



Isle of Man

Ellan Vannin

AT 10 of 2016

POLICE (AMENDMENT) ACT 2016



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POLICE (AMENDMENT) ACT 2016

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AN ACT to amend the Police Act 1993 and the Police Powers and Procedures Act 1998; and for connected purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

1 Short title

The short title of this Act is the Police (Amendment) Act 2016.

2 Commencement

- (1) This Act, except section 1 and this section, comes into operation on such day or days as the Department of Home Affairs may by order appoint.
- (2) An order under subsection (1) may include such supplemental, incidental, consequential and transitional provisions as appear to the Department of Home Affairs to be necessary or expedient.

3 Appointment of Chief Constable

In section 2 of the *Police Act 1993* —

(a) after subsection (3) insert —

(3A) Where the Department has (under subsection (3) or this subsection) appointed a person to be the Chief Constable for a fixed term which has expired or is about to expire, it may, with the approval of the Council of Ministers, appoint that person to be Chief Constable for a further fixed term.

(3B) Subsection (2) shall not apply to an appointment under subsection (3A). **(2)**; and

- (b) in subsection (4), for “subsection (3)” substitute **6A** subsections (3) to (3B) **6A**.

4 Police powers for contracted staff

- (1) After section 77A of the *Police Powers and Procedures Act 1998* insert —

6A *Police powers for contracted staff*

77B Police powers for contracted staff

- (1) This section has effect for the purpose of enabling the Department to enter into a contract with a person for the supply by that person of services in assistance of the police force.
- (2) Subject to subsection (6) the Department may by order provide for conferring or imposing powers and duties specified in the order, being powers and duties of a member of the police force, on persons, not being members of the police force, who are employed by a contractor for the purpose of exercising functions assigned to them in pursuance of such a contract.
- (3) An order under this section shall specify —
- (a) the functions which may be assigned in pursuance of the order to contracted staff;
 - (b) the title by which contracted staff to whom a particular function is, or functions of a particular class or description are, so assigned are to be known; and
 - (c) the powers and duties which may be conferred or imposed on contracted staff to whom a particular function is, or functions of a particular class or description are, so assigned.
- (4) An order under this section may under subsection (3)(a) specify functions which, apart from the order, would be reserved to a member of the police force.
- (5) An order under this section may under subsection (3)(c) specify powers and duties —
- (a) which are, by virtue of the order, conferred or imposed on all contracted staff to whom a specified function is, or functions of a specified class or description are, so assigned; or
 - (b) which may be conferred or imposed by a designation on contracted staff to whom a specified function is, or functions of a specified class or description are, so assigned.

- (6) An order under this section may not specify any function, power or duty in relation to the execution of a warrant to enter and search any land or premises.
 - (7) For the avoidance of doubt, this section is without prejudice to any power conferred by or by virtue of any other provision of this Act or any other enactment.
 - (8) An order under this section may modify in its application to contracted staff any statutory provision relating to the exercise by members of the police force of any power or duty referred to in subsection (3)(c).
 - (9) Before making an order under this section the Department shall consult —
 - (a) the Chief Constable;
 - (b) the commissioner appointed under paragraph 2(1) of Schedule 1 to the *Police Act 1993*;
 - (c) the Isle of Man Police Federation; and
 - (d) such other persons as the Department thinks fit.
 - (10) An order under this section shall not have effect unless it is approved by Tynwald.
 - (11) Schedule 2A makes further provision about contracted staff. **22**.
- (2) After Schedule 2 to the *Police Powers and Procedures Act 1998* insert Schedule 2A as set out in Schedule 1 to this Act.

5 Complaints and conduct matters

- (1) In section 9 of the *Police Act 1993* —
 - (a) for the section-heading substitute **63** **Complaints and conduct matters** **22**;
 - (b) at the end insert **64**, and the investigation of certain other matters relating to the conduct of the police **22**.
- (2) For the cross-heading immediately before that section substitute **63** *Complaints and conduct matters* **22**.
- (3) Schedule 1 to the *Police Act 1993* is amended in accordance with Schedule 2 to this Act.
- (4) This section applies to matters arising before as well as after this section comes into operation.

