Panels discretion as to how they handle complaints.

The regulations are intended to be light touch. The PCP can use its general powers to call the Commissioner to attend a hearing to answer questions, request information and documents from the Commissioner, and publish a report or recommendation. A PCP may also invite any other party to attend before them or to provide information where appropriate.

The PCC has a period of 28 days in which to resolve the complaint to the satisfaction of the complainant. If the complaint is not dealt with satisfactorily within this period, the PCC must notify the PCP of the complaint. If the PCP considers that the complaint had been satisfactorily dealt with at the time it was brought to their notice, no further action is required. The complainant will be given an opportunity to make representations before the complaint is treated as having been resolved.

If the PCP considers that the complaint has not been resolved, it must give both the complainant and the relevant office holder an opportunity to comment on the complaint. If the relevant office holder chooses not to comment on the complaint, the PCP must record this.

When a panel has secured the resolution of a complaint, it will record the outcome and send a copy of the record to the complainant and the relevant office holder. A panel may publish the record if it considers publication to be in the public interest, the complainant and relevant office holder have been given an opportunity to make representations regarding publication, and the panel has considered these representations.

To encourage open and frank engagement with the informal resolution procedure, any statement made on the matter subject to informal resolution shall not be admissible in subsequent criminal or civil proceedings.

4. Do you have any comments on the regulations which set out the way in which complaints against relevant office holders regarding non-criminal behaviour will be resolved by the PCP?

GUIDANCE

The regulations provide that the IPCC (for criminal allegations) and the Secretary of State (for non-criminal allegations) can issue guidance about handling of complaints against the relevant office holder. This guidance will be for those involved in operating the new system – elected local policing bodies, PCPs and the police – and will be developed once the regulations are in place. Views are invited on what issues in particular it would be helpful for the guidance to cover.

5. Are there any particular issues relating to the system for handling complaints against elected local policing bodies that you would like to see covered by forthcoming guidance?

SUMMARY OF QUESTIONS

We would welcome responses to the following questions set out in this consultation paper.

1. Do you have any comments on the regulations which set out the way in which allegations of criminal behaviour will be referred to the IPCC?

2. Do you have any comments on the regulations which set out the way in which allegations of criminal behaviour against relevant office holders will be investigated by or under the management of the IPCC?

3. Do you have any comments on the regulations which set out the way in which the findings of an investigation by or under the management of the IPCC into allegations of criminal behaviour against a relevant office holder will be reported?

4. Do you have any comments on the regulations which set out the way in which complaints against relevant office holders regarding non-criminal behaviour will be resolved by the PCP?

5. Are there any particular issues relating to the system for handling complaints against elected local policing bodies that you would like to see covered by forthcoming guidance?

The above questions are an indication of the main issues being raised in this paper. However, we welcome any general comments you may have.

Thank you for participating in this consultation exercise.

RESPONSES: CONFIDENTIALITY & DISCLAIMER

The information you send us may be passed to colleagues within the Home Office, the Government or related agencies.

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 [FOIA], the Data Protection Act 1998 [DPA] and the Environmental Information Regulations 2004).

If you want other information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.'

ALTERNATIVE FORMATS

The Department is obliged to both offer, and provide on request, these formats under the Disability Act.

CONSULTATION CRITERIA

The Consultation follows the Code of Practice on Consultation – the criteria for which are set out below. Where possible, this consultation has followed this code.

Criterion 1 – When to consult – Formal consultation should take place at a stage when there is scope to influence the policy outcome.

Criterion 2 – Duration of consultation exercises – Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

Criterion 3 – Clarity of scope and impact – Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

Criterion 4 – Accessibility of consultation exercises – Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

Criterion 5 – The burden of consultation – Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

Criterion 6 – Responsiveness of consultation exercises – Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

Criterion 7 – Capacity to consult – Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

The full Code of Practice on Consultation is available at:

<http://www.berr.gov.uk/whatwedo/bre/consultation-guidance/page44420.html>

CONSULTATION CO-ORDINATOR

If you have a complaint or comment about the Home Office's approach to consultation, you should contact the Home Office Consultation Co-ordinator. Please DO NOT send your response to this consultation to the consultation co-ordinator. The Co-ordinator works to promote best practice standards set by the Code of Practice, advises policy teams on how to conduct consultations and investigates complaints made against the Home Office. He does not process your response to this consultation.

The Co-ordinator can be emailed at:

Adam.Mcardle2@homeoffice.gsi.gov.uk

or alternatively write to him at:

Adam Mcardle, Consultation Co-ordinator
Home Office
Value for Money and Productivity Unit
Better Regulation Team
3rd Floor Seacole
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London
SW1P 4DF

2011 No.

POLICE, ENGLAND AND WALES

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

Made - - - - ***
Laid before Parliament ***
Coming into force - - ***

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The Secretary of State, in exercise of the powers conferred by section [32] of the Police Reform and Social Responsibility Act 2011(a), makes the following Regulations.

PART 1

General

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2011 and shall come into force on [date].

(2) These Regulations extend to England and Wales.

Interpretation

2.—(1) In these Regulations—

“2002 Act” means the Police Reform Act 2002(a);

(a) 2011 c. . Relevant extensions to the powers conferred by section 32 are in Schedule 7 to the Police Reform and Social Responsibility Act 2011.

“2011 Act” means the Police Reform and Social Responsibility Act 2011;
“the Commission” means the Independent Police Complaints Commission and has the meaning given by section 9(1) of the 2002 Act;
“complainant” shall be construed in accordance with paragraph (2);
“complaint” has the meaning given by regulation 8;
“conduct” includes acts, omissions, statements and decisions (whether actual, alleged or inferred);
“conduct matter” has the meaning given by regulation 8;
“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(b), the police and crime panel for that police area under section 29(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 33 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.

(2) References in these Regulations, in relation to anything which is or purports to be a complaint, to the complainant are references—

- (a) except in the case of anything which is or purports to be a complaint falling within regulation 8(1)(d), to the person by whom the complaint or purported complaint was made; and
- (b) in that case, to the person on whose behalf the complaint or purported complaint was made;

but where any person is acting on another person’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 the person acting on the complainant’s behalf.

(3) References in these Regulations, in relation to any conduct or anything purporting to be a complaint about any conduct, to a member of the public include references to any person falling

(a) 2002 c. 30.
(b) 1996 c. 16.

within any of the following sub-paragraphs (whether at the time of the conduct or at any subsequent time)—

- (a) a member of a police force;
- (b) a member of the civilian staff of a police force, including the metropolitan police force, (within the meaning of Part 1 of the Police Reform and Social Responsibility Act 2011);
- (c) a special constable who is under the direction and control of a chief officer of police; and
- (d) subject to paragraph (4), a member of the staff of a relevant office holder;

(4) In these Regulations references, in relation to any conduct or to anything purporting to be a complaint about any conduct, to a member of the public do not include references to a person who—

- (a) at the time when the conduct is supposed to have taken place in relation to him, or
- (b) at the time when he is supposed to have been adversely affected by it, or to have witnessed it,

was working in his capacity as a member of the staff of the person complained against.

