

IN THE UNDERCOVER POLICING INQUIRY

NOTE

On behalf of the Metropolitan Police Service

1. The MPS has been requested by the Inquiry to set out the range of potential sanctions a retired officer may face in the event that the legislation, that is, Clause 27 of the Policing and Crime Bill, is enacted as presently drafted.

Policing and Crime Bill

2. The Chairman described the history and development of Clause 27 of the Policing and Crime Bill in his Further Directions on the Preliminary Issue of Undertakings, 8th June 2016, §§5-9. Clause 27, as explained in the Explanatory Notes to the Bill as brought from the Commons on 14th June 2016, extends the disciplinary regime to former officers for up to 12 months after they leave the police: Explanatory Notes §60.
3. Clause 28 and Schedule 7 of the Bill provide for a new Part 4A, sections 88A-M, to be inserted into the Police Act 1996. These provisions create a new statutory list of persons barred from policing called the "Police Barred List", held by the College of Policing. Where an individual receives a finding of dismissal they will be added to the Police Barred List. Any dismissals from a police force must be reported to the College of Policing, which will hold this information and maintain a list of people barred from policing activity. By (proposed) section 88A(1)(b), persons who must be so reported include a person who is: *'.. a former member of a police force ... and there is a finding in relation to the person in disciplinary proceedings [in proceedings conducted under regulations made pursuant to section 50(3A) or 51(2B)] that the person would have been dismissed if the person had still been a member of a police force ...'*
4. Any person on the Police Barred list list will be prevented from being employed by or appointed to a position in a police force, the IPCC, HMIC and any other organisation specified in regulations.

Current legislation

5. Misconduct proceedings cannot presently be brought in respect of retired officers.
6. The available outcomes in misconduct proceedings are prescribed by Regulations made pursuant to sections 50, 51, and 84 of the Police Act 1996. The most recent iterations of these Regulations are:
 - a. The Police (Conduct) Regulations 2004, SI 2004/645, made on 8th March 2004 and in force on 1st April 2004 [‘the 2004 Regulations’]. These Regulations revoked the relevant parts of seven Regulations or Orders, saving that where an allegation in respect of conduct by a police officer came to the attention of the appropriate authority before 1st April 2004, the previous relevant Regulations or Order continue to apply.
 - b. The Police (Conduct) Regulations 2008, SI 2008/2864, made on 5th November 2008 and in force on 1st December 2008 [‘the 2008 Regulations’]. These Regulations revoked the 2004 Regulations, saving that where an allegation in respect of conduct by a police officer came to the attention of the appropriate authority before 1st December 2008, the 2004 Regulations continue to apply.
 - c. The Police (Conduct) Regulations 2012, SI 2012/2632, made on 23rd October 2012 and in force on 22nd November 2012 [‘the 2012 Regulations’]. These Regulations revoked the 2008 Regulations, saving that where an allegation in respect of conduct by a police officer came to the attention of the appropriate authority before 22nd November 2012 (saving to the limited extent provided for by Schedule 1 of the Regulations).
7. The available outcomes under current legislation in respect of allegations coming to the attention of the MPS on or after 22nd November 2012 are (reg.35(2)):
 - a. *In relation to a misconduct meeting at which alleged misconduct is considered*
 - (1) Misconduct not found
 - (2) No further action
 - (3) Management advice

- (4) Written warning
- (5) Final written warning

b. *In relation to a misconduct hearing at which alleged gross misconduct is considered), (1)-(5) as above, and:*

- (6) Dismissal with notice
- (7) Dismissal without notice

These outcomes are only available where gross misconduct is found on the part of the officer or where the officer is subject to a live final written warning.

8. The outcomes available under the 2008 and 2012 Regulations differ very considerably from those provided for by the 2004 Regulations. In particular, the following outcomes were provided for in the 2004 Regulations (reg.35(2)) and abolished by the 2008 Regulations:

- (i) Reduction in rank
- (ii) Fine
- (iii) Reprimand
- (iv) Caution

9. The MPS does not know whether new Conduct Regulations would be made in the event that Clause 27 is enacted as presently drafted, or what the content of any such Regulations would or might be.

10. The following features of the present regime may be instructive:

- (a) Since 1st December 2013, the College of Policing has maintained a 'Disapproved Register'. This Register contains details of officers who have been dismissed from the service or who either resigned or retired while subject to a gross misconduct investigation where there would have been a case to answer. The Register *'prevents officers from re-entering the police service if they have been dismissed, or resigned or retired while subject to a gross misconduct investigation where there would have been a case to answer.'*¹

¹ <http://www.college.police.uk/News/College-news/Pages/disapproved-register.aspx>

- (b) The dismissal of a serving officer may exceptionally in the case of serious conduct which has adversely affected public trust in a major way have ramifications for the officer's pension entitlements.
- (c) Reg.31 of the 2012 Regulations (as substituted by reg.9 Police (Conduct) (Amendment) Regulations 2015/626 reg.9, 1st May 2015) provides for public attendance at a misconduct hearing.

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5th August 2016