6 Membership of Police Federation: special constables

In section 12(5) of the *Police Act 1993* at the end insert **65** and to special constables. **22**.

7 Expiry

- (1) This Act expires —
 - (a) on the day after its promulgation, if all of its provisions are in operation on its promulgation; or
 - (b) otherwise, on the day after the last provision is brought into operation.
- (2) The expiry does not —
 - (a) affect the continuing operation of the amendments made by this Act; or
 - (b) revive any provision not in operation when the amendments took effect.

SCHEDULE 1

Section 4(2)

SCHEDULE 2A TO THE POLICE POWERS AND PROCEDURES ACT 1998
INSERTED

SCHEDULE 2A

Section 77B(11)

CONTRACTED STAFF

1 Designation of contracted staff

- (1) The Chief Constable may by a designation in writing (and not otherwise) assign functions specified in the designation to a contracted person named in it.
- (2) A contracted person so designated —
 - (a) shall have the powers and duties conferred or imposed on him or her —
 - (i) by any relevant provision made under section 77B(5)(a); and
 - (ii) by the designation in accordance with section 77B(5)(b); and
 - (b) when exercising any of those powers or performing any of those duties, shall act under the direction and control of the Chief Constable.
- (3) The Chief Constable shall not designate a contracted person under this paragraph unless he or she is satisfied that that person —
 - (a) is a suitable person to carry out the functions assigned to him or her;
 - (b) is capable of effectively carrying out those functions; and
 - (c) has received adequate training in the carrying out of those functions and in the exercise and performance of the powers and duties to be conferred or imposed on him or her as mentioned in sub-paragraph (2)(a).
- (4) The Chief Constable shall not designate a contracted person under this paragraph unless he or she is satisfied that the contractor is a fit and proper person to supervise the carrying out of the functions assigned to the contracted person.
- (5) A designation, unless it is previously withdrawn or ceases to have effect in accordance with sub-paragraph (6), shall remain in force for such period as may be specified in the designation; but it may

be renewed at any time with effect from the time when it would otherwise expire.

- (6) A designation shall cease to have effect —
- (a) if the contracted person ceases to be an employee of the contractor;
 - (b) if the contract between the Department and the contractor is terminated or expires; or
 - (c) if it is withdrawn under sub-paragraph (7).
- (7) The Chief Constable may at any time, by notice to a contracted person, modify or withdraw a designation.
- (8) Where a contracted person's designation is modified or withdrawn, the Chief Constable shall send a copy of the notice to the contractor by whom that person is employed.

2 Powers and duties of contracted staff

- (1) A contracted person authorised or required to do anything by virtue of a designation —
- (a) shall not be authorised or required by virtue of that designation to engage in any conduct otherwise than in the course of his or her employment by the contractor; and
 - (b) shall be so authorised or required subject to such restrictions and conditions (if any) as may be specified in that designation.
- (2) Where any power exercisable by any person in reliance on his or her designation is a power which, in the case of its exercise by a constable, includes or is supplemented by a power to use reasonable force, any person exercising that power in reliance on that designation shall have the same entitlement as a constable to use reasonable force.
- (3) A contracted person who exercises or performs any power or duty in relation to any person in reliance on his or her designation, or who purports to do so, shall produce that designation to that person, if requested to do so.
- (4) Except in such circumstances as may be specified in an order under section 77B, a power exercisable by a contracted person in reliance on his or her designation shall be exercisable only by a person wearing such uniform as may be —
- (a) determined or approved by the Chief Constable for the purpose of this sub-paragraph; and
 - (b) identified or described in the designation.

3 Complaints etc.

- (1) An order under section 77B shall apply to contracted persons the provisions of Schedule 1 to the *Police Act 1993* with respect to complaints against or misconduct of members of the police force, with such modifications as are specified in the order.
- (2) For the purposes of determining liability for the unlawful conduct of contracted staff, conduct by a contracted person in reliance or purported reliance on a designation shall be taken to be conduct in the course of his or her employment by the contractor by whom he or she is employed; and, in the case of a tort, that contractor shall fall to be treated as a joint tortfeasor accordingly.