(5) For the purposes of these Regulations a person is adversely affected if he suffers any form of loss or damage, distress or inconvenience, if he is put in danger or if he is otherwise unduly put at risk of being adversely affected.

(6) References in these Regulations to the investigation of any complaint or matter under the management of the Commission or by the Commission itself shall be construed as references to its investigation in accordance with regulation 23 and 24 as the case may be.

Application of the 2002 Act

3.—(1) Sections 9 (the Independent Police Complaints Commission), 19 (use of investigatory powers by or on behalf of the Commission) and 27 (conduct of the Commission’s staff) of the 2002 Act shall apply in relation to police and crime panels and relevant office holders.

General functions of the Commission

4.—(1) 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 the following provisions of this Part, 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 made about the conduct of relevant office holders;
- (b) the recording of matters from which it appears that there may have been conduct by such persons which constitutes or involves the commission of a criminal offence;
- (c) the manner in which any such complaints or any such matters as are mentioned in sub-paragraph (b) are investigated or otherwise handled and dealt with,

in accordance with these Regulations, with the exception of Part 3 (resolution of complaints).

(3) 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) 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 paragraph (1)(e), 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.

Guidance

5.—(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 specified in paragraph (2).

(2) Those powers and duties are—

- (a) those that are conferred or imposed by these Regulations, with the exception of Part 3 (resolution of complaints);
- (b) those that are otherwise conferred or imposed but relate to—
 - (i) the handling of complaints;
 - (ii) the means by which conduct matters are dealt with; or
 - (iii) the detection or deterrence of misconduct by relevant office holders.

(3) Without prejudice to the generality of paragraphs (1) and (2), the guidance that may be issued under paragraph (1) 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 any 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 complaint or conduct matter; or
 - (ii) to provide any person with, or to publish, any report or other document relating to such an investigation.

(4) Before issuing any guidance under paragraph (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.

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

(6) 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 Part 3.

(7) Before issuing any guidance under paragraph (6), 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.

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

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

Reports to the Secretary of State

6.—(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 4(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.

(7) The Commission shall send a copy of every report under paragraph (3) to—

- (a) any police and crime panel; and
- (b) any relevant office holder

that appears to the Commission to be concerned.

(8) The Commission shall send a copy of every report under paragraph (4) to—

- (a) the Secretary of State; and
- (b) every police and crime panel.

(9) The Commission shall send a copy of every report made or prepared by it under paragraphs (3) or (4) to such of the persons (in addition to those specified in the preceding paragraphs) who—

- (a) are referred to in the report, or
- (b) appear to the Commission otherwise to have a particular interest in its contents.

General duties of police and crime panels and relevant office holders

7.—(1) It shall be the duty of every police and crime panel to ensure that it is kept informed, in relation to a relevant office holder for the panel's police area, about all matters falling within paragraph (2).

(2) Those matters are—

- (a) matters with respect to which any provision of these Regulations has effect;
- (b) anything which is done under or for the purposes of any such provision; and
- (c) any obligations to act or refrain from acting that have arisen by or under these Regulations, but have not yet been complied with or have been contravened.

(3) It shall be the duty of every police and crime panel and of every relevant office holder to provide the Commission and every member of the Commission's staff with all such assistance as the Commission or that member of staff may reasonably require for the purposes of, or in connection with, the carrying out of any investigation by the Commission under these Regulations.

PART 2

Initial Handling of Complaints and Conduct Matters

Complaints, matters and persons to which these Regulations apply

8.—(1) In these Regulations references to a complaint are references (subject to the following provisions of this regulation) to any complaint about the conduct of a relevant office holder which is made (whether in writing or otherwise) by—

- (a) a member of the public who claims to be the person in relation to whom the conduct took place;
- (b) a member of the public not falling within sub-paragraph (a) who claims to have been adversely affected by the conduct;
- (c) a member of the public who claims to have witnessed the conduct;
- (d) a person acting on behalf of a person falling within any of sub-paragraphs (a) to (c).

(2) In these Regulations "conduct matter" means (subject to the following provisions of this regulation) any matter which is not and has not been the subject of a complaint but in the case of which there is an indication (whether from the circumstances or otherwise) that a relevant office holder may have committed a criminal offence.

(3) The complaints that are complaints for the purposes of these Regulations by virtue of paragraph (1)(b) do not, except in a case falling within paragraph (4), include any made by or on behalf of a person who claims to have been adversely affected as a consequence only of having seen or heard the conduct, or any of the alleged effects of the conduct.

(4) A case falls within this paragraph if—

- (a) it was only because the person in question was physically present, or sufficiently nearby, when the conduct took place or the effects occurred that the person was able to see or hear the conduct or its effects, or

- (b) the adverse effect is attributable to, or was aggravated by, the fact that the person in relation to whom the conduct took place was already known to the person claiming to have suffered the adverse effect.

(5) For the purposes of this regulation a person shall be taken to have witnessed conduct if, and only if—

- (a) that person acquired knowledge of the conduct in manner which could make that person a competent witness capable of giving admissible evidence of that conduct in criminal proceedings, or
- (b) that person possesses or controls anything which would in any such proceedings constitute admissible evidence of that conduct.

(6) For the purposes of these Regulations a person falling within paragraph (1)(a) to (c) shall not be taken to have authorised another person to act on that person's behalf unless—

- (a) That other person is for the time being designated for the purposes of these Regulations by the Commission as a person through whom complaints may be made, or is of a description of persons so designated, or
- (b) The other person has been given, and is able to produce, the written consent to such action, of the person on whose behalf the action is taken.

(7) It shall be the duty of a relevant office holder to notify the police and crime panel of any matter which would amount to a conduct matter

Duties to preserve evidence

9.—(1) Where a complaint or conduct matter that relates to the conduct of a relevant office holder comes to the attention of the police and crime panel, it shall be the duty of that panel to secure that all such steps as are appropriate for the purposes of these Regulations are taken, both initially and from time to time after that, for obtaining and preserving evidence relating to the conduct in question.

(2) Where—

- (a) a complaint is made to a relevant office holder about his own conduct,
- (b) a relevant office holder becomes aware that a complaint about his own conduct has been made to a police and crime panel or the Commission, or
- (c) a relevant office holder becomes aware of any conduct matter relating to his own conduct,

it shall be the duty of the relevant office holder to take all such steps as appear to him to be appropriate for the purposes of these Regulations for obtaining and preserving evidence relating to the conduct in question.

(3) The relevant office holder's duty under paragraph (2) must be performed as soon as practicable after—

- (a) the complaint is made,
- (b) the relevant office holder becomes aware of the complaint, or
- (c) the relevant office holder becomes aware of the conduct matter,

as the case may be.

(4) After that, he shall be under a duty, until he is satisfied that it is no longer necessary for him to do so, to continue to take the steps from time to time appearing to him to be appropriate for the purposes of these Regulations for obtaining and preserving the evidence relating to the conduct in question.

