
STATUTORY RULES OF NORTHERN IRELAND

2016 No. 41

The Police (Conduct) Regulations (Northern Ireland) 2016

PART 5

Fast Track Procedure for Special Cases

Referral of case to special case hearing

42.—(1) On receipt of a statement submitted by the investigator under regulation 20(3), or a recommendation by the Ombudsman under section 59(2) of the 1998 Act, the appropriate authority shall determine whether the special conditions are satisfied.

(2) In a case where special case proceedings have been delayed by virtue of regulation 9(3), as soon as practicable after the appropriate authority considers that such proceedings would no longer prejudice any criminal proceedings, it shall make a further determination as to whether the special conditions are satisfied.

(3) In a case where disciplinary proceedings have been delayed by virtue of regulation 9(3), the appropriate authority may, as soon as practicable after it considers that such proceedings would no longer prejudice any criminal proceedings, determine whether the special conditions are satisfied.

(4) Where the appropriate authority determines that the special conditions are satisfied, unless it considers that the circumstances are such as to make it inappropriate to do so, it shall certify the case as a special case and, subject to regulation 9(3) and paragraph (2), refer it to a special case hearing.

(5) Where the appropriate authority determines—

- (a) that the special conditions are not satisfied; or
- (b) that, although those conditions are satisfied, the circumstances are such as to make such certification inappropriate,

it shall, if the investigation was incomplete, return the case to the investigator to complete the investigation or, in any other case, proceed in accordance with Part 4.

(6) Where the appropriate authority is to proceed in accordance with Part 4, regulation 21(1) shall be read as if the words “regulation 42 and paragraphs (6) and (7), on receipt of the investigator’s written report” were omitted and replaced with “paragraphs (6) and (7), on receipt of a determination under regulation 42(5)”.

(7) At any time before the beginning of the hearing, the appropriate authority may direct that the case be returned to the investigator.

Remission of case

43.—(1) At any time after the case has been referred to a special case hearing but before the beginning of that hearing the appropriate authority may direct that the case be dealt with under Part 4 if it considers that the special conditions are no longer satisfied.

(2) Where a direction is made under paragraph (1) the member concerned shall be notified before the end of 3 working days beginning with the first working day after that direction is made and the appropriate authority shall proceed in accordance with Part 4.

(3) Where the appropriate authority is to proceed in accordance with Part 4, regulation 21(1) shall be read as if the words “regulation 42 and paragraphs (6) and (7), on receipt of the investigator’s written report” were omitted and replaced with “paragraphs (6) and (7), on receipt of a direction under regulation 43(1)”.

Notice of referral to special case hearing

44.—(1) Where a case is certified as a special case and referred to a special case hearing, the appropriate authority shall as soon as practicable give the member concerned written notice of these matters and shall supply him with a copy of—

- (a) the certificate issued under regulation 42(4);
- (b) any statement he may have made to the investigator during the course of the investigation; and
- (c) subject to the harm test—
 - (i) the investigator’s report or such parts of that report as relate to him (together with any document attached to or referred to in that report as relates to him); and
 - (ii) any other relevant document gathered during the course of the investigation.

(2) The notice given under paragraph (1) shall describe the conduct that is the subject matter of the case and how that conduct is alleged to amount to gross misconduct.

(3) For the purposes of this regulation “relevant document” means a document which, in the opinion of the appropriate authority, is relevant to the case of the member concerned.

Notice of special case hearing

45.—(1) The appropriate authority shall specify a date for the special case hearing which shall be not less than 15 and not more than 25 working days after the date on which notice is given under regulation 44(1) and shall immediately notify the member concerned of—

- (a) the date, time and place of that hearing; and
- (b) the effect of regulation 7(1) to (3) in relation to a special case hearing.

(2) Where the Ombudsman is entitled to attend the special case hearing as an observer or to nominate a person to attend the hearing as an observer under regulation 51, the Board shall notify the Ombudsman of the date, time and place of the hearing.

Procedure on receipt of notice

46.—(1) Before the end of 10 working days beginning with the first working day after the written notice given to the member concerned under regulation 44(1), the member concerned shall provide to the appropriate authority—

- (a) written notice of whether or not he accepts that his conduct amounts to gross misconduct;
- (b) where he accepts that his conduct amounts to gross misconduct, any written submission he wishes to make in mitigation;
- (c) where he does not accept that his conduct amounts to gross misconduct, written notice of—
 - (i) the allegations he disputes and his account of the relevant events; and
 - (ii) any arguments on points of law he wishes to be considered by the person or persons conducting the special case hearing.

