

2008 No. 212

IMMIGRATION

**The Independent Police Complaints Commission (Immigration
and Asylum Enforcement Functions) Regulations 2008**

<i>Made</i>	- - - -	<i>31st January 2008</i>
<i>Laid before Parliament</i>		<i>4th February 2008</i>
<i>Coming into force</i>	- -	<i>25th February 2008</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 41 of the Police and Justice Act 2006(a).

Citation and commencement

1. These Regulations may be cited as the Independent Police Complaints Commission (Immigration and Asylum Enforcement Functions) Regulations 2008 and shall come into force on 25th February 2008.

Interpretation

2.—(1) In these Regulations –

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

“appropriate authority” means a person nominated by the Secretary of State;

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

“Complaints Regulations” means the Police (Complaints and Misconduct) Regulations 2004(d);

“complaint” has the meaning given in section 12 of the 2002 Act for the purposes of these Regulations(e);

“conduct matter” has the meaning given in section 12 of the 2002 Act for the purposes of these Regulations;

“death and serious injury matter” and “DSI matter” have the meaning given in section 12 of the 2002 Act;

(a) 2006 c.48.

(b) 2002 c.30. The 2002 Act has been amended by a number of enactments.

(c) Section 9 of the 2002 Act has been amended by: sections 1(3) and 52 of, paragraphs 80 and 81 of Part 7 of Schedule 1 to, and paragraph 40 of Schedule 14 to, the Police and Justice Act 2006 (c. 48); sections 55(1) and 174(2) of, paragraphs 1 and 2 of Schedule 2 to, and Part 2 of Schedule 17 to, the Serious Organised Crime and Police Act 2005 (c. 15).

(d) S.I. 2004/643 as been amended by S.I. 2006/1406.

(e) Section 12 of the 2002 Act has been amended by section 160 of, and paragraphs 1 and 3 of Schedule 12 to, the Serious Organised Crime and Police Act 2005.

“immigration decision” has the meaning given in section 82(2) of the Nationality, Immigration and Asylum Act 2002(a); and

“Staff Conduct Regulations” means the Independent Police Complaints Commission (Staff Conduct) Regulations 2004(b).

(2) In these Regulations “specified enforcement functions” means subject to paragraphs (3) and (4)—

- (a) powers of entry;
- (b) powers to search persons and property;
- (c) powers to seize or detain property;
- (d) powers to arrest persons;
- (e) powers to detain persons;
- (f) powers to examine persons or otherwise obtain information (including powers to take fingerprints or to acquire other personal data); and
- (g) powers in connection with the removal of persons from the United Kingdom.

(3) The following shall not be regarded as an enforcement function—

- (i) the making of an immigration decision;
- (ii) the making of any decision to grant or refuse asylum; or
- (iii) the giving of any direction to remove persons from the United Kingdom.

(4) For the avoidance of doubt, references to “specified enforcement functions” include their exercise in connection with any authorisation granted under Part 2 of the Regulation of Investigatory Powers Act 2000(c).

Conferral of functions on the Independent Police Complaints Commission

3.—(1) Subject to regulation 4, the Commission shall have functions in relation to the exercise (in, or in relation to, England and Wales) by—

- (a) immigration officers of the enforcement functions specified in paragraph (2), and
- (b) officials of the Secretary of State of the enforcement functions specified in paragraph (2) when carried out in relation to immigration or asylum.

(2) Subject to paragraphs (3) and (4) the enforcement functions are—

- (a) powers of entry;
- (b) powers to search persons and property;
- (c) powers to seize or detain property;
- (d) powers to arrest persons;
- (e) powers to detain persons;
- (f) powers to examine persons or otherwise obtain information (including powers to take fingerprints or to acquire other personal data); and
- (g) powers in connection with the removal of persons from the United Kingdom.

(3) The following shall not be regarded as an enforcement function—

- (i) the making of an immigration decision;
- (ii) the making of any decision to grant or refuse asylum; or
- (iii) the giving of directions to remove persons from the United Kingdom.

(a) 2002 c. 41. Section 82(2) has been amended by: sections 26(2) and 31 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c.19); and sections 2, 11(6), 47(6), 57(2) and 61 of, and Schedule 3 to, the Immigration, Asylum and Nationality Act 2004 (c.13). Section 82(2) has also been amended by section 35(1) and (3) of the UK Borders Act 2007 (c. 30) but that amendment is not yet in force.

(b) S. I. 2004/660.

(c) 2000 c.23.

(4) For the avoidance of doubt, the enforcement functions specified in paragraph (2) include their exercise in connection with any authorisation granted under Part 2 of the Regulation of Investigatory Powers Act 2000.

4. The Commission shall not have functions in relation to—

- (a) a complaint relating to the conduct of an immigration officer exercising specified enforcement functions or an official of the Secretary of State exercising specified enforcement functions in relation to immigration or asylum,
- (b) a conduct matter relating to the conduct of an immigration officer exercising specified enforcement functions or an official of the Secretary of State exercising specified enforcement functions in relation to immigration or asylum, or
- (c) a DSI matter relating to an immigration officer exercising specified enforcement functions or an official of the Secretary of State exercising specified enforcement functions in relation to immigration or asylum,

where the conduct or matter is alleged to have occurred before 1st April 2007.

Application of provisions of the 2002 Act with modifications

5. For the purposes of the Commission exercising the functions conferred on it by regulation 3(1)—

- (a) Part 2 of the 2002 Act (complaints and misconduct) shall apply and have effect with the modifications made by Schedule 1; and
- (b) Schedule 3 to the 2002 Act (handling of complaints and conduct matters etc) shall apply and have effect with the modifications made by Schedule 2.

Application of other provisions with modifications

6. For the purposes of the Commission exercising the functions conferred on it by regulation 3(1)—

- (a) the Complaints Regulations shall apply and have effect with the modifications made by Schedule 3;
- (b) the Staff Conduct Regulations shall apply and have effect with the modifications made by Schedule 4;
- (c) the Independent Police Complaints Commission (Investigatory Powers) Order 2004^(a) shall apply; and
- (d) the Regulation of Investigatory Powers (Communications Data) Order 2003^(b) shall apply in so far as it makes provision in respect of the Commission.

Disclosure of Information

7. Where the Commission, or any person acting on its behalf, obtains information in the course of performing a function conferred on it by regulation 3(1) they may not disclose it except as permitted by Part 2 of the 2002 Act or the Complaints Regulations as modified by Schedule 1 and Schedule 3 respectively.

Use of Information

8. Where the Commission, or any person acting on its behalf, obtains information in the course of performing a function conferred on it by regulation 3(1) they may not use it for any purpose other than the performance of a function under these Regulations.

(a) S.I.2004/815.

(b) S.I. 2003/3172 as amended by S.I. 2005/1083.

Signed by authority of the Secretary of State

Home Office
31st January 2008

Liam Byrne
Minister of State

SCHEDULE 1

Regulation 5(a)

MODIFICATION OF PART 2 OF THE 2002 ACT

1.—(1) Section 10 of the 2002 Act (general functions of the Commission)(a) is modified as follows.

(2) In subsection (1), after “the functions of the Commission” insert “in relation to the exercise by immigration officers of specified enforcement functions and officials of the Secretary of State of specified enforcement functions relating to immigration or asylum”.

(3) In subsection (1)(a), for “police authorities and chief officers” substitute “the appropriate authority”.

(4) In subsection (1)(e)(b) omit “and also of police practice in relation to other matters.”.

(5) Omit subsections (1)(f), (1)(g) and (1)(h)(c).

(6) For subsection (3)(d), substitute—

“(3) In carrying out its functions under subsection (1)(d) and (e) the Commission shall only have regard to the following matters—

(a) the handling of complaints which—

(i) fall within regulation 2(2) of the Complaints Regulations;

(ii) the Commission has notified the appropriate authority that it requires to be referred to it for its consideration; or

(iii) the appropriate authority has referred to the Commission on the grounds that it would be appropriate to do so by reason of—

(aa) the gravity of the subject matter of the complaint; or

(bb) any exceptional circumstances;

(b) the recording of conduct matters which—

(i) fall within regulation 5(1) of the Complaints Regulations;

(ii) the Commission has notified the appropriate authority that it requires to be referred to it for its consideration;

(iii) the appropriate authority has referred to the Commission on the grounds that it would be appropriate to do so by reason of—

(a) Section 10 of the 2002 Act has been amended by: sections 55(1) and 174(2) of, and Schedules 2 and 17 to, the Serious Organised Crime and Police Act 2005; and sections 1(3) and 52 of, and Schedules 1 and 15 to, the Police and Justice Act 2006.