(5) It shall be the duty of a police and crime panel to comply with all such directions as may be given to it by the Commission in relation to the performance of its duty under paragraph (1).

(6) It shall be the duty of a relevant office holder to take all such steps for obtaining or preserving evidence relating to any conduct of his as he may be directed to take for the purposes of this regulation by the police and crime panel or by the Commission.

Notification and recording of complaints

10.—(1) Where a complaint is made to the Commission that relates to the conduct of a relevant office holder, it shall give notification of the complaint to the police and crime panel unless it considers that there are exceptional circumstances that justify notification not being given.

(2) Where a complaint is made to a police and crime panel that relates to the conduct of a relevant office holder, it shall—

- (a) determine whether or not it is itself the police and crime panel in relation to that relevant office holder; and
- (b) if it determines that it is not, give notification of the complaint to the panel that is.

(3) Where a complaint is made to a chief officer of police that relates to the conduct of a relevant office holder, he shall give notification of the complaint to the police and crime panel.

(4) Where a complaint is made to a relevant office holder that relates to his own conduct—

- (a) he shall take reasonable steps to deal with the complaint to the satisfaction of the complainant, but
- (b) if the complaint is not dealt with satisfactorily within 28 days of being received by him, he shall give notification of the complaint to the police and crime panel.

(5) Where the Commission, a police and crime panel, a chief officer of police or a relevant office holder gives notification of a complaint under any of paragraphs (1) to (4), the person who gave the notification shall notify the complainant that the notification has been given and of what it contained.

(6) Where—

- (a) a police and crime panel determines, in the case of a complaint made to the panel that relates to the conduct of a relevant office holder, that it is itself the police and crime panel in relation to that relevant office holder, or
- (b) a complaint is notified to a police and crime panel under this regulation,

the panel shall record the complaint.

(7) Nothing in this regulation shall require the notification or recording by any person of any complaint about any conduct if—

- (a) that person is satisfied that the subject-matter of the complaint has been, or is already being, dealt with by means of criminal proceedings against the relevant office holder; or
- (b) the complaint has been withdrawn.

Failures to record or notify a complaint

11.—(1) This regulation applies where anything which is or purports to be a complaint in relation to which regulation 10 (initial handling and recording of complaints) has effect is received by a police and crime panel, a relevant office holder or a chief officer of police (whether in consequence of having been made directly or of a notification under that regulation).

(2) If the police and crime panel, relevant office holder or chief officer of police decides not to take action under regulation 10 for notifying or recording the whole or any part of what has been received, the panel, office holder or chief officer shall notify the complainant of the following matters—

- (a) the decision to take no action and, if that decision relates to only part of what was received, the part in question; and
- (b) the grounds on which the decision was made.

Notification and recording of conduct matters arising in civil proceedings

12.—(1) This regulation applies where—

- (a) a police and crime panel has received notification (whether or not under this paragraph) that civil proceedings relating to any matter have been brought by a member of the public against a relevant office holder, or it otherwise appears to a police and crime panel that such proceedings are likely to be so brought; and
 - (b) it appears to that panel (whether at the time of the notification or at any time subsequently) that those proceedings involve or would involve a conduct matter.
- (2) The police and crime panel—
- (a) shall consider whether it is itself the police and crime panel in relation to the relevant office holder concerned; and
 - (b) if it is not, shall notify that police and crime panel about the proceedings, or the proposal to bring them, and about the circumstances that make it appear as mentioned in subparagraph (1)(b).
- (3) Where a police and crime panel determines for the purposes of this paragraph that it is the police and crime panel in relation to a relevant office holder to whom any conduct matter relates, it shall record that matter.
- (4) Nothing in paragraph (3) shall require the police and crime panel to record any conduct matter if it is satisfied that the matter has been, or is already being, dealt with by means of criminal proceedings against the person to whose conduct the matter relates.
- (5) For the purposes of this regulation civil proceedings involve a conduct matter if—
- (a) they relate to such a matter; or
 - (b) they are proceedings that relate to a matter in relation to which a conduct matter, or evidence of a conduct matter, is or may be relevant.

Recording of conduct matters in other cases

13.—(1) Where a conduct matter comes (otherwise than as mentioned in regulation 12) to the attention of the police and crime panel for the relevant office holder concerned, it shall be the duty of the panel to record that matter.

(2) Nothing in paragraph (1) shall require the police and crime panel to record any conduct matter if it is satisfied that the matter has been, or is already being, dealt with by means of criminal proceedings against the person to whose conduct the matter relates.

(3) If it appears to the Commission—

- (a) that any matter that has come to its attention is a conduct matter, but
- (b) that that matter has not been recorded by the police and crime panel,

the Commission may direct the panel to record that matter; and it shall be the duty of that panel to comply with the direction.

Reference of complaints and conduct matters to the Commission

14.—(1) It shall be the duty of a police and crime panel to refer a complaint to the Commission if—

- (a) the complaint is one made about conduct which constitutes or involves, or appears to constitute or involve, the commission of a criminal offence; or
- (b) the Commission notifies the panel that it requires the complaint in question to be referred to the Commission for its consideration.

(2) It shall be the duty of a police and crime panel to refer a conduct matter to the Commission if—

- (a) the panel has recorded the matter under regulation 12 or 13; or
- (b) the Commission notifies the panel that it requires the matter to be referred to the Commission for its consideration.

(3) Where a complaint or conduct matter is required to be referred to the Commission under paragraph (1)(a) or (2)(a), notification of the complaint shall be given to the Commission—

- (a) as soon as is practicable, and in any event not later than the end of the day following the day on which it first becomes clear to the police and crime panel that the complaint or conduct matter is one to which the paragraph (1)(a) or (2)(a) applies, and
- (b) in such manner as the Commission specifies.

(4) Where a complaint or conduct matter is required to be referred to the Commission under paragraph (1)(b) or (2)(b), notification of the complaint shall be given to the Commission—

- (a) as soon as is practicable, and in any event not later than the end of the day following the day on which the Commission notifies the police and crime panel that the complaint or conduct matter is to be referred, and
- (b) in such manner as the Commission specifies.

(5) Subject to sub-paragraph (7), the power of the Commission by virtue of sub-paragraph (1)(b) or (2)(b) to require a complaint or conduct matter to be referred to it shall be exercisable at any time irrespective of whether the complaint or conduct matter is already being investigated by any person or has already been considered by the Commission.

(6) A police and crime panel which refers a complaint or conduct matter to the Commission under this regulation shall give a notification of the making of the reference—

- (a) to the complainant (if there is one), and
- (b) except in a case where it appears to that panel that to do so might prejudice a possible future investigation of the complaint or conduct matter, to the person to whose conduct the complaint or matter relates.

(7) A complaint or conduct matter that has already been referred to the Commission under this regulation on a previous occasion shall not be required to be referred again under this regulation unless the Commission so directs.

Duties of Commission on a reference

15.—(1) It shall be the duty of the Commission in the case of every complaint or conduct matter referred to it by a police and crime panel to determine whether or not it is necessary for the complaint or matter to be investigated.

