



BERMUDA

POLICE COMPLAINTS AUTHORITY ACT 1998

1998 : 29

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SCHEDULE

WHEREAS it is expedient to establish a Police Complaints Authority and to make better provision for the investigation and resolution of complaints against the police:

[Words of enactment omitted]

Short title

1 This Act may be cited as the Police Complaints Authority Act 1998.

Interpretation

2 In this Act—

“the Authority” means the Police Complaints Authority established under section 4;

“the Commanding Officer” means the commanding officer of the Royal Bermuda Regiment coast guard unit;

“the Commissioner” means the Commissioner of Police;

“complaint” means any complaint about the conduct of an officer which is submitted—

(a) by a member of the public; or

(b) on behalf of a member of the public and with his written consent;

“the Minister” means the Minister responsible for police matters;

“officer” means—

(a) a police officer of the Bermuda Police Service; or

(b) a coast guard unit person.

[Section 2 definition “the Commanding Officer” inserted, and definition “officer” repealed and replaced by 2018 : 57 s. 5 effective 1 February 2021]

Act to bind Crown

3 This Act binds the Crown.

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Police Complaints Authority

- 4 (1) There is established a body to be known as the Police Complaints Authority.
- (2) The Authority shall consist of a Chairman who shall be a barrister and five members.
- (3) The Chairman and members of the Authority shall be appointed by the Governor after consultation with the Minister.
- (4) Fees shall be paid to the Chairman and members of the Authority in accordance with the provisions of the Government Authorities (Fees) Act 1971 [*title 14 item 6*].
- (5) The Minister shall provide such staff support and other services as the Authority may require to perform its functions.
- (6) The provisions of the Schedule have effect with regard to the constitution of, and other matters concerning, the Authority.

Functions of the Authority

- 5 (1) The functions of the Authority are—
- (a) to receive complaints alleging any misconduct, neglect of duty or negligent performance of duty by an officer;
 - (b) where it is satisfied that there are reasonable grounds to carry out an investigation in the public interest, of its own initiative, to conduct its own investigation or to direct and supervise an investigation of any incident involving death or serious injury;
 - (c) to take such action in respect of complaints, incidents and other matters as is contemplated by this Act.
- (2) In the course of taking action in respect of any complaint the Authority may direct and supervise an investigation of any apparent misconduct, or neglect or negligent performance of duty by an officer which appears to the Authority to relate to the complaint, notwithstanding that the complaint itself does not refer to that misconduct or neglect or negligent performance of duty.
- (3) Nothing in subsection (1) shall authorize the Authority to investigate any matter relating to the terms and conditions of service of an officer.

Commanding Officer and Commissioner to notify Authority of incidents involving death or serious injury

- 6 Where an officer acting in the execution of his duty causes, or appears to have caused, death or serious injury to any person, the Commanding Officer or the Commissioner shall, as soon as practicable, give to the Authority a written notice setting out particulars of the incident in which the death or serious injury was caused.

[Section 6 amended by 2018 : 57 s. 5 effective 1 February 2021]

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Making a complaint

- 7 (1) A complaint may be made either orally or in writing.
- (2) A complaint made orally shall be reduced to writing as soon as practicable.
- (3) A complaint may be made to an officer or to the Authority.
- (4) It is the duty of an officer on receipt of a complaint to record the date of its receipt and transmit the complaint forthwith to the Commanding Officer or (as the case may warrant) to the Commissioner.
- (5) Notwithstanding any provision in any enactment, where any letter appearing to be written by or on behalf of—
- (a) a person in custody on a charge or after conviction of any offence; or
 - (b) a patient of a hospital within the meaning of the Mental Health Act 1968 [title 11 item 36],

is addressed to the Authority, the person for the time being in charge of the place or institution where the person is in custody or is a patient shall immediately forward the letter, unopened, to the Authority.

[Section 7 subsection (4) amended by 2005:22 s.2 effective 3 August 2005; Section 7 subsection (4) amended by 2018 : 57 s. 5 effective 1 February 2021]

Commanding Officer and Commissioner to notify Authority of complaints

8 Immediately on receipt of it the Commanding Officer and the Commissioner shall notify the Authority of every complaint received by the police, other than a complaint notified to the Commanding Officer and the Commissioner by the Authority.