(b) Section 10(1)(e) of the 2002 Act has been amended by sections 55(1) and 174(2) of, paragraphs 1, 2 and 3 of Schedule 2 to, and Schedule 17 to, the Serious Organised Crime and Police Act 2005.

(c) Section 10(1)(f) of the 2002 Act has been amended by: sections 55(1) and 174(2) of, paragraphs 1, 3(1) and 2(a) of Schedule 2 to, and Schedule 17 to, the Serious Organised Crime and Police Act 2005; and section 52 of, and Schedule 15 to the Police and Justice Act 2006. Section 10(1)(g) of the 2002 Act has been amended by section 55(1) of, and paragraphs 1, 3(1) and 2(c) of Schedule 2 to, the Serious Organised Crime and Police Act 2005. Section 10(1)(h) of the 2002 Act is amended by section 1(3) of, and paragraphs 80 and 82 of Schedule 1 to, the Police and Justice Act 2006.

(d) Section 10(3) of the 2002 Act has been amended by: sections 55(1) and 174(2) of, paragraphs 1 and 3 of Schedule 2 to, and Schedule 17 to, the Serious Organised Crime and Police Act 2005; and section 1(3), and paragraphs 80 and 82 of Schedule 12 to, the Police and Justice Act 2006.

- (aa) the gravity of the subject matter of the complaint; or
 - (bb) any exceptional circumstances;
 - (c) the recording of a DSI matter; and
 - (d) the manner in which any such complaints or any such matters as are mentioned in paragraph (b) or (c) are investigated or otherwise handled and dealt with.”
- (7) In subsection (4), for “subsections (1) and (3)” substitute “subsection (1)”.
- (8) After subsection (4) insert—
- “(4A) It shall be the duty of the Commission to carry out its functions under subsection (1) in relation to the following:
- (a) any DSI matter;
 - (b) those complaints falling within paragraph 2(2) of the Complaints Regulations;
 - (c) those conduct matters falling within paragraph 5(1) of the Complaints Regulations;
 - (d) those complaints or recordable conduct matters which the Commission has notified the appropriate authority that it requires to be referred to it for its consideration;
 - (e) those complaints or recordable conduct matters that the appropriate authority has referred to the Commission on the grounds that it would be appropriate to do so by reason of —
 - (i) the gravity of the subject-matter of the complaint; or
 - (ii) any exceptional circumstances; and
 - (f) any matter that is subject to any of the appeal rights set out in Schedule 3.”
- (9) In subsection (5)(a)—
- (a) for “the chief inspector of constabulary” substitute “the Chief Inspector of the Border and Immigration Agency^(a), Her Majesty’s Chief Inspector of Prisons, the Prison and Probation Ombudsman”; and
 - (b) for “between the Commission and the inspectors of constabulary” substitute “in relation to the exercise by immigration officers of specified enforcement functions and officials of the Secretary of State of specified enforcement functions in relation to immigration or asylum”.
- (10) After subsection (5) insert—
- “(5A) Until such time as the chief inspector of the Border and Immigration Agency is appointed under section 48 of the UK Borders Act 2007 (establishment of Border and Immigration Inspectorate)^(b), subsection (5) shall be read as if his name is omitted.”
- (11) For subsection (7)(c), substitute—
- “(7) The Commission may, in connection with the making of any recommendation or the giving of any advice to any person for the carrying out of its function under subsection (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.”
- (12) Omit subsections (8) and (9).
- 2.—(1)** Section 11 of the 2002 Act (reports to the Secretary of State)^(d) is modified as follows.
- (2) For subsection (4) substitute—

(a) The Chief Inspector of the Border and Immigration Agency shall be appointed under section 48 of the UK borders Act 2007 (c.30). Section 48 is not yet in force.

(b) 2007 c.30.

(c) Section 10(7) of the 2002 Act has been amended by: sections 55(1) and 174(2) of, paragraphs 1 and 3 of Schedule 2 to, and Schedule 17 to, the Serious Organised Crime and Police Act 2005; and section 1(3), and paragraphs 80 and 82 of Schedule 1 to, the Police and Justice Act 2006.

(d) Section 11 of the 2002 Act has been amended by: section 55(1) of, and Schedule 2 to, the Serious Organised Crime and Police Act 2005; and sections 1(3) and 52 of, and Schedules 1 and 15 to, the Police and Justice Act 2006.

“(4) The Commission shall prepare such reports containing advice and recommendations as it thinks appropriate for the purpose of carrying out its function under subsection (1)(e) of section 10.”.

(3) Omit subsections (6)(a), (7), (8)(b), (9) and (9A)(c).

(4) In subsection (10)(d), from the words “under subsection (4)” to the end substitute “under subsection (4) to the Secretary of State and the appropriate authority”.

3.—(1) Section 12 of the 2002 Act (complaints, matters and persons to which Part 2 applies)(e) is modified as follows.

(2) In subsections (1) and (2), for “a person serving with the police” substitute “an immigration officer exercising specified enforcement functions or an official of the Secretary of State exercising specified enforcement functions in relation to immigration or asylum”.

(3) In subsections (2B), (2C) and (2D)(f), for “a person serving with the police” (in each place that it occurs) substitute “an immigration officer exercising specified enforcement functions or an official of the Secretary of State exercising specified enforcement functions in relation to immigration or asylum”.

(4) Omit subsection (7).

4.—(1) Section 14 of the 2002 Act (direction and control matters) is modified as follows.

(2) For subsection (1) substitute—

“(1) Nothing in Part 2 or Schedule 3 shall have effect with respect to so much of any complaint as relates to the direction and control of immigration officers exercising specified enforcement functions or officials of the Secretary of State exercising specified enforcement functions in relation to immigration or asylum by the Secretary of State.”.

(3) For subsection (2) substitute—

“(2) The Secretary of State may issue guidance to any person he sees fit about the handling of so much of any complaint as relates to the direction and control of immigration officers exercising specified enforcement functions or officials of the Secretary of State exercising specified enforcement functions in relation to immigration or asylum.”.

(4) In subsection (3) for “a chief officer and of a police authority” substitute “the appropriate authority”.

5.—(1) Section 15 of the 2002 Act (general duties of police authorities, chief officers and inspectors)(g) is modified as follows.

(2) For the heading of this section substitute “General duties of the appropriate authority and the Secretary of State in relation to immigration or asylum functions”.

(3) For subsection (1) substitute—

“(1) It shall be the duty of the appropriate authority, the Chief Inspector of the Border and Immigration Agency, Her Majesty’s Chief Inspector of Prisons and the Prisons and

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- (a) Section 11(6) of the 2002 Act has been amended by: section 55(1), and paragraphs 1 and 4 of Schedule 2 to, the Serious Organised Crime and Police Act 2005; and sections 1(3) and 52 of, paragraphs 80 and 83 of Schedule 1 to, and Schedule 15 to, the Police and Justice Act 2006.
 - (b) Section 11(8) has been amended by section 55(1), and paragraphs 1 and 4 of Schedule 2 to, the Serious Organised Crime and Police Act 2005.
 - (c) Section 11(9A) of the 2002 Act was inserted by section 1(3) to, and paragraphs 80 and 83 of Schedule 1 to, the Police and Justice Act 2006.
 - (d) Section 11(10) of the 2002 Act has been amended by: section 55(1) of, and paragraphs 1 and 4 of Schedule 2 to, the Serious Organised Crime and Police Act 2005; and sections 1(3) and 52, paragraphs 80 and 83 of Schedule 1 to, and Schedule 15 to, the Police and Justice Act 2006.
 - (e) Section 12 of the 2002 Act has been amended by section 160 of, and paragraphs 1 and 3 of Schedule 12 to, the Serious Organised Crime and Police Act 2005.
 - (f) Sections 12(2B), (2C) and (2D) of the 2002 Act were inserted by section 160 of, and paragraphs 1 and 3 of Schedule 12 to, the Serious Organised Crime and Police Act 2005.
 - (g) Section 15 of the 2002 Act has been amended by: sections 55(1) and 174(2) of, and paragraphs 1 and 5 of Schedule 2 to, the Serious Organised Crime and Police Act 2005; and section 1(3), and paragraphs 80 and 84 to Schedule 1 to, the Police and Justice Act 2006.