(2) Where the Commission determines under this regulation that it is not necessary for a complaint or conduct matter to be investigated, it may, if it thinks fit, refer the complaint or matter back to the police and crime panel—

- (a) in the case of a complaint, to be dealt with by that panel in accordance with Part 3 (resolution of complaints), and
- (b) in the case of a conduct matter, to be dealt with by that panel in such manner (if any) as that panel may determine.

(3) Where the Commission refers a complaint or conduct matter back under paragraph (2), it shall give a notification of the making of the reference back—

- (a) to the complainant (if there is one), and
- (b) to the person to whose conduct the complaint or matter relates.

Disapplication of requirements of Regulations

16.—(1) This regulation applies where a complaint has been recorded by a police and crime panel unless the complaint is one which has been, or must be, referred to the Commission under regulation 14, and is not for the time being referred back to the panel under regulation 15(2).

(2) If the police and crime panel considers—

- (a) that it should handle the complaint otherwise than in accordance with Part 3 or should take no action in relation to it, and

(b) that the complaint falls within a description of complaints specified in paragraph (3), the panel may handle the complaint in whatever manner (if any) that panel thinks fit.

(3) The descriptions of complaints specified for the purposes of paragraph (2)(b) are those where the police and crime panel considers that:

- (a) more than 12 months have elapsed between the incident, or the latest incident, giving rise to the complaint and the making of the complaint and either—
 - (i) no good reason for the delay has been shown, or
 - (ii) injustice would be likely to be caused by the delay;
- (b) the matter is already the subject of a complaint;
- (c) the complaint discloses neither the name and address of the complainant nor that of any other interested person and it is not reasonably practicable to ascertain such a name or address;
- (d) the complaint is vexatious, oppressive or otherwise an abuse of the procedures for dealing with complaints;
- (e) the complaint is repetitious (for which, see paragraph (4)).

(4) A complaint is repetitious for the purposes of paragraph (3)(e) if, and only if—

- (a) it is substantially the same as a previous complaint (whether made by or on behalf of the same or a different complainant), or it concerns substantially the same conduct as a previous conduct matter;
- (b) it contains no fresh allegations which significantly affect the account of the conduct complained of;
- (c) no fresh evidence, being evidence which was not reasonably available at the time the previous complaint was made, is tendered in support of it; and
- (d) as regards the previous complaint or conduct matter, either—
 - (i) the Commission made a determination under regulation 30(2)(b) (action in response to an investigation report);
 - (ii) the complaint was resolved in accordance with the provisions of Part 3 (resolution of complaints);
 - (iii) the complainant gave such notification that he withdrew the complaint as is mentioned in regulation .
 - (iv) the police and crime panel decided to handle the complaint in whatever way it saw fit, in accordance with this regulation.

(5) The police and crime panel shall notify the complainant that it has decided to handle the complainant as permitted by paragraph (2).

Withdrawn and discontinued complaints

17.—(1) If a police and crime panel receives from a complainant notification in writing signed by him or by his solicitor or other authorised agent on his behalf to the effect either—

- (a) that he withdraws the complaint, or
- (b) that he does not wish any further steps to be taken in consequence of the complaint,

then the panel shall forthwith record the withdrawal or the fact that the complainant does not wish any further steps to be taken, as the case may be, and subject to the following provisions of this regulation, these Regulations shall cease to apply in respect of that complaint.

(2) Where a complainant gives such notification as is mentioned in paragraph (1) to the Commission but, so far as is apparent to the Commission, has not sent that notification to the police and crime panel, then—

- (a) the Commission shall send a copy of that notification to the panel;

- (b) that panel shall record the withdrawal or the fact that the complainant does not wish any further steps to be taken, as the case may be; and
- (c) subject to the following provisions of this regulation, the provisions of these Regulations shall cease to apply in respect of that complaint.

(3) Where a complainant gives such notification as is mentioned in paragraph (1) to a police and crime panel, or where the panel receives a copy of a notification under paragraph (2), and it relates to a complaint—

- (a) which was referred to the Commission under regulation 14 and which has not been referred back to the panel under regulation 15(2); or
- (b) which was notified to the panel by the Commission under 10(1),

then the panel shall notify the Commission that it has recorded the withdrawal of the complaint or the fact that the complainant does not wish any further steps to be taken, as the case may be.

(4) In a case falling within paragraph (3)(b), the police and crime panel shall also—

- (a) determine whether it is in the public interest for the complaint to be treated as a conduct matter; and
- (b) notify the Commission of its determination and the reasons for that determination.

(5) In a case falling within paragraph (3)(a), the Commission shall determine whether it is in the public interest for the complaint to be treated as a conduct matter, and shall notify the police and crime panel of its decision.

(6) Where a determination is made that a complaint is to be treated as a conduct matter, then the provisions of these Regulations shall apply to that matter.

(7) Where a complainant gives such notification as is mentioned in paragraph (1) to a police and crime panel, or where the panel receives a copy of a notification under paragraph (2), and that notification relates to a complaint which does not fall within either of sub-paragraphs (a) or (b) of paragraph (3), then—

- (a) the panel shall determine whether it is in the public interest for the complaint to be treated as a conduct matter;
- (b) if the complaint is to be treated as a conduct matter, the provisions of these Regulations shall apply to that matter;
- (c) if the complaint is not to be treated as a conduct matter, the provisions of these Regulations shall cease to apply in respect of that complaint.

(8) Where a complainant indicates that he wishes to withdraw the complaint or that he does not wish any further steps to be taken in consequence of the complaint, but he fails to provide a notification to that effect in writing signed by him or on his behalf, then—

- (a) in the case of an indication received by the police and crime panel, the panel shall take the steps set out in paragraph (9);
- (b) in the case of an indication received by the Commission, the Commission shall refer the matter to the panel which shall take the steps set out in paragraph (9).

(9) Those steps are—

- (a) the police and crime panel shall write to the complainant to ascertain whether he wishes to withdraw his complaint or does not wish any further steps to be taken in consequence of the complaint;
- (b) if the complainant indicates that he wishes to withdraw his complaint or does not wish any further steps to be taken in consequence of the complaint, or if he fails to reply within 21 days, the panel shall treat the indication as though it had been received in writing signed by the complainant;
- (c) if the complainant indicates that he does not wish to withdraw his complaint, or that he does wish further steps to be taken in consequence of the complaint, the panel shall continue to handle the complaint in accordance with these Regulations.

(10) The police and crime panel shall notify the person complained against if—

- (a) it records the withdrawal of a complaint or the fact that the complainant does not wish any further steps to be taken;
- (b) it determines that a complaint shall be treated as a conduct matter;
- (c) the Commission determines that a complaint shall be treated as a conduct matter;
- (d) the Commission instructs the panel to reverse a decision not to treat a complaint as a recordable conduct matter;
- (e) the provisions of these Regulations cease to apply in respect of a complaint.