(2) Within the same time period, the member concerned shall provide the appropriate authority with a copy of any document he intends to rely on at the hearing.

Person conducting special case hearing: members other than senior officers

47.—(1) This regulation applies where the member concerned is not a senior officer.

(2) The special case hearing shall be conducted by the Chief Constable.

(3) Where the Chief Constable is an interested party or is unavailable, the special case hearing shall be conducted by the chief officer of police of another police force or an assistant commissioner of the metropolitan police force.

Persons conducting special case hearing: senior officers

48.—(1) This regulation applies where the member concerned is a senior officer.

(2) The special case hearing shall be conducted by a panel of three persons appointed by the appropriate authority, comprising—

- (a) a barrister or solicitor of not less than seven years' standing, who shall be the chair and who has been nominated by the Lord Chief Justice for the purpose of this regulation;
- (b) the chair of the Board or another member of the Board nominated by him; and
- (c) HMCIC or an inspector of constabulary nominated by him.

Documents to be supplied

49.—(1) Prior to the hearing the appropriate authority shall supply the person or persons conducting the special case hearing with a copy of—

- (a) the notice given to the member concerned under regulation 44(1);
- (b) the other documents given to the member concerned under regulation 44(1);
- (c) the documents provided by the member concerned under—
 - (i) regulation 46; and
 - (ii) where paragraph (2) applies, regulation 24(2) and (3);
- (d) where the member concerned does not accept that his conduct amounts to gross misconduct, any other documents that, in the opinion of the appropriate authority, should be considered at the hearing.

(2) This paragraph applies where the case was certified as a special case following a determination made under regulation 42(3).

(3) Prior to the hearing the member concerned shall be supplied with a list of the documents supplied under paragraph (1) and a copy of any of such document of which he has not already been supplied with a copy.

Attendance of member concerned at special case hearing

50.—(1) Subject to paragraph (2), the member concerned shall attend the special case hearing.

(2) Where the member concerned informs the person conducting or chairing the special case hearing in advance that he is unable to attend on grounds which the person conducting or chairing the hearing considers reasonable, that person may allow the member concerned to participate in the hearing by video link or other means.

(3) Where the member concerned is allowed to and does so participate in the special case hearing by video link or other means, or where the member concerned does not attend the special case hearing—

- (a) he may nonetheless be represented at that hearing by his—
 - (i) police friend; or
 - (ii) counsel or solicitor (in which case the police friend may also attend); and
- (b) the hearing may be proceeded with and concluded in the absence of the member concerned whether or not he is so represented.

(4) Where the member concerned is represented in accordance with paragraph (3), the person representing the member concerned or his police friend (if different), or both, may participate using the video link or other means where such means are also used by the member concerned.

Attendance of Ombudsman and investigator at special case hearing

51.—(1) Where, in the case of a special case hearing, which is being conducted in accordance with—

- (a) a recommendation under section 59(2) of the 1998 Act that disciplinary proceedings should be brought, the Ombudsman may attend the special case hearing as an observer; or
- (b) a direction under section 59(5) of that Act, the Ombudsman shall present the case.

(2) Where paragraph (1)(a) applies, the person chairing the special case hearing may require the Ombudsman to withdraw while any submission is made in mitigation on the member's behalf.

(3) The investigator or a nominated person shall attend the special case hearing on the request of the person chairing that hearing to answer questions.

(4) For the purposes of this regulation, a “nominated person” is a person who, in the opinion of—

- (a) the appropriate authority; or
- (b) where the matter was formally investigated by him, the Ombudsman,

has sufficient knowledge of the investigation of the case to be able to assist the person or persons conducting the special case hearing.

Attendance of complainant and interested persons at special case hearing

52.—(1) The appropriate authority shall notify the complainant or any interested person of the date, time and place of the special case hearing.

(2) Subject to any conditions imposed under paragraph (3), the complainant or any interested person may—

- (a) attend the special case hearing as an observer up to but not including the point at which the person conducting or chairing the hearing considers the question of disciplinary action; and
- (b) be accompanied by one other person, and if the complainant or interested person has a special need, by one further person to accommodate that need.

(3) The person conducting or chairing the special case hearing may impose such conditions as he sees fit relating to the attendance of persons under this regulation at the special case hearing, (including circumstances in which they may be excluded) in order to facilitate the proper conduct of the hearing.