Probation Ombudsman to ensure that they are kept informed, in relation to the exercise by immigration officers of specified enforcement functions and officials of the Secretary of State of specified enforcement functions in relation to immigration or asylum, about all matters falling within subsection (2).”.

(4) For subsections (1A) and (1B)(a) substitute—

“(1A) Until such time as the Chief Inspector of the Border and Immigration Agency is appointed under section 48 of the UK Borders Act 2007, subsection (5) shall be read as if his name is omitted from those sections.”.

(5) For subsection (3)(b) substitute—

“(3) Where the appropriate authority or the Commission requires the chief officer of a police force to provide a member of his force for appointment under paragraph 17A or 18A of Schedule 3 it shall be the duty of the chief officer to whom the requirement is addressed to comply with it.”.

(6) For subsection (4)(c) substitute—

“(4) It shall be the duty of—

- (a) the Secretary of State,
- (b) the appropriate authority,
- (c) a police authority maintaining a police force, and
- (d) the chief officer of police of a police force

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 this Part.”.

(7) For subsection (5)(d) substitute—

“(5) It shall be the duty of the appropriate authority to ensure that a person appointed under paragraph 16, 17, 17A, 18, or 18A of Schedule 3 to carry out an investigation is given all such assistance and co-operation in the carrying out of that investigation as that person may reasonably require.”.

(8) Omit subsections (6) to (10)(e).

6.—(1) Section 16 of the 2002 Act (payment for assistance with investigations)(f) is modified as follows.

(2) In subsection (1)—

(a) in paragraph (a)—

- (i) for “one” substitute “a”;
- (ii) for “to another” substitute “to the appropriate authority”; and

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- (a) Section 15(1A) of the 2002 Act was inserted by: section 55(1) of, and paragraphs 1 and 5 of Schedule 2 to, the Serious Organised Crime and Police Act 2005. Section 15(1B) of the 2002 Act was inserted by section 1(3) of, and paragraphs 80 and 84 to Schedule 1 to, the Police and Justice Act 2006.
 - (b) Section 15(3) of the 2002 Act has been amended by section 55(1) of, and paragraphs 1, 5, and 3 of Schedule 2 to, the Serious Organised Crime and Police Act 2005.
 - (c) Section 15(4) of the 2002 Act has been amended by section 55(1) of, and paragraphs 1 and 5 of Schedule 2 to, the Serious Organised Crime and Police Act 2005.
 - (d) Section 15(5) of the 2002 Act has been amended by section 55(1) of, and paragraphs 1 and 5 of Schedule 2 to, the Serious Organised Crime and Police Act 2005.
 - (e) Section 15(6) of the 2002 Act has been amended by: sections 55(1) and 174(2) of, paragraphs 1 and 5 of Schedule 2 to, and Schedule 17 to, the Serious Organised Crime and Police Act 2005. Section 15(7) of the 2002 Act has been amended by section 55(1) of, and paragraphs 1 and 5 of Schedule 2 to, the Serious Organised Crime and Police Act 2005. Section 15(8) and (9) was inserted by section 55(1) of, and paragraphs 1 and 5 of Schedule 2 to, the Serious Organised Crime and Police Act 2005. Sections 15(8A) and (8B) of the 2002 Act was substituted by section 1(3), and paragraphs 60 and 84 of Schedule 1 to, the Police and Justice Act 2006. Section 15(9) of the 2002 Act has been amended by section 1(3) and paragraphs 80 and 84 of Schedule 1 to, the Police and Justice Act 2006. Section 15(10) of the 2002 Act was inserted by section 1(3) and paragraphs 80 and 84 of Schedule 1 to, the Police and Justice Act 2006.
 - (f) Section 16 of the 2002 Act has been amended by sections 55(1) and 160 of, paragraphs 1 and 6 of Schedule 2 to, and paragraphs 1 and 5 of Schedule 12 to, the Serious Organised Crime and Police Act 2005.

- (iii) omit “or”;
- (b) at the end of paragraph (b) insert “or”; and
- (c) after paragraph (b) insert—
 - “(c) a police force provides assistance by agreement under paragraph 17A(2) or 18A(2) of Schedule 3.”.
- (3) In subsection (2)(a)(a)—
 - (a) for “one police force to another” substitute “a police force to the appropriate authority”;
 - (b) for “the first force (“the assisting force”)” substitute “that force”;
 - (c) in sub-paragraph (i) for “a member of the other force” substitute “an immigration officer exercising specified enforcement functions or an official of the Secretary of State exercising specified enforcement functions in relation to immigration or asylum”; and
 - (d) in sub-paragraph (ii)—
 - (i) for “relevant officer” substitute “person being investigated”; and
 - (ii) for “a member of the other force” substitute “an immigration officer exercising specified enforcement functions or an official of the Secretary of State exercising specified enforcement functions in relation to immigration or asylum”.
- (4) In subsection (2)(b)(b)—
 - (a) omit “(“the assisting force”)”;
 - (b) in sub-paragraph (i), for “not a member of that force” substitute “an immigration officer exercising specified enforcement functions or an official of the Secretary of State exercising specified functions in relation to immigration or asylum”; and
 - (c) in sub-paragraph (ii)—
 - (i) for “relevant officer” substitute “person being investigated”; and
 - (ii) for “not a member of that force” substitute “an immigration officer exercising specified enforcement functions or an official of the Secretary of State exercising specified enforcement functions in relation to immigration or asylum” (in each place that it occurs).
- (5) In subsection (3)—
 - (a) for “one police force to another, the police authority maintaining that other police force” substitute “a police force to the appropriate authority or to the Commission or where a police force provides assistance by agreement under paragraph 17A(2) or 18A(2) of Schedule 3, the Secretary of State”;
 - (b) for “the assisting force” substitute “that force”;
 - (c) omit “(if any)”;
 - (d) in paragraph (b)(ii) omit “, by one police force to another”.
- (6) Omit subsection (4) to (7)(c).

7. Section 16A of the 2002 Act (investigations: National Policing Improvement Agency involvement)(d) is omitted.

(a) Section 16(2)(a) of the 2002 Act has been amended by section 160 to, and paragraphs 1 and 5 of Schedule 12 to, the Serious Organised Crime and Police Act 2005.

(b) Section 16(2)(b) of the 2002 Act has been amended by section 160 to, and paragraphs 1 and 5 of Schedule 12 to, the Serious Organised Crime and Police Act 2005.

(c) Section 16(5) and (6) of the 2002 Act was substituted by section 55(1) to, and paragraphs 1 and 6 of Schedule 2 to, the Serious Organised Crime and Police Act 2005.

(d) Section 16A of the 2002 Act was inserted by section 1(3) to, and paragraphs 80 and 85 of Schedule 1 to, the Police and Justice Act 2006.

8.—(1) Section 17 of the 2002 Act (provision of information to the Commission)(a) is modified as follows.

- (2) In subsection (1) for paragraphs (a) and (b) substitute “the appropriate authority”.
- (3) In subsection (2)—
 - (a) for “every police authority and of every chief officer” substitute “the appropriate authority”; and
 - (b) in paragraph (a) omit “or chief officer”.
- (4) In subsection (4)—
 - (a) for “a police authority or chief officer” substitute “the appropriate authority”; and
 - (b) in paragraphs (a) and (b) for “that authority, or chief officer” substitute “the appropriate authority”.
- (5) Subsection (6) is omitted.

9.—(1) Section 18 of the 2002 Act (inspections of police premises on behalf of the Commission)(b) is modified as follows.

- (2) In the heading omit “police”.
- (3) In subsection (1)—
 - (a) in paragraph (a), for sub-paragraphs (i) and (ii) substitute “the appropriate authority”;
 - (b) for “that force” substitute “immigration officers exercising specified enforcement functions and officials of the Secretary of State exercising specified enforcement functions in relation to immigration or asylum”; and
 - (c) for “authority or, as the case may be, of the chief officer” substitute “appropriate authority”.
- (4) In subsection (2)(c), for “force in question” substitute the “appropriate authority”.
- (5) In subsection (3), for “authority or chief officer” substitute “appropriate authority”.
- (6) In subsection (5)(b), for “police authorities and chief officers” substitute “the appropriate authority”.

