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SCOTTISH STATUTORY INSTRUMENTS

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**2013 No. 60**

**The Police Service of Scotland (Conduct) Regulations 2013**

**PART 1**

**General**

**Citation and commencement**

1. These Regulations may be cited as the Police Service of Scotland (Conduct) Regulations 2013 and come into force on 1st April 2013.

**Interpretation**

2. In these Regulations—

“the Act” means the Police and Fire Reform (Scotland) Act 2012;

“appellant” means the constable acting in pursuance of regulation 26(2);

“audio recording” means a recording made on any disc, tape or other device on which sounds are recorded so as to be capable of being reproduced;

“chairing constable” means the individual appointed under regulation 18(1);

“complainer” means the person who made the report, allegation or complaint from which it can reasonably be inferred that an act or omission of the constable may amount to misconduct;

“the constable” means (unless the context otherwise requires) a constable to whom these Regulations apply—

(a) in respect of whom a report, allegation or complaint is received from which it can reasonably be inferred that an act or omission of that constable may amount to misconduct; and

(b) who is the subject of any proceedings under these Regulations in relation to that report, allegation or complaint;

“investigation form” means the form prepared in pursuance of regulation 10(5)(a);

“investigating officer” means the individual appointed under regulation 10(2)(b);

“misconduct form” means the form prepared in pursuance of regulation 11(4)(a);

“misconduct hearing” means the hearing arranged under regulation 15 for the purpose of determining any allegation against the constable of misconduct;

“police force” means a police force maintained, before 1st April 2013, under the Police (Scotland) Act 1967(1);

“presenting officer” means the individual appointed under regulation 17(1) or (as the case may be) (2);

“special constable” means an individual appointed under section 9 of the Act;

“transcript” means a transcript of all or part of the audio recording made of the proceedings at the misconduct hearing; and

“transferred constable” means an individual who—

- (a) before 1st April 2013 was serving as a constable of a police force (including any such individual who was, immediately before that date, engaged on relevant service within the meaning given by section 38A(1) of the Police (Scotland) Act 1967(2));
- (b) is—
  - (i) transferred to serve as a constable of the Police Service under paragraph 6 of schedule 5 to the Act; or
  - (ii) engaged in service outwith the Police Service by virtue of paragraph 8(4) of that schedule; and
- (c) is not a special constable.

### **Application**

**3.—**(1) These Regulations apply only in relation to misconduct on the part of a constable below the rank of assistant chief constable.

(2) These Regulations apply only to—

- (a) a report, allegation or complaint made on or after 1st April 2013 from which it can reasonably be inferred that an act or omission of such a constable may amount to misconduct; or
- (b) where the alleged misconduct is such as is mentioned in paragraph 9 of Schedule 1, a finding of guilt on or after 1st April 2013.

(3) These Regulations do not apply in relation to misconduct on the part of—

- (a) any individual engaged in service as a constable—
  - (i) under arrangements made under section 16 of the Act; or
  - (ii) by virtue of paragraph 8(2) of schedule 5 to the Act; or
- (b) any special constable.

(4) In their application to acts or omissions occurring before 1st April 2013, references in these Regulations to an act or omission of a constable include references to acts or omissions of a transferred constable.

### **Designation of deputy chief constable**

**4.** The chief constable must designate a deputy chief constable to carry out functions under these regulations (and references in these regulations to “the deputy chief constable” are references to that individual).

### **Meaning of misconduct**

**5.** For the purposes of these Regulations, an act or omission of a constable amounts to misconduct if it is conduct of a type mentioned in Schedule 1.

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(2) Section 38A was inserted by the Police and Magistrates’ Courts Act 1994 (c. 29), section 60, was amended by the International Development Act 2002 (c. 1), Schedules 3 and 4, the Proceeds of Crime Act 2002 (c.29), Schedule 11, the Police Reform Act 2002 (c. 30), Schedule 7, the Serious Organised Crime and Police Act 2005 (c. 15), Schedules 4 and 17, the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10), schedule 6, the Police and Justice Act 2006 (c.48), Schedules 1 and 15 and is repealed by the Police and Fire Reform (Scotland) Act 2012 (asp 8), schedule 8.

