
SCOTTISH STATUTORY INSTRUMENTS

2014 No. 68

The Police Service of Scotland (Conduct) Regulations 2014

PART 2

Misconduct investigations

Preliminary assessment

10.—(1) This regulation applies if a misconduct allegation comes to the attention of the deputy chief constable.

(2) The deputy chief constable must assess whether the conduct which is the subject matter of the misconduct allegation would, if that conduct were proved, amount to—

- (a) misconduct;
- (b) gross misconduct; or
- (c) neither.

(3) If the deputy chief constable assesses that the conduct would, if proved, amount to neither misconduct nor gross misconduct, the deputy chief constable may—

- (a) take no further action;
- (b) take improvement action; or
- (c) refer the matter to be dealt with under the procedures established by the Performance Regulations.

(4) If the deputy chief constable assesses that the conduct would, if proved, amount to either misconduct or gross misconduct, the deputy chief constable must decide whether the misconduct allegation is to be investigated and—

- (a) if it is to be investigated, appoint an investigator; and
- (b) if it is not to be investigated—
 - (i) take no further action; or
 - (ii) take improvement action.

(5) An investigator appointed under paragraph (4)(a) must—

- (a) be a constable of a higher rank than the constable being investigated; and
- (b) have the necessary knowledge, skills and expertise to plan and manage the misconduct investigation in relation to which the appointment is made.

(6) The deputy chief constable must not appoint as an investigator any constable whose appointment could give rise to a reasonable concern as to whether that constable could act impartially in relation to the misconduct investigation.

(7) If, during the course of the misconduct investigation, the deputy chief constable considers that by reason of the scale or complexity of the case a different investigator should be appointed, the deputy chief constable may appoint, or arrange for the appointment of, a constable to replace the investigator originally appointed.

(8) Paragraph (5) and (6) apply to the appointment of a replacement investigator under paragraph (7).

Notice of investigation

11.—(1) The investigator must, as soon as reasonably practicable following appointment, give the constable written notice—

- (a) that the constable is the subject of a misconduct investigation;
- (b) specifying—
 - (i) the conduct forming the subject matter of the misconduct allegation; and
 - (ii) how that conduct is alleged to fall below the Standards of Professional Behaviour;
- (c) providing an initial assessment of whether, if proved, that conduct would amount to misconduct or gross misconduct;
- (d) providing the constable with an opportunity to make written or oral representations; and
- (e) informing the constable of the right to seek advice from the constable’s staff association and police representative.

(2) If, at any time after the notice mentioned in paragraph (1) is issued but before the report mentioned in regulation 13(1) is issued, the investigator’s assessment of whether the constable’s conduct would amount to misconduct or gross misconduct changes, the investigator must issue a further notice of investigation in accordance with this regulation notifying the constable of that change.

Misconduct interview

12.—(1) The investigator—

- (a) must arrange an interview with the constable in a case where the constable intimates, following receipt of a notice under regulation 11(1), an intention to make oral representations,; and
- (b) in any other case, may arrange such an interview.

(2) The investigator must seek to agree with the constable a time and date for the interview.

(3) If no agreement is made under paragraph (2), the investigator must specify a date and time for the interview.

(4) The constable must be provided with a written notice of the date, time and place of the interview.

(5) The investigator must, in advance of the interview, provide the constable with such information as the investigator considers appropriate in the circumstances to enable the constable to prepare for the interview.

(6) Without prejudice to the generality of paragraph (5), the information provided to the constable in advance of the interview must include details of the allegations made against the constable, including—

- (a) the dates on which (or approximate dates on which); and
- (b) the places at which,

any misconduct or gross misconduct is alleged to have occurred.

(7) An audio recording may be made of an interview and, if such a recording is made, the constable must be provided with a copy of that recording.

(8) If no audio recording is made under paragraph (7), a written record of the interview must be prepared by the investigator and—

- (a) a draft of that record must be provided to the constable;
- (b) the constable must be given the opportunity to make representations in relation to that draft;
- (c) the investigator must consider any representations made; and
- (d) having considered those representations (if any), the investigator must send a copy of the final written record of the interview to the constable.

Investigator's report

13.—(1) At the conclusion of the misconduct investigation, the investigator must—

- (a) determine whether, in the investigator's opinion, the constable has a case to answer in relation to the misconduct allegation; and
- (b) submit a written report to the deputy chief constable.

(2) A report submitted in accordance with paragraph (1) must contain—

- (a) a summary of any evidence obtained by the investigator; and
- (b) the investigator's opinion as to whether the misconduct allegation should be referred to misconduct proceedings.

(3) The investigator must send with the report mentioned in paragraph (1) any documents or other information relevant to that report or to the investigation including, in particular—

- (a) a copy of any audio recording made of an interview under regulation 12(7); and
- (b) a copy of any written record of such an interview prepared under regulation 12(8).

Referral to misconduct proceedings

14.—(1) On receipt of the investigator's report, the deputy chief constable must, as soon as reasonably practicable, determine whether the constable has a case to answer in respect of—

- (a) misconduct;
- (b) gross misconduct; or
- (c) neither.

(2) If the deputy chief constable determines that the constable has a case to answer in respect of misconduct and paragraph (4) does not apply, the deputy chief constable must refer the misconduct allegation to a misconduct meeting.

(3) If—

- (a) the deputy chief constable determines that the constable has a case to answer in respect of gross misconduct; or
- (b) the deputy chief constable determines that the constable has a case to answer in respect of misconduct and paragraph (4) applies,

the deputy chief constable must refer the misconduct allegation to a misconduct hearing.

(4) This paragraph applies if, at a time when any of the conduct forming the subject matter of the misconduct allegation occurred, the constable was subject to a final written warning which was in effect.

(5) If the deputy chief constable determines that the constable has no case to answer in respect of either misconduct or gross misconduct, the deputy chief constable may—

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- (a) take no further action;
- (b) take improvement action; or
- (c) refer the matter to be dealt with under the procedures established by the Performance Regulations.