10.—(1) Section 20 of the 2002 Act (duty to keep the complainant informed) is modified as follows.

- (2) After subsection (3) insert—

“(3A) The Commission shall consult the appropriate authority before deciding whether or not to disclose that information to the complainant in accordance with subsection (1) or to give directions under subsection (3), and shall have regard to any representations made to it by the appropriate authority.”.
- (3) In subsection (8), for “any police authority or chief officer” substitute “the appropriate authority”.

11.—(1) Section 21 of the 2002 Act (duty to provide information for other persons)(d) is modified as follows.

- (2) In subsection (1)(e), in paragraph (a) for “an appropriate authority” substitute “the appropriate authority”.

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- (a) Section 17(6) of the 2002 Act was inserted by section 1(3) to, and paragraphs 80 and 86 of Schedule 1 to, the Police and Justice Act 2006.
 - (b) Section 18 of the 2002 Act has been amended by section 160 of, and paragraphs 1 and 6 of Schedule 12 to, the Serious Organised Crime and Police Act 2005.
 - (c) Section 18(2) of the 2002 Act has been amended by section 160 of, and paragraphs 1 and 6 of Schedule 12 to, the Serious Organised Crime and Police Act 2005.
 - (d) Section 21 of the 2002 Act has been amended by section 160 of, and paragraphs 1 and 7 of Schedule 12 to, the Serious Organised Crime and Police Act 2005.
 - (e) Section 21(1) of the 2002 Act has been amended by section 160 of, and paragraphs 1 and 7 of Schedule 12 to, the Serious Organised Crime and Police Act 2005.

(3) In subsection (3)(q) for “an appropriate authority” substitute “the appropriate authority”.

(4) After subsection (9)(a) insert—

“(9A) The Commission shall consult the appropriate authority before deciding whether or not to disclose that information to the complainant in accordance with subsection (6) or to give directions under subsection (8), and shall have regard to any representations made to it by the appropriate authority.”.

12.—(1) Section 22 of the 2002 Act (power of the Commission to issue guidance)(b) is modified as follows.

(2) For subsection (1) substitute—

“(1) The Commission may issue guidance to the appropriate authority and any person it sees fit concerning the exercise or performance, by the persons to whom the guidance is issued, of any of the powers or duties specified in subsection (2).”.

(3) In subsection (2), in paragraph (b)(iii)—

“(b)(iii) for “persons serving with the police” substitute “immigration officers exercising specified enforcement functions or officials of the Secretary of State exercising enforcement functions in relation to immigration or asylum”.

(4) For subsection (3)(c) substitute—

“(3) Before issuing any guidance under this section, the Commission shall consult the appropriate authority and any person it sees fit.”.

13.—(1) Section 23 of the 2002 Act (regulations)(d) is modified as follows.

(2) In subsection (2)(k)(e), for “a person serving with the police” substitute “an immigration officer exercising specified enforcement functions or an official of the Secretary of State exercising specified enforcement functions in relation to immigration or asylum”.

(3) In subsection (2)(n), for “police authorities and chief officers” substitute “the Secretary of State”.

(4) In subsection (2)(p)—

(a) for “chief officers” substitute “the appropriate authority”; and

(b) for “them” substitute “it”.

14.—(1) Section 24 (consultation on regulations)(f) is modified as follows.

(2) At the end of paragraph (a) insert “and”;

(3) Omit paragraphs (b) and (c).

15. Sections 26 (forces maintained otherwise than by police authorities), 26A (Serious Organised Crime Agency)(g) and 26B (National Policing Improvement Agency)(h) of the 2002 Act are omitted.

(a) section 21(9) of the 2002 Act has been amended by section 160 of, and paragraphs 1 and 7 of Schedule 12 to, the Serious Organised Crime and Police Act 2005.

(b) Section 22 of the 2002 Act has been amended by: section 160 of, and paragraphs 1 and 8 to Schedule 12 to, the Serious Organised Crime and Police Act 2005; and section 6(1) of, and paragraph 11 of Schedule 4 to, the Police and Justice Act 2006.

(c) Section 22(3) of the 2002 Act has been amended by section 6(1) of, and paragraph 11 of Schedule 4 to, the Police and Justice Act 2006.

(d) Section 23 of the 2002 Act has been amended by section 160 of, and paragraphs 1 and 9 to Schedule 12 to, the Serious Organised Crime and Police Act 2005.

(e) Section 23(2) of the 2002 Act has been amended by section 160 of, and paragraphs 1 and 9 of Schedule 12 to, the Serious Organised Crime and Police Act 2005.

(f) Section 24 of the 2002 Act has been amended by section 6(1) of, and paragraph 12 of Schedule 4 to, the Police and Justice Act 2006.

(g) Section 26A of the 2002 Act was inserted by section 55(1) of, and paragraphs 1 and 8 of Schedule 2 to, the Serious Organised Crime and Police Act 2005.

(h) Section 26B of the 2002 Act was inserted by section 1(3) of, and paragraphs 80 and 87 of Schedule 1 to, the Police and Justice Act 2006.

- 16.**—(1) Section 29 of the 2002 Act (interpretation of Part 2)(a) is modified as follows.
- (2) In subsection (1)—
- (a) for the definition of “the appropriate authority” substitute—
 - ““the appropriate authority” means a person nominated by the Secretary of State;”;
 - (b) after the definition of “complaint” insert—
 - ““Complaints Regulations” means the Police (Complaints and Misconduct) Regulations 2004(b);”;
 - (c) for the definition of “disciplinary proceedings” substitute—
 - ““disciplinary proceedings” means, in relation to an immigration officer exercising specified enforcement functions or an official of the Secretary of State exercising specified enforcement functions in relation to immigration or asylum, any proceedings or management process, other than criminal proceedings or an investigation under paragraphs 16 to 19 of Schedule 3, in which the conduct of such a person is considered in order to determine whether a sanction or punitive measure is to be imposed against him in relation to that conduct;”;
 - (d) after the definition of “document” insert—
 - ““immigration decision” has the meaning given in section 82(2) of the Nationality, Immigration and Asylum Act 2002;”;
 - (e) for the definition of “local resolution” substitute—
 - ““local resolution” in relation to a complaint, means the handling of that complaint in accordance with a procedure which does not involve a formal investigation by the Secretary of State;”;
 - (f) omit the definition of “relevant force”.
 - (g) omit the definition of “senior officer”.
 - (h) omit the definition of “serving with the police”.
- (3) For (1A) and (1B) insert—
- “(1A) In this Part “specified enforcement functions” means, subject to subsections (1B) and (1C)—
 - (a) powers of entry;
 - (b) powers to search persons and property;
 - (c) powers to seize or detain property;
 - (d) powers to arrest persons;
 - (e) powers to detain persons;
 - (f) powers to examine persons or otherwise obtain information (including powers to take fingerprints or to acquire other personal data); and
 - (g) powers in connection with the removal of persons from the United Kingdom.
 - (1B) The following shall not be regarded as an enforcement function—
 - (i) the making of an immigration decision;
 - (ii) the making of any decision to grant or refuse asylum; or
 - (iii) the giving of any directions to remove persons from the United Kingdom.
 - (1C) For the avoidance of doubt, references to “specified enforcement functions” in subsection (1A) include their exercise in connection with any authorisation granted under Part 2 of the Regulation of Investigatory Powers Act 2000.”.

(a) Section 29 of the 2002 Act has been amended by: sections 55(1) and 160 of, paragraphs 1 and 2 of Schedule 2 to, and paragraphs 1 and 10 of Schedule 12 to, the Serious Organised Crime and Police Act 2005; and sections 1(3) and 52 of, paragraphs 80 and 88 of Schedule 1 to, and Schedule 15 to, the Police and Justice Act 2006.

(b) S.I. 2004/643 as amended by S.I. 2006/1406.

- (4) In subsection (3)—
 - (a) for paragraph (a) substitute—
 - “(a) an immigration officer exercising specified enforcement functions; or”;
 - (b) for paragraph (b) substitute—
 - “(b) an official of the Secretary of State exercising specified enforcement functions in relation to immigration or asylum”; and
 - (c) omit paragraphs (c) and (d).
- (5) In subsection (4)—
 - (a) in paragraph (a) for “chief officer” substitute “person”; and
 - (b) for “to (d)” substitute “or (b)”.
- (6) In subsection (6), for “17, 18” substitute “17, 17A, 18, 18A”.
- (7) Omit subsection (7).