[Section 8 amended by 2018 : 57 s. 5 effective 1 February 2021]

Authority to notify The Commanding Officer and the Commissioner of complaints

9 Immediately on receipt of it the Authority shall notify the Commanding Officer or the Commissioner of every complaint received by it, other than a complaint notified to it by the Commanding Officer or the Commissioner.

[Section 9 amended by 2018 : 57 s. 5 effective 1 February 2021]

Action upon receipt of complaint

- 10 (1) On receiving or being notified of a complaint, the Authority may do one or more of the following:
- (a) defer action until the receipt of a report from the Commanding Officer or the Commissioner on a police investigation of the complaint;
 - (b) direct and supervise a police investigation of the complaint and the Chairman may, if he thinks fit, designate a member of the Authority to attend any or all of the proceedings on a police investigation or hearing of a complaint;

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- (c) conduct its own investigation, whether or not a police investigation is or has been undertaken;
- (d) request the Commanding Officer or the Commissioner to seek an informal resolution of the complaint and may, if it thinks fit, recommend the form of informal resolution which it considers appropriate in the circumstances;
- (e) decide pursuant to section 12 to take no action on the complaint.

(1A) Without prejudice to the generality of subsection (1)(d), the Authority may recommend, in particular, that—

- (a) a complaint be dealt with by mediation; or
- (b) that an officer who is the subject of a complaint be sent for counselling,

if the Authority is of the opinion, having regard to all the circumstances of the case, that mediation or counselling is suitable.

(2) The Authority shall, as soon as practicable, advise the Commanding Officer or the Commissioner and the complainant of the procedure it proposes to adopt under subsection (1).

[Section 10 subsection (1) amended, and (1A) inserted, by 2005:22 s.3 effective 3 August 2005; Section 10 amended by 2018 : 57 s. 5 effective 1 February 2021]

Informal resolution of complaint

11 (1) Where the Authority gives a direction under section 10(1)(d), the Commanding Officer or the Commissioner shall appoint an officer to resolve the complaint informally.

(2) If the officer is able to resolve the complaint informally, he shall advise the Commanding Officer or the Commissioner of the resolution, and the terms thereof, and the Commanding Officer or the Commissioner shall inform the Authority accordingly.

(3) If the officer is not able to resolve the complaint informally, he shall so advise the Commanding Officer or the Commissioner and the Authority, and the Commanding Officer or the Commissioner shall cause a formal investigation of the complaint to be conducted.

(4) A statement made by an officer for the purposes of the resolution of any complaint shall not be admissible in any subsequent criminal, civil or disciplinary proceedings except to the extent that it consists of an admission relating to a matter that has not been subjected to resolution.

[Section 11 subsection (4) inserted by 2016 : 44 s. 5 effective 2 December 2016; Section 11 amended by 2018 : 57 s. 5 effective 1 February 2021]

Authority may decide to take no action on complaint

12 (1) The Authority may decide to take no action, or, as the case may require, no further action, on any complaint if—

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- (a) the complaint relates to a matter of which the person alleged to be aggrieved has had knowledge for more than 12 months before the complaint was made; or
- (b) in the opinion of the Authority—
 - (i) the subject-matter of the complaint is trivial;
 - (ii) the complaint is frivolous or vexatious or is not made in good faith;
 - (iii) the person alleged to be aggrieved does not desire that action be taken or, as the case may be, continued; or
 - (iv) there is in all the circumstances an adequate alternative remedy or right of appeal, which it would be reasonable for the person alleged to be aggrieved to exercise.

(2) The Authority may decide not to take any further action on a complaint if, in the course of the investigation of the complaint by the Authority or the police, or as a result of the Commanding Officer's or the Commissioner's report on a police investigation, it appears to the Authority that, having regard to all the circumstances of the case, any further action is unnecessary or inappropriate.

(3) In any case where the Authority decides to take no action, or no further action, on a complaint, it shall inform the complainant of that decision and the reasons for it.

[Section 12 subsection (2) amended by 2018 : 57 s. 5 effective 1 February 2021]

Subsequent powers in relation to complaint

13 The Authority may at any time—

- (a) review a police investigation of a complaint;
- (b) decide to conduct its own investigation of a complaint;
- (c) give such directions to the Commanding Officer or the Commissioner concerning the investigation as it thinks fit;
- (d) direct the Commanding Officer or the Commissioner to re-open an investigation, and thereafter direct and supervise the investigation;
- (e) direct the Commanding Officer or the Commissioner to reconsider his proposals for action on a complaint;
- (f) decide, in accordance with section 12, to take no further action on the complaint;
- (g) decide that no action by the Authority is required on the ground that it considers that the outcome of a police investigation is satisfactory.