## Suspension

6.—(1) Where a report, allegation or complaint is received from which it can reasonably be inferred that an act or omission of a constable to whom these Regulations apply may amount to misconduct or may constitute a criminal offence, that constable may be suspended from the office of constable by any other constable of a higher rank.

(2) The deputy chief constable may terminate a suspension imposed under paragraph (1) with effect either from the date of suspension or from any subsequent date and must do so where—

- (a) a decision has been made that the constable suspended is not to be required to appear before a misconduct hearing, unless the constable has resigned; or
- (b) misconduct proceedings have been concluded and have not resulted in a disposal mentioned in regulation 24(2)(a) or (b).

(3) Where a constable's suspension has been terminated under paragraph (2), that constable may not be suspended again in respect of the report, allegation or complaint which led to the suspension which has been terminated unless further information comes to light and the deputy chief constable, after considering that information, determines that it would be in the best interests of the Police Service to suspend the constable for a further period.

(4) The Police Service of Scotland Regulations 2013<sup>(3)</sup> and these Regulations apply to an individual suspended from the office of constable as they apply to any other constable.

## Records

7.—(1) The deputy chief constable must maintain a record of every—

- (a) complaint made by a member of the public against any constable to whom these Regulations apply, together with details of the action taken in connection with that complaint; and
- (b) report, allegation or complaint from which it has been inferred that an act or omission of a constable to whom these Regulations apply may amount to misconduct, together with details of the action taken in connection with that report, allegation or complaint and, in particular—
  - (i) whether the constable was required to appear before a misconduct hearing;
  - (ii) where the constable was required to appear before a misconduct hearing, the finding of that hearing and any disposal made;
  - (iii) whether an appeal was made under regulation 26; and
  - (iv) where an appeal was made, details of the chief constable's determination (including any variation of a disposal).

(2) Records kept under paragraph (1) are to include records kept before 1st April 2013 under regulation 24(1) of the Police (Conduct) (Scotland) Regulations 1996<sup>(4)</sup> in so far as those records relate to complaints against, or misconduct proceedings in relation to, any constable to whom these Regulations apply when that individual was serving as a constable of a police force.

(3) The chief constable must retain—

- (a) any audio recording made in accordance with regulation 19(11)(b), for a period of not less than 3 years from the date on which it was sent in pursuance of regulation 23(4)(c); and
- (b) any transcript of all or part of a recording obtained or submitted under regulation 27, for a period of not less than 3 years from the date on which that transcript was obtained or submitted.

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<sup>(3)</sup> S.S.I. 2013/35.

<sup>(4)</sup> S.I. 1996/1642.

### **Alleged offences**

**8.**—(1) Where the deputy chief constable or, in the case of an appeal, the chief constable considers that it can reasonably be inferred from a report, allegation or complaint as to misconduct that the constable may have committed a criminal offence, the deputy chief constable or, as the case may be, the chief constable—

- (a) must refer the matter to the appropriate prosecutor; and
- (b) may suspend or postpone any proceedings under these Regulations (and may give directions to persons acting in pursuance of these Regulations accordingly) until the appropriate prosecutor intimates—
  - (i) that criminal proceedings are not to be brought in respect of any matter mentioned in the report, allegation or complaint; or
  - (ii) that any criminal proceedings which have been brought have been concluded.

(2) Where proceedings are suspended or postponed under paragraph (1)(b), the deputy chief constable or, as the case may be, the chief constable must inform the constable—

- (a) that the proceedings have been suspended or postponed; and
- (b) that those proceedings, or any other proceedings under these Regulations, may be taken against the constable, whether or not criminal proceedings are brought against the constable and regardless of the outcome of those proceedings.

(3) In this regulation, “appropriate prosecutor” means—

- (a) where the offence is alleged to have been committed in Scotland, the procurator fiscal; or
- (b) where the offence is alleged to have been committed in any other part of the United Kingdom, Channel Islands or Isle of Man, the person who—
  - (i) has responsibility for deciding whether to institute criminal proceedings in that place; or
  - (ii) has instituted such proceedings in relation to the offence.