SCHEDULE 2

Regulation 5(b)

MODIFICATION OF SCHEDULE 3 TO THE 2002 ACT

1. Schedule 3 to the 2002 Act is modified as follows.
 - 2.—(1) Paragraph 1 (duties to preserve evidence relating to complaints) is modified as follows.
 - (2) Omit sub-paragraph (1).
 - (3) For sub-paragraph (2) substitute—
 - “(2) Where—
 - (a) a complaint is made to the appropriate authority about the conduct of an immigration officer exercising specified enforcement functions or an official of the Secretary of State exercising specified enforcement functions in relation to immigration or asylum, or
 - (b) the appropriate authority becomes aware that a complaint about an immigration officer exercising specified enforcement functions or an official of the Secretary of State exercising specified enforcement functions in relation to immigration or asylum has been made to the Commission;

the appropriate authority shall take all such steps as appear to it to be appropriate for the purposes of Part 2 of this Act for obtaining and preserving evidence relating to the conduct complained of.”
 - (4) In sub-paragraph (3), for “chief officer’s” substitute “appropriate authority’s”.
 - (5) In sub-paragraph (4)—
 - (a) for “he shall” substitute “the appropriate authority shall”;
 - (b) for “he is” substitute “it is”; and
 - (c) for “him” substitute “it”.
 - (6) In sub-paragraph (5), for “a police authority” substitute “the appropriate authority”.
 - (7) In sub-paragraph (6)—
 - (a) for “a chief officer” substitute “the appropriate authority”;
 - (b) for “he” substitute “it”; and
 - (c) omit “by the police authority maintaining his force or”.
- 3.—(1) Paragraph 2 (initial handling and recording of complaints) is modified as follows.
 - (2) In sub-paragraph (1)(a), omit “police authority or chief officer who is the”.

(3) Omit sub-paragraphs (2) and (3).

(4) For sub-paragraph (5) substitute—

“(5) Where the Commission gives notification of a complaint under sub-paragraph (1) or the Commission brings any matter to the appropriate authority’s attention under sub-paragraph (4), the Commission shall notify the complainant—

(a) that the notification has been given and of what it contained; or

(b) that the matter has been brought to the appropriate authority’s attention to be dealt with otherwise than as a complaint.”.

(5) For sub-paragraph (6) substitute—

“(6) Where the appropriate authority receives a complaint made to it, or a complaint is notified to the appropriate authority, the authority shall record the complaint.”.

4.—(1) Paragraph 3 (failures to notify or record a complaint) is modified as follows.

(2) In sub-paragraph (1), for “a police authority or chief officer” substitute “the appropriate authority”.

(3) In sub-paragraph (2)—

(a) for “police authority or chief officer” substitute “appropriate authority”; and

(b) for “authority or chief officer” substitute “appropriate authority”.

(4) In sub-paragraph (3)—

(a) for “any” substitute “a”;

(b) for “police authority or chief officer” substitute “appropriate authority”; and

(c) at the end insert “where that failure concerns a complaint falling within regulation 2(2) of the Complaints Regulations”.

(5) In sub-paragraph (4)—

(a) for “police authority or chief officer” substitute “appropriate authority”; and

(b) for “a police authority or chief officer” substitute “the appropriate authority”.

(6) In sub-paragraph (6)(a), for “police authority or, as the case may be, the chief officer” substitute “appropriate authority”.

(7) In sub-paragraph (6)(b), for “police authority or chief officer” substitute “appropriate authority”.

5.—(1) Paragraph 4 (reference of complaints to the Commission) is modified as follows.

(2) For sub-paragraph (3) insert—

“(3) In a case where—

(a) the Commission has notified the appropriate authority that it requires a complaint to be referred to it for its consideration; or

(b) a complaint has been referred to the Commission on the grounds that it would be appropriate to do so by reason of the gravity of the subject matter or complaint, or any exceptional circumstances;

the Commission may give such direction to the appropriate authority as it considers appropriate for recording the complaint.”.

(3) After sub-paragraph (3) insert—

“(3A) Directions under sub-paragraph (3) may require action taken in pursuance of the directions to be treated as taken in accordance with any such provision of paragraph 2 as may be specified in the direction.”.

(4) In sub-paragraph (5)(b)—

(a) for “a police authority or chief officer” substitute “the appropriate authority”; and

(b) omit “or (3)”.

(5) In sub-paragraph (6)—

- (a) for “A police authority or chief officer” substitute “The appropriate authority”; and
- (b) in paragraph (b), omit “or chief officer”.

6. In paragraph 5 (duties of Commission on references under paragraph 4), in sub-paragraph (1), for “a police authority or chief officer” substitute “the appropriate authority”.

7.—(1) Paragraph 6 (handling of complaints by the appropriate authority) is modified as follows.

(2) For sub-paragraph (2) substitute—

“(2) The appropriate authority shall determine whether or not the complaint is suitable for being subjected to local resolution, and if it determines that it is so suitable it shall be so subjected.”.

(3) Omit sub-paragraphs (3) to (7).

8. Paragraphs 7 (dispensation by the Commission from requirements of Schedule), 8 (local resolution of complaints) and 9 (appeals relating to local resolution) are omitted.

9.—(1) Paragraph 10 (conduct matters arising in civil proceedings) is modified as follows.

(2) In sub-paragraph (1)—

- (a) for “a police authority or chief officer” substitute “the appropriate authority” (in each place that it occurs);
- (b) in paragraph (a), for “that authority or chief officer” substitute “the Secretary of State”; and
- (c) in paragraph (b), for “that authority or chief officer” substitute “the appropriate authority”.

(3) Omit sub-paragraph (2).

(4) For sub-paragraph (3) substitute—

“(3) Where the appropriate authority considers that sub-paragraph (1) applies it shall record that conduct matter.”.

10. In paragraph 11 (recording etc. of conduct matters in other cases), in sub-paragraph (1), omit “police authority or chief officer who is the”.

11.—(1) Paragraph 12 (duties to preserve evidence relating to conduct matters) is modified as follows.

(2) Omit sub-paragraph (1).

(3) In sub-paragraph (2)—

- (a) for “a chief officer” substitute “the appropriate authority”;
- (b) for “a person under his direction and control” substitute “an immigration officer exercising specified enforcement functions or an official of the Secretary of State exercising specified enforcement functions in relation to immigration or asylum”;
- (c) for “his” substitute “its”; and
- (d) for “him” substitute “it”.

(4) In sub-paragraph (3)—

- (a) for “chief officer’s” substitute “appropriate authority’s”; and
- (b) for “he” substitute “it”.

(5) In sub-paragraph (4)—

- (a) for “he shall” substitute “the appropriate authority shall”;
- (b) for “he is” substitute “it is”; and
- (c) for “him” substitute “it”.

- (6) In sub-paragraph (5), for “a police authority” substitute “the appropriate authority”.
- (7) In sub-paragraph (6)—
- (a) for “chief officer” substitute “appropriate authority”;
 - (b) for “he” substitute “it”; and
 - (c) omit “the police authority maintaining his force or by”.
- 12.**—(1) Paragraph 13 (reference of conduct matters to the Commission) is modified as follows.
- (2) In sub-paragraph (1)—
- (a) for “a police authority or a chief officer” substitute “the appropriate authority”; and
 - (b) omit “in which the authority or chief officer is the appropriate authority”.
- (3) Omit sub-paragraph (3).
- (4) In sub-paragraph (5)(b)—
- (a) for “a police authority or chief officer” substitute “the appropriate authority”; and
 - (b) omit “or (3)”.
- (5) In sub-paragraph (6)—
- (a) for “a police authority or chief officer” substitute “the appropriate authority”; and
 - (b) omit “or chief officer” (in each place that it occurs).
- 13.** In paragraph 14 (duties of Commission on references under paragraph 13), in sub-paragraph (1), for “a police authority or chief officer” substitute “the appropriate authority”.
- 14.** In paragraph 14A (duty to record DSI matters)(a), in sub-paragraph (1), omit “police authority or chief officer who is the”.
- 15.**—(1) Paragraph 14B (duty to preserve evidence relating to DSI matters) is modified as follows.
- (2) In sub-paragraph (1)—
- (a) for “a police authority, and” substitute “the appropriate authority”; and
 - (b) omit sub-paragraph (b).
- (3) Omit sub-paragraph (2).
- (4) In sub-paragraph (3)—
- (a) for “chief officer’s” substitute “appropriate authority’s”;
 - (b) for “(2)” substitute “(1)”; and
 - (c) for “he” substitute “it”.
- (5) In sub-paragraph (4)—
- (a) for “he shall” substitute “the appropriate authority shall”;
 - (b) for “he” substitute “it”; and
 - (c) for “him” substitute “it”.
- (6) In sub-paragraph (5), for “a police authority” substitute “the appropriate authority”.
- (7) In sub-paragraph (6)—
- (a) for “chief officer” substitute “appropriate authority”;
 - (b) for “he” substitute “it”; and
 - (c) omit “the police authority maintaining his force or by”.

