

**2013 No. 1778**

**POLICE, ENGLAND AND WALES**

**The Police (Complaints and Misconduct)(Old Cases)  
Regulations 2013**

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| <i>Made</i> - - - -           | <i>15th July 2013</i>  |
| <i>Laid before Parliament</i> | <i>18th July 2013</i>  |
| <i>Coming into force</i> - -  | <i>9th August 2013</i> |

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 28A(10) of the Police Reform Act 2002(a).

In accordance with section 24 of that Act(b), the Secretary of State has consulted with the Independent Police Complaints Commission, such persons as appear to the Secretary of State to represent the views of police and crime commissioners, the Mayor's Office for Policing and Crime, the Common Council of the City of London, the Association of Chief Police Officers and such other persons as she thinks fit.

In accordance with section 63(3)(b) of the Police Act 1996(c), the Secretary of State supplied a draft of these Regulations to the Police Advisory Board of England and Wales and has taken into consideration their representations before making these Regulations.

**Citation, commencement, interpretation and extent**

1.—(1) These Regulations may be cited as the Police (Complaints and Misconduct)(Old Cases) Regulations 2013 and come into force on 9th August 2013.

(2) In these Regulations—

“the 2002 Act” means the Police Reform Act 2002;

“the 2012 Regulations” means the Police (Complaints and Misconduct) Regulations 2012(d).

**Application of the 2002 Act to old cases**

2. In a matter in relation to which the Commission has made a direction under section 28A(1) or (4) of the 2002 Act, Part 2 of that Act and any provision made under it shall apply in accordance with the modifications set out in regulation 3 of these Regulations.

3. In relation to the 2012 Regulations—

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(a) 2002 c. 30. Section 28A was inserted by section 2(2) of the Police (Complaints and Conduct) Act 2012 (c. 22).  
(b) Section 24 was amended by section 6(1) of, and paragraph 12 of Schedule 4 to, the Police and Justice Act 2006 (c. 48), and section 99 of, and paragraphs 277 and 289 of Schedule 16 to, the Police Reform and Social Responsibility Act 2011 (c. 13).  
(c) 1996 c. 16.  
(d) S.I. 2012/1204.

- (a) Regulation 4 shall apply as if after paragraph (2)(b) there were inserted—
  - “(c) any complaint which is the subject of a direction by the Commission under section 28A(1) of the 2002 Act.”;
- (b) Regulation 7 shall apply as if for paragraph (4) there were substituted—
  - “(4) For the purposes of paragraph 13(1)(b) of Schedule 3 to the 2002 Act (reference of recordable conduct matters to the Commission), the following matters are hereby specified—
    - (a) any matter which relates to conduct falling within paragraph (1)(a) to (e) or (g) of this regulation, or
    - (b) any matter which is the subject of a direction by the Commission under section 28A(1) or (4) of the 2002 Act.”; and
- (c) those Regulations shall apply as if after regulation 36 there were added—

**“Application of Part 2 to old cases**

**37.—(1)** A matter which is the subject of a direction under section 28A(1) or (4) of the 2002 Act shall—

- (a) regardless of when it came to the attention of the appropriate authority, be treated as a matter which did not come to the attention of the appropriate authority before 22nd November 2012; and
- (b) be recorded as if—
  - (i) in relation to a complaint, it was the first notification of it under paragraph 2(1) of Schedule 3 to the 2002 Act,
  - (ii) in relation to a conduct matter, it was the first direction in respect of it under paragraph 11(5) of Schedule 3 to the 2002 Act, or
  - (iii) in relation to a DSI matter, it was the first direction in respect of it under paragraph 14A(2) of Schedule 3 to the 2002 Act.

(2) Where the Commission gives a direction under section 28A(1) of the 2002 Act that a matter shall be recorded as a complaint, paragraph 2(7) and (8) of Schedule 3 to the 2002 Act does not apply in relation to that matter.

(3) Where the Commission makes a direction under section 28A(1) or (4) of the 2002 Act, Part 2 of that Act shall apply in relation to a relevant person as if it did not include any requirement for an appropriate authority to determine whether disciplinary proceedings should be brought against that person.

(4) In this regulation—

- (a) a “relevant person” means a person—
  - (i) in respect of whose conduct the Commission has made a direction under section 28A(1) or (4), and
  - (ii) who has previously been the subject of relevant disciplinary proceedings in connection with that conduct.
- (b) “relevant disciplinary proceedings” means—
  - (i) any process in accordance with which the conduct of a person is considered, whether under the Police (Conduct) Regulations 2012(a) or otherwise, in order to determine whether it is misconduct and whether, as a result, any action is to be taken in relation to it;
  - (ii) any process in accordance with which the performance of a person is considered, whether under the Police (Performance) Regulations 2012(b) or

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(a) S.I. 2012/2632.

(b) S.I. 2012/2631.

otherwise, in order to determine whether it is unsatisfactory and whether, as a result, any action is to be taken in relation to it.”.

Home Office  
15th July 2013

*Damian Green*  
Minister of State

## **EXPLANATORY NOTE**

*(This note is not part of these Regulations)*

These Regulations modify the application of Part 2 of the Police Reform Act 2002 (“the 2002 Act”) and any provision made under it, by virtue of the power in section 28A(10) of that Act, to a matter in relation to which the Independent Police Complaints Commission (“the Commission”) has made a direction under section 28A(1) or (4) of the 2002 Act (“a direction”).

Regulation 3 makes provision to modify the application of the Police (Complaints and Misconduct) Regulations 2012 (S.I. 2012/1204) (“the 2012 Regulations”) to a matter which is the subject of a direction.

Regulation 4 of the 2012 Regulations will apply so as to require the appropriate authority to refer a complaint to the Commission if that complaint is the subject of a direction.

Regulation 7 of the 2012 Regulations will apply so as to require the appropriate authority to refer a conduct matter to the Commission if that matter is the subject of a direction.

The 2012 Regulations will apply as if they contained a further provision (regulation 37), and in relation to a direction this modifies the application of Part 2 of the 2002 Act and any provision made under it in a number of respects.

First, it requires that a complaint, conduct matter or DSI matter is treated as, and recorded as, a new matter regardless of whether it had come to the attention of the appropriate authority before, on or after 22nd November 2012. This ensures that the matter will be investigated in accordance with the legislative framework which applies on and after that date, and not in accordance with the procedures set out in the legislative framework which applies to the investigation of older matters.

Secondly, it provides that exceptions in the 2002 Act from the duty to notify or record a complaint do not apply to a complaint which is the subject of a direction. For example, the exception from the requirement to record a complaint for a repetitious complaint does not apply to a complaint which is the subject of such a direction.

Thirdly, it makes provision which modifies the 2002 Act to the effect that a person who has previously been the subject of a disciplinary procedure in relation to certain conduct may not, as a result of the Commission giving a direction, become subject to a further disciplinary procedure in relation to the same conduct. The earlier disciplinary procedure may relate to the person’s conduct, or performance in respect of that conduct, and need not have been concluded.

An impact assessment has not been prepared for this instrument as no impact on businesses, charities, voluntary bodies or the public sector is foreseen.

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