

Subsidiary Legislation made under s.24.

Police Complaints Regulations 2008

LN.2008/015

Commencement LN.2008/027

17.4.2008

| Amending enactments | Relevant current provisions | Commencement date |
|---------------------|-----------------------------|-------------------|
| LN. 2009/054 | r. 15(1)-(6) | 15.10.2009 |
| 2010/040 | r. 2(1) | 18.2.2010 |

ARRANGEMENT OF REGULATIONS

Regulation

1. Title, commencement and interpretation.
2. Establishment of the Police Complaints Board.
3. Proceedings of the Board.
4. Liability of members.
5. Accountability.
6. Manner of making complaints.
7. Register of complaints.
8. No complaints admissible after 3 years.
9. Initial examination.
10. No case to answer.
11. Complainant's right of appeal against a finding of no case to answer.
12. Investigation by the Board.
13. Police investigation.
14. Completion of investigation.
15. Findings of the Board.
16. Disciplinary action by the Commissioner of Police.
17. Criminal offence.
18. Power of the Board to discontinue an investigation.
19. Manner in which duties to provide information are to be performed.
20. Exceptions to the duty to keep the complainant informed and to provide information to other persons.
21. Copies of complaints etc..
22. Circumstances in which an investigation or other procedure may be suspended.
23. Resumption of investigation after criminal proceedings.
24. Appointment of persons to carry out investigations.
25. Combining and splitting investigations.
26. Complaints against a person who has subsequently ceased to serve with the police.
27. Complaints against a person whose identity is unascertained.
28. Keeping of records.

SCHEDULE**Fees**

In exercise of the powers conferred upon it by section 24 of the Police Act 2006 and pursuant to section 25 of that Act, after consultation with the Gibraltar Police Authority and the Commissioner of Police, the Government has made the following Regulations—

Title, commencement and interpretation.

1.(1) These Regulations may be cited as the Police Complaints Regulations 2008 and shall come into operation on the day appointed by the Government by notice in the Gazette.

(2) In these Regulations—

“Act” means the Police Act 2006;

“Authority” means the Gibraltar Police Authority;

“Board” means the Police Complaints Board;

“Chairman” means the Chairman of the Police Complaints Board;

“Commissioner” means the Commissioner of Police;

“Register” means the Register to be kept in accordance with regulation 7(1).

Establishment of the Police Complaints Board.

2.(1) There is hereby established a Police Complaints Board, which shall consist of a Chairman and six other members appointed by the Authority acting with the consent of the Minister with responsibility for the police.

(2) A member of the Authority shall be appointed Chairman of the Board and he shall not form part of the Authority when considering any appeal to the Authority from any decision of the Board in which he is a member.

(3) Every member of the Board shall hold office for a period of three years, and at the expiration of any such period or periods shall be eligible for reappointment.

(4) The quorum at meetings of the Board shall be three members comprising—

- (a) the Chairman, or another member presiding with the authority of the Chairman or in the absence of the Chairman or his failure or inability to authorise another member to preside, another member elected by the members present from among their number to preside over the meeting; and

(b) two other members.

(5) The Authority shall designate an officer to be the Secretary of the Board and shall provide the Board with such further administrative support as the Authority shall consider reasonable.

Proceedings of the Board.

3.(1) Any matters arising at a meeting of the Board shall be decided by a majority of the members present and voting thereon at the meeting and in the case of an equality of votes, the Chairman (or any member presiding in the absence of the Chairman) shall have a second casting vote.

(2) Minutes of every meeting shall be kept and once signed by the Chairman of the meeting (or any member presiding in his absence) at which they were approved, shall be rebuttable evidence of the proceedings to which they relate.

(3) Subject as otherwise provided in these Regulations, the Board shall have power to regulate its own proceedings.

Liability of members.

4. No personal liability shall attach to any member of the Board in respect of anything done or omitted to be done, in good faith, under the provisions of these Regulations.

Accountability.

5. The Board shall be accountable to the Authority, and shall be guided by the Authority in carrying out its duties generally but not (save as expressly provided in these Regulations) in the investigation of any specific complaint.

Manner of making complaints.

6.(1) A person wishing to complain about the conduct of a person serving with the Force shall do so in writing and shall transmit it to the Board through the Secretary.