## **PART 2**

### **Misconduct investigations**

#### **Preliminary investigation procedures**

**9.**—(1) The deputy chief constable must establish and maintain procedures (“the procedures”) for the investigation of any report, allegation or complaint from which it can reasonably be inferred that an act or omission of a constable to whom these Regulations apply may amount to misconduct.

(2) The procedures must provide, in particular, for a report, allegation or complaint—

- (a) to be first considered by a constable of appropriate rank;
- (b) to be dealt with in accordance with the procedures where that constable considers that it involves an allegation of misconduct of a minor or trivial nature; and
- (c) where that constable considers that it involves an allegation of misconduct of any other type, to be referred to the deputy chief constable.

(3) The deputy chief constable must ensure that where a constable acting in pursuance of paragraph (2) considers that a report, allegation or complaint involves an allegation of misconduct of a minor or trivial nature, the procedures—

- (a) permit the constable against whom the allegation has been made an opportunity to make representations in relation to that report, allegation or complaint; and
- (b) permit a warning to be given by a constable of a higher rank (and require that constable to keep a record of any warning so given).

### **Cases referred to deputy chief constable**

**10.**—(1) This regulation applies where a report, allegation or complaint of misconduct is referred to the deputy chief constable under regulation 9(2)(c).

- (2) Where this regulation applies, the deputy chief constable may—
  - (a) if there is sufficient evidence only of misconduct of a minor or trivial nature—
    - (i) give the constable an opportunity to make representations in relation to the report, allegation or complaint; and
    - (ii) arrange for a warning to be given by a constable of a rank higher than the constable (and require the constable giving the warning to keep a record of it); or
  - (b) if there is sufficient evidence of misconduct of any other kind, appoint an investigating officer.
- (3) An investigating officer must—
  - (a) be of a higher rank than the constable under investigation; and
  - (b) have, in the opinion of the deputy chief constable, the necessary skills, knowledge and expertise to carry out a misconduct investigation.
- (4) An investigating officer must not be—
  - (a) the chief constable;
  - (b) the deputy chief constable; or
  - (c) any other constable who—
    - (i) may be a witness to any act or omission giving rise to the allegation of misconduct; or
    - (ii) is interested in the matter otherwise than as a constable.
- (5) As soon as reasonably practicable after being appointed, the investigating officer must—
  - (a) prepare an investigation form containing details of the report, allegation or complaint of misconduct and informing the constable—
    - (i) that the constable may make representations in writing to the investigating officer in relation to that report, allegation or complaint;
    - (ii) that the constable may provide the names and addresses of any persons whom the constable may wish to provide evidence; and
    - (iii) that any representations made may be used as evidence during any future misconduct proceedings; and
  - (b) send a copy of the investigation form to the constable.
- (6) Paragraph (5)(a)(i) is without prejudice to any obligation on the constable to make a written or oral statement in the ordinary course of duty.

### **Investigating officer's report**

**11.**—(1) When an investigation form has been sent to the constable, the investigating officer must—

- (a) investigate the report, allegation or complaint of misconduct (including the taking of all reasonable steps to obtain statements from witnesses); and
  - (b) submit a report to the deputy chief constable.
- (2) A report submitted under paragraph (1)(b) must be accompanied by—
- (a) the investigation form;
  - (b) details of any representations made by the constable; and
  - (c) any statements obtained from witnesses.
- (3) The deputy chief constable must consider a report and any other papers submitted under this regulation and determine whether the constable is required to attend a misconduct hearing.
- (4) Where the deputy chief constable determines that the constable is required to attend a misconduct hearing, the deputy chief constable must—
- (a) prepare a misconduct form containing—
    - (i) details of the alleged acts or omissions which it is considered may amount to misconduct;
    - (ii) a statement of the deputy chief constable’s reasons for considering that those acts or omissions may amount to misconduct; and
    - (iii) a notice requiring the constable to attend a misconduct hearing at a specified time and place; and
  - (b) send a copy of the misconduct form to the constable.
- (5) The misconduct form must, where the deputy chief constable considers that a disposal mentioned in regulation 24(2)(a), (b) or (c) should be available to the chairing constable of the misconduct hearing—
- (a) inform the constable that those disposals will be available; and
  - (b) notify the constable that the constable may elect to be legally represented at the misconduct hearing in accordance with regulation 14(1)(e).
- (6) Where the deputy chief constable determines that the constable is not required to attend a misconduct hearing the deputy chief constable must, as soon as reasonably practicable, send to the constable a notice of that determination.
- (7) Where the deputy chief constable has made a determination as mentioned in paragraph (6), but considers that there is sufficient evidence of misconduct of a minor or trivial nature, the deputy chief constable may—
- (a) arrange for the constable to be given an opportunity to comment on that evidence; and
  - (b) if it is considered appropriate, arrange for the constable to be given a warning by another constable of a rank higher than the constable.