(11) But nothing in paragraph (10) shall require the police and crime panel to make a notification if it has previously decided under regulation 31(3) not to notify the person complained against of the complaint because it is of the opinion that that might prejudice any criminal investigation or pending proceedings or would be contrary to the public interest.

Conduct occurring outside England and Wales

18.—(1) It shall be the duty of a relevant office holder to notify the police and crime panel of any allegation, investigation or proceedings in relation to his conduct which would amount to a conduct matter for the purposes of these Regulations if the conduct in question had occurred in England and Wales.

(2) A police and crime panel receiving a notification under paragraph (1) shall handle the matter in whatever manner (if any) that panel thinks fit.

PART 3

Resolution of Complaints

Complaints to which this Part applies

19. This Part applies to a complaint which has been recorded by the police and crime panel unless the complaint—

- (a) is one which has been, or must be, referred to the Commission under regulation 14, and is not for the time being referred back to the panel under regulation 15(2); or
- (b) is one which the panel has decided to handle as permitted by regulation 16(2).

Informal resolution

20.—(1) If a complaint to which this Part applies concerns the conduct of—

- (a) a police and crime commissioner;
- (b) a deputy police and crime commissioner; or
- (c) a holder of the office of Deputy Mayor for Policing and Crime who is not a member of the London Assembly at the time when the complaint is recorded,

the police and crime panel shall make arrangements for the complaint to be subjected to informal resolution.

(2) The informal resolution of any complaint shall be discontinued if—

- (a) the Commission notifies the police and crime panel that it requires the complaint to be referred to the Commission under regulation 14(1)(b); or
- (b) the complaint is so referred otherwise than in pursuance of such a notification.

(3) The arrangements made by a police and crime panel for subjecting a complaint to informal resolution may include the appointment of a sub-committee or a single member of the panel, or a person who is not a member of the panel, to secure the informal resolution of the complaint, and any reference to the panel in paragraphs (5) to (13) shall be read as a reference to the sub-committee or person so appointed.

(4) In a case where a sub-committee or person is appointed under paragraph (3), the arrangements made by the police and crime panel may include arrangements for the complaint to be remitted at any time to the panel as a whole (whether at the request of the appointed sub-committee or person, the complainant or the person complained against, or otherwise) if the panel are of the opinion that this will lead to a more satisfactory resolution of the complaint.

(5) The procedures that are to be available for dealing with a complaint which is to be subjected to informal resolution are, subject to the provisions of this regulation, any procedures which are approved by the Secretary of State in guidance issued under regulation 5(6).

(6) Those procedures shall not include investigation of the complaint, but the exercise by the police and crime panel of its powers to require the person complained against to—

- (a) provide the panel with information or documents under section [14(1)] or [34(5)(b)] of the 2011 Act; or
- (b) attend before the panel to answer questions or give evidence under section [30(1)] or [34(5)(a)] of the 2011 Act

shall not be regarded as investigation for the purposes of this paragraph.

(7) Where it appears to the police and crime panel that the complaint had in fact already been satisfactorily dealt with at the time it was brought to their notice—

- (a) the panel may, subject to any representation by the complainant, treat it as having been resolved, and
- (b) if the panel does so, paragraphs (8) to (13) shall not apply to it.

(8) The police and crime panel shall as soon as practicable give the complainant and the person complained against an opportunity to comment on the complaint.

(9) Where the person complained against chooses not to comment on the complaint, the police and crime panel shall record this fact in writing.

(10) The police and crime panel shall not, for the purposes of informally resolving a complaint, tender on behalf of the person complained against an apology for his conduct unless the person complained against has admitted the conduct in question and has agreed to the apology.

(11) Where a complaint has been subjected to informal resolution, the police and crime panel shall as soon as practicable make a record of the outcome of the procedure and send a copy of that record to the complainant and the person complained against.

(12) A police and crime panel shall not publish any part of any such record unless the panel—

- (a) have given the complainant and the person complained against the opportunity to make representations in relation to the proposed publication; and
- (b) having considered any such representations, are of the opinion that publication is in the public interest.

(13) A statement made by any person for the purposes of the informal resolution of any complaint shall not be admissible in any subsequent criminal or civil proceedings except to the extent that it consists of an admission relating to a matter that has not been subjected to informal resolution.

Resolution in accordance with Part 3 of the Local Government Act 2003

21.—(1) If a complaint to which this Part applies concerns the conduct of—

- (a) the holder of the Mayor's Office for Policing and Crime; or
- (b) a holder of the office of Deputy Mayor for Policing and Crime who is a member of the London Assembly at the time when the complaint is recorded,

the police and crime panel shall pass the complaint to the standards committee of the Greater London Authority.

(2) On receiving a complaint in accordance with paragraph (1), the standards committee shall deal with it in accordance with Part 3 of the Local Government Act 2000 as if it was a written allegation made under section 57A(1) of that Act.

(3) The standards committee shall as soon as practicable inform the police and crime panel of the outcome of the complaint.

PART 4

Investigation of Complaints and Conduct Matters

Power to determine the form of an investigation

22.—(1) This regulation applies where—

- (a) a complaint or conduct matter is referred to the Commission; and
- (b) the Commission determines that it is necessary for the complaint or matter to be investigated.

(2) It shall be the duty of the Commission to determine the form which the investigation should take.

(3) In making a determination under paragraph (2) the Commission shall have regard to the following factors—

- (a) the seriousness of the case; and
- (b) the public interest.

(4) The only forms which the investigation may take in accordance with a determination made under this regulation are—

- (a) an investigation by a police force under the management of the Commission;
- (b) an investigation by the Commission.

(5) The Commission may at any time make a further determination under this regulation to replace an earlier one.

(6) Where a determination under this regulation replaces an earlier determination under this regulation the Commission may give the relevant police force such directions as the Commission considers appropriate for the purpose of giving effect to the new determination.

(7) It shall be the duty of a person to whom a direction is given under paragraph (6) to comply with it.

(8) The Commission shall notify the police and crime panel of any determination that it makes under this regulation in relation to a particular complaint or conduct matter.

Investigations managed by the Commission

23.—(1) This regulation applies where the Commission has determined that it should manage the investigation by a police force of any complaint or conduct matter.

(2) On being given notice of that determination, the chief officer of police shall, if he has not already done so, appoint a person serving with the police (whether under the direction and control of that chief officer of police or the chief officer of another force) to investigate the complaint or matter.

(3) No person shall be appointed to carry out an investigation under paragraph (2)—

- (a) unless he has an appropriate level of knowledge, skills and experience to plan and manage the investigation;
- (b) if he is a person whose involvement in the role could reasonably give rise to a concern as to whether he could act impartially under these Regulations.

(4) The Commission may require that no appointment is made under paragraph (2) unless it has given notice to the chief officer of police of the relevant police force that it approves the person whom that chief officer of police proposes to appoint.

(5) Where a person has already been appointed to investigate the complaint or matter, or is selected under this paragraph for appointment, and the Commission is not satisfied with that person, the Commission may require the chief officer of police, as soon as reasonably practicable after being required to do so—

- (a) to select another person serving with the police (whether under the direction and control of that chief officer of police or the chief officer of another force) to investigate the complaint or matter; and
- (b) to notify the Commission of the person selected.