[Section 13 amended by 2018 : 57 s. 5 effective 1 February 2021]

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Commanding Officer or the Commissioner to report to Authority on police investigation of complaint

14 (1) The Commanding Officer or the Commissioner shall, in respect of a complaint, report to the Authority—

- (a) whether the complaint has been upheld and, if so, what action has been taken or is proposed to be taken to rectify the matter;
- (b) whether the complaint has been resolved informally pursuant to section 11 and, if so, the terms on which it has been resolved.

(1A) The Commanding Officer or the Commissioner shall report to the Authority under subsection (1) within two months after the day when a complaint is received by an officer in accordance with section 7(4).

(1B) The Authority may in the circumstances of the investigation of a particular complaint, in writing, extend the time period referred to in subsection (1A) for such period as it considers appropriate.

(1C) If within the time period specified pursuant to this section the Commanding Officer or the Commissioner fails to submit a report to the Authority, the Authority, after considering any reasons given by the Commanding Officer or the Commissioner, may transmit to the Minister for tabling in both Houses of the Legislature such report on the matter as it thinks fit.

(2) When reporting to the Authority under this section, the Commanding Officer or the Commissioner shall supply to the Authority accompanying material sufficient to enable the Authority to assess the adequacy of the police investigation.

(3) The Commanding Officer or the Commissioner may consult the Authority on any police proposals for action on a complaint before reporting to the Authority under this section.

[Section 14 subsection (1) amended, and (1A) to (1C) inserted, by 2005:22 s.4 effective 3 August 2005; Section 14 amended by 2018 : 57 s. 5 effective 1 February 2021]

Commanding Officer or the Commissioner to provide information and assistance

15 (1) The Commanding Officer or the Commissioner shall, provide to the Authority all such information and assistance as is necessary for the proper performance by the Authority of its functions in relation to the investigation of any complaint or incident under this Act.

(2) Where the Authority supervises and directs a police investigation of a complaint, the Commanding Officer or the Commissioner shall, whenever the Authority so requests, provide to the Authority—

- (a) any or all information in the possession or under the control of the police that is relevant to the complaint;
- (b) a report on the progress of the investigation.

[Section 15 heading and subsection (1) amended by 2005:22 s.5 effective 3 August 2005; Section 15 amended by 2018 : 57 s. 5 effective 1 February 2021]

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Preservation of evidence

16 The Commanding Officer or the Commissioner shall, in respect of any complaint, take such steps as appear to him to be desirable for the purpose of obtaining or preserving evidence relevant to the complaint.

[Section 16 amended by 2018 : 57 s. 5 effective 1 February 2021]

Proceedings of Authority

17 (1) Before proceeding to investigate any complaint under this Act the Authority shall inform the Commanding Officer or the Commissioner, the complainant (if any), and, unless the interests of justice otherwise require, any person alleged to be aggrieved (if not the complainant) of its intention to make the investigation.

(2) Every investigation by the Authority under this Act shall be conducted in private.

(3) Subject to section 24, the Authority may hear or obtain information from such persons as it thinks fit, including, where it considers that cultural matters are a factor relevant to a complaint or investigation, information from such persons as the Authority thinks have knowledge or experience in those matters.

(4) The Chairman shall determine matters of procedure and admissibility of evidence.

[Section 17 subsection (1) amended by 2018 : 57 s. 5 effective 1 February 2021]

Powers of Authority in relation to investigations

18 (1) The Authority may require any person who in its opinion is able to give information relating to any matter under investigation by the Authority to furnish such information, and to produce such documents or things in the possession or under the control of that person, as in the opinion of the Authority are relevant to the subject-matter of the investigation.

(2) The Authority may summon before it and examine on oath any person who in its opinion is able to give any information relating to the matter under investigation, and may for the purpose administer an oath to any person so summoned.

(3) Every such examination by the Authority shall be deemed to be a judicial proceeding within the meaning of section 119 of the Criminal Code (which relates to perjury).

(4) For the purpose of this section the Authority shall have the powers of a judge of the Supreme Court.

