



09 September 2016
By Email Only

Submission to the Chairman of the Undercover Policing Inquiry on behalf of the Home Office

Subject: Disciplinary procedures concerning serving and former police officers and reforms to the relevant legislation

1. This submission follows the invitation of solicitors on behalf of the Undercover Policing Inquiry (UPI) to provide an update on the progress of the Policing and Crime Bill (“the Bill”) and to explain the policy intention in respect of certain key provisions, namely of Clause 28¹ *Disciplinary proceedings: former members of police forces and former special constables*.
2. This relates to the further directions issued by the Inquiry Chairman of 8 June 2016.
3. The purpose of this submission is to (i) clarify the effect of the provisions contained at Clause 28 and related amendments, (ii) set out the Government’s policy intentions concerning the extension of disciplinary provisions to former police officers and (iii) provide a response to questions surrounding the retrospective effect of these provisions.

Clause 28

4. Sections 50 and 51 of the Police Act 1996 (“the 1996 Act”) provide powers to make regulations related to the “maintenance of discipline” of members of police forces and special constables respectively. The existing legislation (including regulations) applies to serving members of police forces and serving special constables and therefore does not apply when the person has left the force through retirement or resignation. The Police (Conduct) Regulations 2012 (SI 2012/2632, as amended) are the relevant regulations.
5. Clause 28(2) and (3) of the Bill inserts new sections 50(3A) and 51(2B) into the 1996 Act which, respectively, would allow for the procedures that are established by or under regulations made under the sections (‘disciplinary procedures’) to apply in respect of the conduct, efficiency or effectiveness of former members of police forces and former special constables in certain circumstances. These circumstances are where, at the time of the alleged misconduct, inefficiency or ineffectiveness, the person was a member of a police force or special constable, and either:
 1. the person resigns or retires after the allegation surfaces during the course of an investigation or before disciplinary proceedings, if brought, have concluded; or
 2. the person resigns or retires within a specified period of the allegation surfacing (the period to be specified in regulations – ‘the Specified Period’).
6. The purpose of these provisions is to allow disciplinary proceedings to be brought in the circumstances described above. Through these reforms, if an officer resigns or retires early during the course of an ongoing investigation or before a disciplinary proceedings for gross misconduct have concluded, that process will be able to continue to a full conclusion.
7. Additionally, where an allegation comes to the attention of a force soon after an officer has resigned or retired that could lead to dismissal, this will also be able to be investigated and subject to disciplinary proceedings, where the matter arises during the Specified Period. The Government intends to set the Specified Period at 12 months.

¹ (Clause 22 on introduction to the House of Commons)



8. If found guilty at a misconduct hearing and the former officer receives a finding that s/he would have been dismissed, the officer will be barred from future service in policing and law enforcement, through the provisions of the Police Barred List created by the Bill at Clause 29 and Schedule 8.
9. At present, regulation 10A of the Police (Conduct) Regulations 2012 prevents an officer from resigning or retiring whilst under investigation or subject to proceedings that could result in dismissal. As a result of the provisions outlined above, this restriction will be lifted.

Government Amendments to Clause 28

10. At Commons Report stage for the Bill, the then Minister for Policing, Fire, Criminal Justice and Victims Rt. Hon Mike Penning MP announced² that the Government would bring forward amendments to the Bill in the House of Lords to enable disciplinary proceedings to be brought outside the Specified Period in “exceptional circumstances”.
11. On 7 September 2016 the Government tabled amendments to these provisions in the name of Baroness Williams of Trafford³. The amendments give effect to the new ‘exceptional circumstances’ test, which will be applied by the Independent Police Complaints Commission (IPCC), in due course the Office for Police Conduct (OPC) once the reforms to the IPCC and its governance have taken effect.
12. As a result of these amendments, disciplinary proceedings for allegations which arise outside the Specified Period could only be instigated in cases where the allegation is such that, if proved, the person could have been dealt with by dismissal if he or she had still been serving and the IPCC determines that such proceedings would be reasonable and proportionate, having regard to:
 - a) the seriousness of the alleged misconduct, inefficiency or ineffectiveness;
 - b) the impact of the allegation on public confidence in the police; and
 - c) the public interest.
13. Regulations will set out the matters to be taken into account by the IPCC in making such a determination.
14. The Government intends that the regulations setting out the process and matters to be taken into account will only allow disciplinary proceedings to be brought in relation to the most serious matters which are considered of an exceptional nature where serious and lasting harm has been caused to public confidence in policing as a result of the wrongdoing. Where there is a finding that the officer would have been dismissed, the individual will be barred from future service in policing and law enforcement.

Retrospective Effect

15. Specific questions have been raised in the Further Directions and submissions in respect of the provisions outlined above and whether these will be applied retrospectively and therefore extend to individuals who have previously left policing through retirement or resignation prior to the Bill becoming an Act of Parliament and the provisions taking effect and are no longer serving with the police.

² (HC) Deb (13 June 2016) (Volume 611) (Column 1466)

³ [http://www.publications.parliament.uk/pa/bills/lbill/2016-2017/0055/17055\(k\).pdf](http://www.publications.parliament.uk/pa/bills/lbill/2016-2017/0055/17055(k).pdf)



16. Clause 28(7) of the Bill is explicit that:

“Regulations made in pursuance of section 50(3A) or 51(2B) of the Police Act 1996 (as inserted by subsections (2) and (3))—

- (a) may not make provision in relation to a person who ceases to be a member of a police force or a special constable (as the case may be) before the coming into force of subsections (2) and (3);”.

17. The effect of this is to prevent these provisions from applying to officers who have previously left policing before these provisions are enacted. Where an officer resigns or retires before the provisions in the Bill come into force, the new measures will also not apply. As a general principle, new laws cannot alter the definite and predictable consequences for a person who committed an act before new provisions take effect.

18. This sentiment was expressed by the then Policing Minister, in the chamber of the House of Commons during the Bill’s Report Stage Debate:

“The measure will apply to police officers serving with a police force at the point at which the provisions come into force. In line with established principles, we do not believe that it would be appropriate to apply such a provision retrospectively.”⁴

Pension Forfeiture

19. Further questions have been raised in relation to the threshold for the forfeiture of pensions which were among proposals previously put forward during the Bill’s earlier stages by the Shadow Home Secretary.

20. The Government does not intend to make any changes at this time in respect to the threshold for forfeiture of pensions which, as is consistent across public service, can only be subject to forfeiture where a criminal offence has been committed in connection with an individual’s service and it has been certified by the Secretary of State that the matter is either (i) gravely injurious to the interests of the State or (ii) liable to lead to a serious loss of confidence in the service.

Parliamentary Process

21. This submission sets out the Government’s policy position in respect of these matters and the legislation that has been brought forward. All such matters are subject to the Parliamentary procedures and successful completion of both Houses of Parliament and Royal Assent.

On Behalf of the Home Office,

Rupert Bailey

Head of Police Discipline
Police Integrity and Powers Unit
Policing Directorate - Crime, Policing and Fire Group

⁴ (HC) Deb (13 June 2016) (Volume 611) (Column 1466)