(2) Once the Board considers that there is a case to answer the Secretary shall provide the police officer complained against and the Commissioner with a copy of the complaint.

(3) The Board may request the complainant to provide further and better particulars in writing of the matter that is the subject of the complaint.

(4) After considering the complaint, and if the Board considers there is a case to answer, it shall invite the police officer complained against or the Commissioner if no police officer is

identified, to respond in writing to the complaint within 28 days, or such longer period of time as the Board allows.

(5) If the police officer complained against or the Commissioner fails to respond in writing within the timescale prescribed under subregulation (4), the Board shall proceed with the initial examination of the complaint in accordance with regulation 9.

Register of complaints.

7.(1) Every complaint shall be recorded by the Board in a Register kept for the purpose, which shall contain–

- (a) the serial number allocated to the complaint;
- (b) the name of the complainant;
- (c) the nature of the complaint;
- (d) the date the complaint was received by the Board;
- (e) the date on which the complaint was considered admissible;
- (f) the police officer against whom the complaint has been made;
- (g) the date on which the initial report from the Commissioner was requested and the date it was received;
- (h) the date on which the Commissioner was asked to carry out a full investigation and the date on which the report on the full investigation was received by the Board;
- (i) the date of the Board's recommendation or decision;
- (j) the date on which the complainant was informed of the decision of the Board;
- (k) details of any request for a review or appeal that is made by the complainant against a finding of the Board;
- (l) the result of any review or appeal against a finding of the Board;
- (m) any additional note that the Board considers should be recorded in the register.

(2) Subject to the provisions of regulation 21, the Register shall be a public record and it may be searched by the public on payment of a search fee, and copies of an entry may be requested by the public on payment of the prescribed fee set out in the schedule.

(3) Subject to regulation 19, on each occasion that the entry in the Register is updated, a copy of the revised entry shall be supplied by the Board or the Authority, as the case may be, to the complainant and the police officer complained against or the Commissioner, if no police officer is identified in the complaint.

(4) No amendment may be made to the Register other than to correct a clerical error or an error of fact.

No complaints admissible after 3 years.

8. The Board shall not accept and shall not investigate any complaint that relates to an event that occurred three or more years before the date on which the complaint is made unless there are exceptional reasons why in its opinion it should accept and investigate the complaint.

Initial examination.

9.(1) Subject to regulation 6(2) and 6(5), when a complaint is received by the Board, it shall carry out an initial examination to determine whether—

- (a) there is a case to answer;
- (b) it appears that an offence may have been committed against any law.

(2) Where the Board is of the view that an offence in law may have been committed, the Attorney General shall be asked to determine whether criminal proceedings should be instituted against the police officer complained against.

(3) If criminal proceedings are to be instituted against the police officer, the Board shall inform the complainant and the Board shall not investigate the complaint until after the conclusion of those proceedings. Where the Board decides to resume the investigation of a complaint after criminal proceedings have concluded, the procedure set out in regulation 23 shall apply.

(4) In determining whether there is a case to answer the Board may ask the Commissioner to submit an initial report to the Board and shall furnish the Commissioner with any material it considers to be relevant for that purpose. The Commissioner may carry out any internal investigation he considers appropriate before submitting his report to the Board.

(5) The Board may ask the Commissioner for further information arising from his initial report.

No case to answer.

10. If the Board determines that the complaint shall not be proceeded with as in its opinion there is no case to answer, it shall inform the complainant, the police officer complained against and the Commissioner, in writing.

Complainant's right of appeal against a finding of no case to answer.

11.(1) The complainant may appeal to the Authority against a decision by the Board made under regulation 10 that there is no case to answer. Any such request shall be made in writing to the Authority within 14 days of receipt by the complainant of the decision of the Board and shall set out the reasons for the appeal.

(2) The Authority may consider the appeal even in the absence of reasons and may (in its discretion) extend the time for appealing even after the 14 day time period has expired but may not review a decision of the Board unless there is a written request for it to do so.

(3) Subject to subregulation (2) the Authority shall then consider and determine the matter and shall so inform the person appealing.

(4) The decision of the Authority in this matter will be final.

(5) The police officer complained against shall be informed in writing by the Authority that an appeal has been made to the Authority.

Investigation by the Board.

12.(1) If the Board considers that there is a case to answer it shall institute a formal investigation.