4 Offences against contracted staff

- (1) Any person who assaults a contracted person in the execution of his or her duty is guilty of an offence and liable on summary conviction to custody for a term not exceeding 12 months or to a fine not exceeding £5,000, or to both.
- (2) Any person who resists or wilfully obstructs a contracted person in the execution of his or her duty is guilty of an offence and liable on summary conviction to custody for a term not exceeding 3 months or to a fine not exceeding £1,000, or to both.
- (3) Any person who, with intent to deceive —
 - (a) impersonates a contracted person;
 - (b) makes any statement or does any act calculated falsely to suggest that he or she is a contracted person; or
 - (c) makes any statement or does any act calculated falsely to suggest that he or she has powers as a contracted person that exceed the powers he or she actually has,is guilty of an offence and liable on summary conviction to custody for a term not exceeding 12 months or to a fine not exceeding £5,000, or to both.
- (4) In this paragraph references to the execution by a contracted person of his or her duty are to his or her exercising any power or performing any duty conferred or imposed on him or her as mentioned in paragraph 1(2)(a). 

SCHEDULE 2

Section 5(3)

AMENDMENTS TO SCHEDULE 1 TO THE POLICE ACT 1993

1 Interpretation

- (1) In paragraph 1, at the appropriate places in alphabetical order insert —
- ☒ “**conduct**” includes acts, omissions and statements (whether actual, alleged or inferred), and “behave” has a corresponding meaning; ☒;
 - ☒ “**conduct matter**” means any matter which is not and has not been the subject of a complaint but in the case of which there is an indication (whether from the circumstances or otherwise) that a member of the police force may have —
 - (a) committed a criminal offence; or
 - (b) behaved in a manner which would justify the bringing of disciplinary proceedings; ☒;
 - ☒ “**disciplinary proceedings**” means proceedings against a member of the police force under regulations made by virtue of section 8(2)(e) or 8A(2)(c); ☒;
 - ☒ “**member of the police force**” includes a special constable; ☒;
 - ☒ “**police custody**” means —
 - (a) police detention (within the meaning of the *Police Powers and Procedures Act 1998*); or
 - (b) the custody of a member of the police force; ☒;
 - ☒ “**relevant person**” means —
 - (a) a member of a police force in a relevant territory; or
 - (b) a member or officer of a body, or the holder of an office or an officer of such an office-holder, having functions in a relevant territory corresponding to any functions of the commissioner; ☒;
 - ☒ “**relevant territory**” means any part of the United Kingdom, any of the Channel Islands or the Republic of Ireland; ☒;
 - ☒ “**serious injury**” means a fracture, a deep cut, a deep laceration or an injury causing damage to an internal organ or the impairment of any bodily function. ☒.
- (2) In paragraph 1, in the definition of “investigation”, for “paragraph 4 into a complaint.” substitute ☒ paragraph 4, 4B or 4D. ☒.

2 Appointment of commissioner

- (1) In paragraph 2(1), for “after consultation with the Department” substitute **“on the recommendation of the Council of Ministers”**.
- (2) In paragraph 2(2) —
 - (a) in head (a) after “police force” insert **“or a special constable”**;
 - (b) in head (b) —
 - (i) after “he is” insert **“or has been”**;
 - (ii) at the end insert **“at any time within the period of 3 years immediately preceding the date on which the vacancy arises.”**
- (3) In paragraph 2(3) —
 - (a) for “3 years” substitute **“5 years”**;
 - (b) for “but” substitute **“and”**;
 - (c) at the end insert **“for one further term of 3 years.”**
- (4) For paragraph 2(4) substitute —