(6) Where a selection made in pursuance of a requirement under paragraph (5) has been notified to the Commission, the chief officer of police shall appoint that person to investigate the complaint or matter if, but only if, the Commission notifies the chief officer of police that it approves the appointment of that person.

(7) The person appointed to investigate the complaint or matter shall, in relation to that investigation, be under the direction and control of the Commission.

Investigations by the Commission itself

24.—(1) This regulation applies where the Commission has determined that it should itself carry out the investigation of a complaint or conduct matter.

(2) The Commission shall designate both—

- (a) a member of the Commission's staff to take charge of the investigation on behalf of the Commission, and
- (b) all such other members of the Commission's staff as are required by the Commission to assist him.

(3) A member of the Commission's staff who—

- (a) is designated under paragraph (2) in relation to any investigation, but
- (b) does not already, by virtue of section 97(8) of the 1996 Act, have all the powers and privileges of a constable throughout England and Wales and the adjacent United Kingdom waters,

shall, for the purposes of the carrying out of the investigation and all purposes connected with it, have all those powers and privileges throughout England and Wales and those waters.

(4) A member of the Commission's staff who is not a constable shall not, as a result of paragraph (3), be treated as being in police service for the purposes of—

- (a) section 280 of the Trade Union and Labour Relations (Consolidation) Act 1992 (c 52) (person in police service excluded from definitions of “worker” and “employee”); or
- (b) section 200 of the Employment Rights Act 1996 (c 18) (certain provisions of that Act not to apply to persons in police service).

(5) References in this paragraph to the powers and privileges of a constable—

- (a) are references to any power or privilege conferred by or under any enactment (including one passed after the making of these Regulations) on a constable; and
- (b) shall have effect as if every such power were exercisable, and every such privilege existed, throughout England and Wales and the adjacent United Kingdom waters (whether or not that is the case apart from this paragraph).

(6) In this regulation “United Kingdom waters” means the sea and other waters within the seaward limits of the United Kingdom's territorial sea.

Combining and splitting investigations

25.—(1) Subject to paragraph (2), where the Commission is managing or carrying out an investigation it may—

- (a) combine that investigation with another investigation; or

(b) split that investigation into two or more separate investigations, if it considers that it is more efficient and effective, or is otherwise in the public interest, to do so.

(2) The Commission shall not take any action under paragraph (1) in relation to a managed investigation except after consulting the chief officer of police of the police force carrying out the investigation.

(3) Nothing in this regulation shall prevent the Commission from determining that—

- (a) where an investigation is split into two or more separate investigations, those investigations may take different forms;
- (b) two or more separate investigations which take different forms may be combined into a single investigation.

Suspension and resumption of an investigation

26.—(1) The Commission may suspend any investigation or other procedure under these Regulations which would, if it were to continue, prejudice any criminal proceedings.

(2) Where the whole or part of the investigation of a complaint has been suspended until the conclusion of criminal proceedings, and the complainant has failed to indicate after the conclusion of those proceedings that he wishes the investigation to start or be resumed, the Commission shall take the steps set out in paragraph (3).

(3) The Commission shall take all reasonable steps to contact the complainant to ascertain whether he wants the investigation to start or be resumed, as the case may be.

(4) If the complainant indicates that he does wish the investigation to start or be resumed, the Commission shall start or resume the investigation, as the case may be.

(5) If the complainant indicates that he does not wish the investigation to start or be resumed, or if he fails to reply within 21 days to a letter sent to him by the Commission, the Commission shall determine whether it is in the public interest for the complaint to be treated as a conduct matter.

(6) If the Commission determines that it is not in the public interest for the complaint to be treated as a conduct matter, the provisions of these Regulations shall cease to apply to the complaint.

(7) If the Commission determines that it is in the public interest for the complaint to be treated as a conduct matter, the Commission shall treat the complaint as if it was a conduct matter referred to the Commission by a police and crime panel in accordance with these Regulations.

(8) The Commission shall notify the person complained against if paragraph (6) or (7) applies.

(9) But nothing in paragraph (8) shall require the Commission to make a notification if it is of the opinion that that might prejudice any criminal investigation or pending proceedings or would be contrary to the public interest.

Restrictions on proceedings pending the conclusion of an investigation

27.—(1) No criminal proceedings shall be brought in relation to any matter which is the subject of an investigation in accordance with the provisions of this Part until a report on that investigation has been submitted to the Commission under regulation 29 (final reports on investigations).

(2) Nothing in this regulation shall prevent the bringing of criminal proceedings in respect of any conduct at any time after the discontinuance, in accordance with the provisions of this Part, of the investigation which relates to that conduct.

(3) The restrictions imposed by this regulation in relation to the bringing of criminal proceedings shall not apply to the bringing of criminal proceedings by the Director of Public Prosecutions in any case in which it appears to him that there are exceptional circumstances which make it undesirable to delay the bringing of such proceedings.

Power to discontinue an investigation

28.—(1) If at any time appears to the Commission (whether on an application by a chief officer of police made in accordance with paragraph (3) or otherwise) that a complaint or conduct matter that is being investigated under the management of the Commission is of a description specified in paragraph (2), the Commission may by order require the discontinuance of the investigation.

(2) The descriptions of complaints or matters specified for the purposes of paragraph (1) are any matter—

- (a) in which the complainant refuses to co-operate to the extent that the Commission considers that it is not reasonably practicable to continue the investigation;
- (b) which the complainant has agreed may be handled in accordance with Part 3 (resolution of complaints);
- (c) which the Commission considers is vexatious, oppressive or otherwise an abuse of the procedures for dealing with complaints or conduct matters;
- (d) which is repetitious, as defined in regulation 16(4); or
- (e) which the Commission otherwise considers is such as to make it not reasonably practicable to proceed with the investigation.

(3) Any application by a chief officer of police to the Commission for an order under paragraph (1) shall be in writing and shall be accompanied by—

- (a) a copy of the complaint, and
- (b) a memorandum from the chief officer of police containing a summary of the investigation undertaken so far and explaining the reasons for the application to discontinue the investigation.

(4) The chief officer of police shall—

- (a) send the complainant a copy of any such application on the same day as the day on which the application is sent to the Commission; and
- (b) supply any further information requested by the Commission for the purpose of considering that application.

(5) The Commission shall not require the discontinuance of an investigation in a case where there has been no application to do so by the chief officer of police under paragraph (3) unless it has consulted with that chief officer of police.

(6) The Commission shall not discontinue any investigation that is being carried out by the Commission itself except in a case where the complaint or conduct matter under investigation falls within paragraph (2).

(7) Where the Commission makes an order under paragraph (1) or discontinues an investigation being carried out by the Commission itself, it shall give notification of the discontinuance—

- (a) to the police and crime panel; and
- (b) to every person entitled to be kept properly informed in relation to the subject matter of the investigation under regulation 32(3).