(2) The Chairman shall designate two members of the Board to institute the investigation into a particular complaint. The Commissioner when required by the Board shall appoint a senior officer of the Police Force to carry out a police investigation into the complaint. The officer carrying out the police investigation shall be provided by the Board with a copy of the complaint, the response of the officer complained against and the initial police report (if any) prepared pursuant to regulation 9(4).

(3) The police investigation shall be carried out within any timescale set by the Board.

(4) The result of the police investigation or any preliminary results thereof shall be communicated by the officer carrying out the investigation to the Board and to the Commissioner.

(5) The Board may require further investigation of the complaint by the officer who carried out the investigation or by the Commissioner.

(6) The Board may request the appearance before it of the complainant or a police officer or other person to assist the Board in assessing a complaint.

(7) The Board shall regulate its own proceedings and shall determine when hearings shall be held in public or in private.

(8) A person complained against or the complainant may be assisted in making representations to the Board, but may not be legally represented without the express consent of the Board.

(9) The complainant and the police officer complained against or where a complaint is not made against a named police officer, a person appointed by the Commissioner shall be entitled to attend or be represented at a hearing.

(10) The Board shall give a minimum of 14 days notice of a hearing.

Police investigation.

13.(1) If the full police investigation is not carried out in accordance with timescale set by the Board, the Board shall report the matter to the Authority, whereupon the Authority shall consult the Commissioner to investigate the causes for the delay and shall have regard to any representations made by him.

(2) The Authority may require the Commissioner to make additional resources available so that the police investigation can be completed in a timely manner. Nothing in this section shall compel the Commissioner to make additional resources available if in his opinion the provision of additional resources would detrimentally affect police operations generally or a specific police operation.

(3) If the Board or the Authority are not satisfied that the police investigation is being carried out fully and properly, or that there is a possibility of bias or perception of bias because of the police officer or of officers carrying out the investigation, the Board or the Authority as the case may be may request the Commissioner to appoint another senior police officer to carry out the police investigation whereupon the Commissioner shall do so.

Completion of investigation.

14. On completion of the investigation the Board shall determine whether it wishes to make any additional recommendations to the Authority in respect of any particular matter.

Findings of the Board.

15.(1) The Board shall communicate its decision and recommendations if any to the complainant, the officer complained against, the Commissioner and to the Authority.

(2) No appeal shall lie to the Authority from a decision or recommendation of the Board under this Regulation.

(3) A complainant may ask the Authority to review a decision or recommendation of the Board if either—

(a) the complainant produces new written evidence to the Authority which—

(i) was not, with reasonable diligence, available to the complainant at the time the Board considered the complaint; and

(ii) in the opinion of the Authority might have had a significant bearing on the decision or recommendation of the Board had the Board considered that evidence; or

(b) the complainant considers that the decision or recommendation of the Board was manifestly wrong or perverse and that no reasonable Board properly considering the complaint could have come to that decision or recommendation.

(4) A request that the Authority review a decision or recommendation of the Board shall—

(a) be in writing;

(b) set out the reasons why the Authority should review the decision or recommendation of the Board; and

(c) be lodged with the Authority within 28 days of receipt by the complainant of the decision or recommendation of the Board, unless the Authority agrees for exceptional reasons to extend the time for lodging the request.

(5) On reviewing a decision or recommendation of the Board, the Authority may uphold the decision or recommendation of the Board in whole or in part; or refer back to the Board the decision or recommendation of the Board in whole or in part with instructions that it be reconsidered.

(6) There shall be no automatic right to a hearing in person in respect of an application to review a decision or recommendation of the Board.

Disciplinary action by the Commissioner of Police.

16.(1) If the Authority determines that the officer complained against should be subjected to disciplinary action, and if such action has not already been unilaterally instituted by the Commissioner, the Commissioner will then institute action in accordance with the Police (Discipline) Regulations 1991.

(2) The Commissioner will submit a report in writing to the Authority and to the Board setting out the decision of the disciplinary board and the action taken as a result.

(3) The complainant shall be informed by the Board if disciplinary action is to be taken against a police officer as a result of the complaint and the result of the disciplinary action, but the complainant shall not be supplied by the Board with details of the disciplinary charge or charges or any details of the penalty (if any) imposed on the police officer.