Protection and privileges of witnesses, etc.

19 (1) Except as provided in subsection (2), every person shall have the same privileges in relation to the giving of information to the Authority, the answering of questions put by the Authority, and the production of documents and things to the Authority, as witnesses have in any court.

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(2) Where the Authority requires any person to give any information or produce any document or thing, and compliance with that requirement would breach an obligation of secrecy or non-disclosure imposed on that person by or under any enactment,—

- (a) the existence of the obligation shall not constitute a ground for refusal or failure to give the information or produce the document or thing, as the case may be; and
- (b) compliance with any such requirement is not a breach of the relevant obligation of secrecy or non-disclosure, or of the enactment or provision by which that obligation is imposed.

(3) No person shall be liable to prosecution for an offence against any enactment, other than section 28 or 29, by reason of that person's compliance with any requirement of the Authority under section 18.

(4) Except in proceedings for perjury within the meaning of the Criminal Code in respect of sworn testimony given before the Authority, or for an offence against section 28 or 29,—

- (a) no statement made or answer given by any person in the course of any investigation by or proceedings before the Authority shall be admissible in evidence against that or any other person in any court or in any inquiry or other proceeding; and
- (b) no evidence in respect of proceedings before the Authority shall be given against any person.

(5) Where the attendance of any person is required by the Authority under section 18, the person shall be entitled to the same fees and expenses as a witness in a court of summary jurisdiction.

Procedure after investigation by Authority

20 (1) Where the Authority itself undertakes an investigation under this Act it shall form an opinion on whether or not any decision, recommendation, act, omission or conduct, which was the subject-matter of the investigation was contrary to law, unreasonable, unjustified, unfair, or undesirable.

(2) The Authority shall convey its opinion, with reasons, to the Commanding Officer or the Commissioner, and may make such recommendations as it thinks fit, including a recommendation that disciplinary or criminal proceedings be considered or instituted against any member of the police.

(3) If, after the Authority has made a recommendation under this section, the Commanding Officer or the Commissioner does not accept the recommendation—

- (a) the Commanding Officer or the Commissioner shall not be compelled to give effect to the recommendation; and

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- (b) in such case the Authority shall, instead, have the right to give effect to its own recommendation.

[Section 20 subsection (3) inserted by 2016 : 44 s. 5 effective 2 December 2016; Section 20 amended by 2018 : 57 s. 5 effective 1 February 2021]

Procedure after investigation by police

21 (1) Where, pursuant to section 14, the Commanding Officer or the Commissioner reports to the Authority on a police investigation of a complaint, the Authority shall consider the report and determine whether or not any act, omission, decision, recommendation or conduct which was the subject of the investigation was contrary to law, unreasonable, unjustified, unfair or undesirable.

(2) The Authority—

- (a) shall indicate to the Commanding Officer or the Commissioner whether or not it agrees with the Commanding Officer's or the Commissioner's decision or proposed decision in respect of the complaint;
- (b) may, where it does not so agree, make such recommendations, supported by its reasons for them, as it thinks fit and it may recommend that disciplinary or criminal proceedings be instituted against an officer.

[Section 21 amended by 2018 : 57 s. 5 effective 1 February 2021]

Implementation of recommendations of Authority

22 (1) The Commanding Officer or the Commissioner, as soon as practicable after receiving any recommendation under section 21(2), shall—

- (a) notify the Authority of the action proposed to be taken to give effect to the recommendation; and
- (b) where the proposed action departs from or does not implement the recommendation, the reasons therefor together with the Commanding Officer's or the Commissioner's comments.

(2) If, within a reasonable time after a recommendation is made, no action is taken which seems to the Authority to be adequate and appropriate, the Authority shall require the Commanding Officer or the Commissioner to comment on the recommendation and, after considering any comments made by the Commanding Officer or the Commissioner, may—

- (a) send a copy of its opinion and recommendations on the matter, together with the comments of the Commanding Officer or the Commissioner, to the Minister and to the Governor; and
- (b) where it considers it appropriate, transmit to the Minister for tabling in both Houses of the Legislature such report on the matter as it thinks fit.

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(3) The Minister shall, as soon as practicable after receiving a report under subsection (2)(b), lay the report before both Houses of the Legislature.