(4) Where the member concerned objects to the complainant or interested person, or any person accompanying him, being present while a submission is made in mitigation on the member's behalf, the person conducting or chairing the special case hearing may require the complainant or interested person, or any person accompanying him, to withdraw while the submission is made.

(5) For the purposes of this regulation, a person has a special need if, in the opinion of the person conducting or chairing the special case hearing, he has a disability or learning difficulty, or does not have sufficient knowledge of English, to participate in or understand the special case hearing.

Procedure at special case hearing

53.—(1) Subject to these Regulations, the person conducting or chairing the special case hearing shall determine the procedure.

(2) Subject to regulation 52, the special case hearing shall be in private.

(3) The special case hearing shall not proceed unless the member concerned has been notified of the effect of regulation 7(1) to (3) in relation to a special case hearing.

(4) Subject to paragraph (5), the person conducting or chairing the special case hearing may from time to time adjourn the hearing if it appears to him to be necessary or expedient to do so.

(5) The special case hearing shall not, except in exceptional circumstances, be adjourned solely to allow the complainant or any interested person to attend.

(6) No witnesses other than the member concerned shall give evidence at the special case hearing.

(7) The person representing the member concerned may—

(a) address the hearing in order to do any or all of the following—

(i) put the case of the member concerned;

(ii) sum up that case;

(iii) respond on behalf of the member concerned to any view expressed at the proceedings; and

(iv) make representations concerning any aspect of proceedings under these Regulations; and

(b) if the member concerned is present at the proceedings or is participating in them by video link or other means in accordance with regulation 50(2), confer with the member concerned.

(8) Where the person representing the member concerned is counsel or a solicitor, the police friend of the member concerned may also confer with the member concerned in the circumstances mentioned at paragraph (7)(b).

(9) The police friend or counsel or solicitor of the member concerned may not answer any questions asked of the member concerned during the special case hearing.

(10) The person conducting or chairing the special case hearing may allow any document to be considered at the hearing notwithstanding that a copy of it has not been supplied—

(a) by the member concerned to the appropriate authority in accordance with regulation 46(2); or

(b) to the member concerned in accordance with regulation 44(1).

(11) Where evidence is given or considered at the special case hearing that the member concerned—

(a) on being questioned by an investigator, at any time after he was given written notice under regulation 16(1) or 17(1); or

(b) in submitting any information or by not submitting any information at all under regulation 46 (or, where paragraph (13) applies, regulation 18(1) or 24(2) or (3)),

failed to mention any fact relied on in his case at the special case hearing, being a fact which in the circumstances existing at the time, the member concerned could reasonably have been expected to mention when so questioned or when providing such information, paragraph (12) applies.

(12) Where this paragraph applies, the person or persons conducting the special case hearing may draw such inferences from the failure as appear proper.

(13) This paragraph applies where the case was certified as a special case following a determination made under regulation 42(3).

(14) The person or persons conducting the special case hearing shall review the facts of the case and decide whether or not the conduct of the member concerned amounts to gross misconduct.

(15) The person or persons conducting the special case hearing shall not find that the conduct of the member concerned amounts to gross misconduct unless—

- (a) he is or they are satisfied on the balance of probabilities that this is the case; or
- (b) the member concerned admits it is the case.

(16) At a special case hearing conducted by a panel, any decision shall be based on a majority but shall not indicate whether it was taken unanimously or by a majority.

(17) Where the member concerned is a senior officer, the persons conducting the special case hearing shall, as soon as practicable after the hearing, submit a report to the Board, together with a copy to the senior officer concerned, setting out—

- (a) the finding of the persons conducting the hearing under paragraph (14);
- (b) the reasons for that finding;
- (c) if the finding was that the conduct of the senior officer concerned amounted to gross misconduct, a recommendation as to any disciplinary action which in their opinion should be imposed; and
- (d) any other matter arising out of the hearing which they desire to bring to the notice of the Board.

(18) In any case in which the Ombudsman was entitled to attend as an observer or to present the case under regulation 51(1), the person or persons conducting the special case hearing shall send a copy of any report submitted under paragraph (17) to the Ombudsman.

(19) The Board shall send a copy of the report submitted under paragraph (17) to the Department of Justice and the Chief Constable.

Outcome of special case hearing

54.—(1) Where the person or persons conducting the special case hearing in the case of a member other than a senior officer find that the conduct of the member concerned amounts to gross misconduct, he or they shall impose disciplinary action, which may be—

- (a) subject to paragraphs (3) and (4), a final written warning;
- (b) extension of a final written warning in accordance with paragraph (2); or
- (c) reduction in rank; or
- (d) dismissal with notice; or
- (e) dismissal without notice.