Criminal offence.

17.(1) Where at any stage of an investigation of a complaint by the Board or the Commissioner it appears that a criminal offence may have been committed, the Attorney General will be asked to state whether criminal proceedings should be instituted, and if they are, the investigation will be suspended until the conclusion of those proceedings. Any evidence of a possible criminal offence will be preserved by the Board or the Commissioner and passed to the Attorney General.

Power of the Board to discontinue an investigation.

18.(1) The Board or the Authority may discontinue an investigation into a complaint where—

- (a) the complainant refuses to co-operate with the Board to the extent that the Board considers that it is not reasonably practicable to continue the investigation;
- (b) the Board considers the complaint is vexatious, oppressive or otherwise an abuse of the procedures for dealing with complaints;
- (c) the Board otherwise considers that it is not reasonably practicable to proceed with the investigation of the complaint; or
- (d) the complainant informs the Board or the Authority that he does not wish the investigation of the complaint to proceed or it is otherwise withdrawn.

(2) The withdrawal of a complaint by a complainant shall be in writing.

(3) When a complaint is withdrawn by a complainant, the register shall be endorsed accordingly together with the date on which the complaint was withdrawn.

(4) A complaint that has been withdrawn by a complainant cannot be commenced as a new complaint.

(5) Where the Board or the Authority discontinues an investigation the complainant and the officer complained against shall be informed in writing and provided with the reason or reasons for the discontinuation of the investigation.

(6) Save for a decision reached pursuant to subregulation (1)(d) where no appeal shall lie, a complainant who is dissatisfied with a decision to discontinue an investigation may appeal in writing to the Authority in the same manner as an appeal under regulation 11.

(7) The Authority shall determine any appeal made under this regulation and its decision shall be final.

Manner in which duties to provide information are to be performed.

19.(1) Where there is a requirement in these Regulations for a complainant or a police officer complained against to be informed of the progress of the investigation, or the discontinuation of the investigation or the results of an investigation, the Board or the Authority, as the case may be, shall do so in writing within 28 days of the event that is to be communicated to the complainant or the police officer complained against.

(2) The Board or the Authority shall inform the complainant and the police officer complained against of the progress of the investigation as frequently as the Board or the Authority determines to be appropriate in order for the complainant and the police officer complained against to be kept properly informed and in any event not later than 42 days after the previous notification.

Exceptions to the duty to keep the complainant informed and to provide information to other persons.

20. Notwithstanding the other provisions of these Regulations, the complainant and the officer complained against should not be informed of the progress of the investigation or of any matter in relation to its progress, and shall not be provided with an updated copy of the entry in the Register relating to the complaint where in the opinion of the Board or the Authority the non-disclosure of information is necessary for the purpose of—

- (a) preventing the premature or inappropriate disclosure of information that is relevant to or may be used in any on-going or prospective criminal proceedings or where to do so might otherwise prejudice any investigation of the Board or the Authority;
- (b) preventing the disclosure of information in any circumstances in which its non-disclosure is–
 - (i) in the interests of national security;
 - (ii) for the purpose of the prevention or detection of crime, or the apprehension or prosecution of offenders;
 - (iii) otherwise necessary in the public interest.

Copies of complaints etc.

21.(1) Notwithstanding the provisions of regulation 7(2) the public shall not be allowed access to those parts of the Register showing the name of the complainant or the name of the police officer against whom the complaint has been made and the Board or the Authority may decide not to allow the public search of a particular entry in the Register or to supply a copy of a complaint if it is of the opinion that to do so–

- (a) might prejudice any criminal investigation or pending proceedings; or
- (b) would otherwise be contrary to the public interest.

(2) Where the Board decides not to allow the public search of a particular entry in the Register or to supply a copy to a person requesting one, it shall keep that decision under regular review.

(3) Notwithstanding the provisions of subsection (1), the Authority or the Board may disclose the identity of the parties to the complaint where in its opinion it is in the public interest to do so.

Circumstances in which an investigation or other procedure may be suspended.

22.(1) The Board or the Authority may suspend any investigation or other procedure which would, if it were to continue, prejudice any criminal proceedings or criminal investigation.

(2) The Board or the Authority may direct that any investigation or other procedure which is liable to be suspended under subregulation (1) shall continue or resume if it is of the view that it is in the public interest to make such a direction.