### **Dismissal of allegations**

**12.** At any time before the conclusion of the misconduct hearing, the deputy chief constable may, if satisfied in the light of any new event or information received that it is not appropriate that any allegation as to misconduct be considered at that hearing—

- (a) direct that the allegation is not to be considered;
- (b) note that direction on the misconduct form; and
- (c) notify the constable in writing of that direction.

### **Documents to be supplied to the constable**

**13.**—(1) As soon as reasonably practicable after notifying the constable of the requirement to attend a misconduct hearing (and before that hearing takes place), the deputy chief constable must provide the constable with a copy of—

- (a) the report, allegation or complaint giving rise to the misconduct proceedings;
- (b) any representations the constable may have made in response to the investigation form;
- (c) any statement relating to the alleged misconduct made by—
  - (i) any witness on whom the presenting officer intends to rely at the misconduct hearing; and
  - (ii) any other person.

(2) Where the decision to arrange a misconduct hearing is based on both a report, allegation or complaint of misconduct and a statement made by the complainer in relation to that report, allegation or complaint, that statement must be sent to the constable at the same time as the report, allegation or complaint.

(3) If satisfied on grounds of national security that any report, allegation or complaint should not be disclosed, the deputy chief constable may withhold that report, allegation or complaint from the constable.

(4) Where a report, allegation or complaint is withheld under paragraph (3), the deputy chief constable must, so far as is reasonably possible without prejudicing national security, disclose to the constable a summary of that report, allegation or complaint.

(5) In this regulation, any reference to a copy of a statement, report, allegation or complaint which was not made in writing includes a reference to a copy of any record of that statement, report, allegation or complaint.

### **Response to misconduct form**

**14.**—(1) On receipt of the misconduct form, the constable must notify the deputy chief constable as to whether the constable—

- (a) admits or denies any or all allegations of misconduct;
- (b) intends to make representations at the misconduct hearing;
- (c) intends to be represented at that hearing by another constable;
- (d) proposes to lead evidence from witnesses at that hearing (and, if so, the constable must provide the names of those witnesses); and
- (e) intends to be legally represented in any case where legal representation is permitted (see regulation 11(5)).

(2) The constable must provide the notification required by paragraph (1) by—

- (a) entering the information mentioned in that paragraph on the copy of the misconduct form;
- (b) signing that copy; and
- (c) returning that copy to the deputy chief constable within the specified time period.

(3) For the purposes of paragraph (2), the specified time period is the period of 14 days beginning on the later of the days on which—

- (a) the misconduct form was sent to the constable; or
- (b) the last of the documents mentioned in regulation 13(1), (2) and (as the case may be) (4) was sent to the constable.

(4) The deputy chief constable may extend the specified time period.

(5) The deputy chief constable may, on an application made in writing by the constable at any time before the misconduct hearing, permit the constable to lead evidence at the misconduct hearing from any witnesses not specified in accordance with paragraph (1)(d).

(6) The deputy chief constable must provide the investigating officer with the details of any witnesses from whom the constable proposes to lead evidence and the investigating officer must—

- (a) so far as is reasonably practicable, invite those witnesses to provide a statement; and
- (b) provide a copy of any such statements to the constable.