<ol style="list-style-type: none"> (4) The Governor may call upon the commissioner to retire — 	<ol style="list-style-type: none"> (a) in the interests of efficiency or effectiveness; or (b) if satisfied that the commissioner has — <ol style="list-style-type: none"> (i) since appointment been convicted of a criminal offence; (ii) become bankrupt or made a composition or arrangement with his or her creditors; or (iii) been guilty of serious misconduct.
<ol style="list-style-type: none"> (4A) 	<p>Before calling upon the commissioner to retire, the Governor must give the commissioner an opportunity to make, either personally or otherwise, representations to him or her and must consider any representations that the commissioner makes.</p>
<ol style="list-style-type: none"> (4B) 	<p>A commissioner who is called upon to retire under sub-paragraph (4) must retire on such date as the Governor may specify or on such earlier date as may be agreed between the commissioner and the Governor.</p>

3 Complaints

- (1) In paragraph 4(5)(b), for “a criminal or disciplinary charge” substitute **“the bringing of criminal or disciplinary proceedings against the member of the police force whose conduct is the subject of the complaint.”**
- (2) In paragraph 4, after sub-paragraph (5) insert —

- 6A (6) A complaint is not suitable for informal resolution if the conduct to which it relates —
- (a) involves the death of, or serious injury to, any person; or
 - (b) is of a description specified for the purposes of this sub-paragraph in regulations made by the Department. 6B.

4 Conduct matters

After paragraph 4 insert —

6A *Reference of conduct matters in certain cases*

4A (1) The Chief Constable shall refer to the commissioner any conduct matter which comes to his or her attention, if it appears to the Chief Constable that the conduct in question —

- (a) has resulted in the death of, or serious injury to, any person; or
 - (b) is of a description specified for the purposes of this sub-paragraph in regulations made by the Department.
- (2) Nothing in sub-paragraph (1) requires the Chief Constable to refer any conduct matter if he or she is satisfied that the matter has been, or is already being, dealt with by means of criminal or disciplinary proceedings against the person to whose conduct the matter relates.
- (3) The Chief Constable shall refer to the commissioner any conduct matter if the commissioner notifies him or her that the matter is to be referred to the commissioner for consideration.
- (4) The Chief Constable may refer to the commissioner any conduct matter (other than one falling within sub-paragraph (1) or (3)) if the Chief Constable considers that it would be appropriate to do so by reason of —
- (a) the gravity of the matter; or
 - (b) any exceptional circumstances.

Action on a reference under paragraph 4A

4B (1) The commissioner shall determine whether any conduct matter referred to him or her by the Chief Constable under paragraph 4A(1)(b) should be investigated, and shall inform the Chief Constable of his or her determination.

- (2) If the commissioner determines under sub-paragraph (1) that a conduct matter should be investigated, the Chief Constable shall,

after consultation with the commissioner, appoint a member of the police force to investigate it formally.

- (3) Where a conduct matter mentioned in paragraph 4A(1)(a) is referred to the commissioner there shall be a formal investigation of the matter in accordance with sub-paragraphs (1A)(a) and (3A) of paragraph 5.

Notification of other cases involving death or serious injury

4C (1) This paragraph applies to any circumstances in or in consequence of which a person has died or suffered serious injury while in police custody.

- (2) This paragraph also applies to any circumstances in or in consequence of which a person has died or suffered serious injury if —

- (a) the death or injury occurred while or after the person had contact (of whatever kind, and whether direct or indirect) with a member of the police force acting in the execution of his or her duties; and
- (b) there is an indication that the contact may have caused (whether directly or indirectly), or contributed to, the death or injury.

- (3) The Chief Constable shall notify the commissioner of any circumstances to which this paragraph applies, unless —

- (a) they are or have been the subject of a complaint;
- (b) they amount to a conduct matter; or
- (c) if he or she is satisfied that they have been, or are already being, dealt with by means of criminal or disciplinary proceedings against any person.

Action on a notification under paragraph 4C

4D Where circumstances are notified to the commissioner under paragraph 4C there shall be a formal investigation of those circumstance in accordance with sub-paragraphs (1B) and (3A) of paragraph 5.