(2) Where the member concerned is a senior officer and the Board has received a report under regulation 53(17)(c) it shall, in agreement with the Ombudsman where the Ombudsman was entitled to attend as an observer under regulation 51, impose disciplinary action under paragraph (1).

(3) Where the member concerned had a final written warning in force on the date of the assessment of the conduct under regulation 12(1) or on the date of the recommendation under section 59(2) of the 1998 Act that disciplinary proceedings should be brought—

- (a) a final written warning shall not be given; but

- (b) subject to paragraph (5), in exceptional circumstances, the final written warning may be extended.
 - (4) Where a final written warning is extended under paragraph (3), that warning shall remain in force for a period of 18 months from the date on which it would otherwise expire.
 - (5) A final written warning may be extended on one occasion only.
 - (6) Where the person conducting the special case hearing in the case of a member other than a senior officer finds that the conduct of the member concerned does not amount to gross misconduct, he may—
 - (a) dismiss the case; or
 - (b) return the case to the Chief Constable to deal with it in accordance with Part 4 at a misconduct meeting or, if the member concerned had a final written warning in force at the date of the assessment of conduct under regulation 12(1) or at the date of the recommendation under section 59(2) of the 1998 Act that disciplinary proceedings should be brought or at the date of the direction under section 59(5), as the case may be, at a misconduct hearing.
 - (7) Where the member concerned is a senior officer and the Board has received a report under regulation 53(17) to the effect that the conduct of the senior officer concerned does not amount to gross misconduct the Board may, in agreement with the Ombudsman where the Ombudsman was entitled to attend as an observer under regulation 51,—
 - (a) dismiss the case; or
 - (b) deal with it in accordance with Part 4 at a misconduct meeting or, if the member concerned had a final written warning in force at the date of the assessment of conduct under regulation 12(1) or on the date of the recommendation under section 59(2) of the 1998 Act that disciplinary proceedings should be brought, at a misconduct hearing.
 - (8) Where the case is returned to the Chief Constable under paragraph (6)(b) or dealt with by the Board under paragraph (7)(b), the appropriate authority shall proceed in accordance with Part 4, subject to regulation 21(1) being read as if the words “regulation 42 and paragraphs (6) and (7), on receipt of the investigator’s written report” were omitted and replaced with “paragraphs (6) and (7), on receipt of a determination under regulation 54(6)(b) or (7)(b)”.
 - (9) Except in the case of extending a final written warning, the disciplinary action shall have effect from the date on which it is notified to the member concerned.
 - (10) Where the question of disciplinary action is being considered, the person or persons conducting the special case hearing—
 - (a) shall have regard to the record of police service of the member concerned as shown on his personal record;
 - (b) may consider such documentary evidence as would, in his or their opinion, assist him or them in determining the question; and
 - (c) shall give—
 - (i) the member concerned; and
 - (ii) his police friend or his counsel or solicitor,
- an opportunity to make oral or written representations.

Notification of outcome

- 55.—**(1) The member concerned shall be informed of—
- (a) the finding; and

- (b) any disciplinary action imposed under regulation 54(1) or any action taken under regulation 54(6) as the case may be,

as soon as practicable and in any event shall be provided with written notice of these matters and a summary of the reasons before the end of 5 working days beginning with the first working day after the conclusion of the special case hearing in accordance with regulation 54.

(2) Where the member concerned is a senior officer he shall be informed of any disciplinary action imposed under regulation 54(2) or any action taken under regulation 54(7), as the case may be, as soon as practicable, and in any event shall be provided with written notice of the action (if any) and the Board's reasons before the end of 5 working days beginning with the first working day after the conclusion of the special case hearing.

(3) A written notice under this regulation shall include notice of the right of the member concerned to an appeal hearing.

(4) The appropriate authority shall send a copy of any written notice under this regulation to the Ombudsman, in any case in which the Ombudsman was entitled to attend the special case hearing as an observer under regulation 51(1).

Record of special case hearing

56.—(1) A verbatim record of the proceedings at the special case hearing shall be taken.

(2) Where the member concerned has exercised his right of appeal in accordance with regulation 55(3) he shall, on request, be supplied with a copy of the record of the proceedings at the special case hearing.

(3) Where the member concerned is a senior officer, a verbatim record of the special case hearing shall be taken and the transcript of the record shall be made and sent to the Board.