## PART 3

### Misconduct hearings

#### **Arrangement of misconduct hearing**

**15.**—(1) The deputy chief constable must make all necessary arrangements for the misconduct hearing, including determining the time, date and place of the hearing.

(2) The deputy chief constable must by notice in writing require the constable to attend the misconduct hearing at the time, date and place specified in the notice.

(3) Where—

- (a) the hearing arises from a report, allegation or complaint made by a member of the public; and
- (b) the constable denies the allegation of misconduct (or any part of that allegation),

the deputy chief constable must give notice to the member of the public of the time, date and place of the hearing and explain to that individual the effect of regulation 19(4).

(4) Any notice required to be given under paragraph (2) or (3) must be sent by the deputy chief constable not less than 21 days before the date of the misconduct hearing.

(5) The constable may waive in writing the constable's entitlement to receive 21 days' notice of the misconduct hearing.

(6) The deputy chief constable must take all reasonable steps to secure the attendance at the hearing of any witnesses required to give evidence.

(7) Where the deputy chief constable considers it necessary or expedient, the misconduct hearing may be postponed to such later date as the deputy chief constable determines.

(8) The procedures set out in this regulation apply to a postponed hearing, except that a notice given under paragraph (2) in relation to a postponed misconduct hearing may be sent less than 21 days before the date of that hearing.

#### **Variation of constable's decision as to legal representation**

**16.**—(1) Where the constable has, under regulation 14(1)(e), notified the deputy chief constable of an intention not to be legally represented, the constable may by notice in writing to the deputy chief constable vary that decision.

(2) A notice given under paragraph (1)—

(a) is valid only—

- (i) if received by the deputy chief constable not less than 48 hours before the time fixed for the misconduct hearing; or



- (ii) if received less than 48 hours before that time, where the deputy chief constable accepts it late; and
- (b) if valid, has the effect of permitting the constable to be legally represented.
- (3) Where the deputy chief constable accepts a notice late under paragraph (1), the misconduct hearing may be postponed for a period not exceeding 48 hours from the time fixed for that hearing.

### **Representation at misconduct hearing**

**17.**—(1) The deputy chief constable must appoint a constable of a rank equal to or above that of the constable to present the case against the constable and that individual may be assisted by—

- (a) another constable; or
- (b) a member of the police staff.

(2) But if the constable has given notice of an intention to be legally represented, the case against the constable may be presented by an advocate or a solicitor (whether or not the constable is legally represented).

(3) The deputy chief constable must not appoint under paragraph (1) or (2)—

- (a) the chief constable;
- (b) the deputy chief constable;
- (c) the investigating officer; or
- (d) any individual who is a witness to the conduct forming the subject matter of the proceedings under these Regulations.

(4) The case for the constable may be presented by—

- (a) the constable;
- (b) another constable chosen by the constable; or
- (c) in a case where the constable has given notice of an intention to be legally represented, an advocate or a solicitor.

(5) References in this regulation to the constable having given notice of an intention to be legally represented are to a notice of intention given in accordance with regulation 14(1)(e) or a valid notice varying a decision as to legal representation given in pursuance of regulation 16.

### **Misconduct hearing: preliminary procedure**

**18.**—(1) The deputy chief constable must appoint a constable of at least the rank of superintendent to act as the chairing constable at the misconduct hearing.

(2) The chairing constable may appoint—

- (a) up to two other constables of at least the rank of superintendent to assist the chairing constable as assessors; and
- (b) in a case where the constable has given notice of an intention to be legally represented, an advocate or a solicitor to assist the chairing constable as a legal assessor.

(3) Where the constable considers that the facts alleged in the misconduct form in relation to any allegation of misconduct are not such as to support that allegation, the constable may, not less than 7 days before the date of the misconduct hearing, send a notice of objection to the deputy chief constable.

(4) Where such a notice is received by the deputy chief constable it must, as soon as reasonably practicable, be provided to the chairing constable.