Change of scope of investigation

4E (1) Subject to sub-paragraph (2), the commissioner may, after consultation with the Chief Constable, direct that any matter which is being, or is to be, investigated under paragraph 4, or paragraph 4B(2) shall instead be investigated under another of those provisions.

- (2) The commissioner may not direct that a complaint which is being, or is to be, investigated under paragraph 4 be investigated under paragraph 4B(2) unless the complaint is withdrawn or the complainant indicates that he or she does not wish any further steps to be taken. **22**.

5 Supervision of investigations

- (1) In paragraph 5, after sub-paragraph (1) insert —
- 33** (1A) The commissioner shall supervise the investigation of any conduct matter —
- (a) which appears to him or her to have resulted in the death of, or serious injury to, any person; or
- (b) in which it appears to him or her that a member of the police force may have committed an offence falling within sub-paragraph (1)(b).
- (1B) The commissioner shall supervise the investigation of any circumstances mentioned in paragraph 4D. **22**.
- (2) In paragraph 5(2), after “complaint” insert **33** or conduct matter **22**, and after “sub-paragraph (1)” insert **33**, (1A), or (1B) as the case may be, **22**.
- (3) In paragraph 5(3) —
- (a) after the words “the commissioner” insert **33** under sub-paragraph (2) **22**;
- (b) in head (a), after “paragraph 4(1) or (3)” insert **33** or 4B(2) **22**.
- (4) After paragraph 5(3) insert —
- 33** (3A) Where an investigation relating to a complaint in relation to any conduct mentioned in sub-paragraph (1) or an investigation into any matter mentioned in sub-paragraph (1A) or circumstances mentioned in sub-paragraph (1B) is to be supervised by the commissioner —
- (a) the Chief Constable shall, appoint a relevant person to investigate the complaint, matter or circumstances formally; and
- (b) the following sub-paragraph applies to such an investigation in substitution for sub-paragraph (3) —
- “(3) Where an investigation is to be supervised by the commissioner under sub-paragraph (1), (1A) or (1B) —
- (a) no appointment shall be made under paragraph (3A) unless the commissioner approves the relevant person whom the Chief Constable proposes to appoint;

- (b) if such an appointment has already been made and the commissioner is not satisfied with the relevant person appointed —
- (i) the Chief Constable shall, as soon as reasonably practicable, select another relevant person and notify the commissioner that the Chief Constable proposes to appoint him or her; and
 - (ii) the appointment shall not be made unless the commissioner gives notice to the Chief Constable that he or she approves that person.”. **22**.

(5) In paragraph 5(4) after “police force” insert **63** or the relevant person **22**.

6 Report on investigation

- (1) In paragraph 6(2) after “police force” insert **63** or relevant person **22**.
- (2) In paragraph 6(3)(c)(i) and (4), for “the complainant” substitute **63** any complainant **22**.
- (3) In paragraph 6(5), for “disciplinary charge” substitute **63** disciplinary proceedings **22**.

7 Steps to be taken after investigation

- (1) In paragraph 7(2), for “has preferred disciplinary charges in respect of the conduct which was the subject of the investigation” substitute **63** referred the conduct which was the subject of the investigation to disciplinary proceedings **22**.
- (2) In paragraph 7(3), for “preferred or proposes to prefer disciplinary charges in respect of the conduct which was the subject of the investigation” substitute **63** referred or proposes to refer the conduct which was the subject of the investigation to disciplinary proceedings **22**.
- (3) in paragraph 7(4), after “(b)” insert **63** in the case of an investigation under paragraph 4, **22**.
- (4) For paragraph 7(6) and (7) substitute —
 - 63** (6) Subject to paragraph 9(5), if a memorandum under sub-paragraph (2) states that the Chief Constable proposes to refer the conduct which was the subject of the investigation to disciplinary proceedings, the Chief Constable shall so refer the conduct and shall not withdraw the case.
 - (6A) Subject to paragraph 9(5), if a memorandum under sub-paragraph (2) states that the Chief Constable has referred the conduct which was the subject of the investigation to disciplinary proceedings, the Chief Constable shall not withdraw the case.