[Section 22 amended by 2018 : 57 s. 5 effective 1 February 2021]

Parties to be informed

23 Where the Authority conducts its own investigation or directs and supervises the investigation of a complaint, it shall in every case inform the parties concerned, as soon as practicable after the conclusion of the investigation, of the result of the investigation.

Adverse comment

24 The Authority shall not—

- (a) in any opinion or recommendation given under section 20 or 21; or
- (b) in any report under section 22,

make any comment that is adverse to any person unless that person has been given an opportunity to be heard.

Authority and staff to maintain secrecy

25 (1) The Authority, and every person acting under the direction of the Authority, shall maintain secrecy in respect of all matters that come to their knowledge in the exercise of their functions, and shall not communicate any such matter to any person except for the purpose of carrying out their functions under this Act.

(2) Notwithstanding subsection (1), the Authority may disclose such matters as in the opinion of the Authority ought to be disclosed—

- (a) for the purposes of carrying out an investigation or other duty of the Authority under this Act; or
- (b) in order to establish grounds for the Authority's conclusions and recommendations.

Privilege

26 (1) No proceedings, civil or criminal, shall lie against the Authority, or against any person acting under the direction of the Authority, for anything done or reported or said by the Authority or person in the course of the exercise or intended exercise of their functions under this Act, unless it is shown that the Authority or person acted in bad faith.

(2) No member of the Authority or person acting under the direction of the Authority, shall be called to give evidence in any court, or in any proceedings of a judicial nature, in respect of anything coming to their knowledge in the exercise of their functions under this Act.

(3) Anything said or any information given or any document or thing produced by any person in the course of any investigation conducted by, or proceedings before, the Authority under this Act shall be privileged in the same manner as if the investigation or proceedings were proceedings in a court.

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Annual report

27 (1) Without limiting the right of the Authority to report at any time under section 14 or 22, the Authority shall in each year furnish to the Minister and to the Governor a report on the exercise of its functions under this Act.

(2) The Minister shall lay a copy of every such report before both Houses of the Legislature as soon as practicable after the date on which it is furnished to him.

[Section 27 subsection (1) amended by 2005:22 s.6 effective 3 August 2005]

Offences

28 Any person who—

- (a) obstructs, hinders or resists a member or servant of the Authority or any person acting under the direction of the Authority in exercise of their powers under this Act;
- (b) without reasonable excuse, refuses or fails to comply with any requirement of the Authority under this Act;
- (c) makes any statement or gives any information to the Authority or to any person acting under the direction of the Authority knowing that the statement or information is false or misleading;
- (d) discloses information in contravention of section 25,

is guilty of an offence and liable on summary conviction to a fine not exceeding \$2,000.

Wasting time of police or Authority

29 Any person who makes a frivolous, vexatious or malicious complaint thereby wasting the time of the police or the Authority is guilty of an offence and liable on summary conviction to a fine not exceeding \$3,000 or imprisonment for a term not exceeding three months.

Consequential amendment

30 *[Omitted]*

Saving for disciplinary powers under Police Act

31 Nothing in this Act shall be construed to affect the powers of the police to deal with disciplinary matters under the Police (Discipline) Orders 1975 *[title 10 item 21(h)]*.

Transitional

32 *[Omitted]*

Commencement

33 This Act comes into operation on such day as the Minister may appoint by notice published in the Gazette.

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SCHEDULE

(section 4(6))

1. The Chairman and members of the Authority shall hold office for such term not exceeding five years as may be specified in their respective instruments of appointment.
2. The Governor may appoint one of the members as Deputy Chairman and he shall act as Chairman in the absence of the Chairman.
3. The Chairman, Deputy Chairman and members of the Authority are eligible for re-appointment.
4. At a meeting of the Authority the quorum shall be three.
5. Any question for decision by the Authority shall be decided by a majority of the members (including the Chairman) present and voting.
6. Each member (including the Chairman) has one vote except that, in the event of a tie, the Chairman or Deputy Chairman, as the case may be, has a casting vote.
7. An act of the Authority is not invalid by reason only of a vacancy in the Authority's membership or a defect in a member's appointment.
8. Subject to this Act, the Authority may regulate its own procedure.
9. The expenses of the Authority shall be met out of funds to be appropriated annually by the Legislature.

[Assent Date: 5 October 1998]

[Amended by:

2005 : 22

2016 : 44

2018 : 57]