(a) Paragraphs 14A to 14D of Schedule 3 to the 2002 Act were inserted by section 160 of, and paragraphs 1, 11 and 12 of Schedule 12 to, the Serious Organised Crime and Police Act 2005.

16. In paragraph 14D (duties of Commission on references under paragraph 14C), in sub-paragraph (1), for “a police authority or a chief officer” substitute “the appropriate authority”.

17. In paragraph 15 (power of the Commission to determine the form of an investigation)(a) in sub-paragraph (4)—

(a) after paragraph (b) insert—

“(ba) an investigation by a police force under the supervision of the Commission;”;

(b) after paragraph (c) insert—

“(ca) an investigation by a police force under the management of the Commission;”.

18.—(1) Paragraph 16 (investigations by the appropriate authority on its own behalf)(b) is modified as follows.

(2) for sub-paragraph (3)(c) substitute—

“(3) It shall be the duty of the appropriate authority to appoint an immigration officer or an official of the Secretary of State to investigate the complaint or matter.”.

(3) Omit sub-paragraphs (4) and (5).

19.—(1) Paragraph 17 (investigations supervised by the Commission)(d) is modified as follows.

(2) For sub-paragraph (2)(e) substitute—

“(2) On being given notice of that determination, the appropriate authority shall, if it has not already done so, appoint an immigration officer or an official of the Secretary of State to investigate the complaint or matter.”.

(3) In sub-paragraph (4)(a), for “sub-paragraph (2)(a), (b) or (c)” substitute “sub-paragraph (2)”.

(4) Omit sub-paragraphs (6) and (6A)(f).

20. After paragraph 17 insert—

“Investigations by a police force under the supervision of the Commission

17A.—(1) This paragraph applies where the Commission determines that there should be an investigation by a police force under the supervision of the Commission.

(2) The appropriate authority shall—

(a) identify the police force for the police area which includes the geographical area to which the subject matter of the complaint, recordable conduct matter or DSI matter most closely relates; and

(b) take steps to obtain the agreement of the chief officer of police of that force, to the appointment of that force to carry out the investigation.

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- (a) Paragraph 15 of Schedule 3 to the 2002 Act has been amended by: section 160 of, and paragraphs 1, 11, and 13 of Schedule 12 to, the Serious Organised Crime and Police Act 2005.
- (b) Paragraph 16 of Schedule 3 to the 2002 Act has been amended by: section 160 of, and paragraphs 1, 11, 13 and 14 of Schedule 12 to, the Serious Organised Crime and Police Act 2005; and section 1(3) of, and paragraphs 80 and 89 of Schedule 1 to, the Police and Justice Act 2006.
- (c) Paragraph 16(3) of Schedule 3 to the 2002 Act has been amended by: section 160 of, and paragraphs 1, 11 and 14 of Schedule 12 to, the Serious Organised Crime and Police Act 2005; and section 1(3) of, and paragraphs 80 and 89 of Schedule 1 to, the Police and Justice Act 2006.
- (d) Paragraph 17 of Schedule 3 to the 2002 Act has been amended by: sections 55(1), and 160 of, and paragraphs 1 and 11 to Schedule 2 to, paragraphs 1, 11 and 15 of Schedule 12 to, the Serious Organised Crime and Police Act 2005; and section 1(3) of, and paragraphs 80 and 89 of Schedule 1 to, the Police and Justice Act 2006.
- (e) Paragraph 17(2) of Schedule 3 to the 2002 Act has been amended by: sections 55(1), and paragraphs 1 and 11 of Schedule 2 to, the Serious Organised Crime and Police Act 2005; and section 1(3), and paragraphs 80 and 89 of Schedule 1 to, the Police and Justice Act 2006.
- (f) Paragraph 17(6) of Schedule 3 to the 2002 Act has been amended by section 160, and paragraphs 1, 11, and 15 of Schedule 12 to, the Serious Organised Crime and Police Act 2005. Paragraph 17(6A) of Schedule 3 to the 2002 Act was inserted by section 160, and paragraphs 1, 11 and 15 of Schedule 12 to, the Serious Organised Crime and Police Act 2005.

(3) In the event that no agreement is reached under sub-paragraph (2) the appropriate authority or the Commission may require the chief officer of police of any police force it considers appropriate to carry out the investigation.

(4) A chief officer of police of a police force who agrees to or is required to carry out an investigation shall, if he has not already done so, appoint a person serving with the police who is a member of that force to investigate that complaint or matter.

(5) The Commission may require that no appointment is made under sub-paragraph (4) unless it has given notice to the chief officer that it approves the person serving with the police whom he proposes to appoint.

(6) Sub-paragraphs (4) and (5) and (7) of paragraph 17 shall apply as they apply to an investigation by the appropriate authority which the Commission has determined is one that it should supervise and for that purpose any references to the appropriate authority in those sub-paragraphs shall be treated as references to the chief officer of police concerned.

(7) An appointment of a person under sub-paragraph (4) or under paragraph 17(5) as applied by sub-paragraph (6) shall be notified by the chief officer of police concerned to the appropriate authority.”.

21. In paragraph 18 (investigations managed by the Commission)(a), in sub-paragraph(2) for “(2) to (6A)” substitute “(2) to (5)”.

22. After paragraph 18 insert—

“Investigations by a police force under the management of the Commission

18A.—(1) This paragraph applies where the Commission determines that there should be an investigation by a police force under the management of the Commission.

(2) The appropriate authority shall—

(a) identify the police force for the police area which includes the geographical area to which the subject matter of the complaint, recordable conduct matter or DSI matter most closely relates; and

(b) take steps to obtain the agreement of—

(i) the chief officer of police of that force, and

(ii) the appropriate authority,

to the appointment by the appropriate authority of that force to carry out the investigation.

(3) In the event that no agreement is reached under sub-paragraph (2) the Commission may require the chief officer of police of any police force it considers appropriate to carry out the investigation.

(4) A chief officer of police of a police force who agrees to or is required to carry out an investigation shall, if he has not already done so, appoint a person serving with the police who is a member of that force to investigate that complaint or matter.

(5) The Commission may require that no appointment is made under sub-paragraph (4) unless it has given notice to the chief officer that it approves the person serving with the police whom he proposes to appoint.

(5) Sub-paragraphs (4) and (5) of paragraph 17 shall apply as they apply to an investigation by the appropriate authority which the Commission has determined is one that it should manage and for that purpose any references to the appropriate authority in those sub-paragraphs shall be treated as references to the chief officer of police concerned.

(a) Paragraph 18 of Schedule 3 to the 2002 Act has been amended by section 160 of, and paragraphs 1, 11 and 16 of Schedule 12 to, the Serious Organised Crime and Police Act 2005.

(6) An appointment of a person under sub-paragraph (4) or 17(5) as applied by sub-paragraph (5) shall be notified by the chief officer of police concerned to the appropriate authority.

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

23. In paragraph 19 (investigations by the Commission itself)(a), sub-paragraphs (3) and (3A)(b) are omitted.

24.—(1) Paragraph 20 (restrictions on proceedings pending the conclusion of an investigation)(c) is modified as follows.

(2) For sub-paragraph (1) substitute—

“(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 Schedule until a report on that investigation has been submitted to the Commission or to the appropriate authority under paragraph 22 or 24A.”.

(3) In sub-paragraph (2) omit “or disciplinary proceedings”.