(8) Where an investigation of a complaint or conduct matter is discontinued in accordance with this regulation—

- (a) the Commission may give the chief officer of police or the police and crime panel directions to do anything specified in paragraph (9);
- (b) the Commission may itself take any such steps of a description specified in paragraph (10) as it considers appropriate for purposes connected with the discontinuance of the investigation; and
- (c) subject to the preceding regulations, neither the panel nor the Commission shall take any further action in accordance with the provisions of these Regulations in relation to that complaint or matter.

(9) A direction under paragraph (8)(a) may—

- (a) require the chief officer of police to produce an investigation report on the discontinued investigation under regulation 29 (final reports on investigations) and to take any subsequent steps under these Regulations;
 - (b) where the investigation concerned a complaint, require the police and crime panel to disapply the requirements of these Regulations as regards that complaint;
 - (c) in a case within paragraph (2)(b), require the police and crime panel to handle the complaint in accordance with Part 3 (resolution of complaints);
 - (d) direct the police and crime panel to handle the manner in whatever manner (if any) that panel thinks fit.
- (10) The steps that may be taken by the Commission under paragraph (8)(b) are—
- (a) to produce an investigation report on the discontinued investigation and take any subsequent steps under these Regulations;
 - (b) where the investigation concerned a complaint, to disapply the requirements of these Regulations as regards that complaint;
 - (c) to handle the matter in whatever manner it thinks fit.
- (11) A chief officer of police or a police and crime panel shall comply with any directions given to him or to it under paragraph (8)(a).

Final reports on investigations

- 29.**—(1) This regulation applies on the completion of an investigation of a complaint or conduct matter.
- (2) A person appointed under regulation 23 (investigations managed by the Commission) shall—
- (a) submit a report on his investigation to the Commission; and
 - (b) send a copy of that report to the police and crime panel.
- (3) A person designated under regulation 24 (investigations by the Commission itself) as the person in charge of an investigation shall submit a report on it to the Commission.
- (4) A person submitting a report under this paragraph shall not be prevented by any obligation of secrecy imposed by any rule of law or otherwise from including all such matters in his report as he thinks fit.

Action in response to an investigation report

- 30.**—(1) This regulation applies where—
- (a) a report on an investigation carried out under the management of the Commission is submitted to it under regulation 29(2)(a); or
 - (b) a report on an investigation carried out by a person designated by the Commission is submitted to it under regulation 29(3).
- (2) On receipt of the report, the Commission—
- (a) shall send a copy of the report to—
 - (i) the police and crime panel;
 - (ii) the chief officer of police for the police area in which the conduct which is the subject of the investigation was alleged to have occurred;
 - (b) shall determine whether the conditions set out in paragraphs (3) and (4) are satisfied in respect of the report;
 - (c) if it determines that those conditions are so satisfied, shall notify the Director of Public Prosecutions of the determination and send him a copy of the report; and
 - (d) shall notify—
 - (i) the police and crime panel, and

(ii) every person entitled to be kept properly informed in relation to the investigation under regulation 32(3)

of its determination under sub-paragraph (b) and of any action taken by it under sub-paragraph (c).

(3) The first condition is that the report indicates that a criminal offence may have been committed by the relevant office holder.

(4) The second condition is that—

(a) the circumstances are such that, in the opinion of the Commission, it is appropriate for the matters dealt with in the report to be considered by the Director of Public Prosecutions, or

(b) any matters dealt with in the report fall within any prescribed category of matters.

(5) The Director of Public Prosecutions shall notify the Commission of any decision of his to take, or not to take, action in respect of the matters dealt with in any report a copy of which has been sent to him under paragraph (2)(c).

(6) It shall be the duty of the Commission to notify every person entitled to be kept properly informed in relation to the investigation under regulation 32(3) if criminal proceedings are brought against any person by the Director of Public Prosecutions in respect of any matters dealt with in a report copied to him under sub-paragraph (2)(c)

(7) Subject to paragraph (8), the Commission shall publish every report submitted to it under regulation 29.

(8) The Commission may delay the publication of a report, or withhold any part of a report from publication, if the Commission considers that it is necessary to do so for the purposes mentioned in regulation 33(1)(a) and (b).

PART 5

Provision and recording of information

Copies of complaints etc

31.—(1) Where a complaint is recorded under regulation 10(5), the police and crime panel shall—

(a) supply to the complainant a copy of the record made of the complaint; and

(b) subject to paragraphs (2) to (4), supply to the person complained against a copy of the complaint.

(2) A copy of a complaint supplied under this regulation may be in a form which keeps anonymous the identity of the complainant or of any other person.

(3) A police and crime panel may decide not to supply such a copy of a complaint if it is of the opinion that to do so—

(a) might prejudice any criminal investigation or pending proceedings, or

(b) would otherwise be contrary to the public interest.

(4) Where a police and crime panel decides not to supply such a copy, it shall keep that decision under regular review.

Duty to keep complainant and any interested person informed

32.—(1) This regulation applies—

(a) in the case of a complaint which is being or has been investigated in accordance with these Regulations, to—

(i) the complainant; and

(ii) any interested person; and

- (b) in the case of a conduct matter which is being or has been investigated in accordance with these Regulations, to any interested person.

(2) For the purposes of these Regulations a person is an interested person in relation to a complaint or conduct matter if—

- (a) the Commission considers that he has an interest in the handling of the complaint or conduct matter which is sufficient to make it appropriate for information to be provided to him in accordance with this regulation, and
- (b) he has indicated that he consents to the provision of information to him in accordance with this regulation.

(3) It shall be the duty of the Commission to provide a person to whom this regulation applies with all such information as will keep him properly informed, while the investigation is being carried out and subsequently, of all the matters mentioned in paragraph (4), and the Commission shall perform this duty in accordance with paragraphs (5) to (10).

(4) The matters of which the complainant must be kept properly informed are—

- (a) the progress of the investigation;
- (b) any provisional findings of the person carrying out the investigation;
- (c) whether any report has been submitted under regulation 29 (final reports on investigations).

(5) The Commission shall inform a person to whom this regulation applies of—

- (a) the progress of the investigation promptly and in any event—
 - (i) if there has been no previous notification, within four weeks of the start of the investigation; and
 - (ii) in any other case, within four weeks of the previous notification;
- (b) any provisional findings of the person carrying out the investigation as frequently as the Commission determines to be appropriate in order for the person to be kept properly informed.

(6) When an investigation has been completed, each person to whom this regulation applies shall be notified—

- (a) of the date on which the final report under regulation 29 is likely to be submitted;
- (b) of the date on which the notification under regulation 30(2)(d) (action in response to an investigation report) is likely to be given.

(7) In performing the duties imposed by paragraph (3) and by regulation 30(2)(d), the Commission shall determine whether it is appropriate to offer, or to accede to a request for, a meeting with a person to whom this regulation applies.

(8) As soon as practicable after any such meeting the Commission shall send to the person concerned a written record of the meeting and an account of how any concerns of that person will be addressed.