- (7) No memorandum need be sent under this paragraph if the conduct which was the subject of the investigation has been referred to disciplinary proceedings and the officer concerned has admitted the conduct and that it amounted to misconduct or gross misconduct, and has not withdrawn his or her admission. **22**.
- (5) In paragraph 7(8)(a), for “disciplinary charges preferred and of any punishment imposed” substitute **23** conduct which was the subject of the investigation and of any disciplinary action taken **22**.

8 Power as to disciplinary proceedings

For paragraph 9 (including the cross-heading immediately before it) substitute —

23 *Power as to disciplinary proceedings*

9. (1) Where a memorandum under paragraph 7 states that the Chief Constable has not referred the conduct which was the subject of the investigation to disciplinary proceedings or does not propose to do so, the commissioner may recommend the Chief Constable to do so.
- (2) Subject to sub-paragraph (5), the Chief Constable may not withdraw any case which he or she has referred to disciplinary proceedings in accordance with a recommendation under sub-paragraph (1).
- (3) If, after the commissioner has made a recommendation under this paragraph and consulted him or her, the Chief Constable is still unwilling to refer the conduct to disciplinary proceedings, the commissioner may direct the Chief Constable so to refer that conduct, and where the commissioner does so, he or she shall furnish the Chief Constable with a written statement of his or her reasons for doing so.
- (4) Subject to sub-paragraph (5), the Chief Constable shall refer a case to disciplinary proceedings in accordance with a direction under sub-paragraph (3) and shall not withdraw the case.
- (5) The commissioner may give the Chief Constable permission —
- (a) not to refer to disciplinary proceedings a case which paragraph 7(6) or sub-paragraph (4) would otherwise oblige the Chief Constable to refer; or
 - (b) to withdraw a case which paragraph 7(6) or (6A) or sub-paragraph (2) or (4) would otherwise oblige the Chief Constable not to withdraw. **22**.

9 Relevant persons

After paragraph 12 insert —

12A *Powers of relevant persons*

12A (1) A relevant person who is appointed to conduct an investigation under this Schedule, has, for the purposes of conducting that investigation all the powers and privileges (whether under an enactment or at common law) of a constable in the Island and within the seaward boundary of the territorial sea adjacent to the Island.

(2) The Department may pay to a relevant person who is carrying out an investigation under this Schedule such fees and allowances as it may with the concurrence of the Treasury determine. **22**.

10 Regulations

(1) In paragraph 13, after sub-paragraph (1) insert —

13 (1A) Without prejudice to the generality of sub-paragraph (1), regulations under that sub-paragraph may prescribe —

- (a) the time within which any conduct matter is to be referred to the commissioner or any case is to be notified to the commissioner under paragraph 4C;
- (b) the information and evidence to be supplied to the commissioner on any such reference or notification; and
- (c) the steps to be taken to obtain and preserve evidence relating to the subject matter of the complaint, conduct matter or notification. **22**.

(2) In paragraph 13(2) —

(a) at the appropriate places insert —

- 13** (aa) subject to such exceptions as may be so specified, for the furnishing of particulars of any conduct matter referred to the commissioner under paragraph 4A to the person to whose conduct the matter relates; **22**;
- 13** (ba) for giving the person to whose conduct a conduct matter relates an opportunity to comment orally or in writing on the matter; **22**;
- 13** (da) for the notification of the outcome of the reference of any conduct matter under paragraph 4A to the person to whose conduct the matter relates; **22**; and

(b) omit head (h).

(3) After paragraph 13(2) insert —

- (3) The Department shall provide by regulations for the investigation, in such cases as may be specified in the regulations, of a complaint (other than a complaint mentioned in paragraph 5(1)) or a conduct matter (other than a conduct matter mentioned in paragraph 5(1A)) by a relevant person and for the modification of the foregoing provisions of this Schedule in relation to such an investigation. ■.

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