(4) After sub-paragraph (3) insert—

“(4) Where disciplinary proceedings are brought in relation to any matter which is the subject of an investigation in accordance with paragraph 17, 17A, 18, 18A or 19 of this Schedule the appropriate authority shall notify the Commission of that fact before such proceedings are brought.”.

25. Omit paragraphs 20A to 20I (accelerated procedure in special cases).

26.—(1) Paragraph 21 (power of the Commission to discontinue an investigation)(d) is modified as follows.

(2) In sub-paragraph (1), at the beginning insert “Subject to paragraph (1A),”.

(3) After sub-paragraph (1) insert—

“(1A) The Commission may only discontinue an investigation in respect of a complaint or matter specified in section 10(3) if—

- (a) the appropriate authority has applied to it for the purpose of discontinuing that investigation and;
- (b) the Commission has previously determined the form that investigation into the complaint or matter should take in accordance with paragraph 15 of this Schedule.”.

27.—(1) Paragraph 21A (procedure where conduct matter is revealed during investigation of DSI matter)(e) is modified as follows.

(2) In sub-paragraphs (1) and (3), for “a person serving with the police” substitute “an immigration officer exercising specified enforcement functions or an official of the Secretary of State exercising specified enforcement functions in relation to immigration or asylum.”.

(3) In sub-paragraph (2)(a), omit “in relation to the DSI matter and (if different) the appropriate authority in relation to the person whose conduct is in question of its determination”.

(4) In sub-paragraph (2)(b), omit “(or each of them)”.

(a) Paragraph 19 of Schedule 3 to the 2002 Act has been amended by section 160 of, and paragraphs 1, 11 and 17 to Schedule 12 to, the Serious Organised Crime and Police Act 2005.

(b) Paragraph 19(3A) was inserted by section 160 of, and paragraphs 1, 11, 17 to Schedule 12 to, the Serious Organised Crime and Police Act 2005.

(c) Paragraph 20 of Schedule 3 to the 2002 Act has been amended by sections 159 and 160 of, paragraphs 1 and 2 of Schedule 11 to, and paragraphs 1, 11 and 18 of Schedule 12 to, the Serious Organised Crime and Police Act 2005.

(d) Paragraph 21 of Schedule 3 to the 2002 Act has been amended by section 160 of, and paragraphs 1, 11 and 19 of Schedule 12 to, the Serious Organised Crime and Police Act 2005.

(e) Paragraph 21A of Schedule 3 to the 2002 Act was inserted by section 160 of, and paragraphs 1, 11 and 20 of Schedule 12 to, the Serious Organised Crime and Police Act 2005.

- (5) In sub-paragraph (3), omit “in relation to the DSI matter”.
- (6) In sub-paragraph (4), omit paragraph (a).
- (7) In sub-paragraph (5)—
 - (a) in paragraph (a), at the end insert “or”;
 - (b) in paragraph (b) —
 - (i) omit “(in a case where it is also the appropriate authority in relation to the DSI matter)”;
 - (ii) at the end omit “or”; and
 - (c) omit paragraph (c).

28.—(1) Paragraph 22 (final reports on investigations: complaints, conduct matters and certain DSI matters)(a) is modified as follows.

- (2) In sub-paragraph (3) for “17 or 18” substitute “17, 17A, 18 or 18A”; and
- (3) Sub-paragraph (4) is omitted.

29.—(1) Paragraph 24A (final reports on investigations: other DSI matters)(b) is amended as follows.

- (2) In sub-paragraph (2), for “17 or 18” substitute “17, 17A, 18 or 18A”.
- (3) In sub-paragraph (4), for “a person serving with the police” substitute “an immigration officer exercising specified enforcement functions or an official of the Secretary of State exercising specified enforcement functions in relation to immigration or asylum”.

30.—(1) Paragraph 24B (action by the Commission in response to an investigation report under paragraph 24A) is modified as follows.

- (2) In sub-paragraph (1), for “a person serving with the police” substitute “an immigration officer exercising specified enforcement functions or an official of the Secretary of State exercising specified enforcement functions in relation to immigration or asylum”.
- (3) In sub-paragraphs (1) and (2), omit “in relation to the person whose conduct is in question”.

31. In paragraph 24C (action by the Commission in response to an investigation report under paragraph 24A), in sub-paragraph (1), for “a person serving with the police” substitute “an immigration officer exercising specified enforcement functions or an official of the Secretary of State exercising specified enforcement functions in relation to immigration or asylum”.

32.—(1) Paragraph 25 (appeals to the Commission with respect to an investigation)(c), is modified as follows

- (2) In sub-paragraph (2), at the beginning insert “In cases where the complaint in question is specified in section 10(3) and the Commission has determined the form of the investigation into that complaint in accordance with paragraph 15 of this Schedule.”.
- (3) After sub-paragraph (6) insert—
 - “(6A) The Commission shall consult the appropriate authority before giving it directions in accordance with sub-paragraph (6), and shall have regard to any representations made to it by the appropriate authority.”.

33. In paragraph 27 (duties with respect to disciplinary proceedings), in sub-paragraph (3), for “any person serving with the police” substitute “an immigration officer exercising specified enforcement functions or an official of the Secretary of State exercising specified enforcement functions in relation to immigration or asylum.”.

(a) Paragraph 22 of Schedule 3 to the 2002 Act was substituted by section 160 to, and paragraphs 1, 11 and 21 of Schedule 12 to, the Serious Organised Crime and Police Act 2005.

(b) Paragraphs 24A to 24C of Schedule 3 to the 2002 Act were inserted by section 160 of, and paragraphs 1, 11 and 24 of Schedule 12 to, the Serious Organised Crime and Police Act 2005

(c) Paragraph 25 of Schedule 3 to the 2002 Act has been amended by section 159 of, and paragraphs 1 and 4 of Schedule 11 to, the Serious Organised Crime and Police Act 2005.

34.—(1) Paragraph 28 (information for complainant about disciplinary recommendations) is modified as follows.

(2) In sub-paragraph (3), at the beginning insert “Subject to sub-paragraph (4),”.

(3) After sub-paragraph (3) insert—

“(4) The Commission shall consult the appropriate authority before notifying the complainant and every person entitled to be kept properly informed in accordance with sub-paragraph (1) or (3), and shall have regard to any representations made to it by the appropriate authority.”.

SCHEDULE 3

Regulation 6(a)

MODIFICATION OF THE COMPLAINTS REGULATIONS

1. The Complaints Regulations are modified as follows.

2.—(1) Regulation 1 (citation, commencement and interpretation)(a) is modified as follows.

(2) In paragraph (2)(b),—

(a) after the definition of “the 2002 Act” insert—

““appropriate authority” means a person nominated by the Secretary of State;”;

(b) after the definition of “the Commission” insert—

““immigration decision” has the meaning given in section 82(2) of the Nationality, Immigration and Asylum Act 2002;” and

(c) omit the definition of “a relevant offence”.

(3) After paragraph (2) insert—

“(3) In these Regulations “specified enforcement functions” means, subject to paragraphs (4) and (5) the exercise of—

(a) powers of entry;

(b) powers to search persons and property;

(c) powers to seize or detain property;

(d) powers to arrest persons;

(e) powers to detain persons;

(f) powers to examine persons or otherwise obtain information (including powers to take fingerprints or to acquire other personal data); and

(g) powers in connection with the removal of persons from the United Kingdom.

(4) The following shall not be regarded as an enforcement function—

(i) the making of an immigration decision;

(ii) the making of any decision to grant or refuse asylum; or

(iii) the giving of any directions to remove persons from the United Kingdom.

(5) For the avoidance of doubt, references to “specified enforcement functions” in paragraph (3) include their exercise in connection with any authorisation granted under Part 2 of the Regulation of Investigatory Powers Act 2000.”.

3.—(1) Regulation 2 (reference of complaints to the Commission)(c) is modified as follows.

(a) Regulation 1 has been amended by articles 26(1) and (2) of S.I. 2005/3389.

(b) Paragraph 2 has been amended by articles 26(1) and (2) of S.I. 2005/3389.

(c) Regulation 2 has been amended by article 26(1) and (3) of S.I. 2005/3389; and regulation 2(1) and (2) of S.I. 2006/1406.