(9) Subject to paragraphs (7) and (10), any notification under this regulation shall be made in writing.

(10) If the Commission considers that an investigation has made minimal or no progress since the previous notification, then the next notification may be made by any means that in the opinion of the Commission is suitable.

Exceptions to the duty to keep the complainant and any interested person informed

33.—(1) Subject to paragraph (2), the duties mentioned in regulations 32(3) and 30(2)(d) shall not apply in circumstances where in the opinion of the Commission the non-disclosure of information is necessary for the purpose of—

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

- (b) preventing the disclosure of information in any circumstances in which its non-disclosure—
 - (i) is in the interests of national security;
 - (ii) is for the purposes of the prevention or detection of crime, or the apprehension or prosecution of offenders;
 - (iii) is required on proportionality grounds; or
 - (iv) is otherwise necessary in the public interest.

(2) The Commission shall not conclude that the non-disclosure of information is necessary under paragraph (1) unless it is satisfied that—

- (a) there is a real risk of the disclosure of that information causing an adverse effect; and
- (b) that adverse effect would be significant.

(3) Without prejudice to the generality of paragraph (1), the Commission shall consider whether the non-disclosure of information is justified under that paragraph in circumstances where—

- (a) the disclosure of that information may prejudice the welfare or safety of any third party;
- (b) the information constitutes criminal intelligence.

Keeping of records by police and crime panels

34. Every police and crime panel shall keep records, in such form as the Commission shall determine, of—

- (a) every complaint and purported complaint that is made to it;
- (b) every conduct matter recorded by it under regulation 12(3) or 13(1);
- (c) every exercise of a power or performance of a duty under these Regulations.

Provision of information to the Commission

35.—(1) It shall be the duty of every police and crime panel and of every relevant office holder—

- (a) to provide the Commission with all such other information and documents specified or described in a notification given by the Commission to that panel or office holder, and
- (b) to produce or deliver up to the Commission all such evidence and other things so specified or described,

as appear to the Commission to be required by it for the purposes of the carrying out of any of its functions.

(2) Anything falling to be provided, produced or delivered up in pursuance of a requirement imposed under paragraph (1) must be provided, produced or delivered up in such form, in such manner and within such period as may be specified in—

- (a) the notification imposing the requirement; or
- (b) any subsequent notification given by the Commission for the purposes of this paragraph.

(3) Nothing in this regulation shall require a person—

- (a) to provide the Commission with any information or document, or to produce or deliver up any other thing, before the earliest time at which it is practicable for the person to do so; or
- (b) to provide, produce or deliver up anything at all in a case in which it never becomes practicable for the person to do so.

(4) A requirement imposed by any notification under this regulation may authorise or require information or documents to which it relates to be provided to the Commission electronically.

Access to premises on behalf of the Commission

36.—(1) Where—

(a) the Commission requires—

- (i) a police and crime panel, or
- (ii) a relevant office holder,

to allow a person nominated for the purpose by the Commission to have access to any premises occupied for the purposes of the functions of that panel or office holder and to documents and other things on those premises, and

(b) the requirement is imposed for any of the purposes mentioned in paragraph (2),

it shall be the duty of the panel or, as the case may be, of the office holder to secure that the required access is allowed to the nominated person.

(2) Those purposes are—

(a) the purposes of any examination by the Commission of the efficiency and effectiveness of the arrangements made in accordance with these Regulations for handling complaints or dealing with recordable conduct matters;

(b) the purposes of any investigation carried out by the Commission or under its management in accordance with these Regulations.

(3) A requirement imposed under this regulation for the purposes mentioned in paragraph (2)(a) must be notified to the police and crime panel or relevant office holder at least 48 hours before the time at which access is required.

(4) Where—

(a) a requirement imposed under this regulation for the purposes mentioned in paragraph (2)(a) requires access to any premises, document or thing to be allowed to any person, but—

(b) there are reasonable grounds for not allowing that person to have the required access at the time at which he seeks to have it,

the obligation to secure that the required access is allowed shall have effect as an obligation to secure that the access is allowed to that person at the earliest practicable time after there cease to be any such grounds as that person may specify.

(5) The provisions of this regulation are in addition to, and without prejudice to—

(a) the rights of entry, search and seizure that are or may be conferred on—

(i) a person designated for the purposes of regulation (investigations by the Commission), or

(ii) any person who otherwise acts on behalf of the Commission,

in his capacity as a constable or as a person with the powers and privileges of a constable;
or

(b) the obligations on police and crime panels and relevant office holders under regulation 7 (general duties of police and crime panels and relevant office holders) and 35 (provision of information to the Commission).

Manner and time limit of notifications

37.—(1) Any notification to be given under these Regulations shall—

(a) unless otherwise specified in these Regulations or determined in guidance issued by the Commission or the Secretary of State, be given in writing;

(b) unless otherwise specified in these Regulations, be made within such period as the Commission or the Secretary of State may determine in guidance.

(2) No time limit mentioned in these Regulations or determined by the Commission or the Secretary of State shall apply in any case where exceptional circumstances prevent that time limit being complied with.

Register to be kept by the Commission

38.—(1) The Commission shall establish and maintain a register of all information supplied to it by a police and crime panel or relevant office holder under these Regulations.

(2) Subject to paragraph (3), the Commission may publish or otherwise disclose to any person any information held on the register provided that the publication or disclosure is necessary for or conducive to the purpose of—

- (a) learning lessons from the handling of complaints, or demonstrating the thoroughness and effectiveness of investigations by or under the management of the Commission;
- (b) raising public awareness of the complaints system; or
- (c) improving the complaints system.

(3) Information may not be published or disclosed in circumstances where in the opinion of the Commission the non-disclosure of information is necessary for the purposes mentioned in regulation 33(1)(a) and (b).

Home Office
Date

Name
Minister of State

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations set out the functions of police and crime panels and the Independent Police Complaints Commission in relation to the handling of complaints and other matters concerning the conduct of police and crime commissioners, deputy police and crime commissioners, the holder of Mayor's Office for Policing and Crime and the Deputy Mayor for Policing and Crime (referred to collectively as relevant office holders). The Regulations set out the process to be followed in dealing with these complaints and matters.

In accordance with Schedule 7 to the Police Reform and Social Responsibility Act 2011, the Regulations provide for complaints alleging criminal conduct and all conduct matters (those matters other than complaints which indicate that criminal conduct has occurred) to be referred to the Commission and investigated either by the Commission itself or by a police force under the management of the Commission. The Regulations provide for any other complaint to be resolved informally by the police and crime panel, except in the case of complaints against the holder of the Mayor's Office for Policing and Crime, or the Deputy Mayor for Policing and Crime if he is a member of the London Assembly. The Regulations provide for this latter category of complaints to be passed to the standards committee of the Greater London Authority, who are responsible for dealing with other complaints about the conduct of the Mayor and Assembly members.

The Regulations are closely based on Part 2 of the Police Reform Act 2002 and the Regulations made under it, which make provision for powers, duties and procedures in relation to the handling of complaints against the police.