(3) In the case of a direction that the Board wishes to make as aforesaid, the Board shall consult the Authority before making such a direction.

Resumption of investigation after criminal proceedings.

23.(1) Where the investigation of a complaint has been suspended until the conclusion of criminal proceedings, the Commissioner shall notify the Board of the outcome of the criminal proceedings.

(2) Where the whole or part of the investigation of a complaint has been suspended until the conclusion of criminal proceedings, after the conclusion of those proceedings the Board may, taking into account the outcome of and any information disclosed in those proceedings, write to the complainant at the address given by him as his contact address to ascertain whether he wants the investigation to start or be resumed, as the case may be.

(3) If the Board decides that it should not proceed to investigate or continue to investigate the complaint, it shall write to the complainant at the aforementioned address notifying him of that decision and setting out the reasons for its decision.

(4) The complainant may appeal to the Authority against the decision of the Board reached pursuant to subregulation (3) and the procedure for that appeal shall be the same as the procedure set out in regulation 11.

(5) The decision of the Authority in this matter shall be final.

(6) If the complainant sets out in writing that he wishes the investigation to start or be resumed, the Board shall start or resume the investigation as the case may be.

(7) If the complainant indicates that he does not want the investigation to start or be resumed, or if he fails to reply to the Board within 21 days of the date of the letter sent to him by the Board, the Board shall determine whether it is in the public interest for the complaint to be investigated and—

(a) if the Board determines that it is not in the public interest for the complaint to be investigated, the case will be closed and the Register annotated accordingly; or

(b) if the Board determines that it is in the public interest for the complaint to be investigated, the matter shall then be investigated by the Board.

(8) The Board shall notify the person complained against accordingly where subregulation (7)(a) or (7)(b) applies, unless it is of the opinion that it would prejudice any criminal investigation or pending proceedings or would be contrary to the public interest.

Appointment of persons to carry out investigations.

24. No police officer shall be appointed by the Commissioner at the request of the Board or the Authority to carry out an investigation under the provisions of these Regulations—

- (a) unless he has an appropriate level of knowledge, skill and experience to plan and conduct the investigation and to manage the resources that will be required during that process;
- (b) if he has any social, financial or other connection, whether or not within the work environment, with the police officer whose conduct is being investigated which could, on an objective appraisal of the material facts, give rise to a legitimate fear as to whether that investigation can be carried out impartially;
- (c) if he works, directly or indirectly, under the management of the person whose conduct is being investigated or he is the direct supervisor of the officer in question.

Combining and splitting investigations.

25.(1) The Board may—

- (a) combine an investigation with another such investigation; or
- (b) split an investigation into two or more separate investigations if it considers that it is more efficient and effective, or is otherwise in the public interest, to do so.

(2) Nothing in this regulation shall prevent the Board from determining that—

- (a) where an investigation is split into two or more separate investigations, those investigations may take different forms;
- (b) two or more separate investigations which take different forms may be combined into a single investigation.

Complaints against a person who has subsequently ceased to serve with the police.

26. Where a complaint relates to the conduct of a person who has ceased to be a person serving with the police since the time of the conduct, the Board shall nevertheless accept the complaint and investigate it in accordance with the provisions of these Regulations.

Complaints against a person whose identity is unascertained.

27. Where a complaint relates to the conduct of a person whose identity is unascertained at the time at which the complaint is made but whose identity is ascertained during or subsequent to the investigation of the complaint, then the Board shall take such action in accordance with these Regulations as it sees fit, regardless of any previous action taken under this regulation.

Keeping of records.

28.(1) Subject to the provisions of these Regulations, the Board shall keep records, in such form as the Authority shall determine, of—

- (a) every complaint and purported complaint that is made to it;
- (b) every exercise of a power or performance of a duty;
- (c) every meeting of the Board.

(2) The records kept by the Board shall not be public records other than the Register kept pursuant to regulation 5.

2006-20

Police

2008/015

Police Complaints Regulations 2008

SCHEDULE

Regulation 7(2)

The fees to be charged under these Regulations are—

| | |
|--|----|
| (a) for a search of the Register (per ½ day or part thereof) | £6 |
| (b) for a photocopy of an entry in the Register | £6 |