(5) The chairing constable must consider any objection made under paragraph (3) at the beginning of the misconduct hearing and must—

- (a) determine whether to uphold that objection; and
- (b) if that objection is upheld, make a finding that there has been no misconduct on the part of the constable in relation to the allegation against which the objection was made.

### **Procedure at misconduct hearing**

**19.**—(1) Subject to regulation 18(5) and the following paragraphs of this regulation, the procedure at the misconduct hearing is to be determined by the chairing constable.

(2) The constable must be given an opportunity to admit any allegation of misconduct and if an admission is made the chairing constable—

- (a) must provide an opportunity for representations to be made by—
  - (i) the presenting officer; and
  - (ii) the constable; and
- (b) may, having considered any representations made, act in accordance with regulation 24 in relation to any allegation admitted.

(3) The misconduct hearing is to be held in private, but—

- (a) where a person is giving evidence, the chairing constable may allow such other persons to attend as seem reasonable by virtue of any special circumstances (and, in particular, a parent or guardian may be allowed to attend where a child is giving evidence);
- (b) where the hearing arises out of a complaint made by a member of the public and the constable denies the allegation of misconduct (or any part of that allegation), the chairing constable may allow the complainer to attend while witnesses are giving evidence; and
- (c) the chairing constable may allow the attendance of such other persons as may be agreed by the presenting officer and the constable.

(4) A complainer who is allowed to attend the misconduct hearing by virtue of paragraph (3)(b)—

- (a) must not participate in the proceedings in any way unless giving evidence as a witness;
- (b) must not, if being called as a witness, be allowed to attend before giving evidence;
- (c) must be excluded from the proceedings where—
  - (i) the chairing constable considers that information may be disclosed which should not, in the public interest, be disclosed to a member of the public; or
  - (ii) the complainer behaves in a disorderly manner; and
- (d) may be excluded from the proceedings in any other circumstances.

(5) The constable may give evidence at the misconduct hearing.

(6) The constable may call witnesses to give evidence in support of the denial of any allegation of misconduct.

(7) The chairing constable or the presenting officer may ask questions of—

- (a) the constable; and
- (b) any person called to give evidence in support of the constable's case.

(8) The presenting officer may call witnesses and the constable may ask questions of those witnesses.

(9) Any question as to the admissibility of evidence or whether any question should or should not be put to a witness is to be determined by the chairing constable.

- (10) When all evidence has been led, concluding submissions may be made—
  - (a) by the presenting officer; and
  - (b) thereafter, by the constable.
- (11) The chairing constable must—
  - (a) prepare a written note summarising the proceedings at the misconduct hearing; and
  - (b) arrange for an audio recording to be made of those proceedings.
- (12) References in paragraphs (2)(a)(ii), (6), (8) and (10)(b) of this regulation and regulation 20(1) and (3)(a) to “the constable” include a reference to any person presenting the constable’s case.

### **Written statements**

**20.**—(1) The presenting officer or the constable may, in lieu of oral evidence, propose to submit a written statement of evidence.

(2) The individual proposing to submit a written statement of evidence in pursuance of paragraph (1) must—

- (a) not less than 21 days (or such shorter period as may be agreed in writing) before the date of the misconduct hearing—
  - (i) give the other party a copy of the statement; and
  - (ii) invite that party to join in a minute of agreement to the admission of the statement without the maker of the statement being called as a witness; and
- (b) not less than 10 days (or such shorter period as may be agreed in writing) before the date of the misconduct hearing lodge the resulting minute of agreement with the deputy chief constable.

(3) The chairing constable may admit evidence by way of a written statement in lieu of oral evidence only if—

- (a) that statement is accompanied by a minute of agreement between the presenting officer and the constable;
- (b) either of those parties requests the chairing constable to admit the written statement and the other party does not object; and
- (c) the evidence contained in the statement would have been admissible if given orally.

(4) Despite the admission of a written statement under paragraph (3), the chairing constable may—

- (a) determine that the person who gave the statement should be called to give oral evidence; and
- (b) disregard the evidence contained in the written statement should that person fail to give oral evidence.

(5) Nothing in this regulation affects the admission of written evidence which would otherwise be admissible.