(2) In paragraph (2)(a)(iii), after “Commission” insert “, arising in connection with the exercise of a specified enforcement function by an immigration officer or the exercise of a specified enforcement function by an official of the Secretary of State in relation to immigration or asylum”.

(3) In paragraph (2)(a)(iv)—

(a) for “or behaviour which is liable to lead to a disciplinary sanction and which in either case was” substitute “which is”; and

(b) at the end insert “or”.

(4) Omit paragraph (2)(a)(v).

(5) At the end of paragraph (2)(b) insert “, or” and insert—

“(c) complaints which refer to an allegation of an infringement of Article 2 or 3 of the European Convention on Human Rights(a).”.

4. Regulation 3 (dispensation by the Commission) and regulation 4 (local resolution of complaints) are omitted.

5.—(1) Regulation 5 (recording and reference of conduct matters)(b) is modified as follows.

(2) In paragraph (1)(c), after “Commission” insert “, arising in connection with the exercise of a specified enforcement function by an immigration officer or the exercise of a specified enforcement function by an official of the Secretary of State in relation to immigration or asylum”.

(3) In paragraph (1)(d) for “or behaviour which is liable to lead to a disciplinary sanction and which in either case was” substitute “which is”.

(4) For paragraph (1)(e) substitute—

“(e) conduct which is alleged to have infringed Article 2 or 3 of the European Convention on Human Rights.”.

6.—(1) Regulation 6 (power of Commission to impose requirements in relation to an investigation which it is supervising)(c) is modified as follows.

(2) In paragraph (1) after “17(7)” insert “and 17A”.

(3) In paragraph (3), after “available by a chief officer” insert “the Secretary of State or a chief officer, as appropriate.”.

7.—(1) Regulation 8 (appeals to the Commission: failures to notify or record a complaint) is modified as follows.

(2) In paragraph (1)—

(a) omit “a police authority or chief officer to determine who is”; and

(b) after “appropriate authority” omit “or”.

(3) In paragraph (2)(c), for “police force or police authority” substitute “appropriate authority”.

(4) In paragraph (3)(a), for “police authority or chief officer concerned” substitute “appropriate authority”.

(5) In paragraph (5), for “A police authority or chief officer” substitute “The appropriate authority”.

(6) In paragraph (7), for “police authority or chief officer concerned” substitute “appropriate authority”.

8. Regulation 9 (appeals to the Commission: local resolution) shall be omitted.

9.—(1) Regulation 11 (manner in which duties to provide information are to be performed)(d) is modified as follows.

(a) Convention for the Protection of Human Rights and Fundamental Freedoms, ETS No: 005.

(b) Regulation 5 has been amended by article 26(1) and (4) of S.I. 2005/3389.

(c) Regulation 6 has been amended by regulation 2(1) and (5) of S.I. 2006/1406.

(d) Regulation 11 has been amended by regulation 2(1) and (7) of S.I. 2006/1406.

(2) After paragraph 7 insert—

“(7A) Before notifying a complainant or interested person of the outcome of a hearing or action further to sub-paragraph (7) the Commission shall consult the appropriate authority and shall have regard to any representations made to it.”.

10.—(1) Regulation 18 (appointment of persons to carry out investigations) is modified as follows.

(2) In paragraph (1)—

(a) for “17 or 18” substitute “17, 17A, 18, or 18A”; and

(b) omit sub-paragraph (d).

(3) Omit paragraphs (2) and (3).

11.—(1) Regulation 21 (complaints against a person who has subsequently ceased to serve with the police) is modified as follows.

(2) For the heading of this section substitute “Complaints against a person who has subsequently ceased to serve as an immigration officer or an official of the Secretary of State in a capacity relating to immigration or asylum”.

(3) For “a person serving with the police” substitute “an immigration officer exercising specified enforcement functions or an official of the Secretary of State exercising specified enforcement functions in relation to immigration or asylum”.

(4) In regulation 24 (keeping of records)(a), in sub-paragraph (1), for “Every police authority and chief officer” substitute “The appropriate authority”.

12.—(1) Regulation 25 (register to be kept by the Commission)(b) is modified as follows.

(2) In paragraph (1), for “a police authority or chief officer” substitute “the Secretary of State”.

(3) After paragraph (3) insert—

“(4) Before disclosing information under paragraph (2) the Commission shall consult the appropriate authority, and shall have regard to any representations made by it.”.

13. Regulations 26 (delegation of powers and duties by chief officer)(c), 28 (application to contracted-out staff) and 30 (disciplinary proceedings for police staff) are omitted.

SCHEDULE 4

Regulation 6(b)

MODIFICATION TO THE STAFF CONDUCT REGULATIONS

1.—(1) The Staff Conduct Regulations are modified as follows.

(2) Regulation 1 (citation, commencement and interpretation), is modified as follows.

(3) For paragraph (2) substitute—

“(2) In these Regulations—

“the Commission” means the Independent Police Complaints Commission; and

“immigration decision” has the meaning given in section 82(2) of the Nationality, Immigration and Asylum Act 2002.

(3) In these Regulations “specified enforcement functions” means, subject to paragraphs (4) and (5)—

(a) Regulation 24 has been amended by regulation 2(1) and (9) of S.I. 2006/1406.

(b) Regulation 25 has been amended by section 159 of, and paragraphs 1 and 4 of Schedule 11 to, the Serious Organised Crime and Police Act 2005.

(c) Regulation 26 has been amended by regulation 2(1) and (10) of S.I. 2006/1406.

- (a) powers of entry;
- (b) powers to search persons and property;
- (c) powers to seize or detain property;
- (d) powers to arrest persons;
- (e) powers to detain persons;
- (f) powers to examine persons or otherwise obtain information (including powers to take fingerprints or to acquire other personal data); and
- (g) powers in connection with the removal of persons from the United Kingdom.

(4) The following shall not be regarded as an enforcement function—

- (i) the making of an immigration decision;
- (ii) the making of any decision to grant or refuse asylum; or
- (iii) the giving of directions to remove persons from the United Kingdom.

(5) For the avoidance of doubt, references to “specified enforcement functions” include their exercise in connection with any authorisation granted under Part 2 of the Regulation of Investigatory Powers Act 2000.”.

2.—(1) Regulation 2 (conduct of Commission’s staff) is modified as follows.

(2) In paragraph (3)(a)(i), for “a person serving with the police” substitute “an immigration officer exercising specified enforcement functions or an official of the Secretary of State exercising specified enforcement functions in relation to immigration or asylum.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations confer functions on the Independent Police Complaints Commission (“IPCC”) in relation to the exercise of specified enforcement functions by immigration officers and officials of the Secretary of State in relation to immigration or asylum. They provide for the provisions of Part 2 of the Police Reform Act 2002 and relevant secondary legislation to apply for this purpose with modifications.

Regulation 3(1) confers functions on the IPCC in relation to the exercise, in or in relation to England and Wales, of the enforcement functions specified in regulation 3(2) by immigration officers and officials of the Secretary of State in relation to immigration or asylum. Regulation 4 provides that the IPCC shall not have those functions in relation to conduct or matters (including incidents where a person has died or suffered a serious injury) which are alleged to have occurred before 1st April 2007.

Regulation 5(a) provides for the Part 2 of the 2002 Act, which establishes the IPCC and sets out its general functions, to apply for this purpose with the modifications made by Schedule 1 to the Regulations. Regulation 5(b) provides for Schedule 3 to the 2002 Act, which sets out the scheme for handling complaints, conduct matters and DSI matters, to apply for this purpose with the modifications set out in Schedule 2 to the Regulations.

Regulation 6 provides for the application of secondary legislation: (the Police (Complaints and Misconduct Regulations) 2004 (the “Complaints Regulations”), the Independent Police Complaints Commission (Staff Conduct) Regulations 2004 made under Part 2 of the 2002 Act with the modifications made by Schedules 3 and 4, and for the application of other pieces of secondary legislation) made under Part 2 of the 2002 Act.

Regulation 7 precludes the disclosure by the IPCC of information obtained in the course of performing a function under Regulation 3(1) except to the extent that Part 2 of the 2002 Act or the Complaints Regulations (as modified) permits disclosure. Regulation 8 precludes the IPCC from using information obtained in the course of performing a function under Regulation 3(1) for any purpose other than those functions.

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen. The impact on the public sector is limited to the Home Office, the IPCC and the police.

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