### **Adjournments**

**21.**—(1) The chairing constable may from time to time adjourn the misconduct hearing to a later time or date should it appear necessary or expedient to do so.

(2) Where a hearing is adjourned to a later date under this regulation, the chairing constable must as soon as reasonably practicable provide a written notice of the time, date and place of the adjourned hearing to—

- (a) the constable;
- (b) any person representing the constable;
- (c) the complainer; and
- (d) any witnesses.

### **Hearing in the constable's absence**

- 22.**—(1) If the constable fails to attend the misconduct hearing—
- (a) the hearing may be proceeded with and concluded in the constable's absence, provided that the chairing constable considers it just and appropriate to do so; and
  - (b) any part of the procedure described in these Regulations which cannot be complied with in the constable's absence may be treated as if it had been complied with.
- (2) But the hearing must not be proceeded with and concluded in the constable's absence if—
- (a) the constable is detained while serving the sentence of a court in a prison or other institution in the United Kingdom, Channel Islands or Isle of Man and wishes to make representations in person at the hearing; or
  - (b) any other reason is given by virtue of which the chairing constable considers that the hearing should not be proceeded with and concluded in the constable's absence.
- (3) In a case mentioned in paragraph (2), the misconduct hearing must be postponed.

### **Determination on allegation of misconduct**

**23.**—(1) At the conclusion of the misconduct hearing, the chairing constable must make a determination on any allegation of misconduct against the constable.

(2) A determination under paragraph (1) may be deferred until a later time or date if the chairing constable considers that it is necessary to do so.

(3) The chairing constable's determination must be recorded on the misconduct form and must state—

- (a) whether the chairing constable finds that any act or omission recorded in the misconduct form amounts to misconduct;
- (b) the disposal (or, as the case may be, disposals) ordered under regulation 24; and
- (c) the reasons for the chairing constable's finding and any disposal ordered.

(4) When the chairing constable's determination has been recorded in the misconduct form, the chairing constable must, as soon as reasonably practicable, send to the deputy chief constable and the constable—

- (a) the completed misconduct form;
- (b) the chairing constable's written note of the misconduct hearing (see regulation 19(11)); and
- (c) the audio recording of the misconduct hearing.

(5) If the misconduct hearing has arisen out of a complaint made by a member of the public, the chairing constable must notify the complainer in writing of the determination under this regulation.

### **Disposals**

- 24.**—(1) This regulation applies where—
- (a) the constable admits an allegation of misconduct in pursuance of regulation 19(2); or
  - (b) the chairing constable finds that an act or omission of the constable amounts to misconduct.

(2) Where this regulation applies, the chairing constable may order in relation to the constable one of the following disposals—

- (a) dismissal (with or without notice);
- (b) requirement to resign from the Police Service at a specified date as an alternative to dismissal;
- (c) demotion in rank;
- (d) reduction in pay for a specified period (not exceeding 12 months);
- (e) fine; or
- (f) admonition.

(3) Where separate admissions or findings of misconduct have been made in relation to separate acts or omissions detailed in the misconduct form, separate disposals may be ordered in relation to each admission or finding.

(4) When considering whether to order a disposal, the chairing constable—

- (a) must have regard to the constable's personal record; and
- (b) may invite another constable of a rank higher than the constable to give an oral statement on the character of the constable, provided that, where such a statement is made, the constable and any individual representing the constable is given an opportunity to comment on that statement.

(5) Where a disposal under paragraph (2)(b) is ordered and the constable fails to resign by the specified date, the constable is to be treated as having been dismissed from that date.

### **Limitations on disposals**

**25.**—(1) The disposals mentioned in regulation 24(2)(a), (b) or (c) must not be ordered if the constable has not been given an opportunity to be legally represented at the misconduct hearing in accordance with regulation 11(5).

(2) A disposal mentioned in regulation 24(2)(a), (b) or (c) may be ordered if the constable has been given the opportunity to be legally represented, but—

- (a) has failed without reasonable cause to notify an intention to be legally represented; or
- (b) has given notice of an intention not to be legally represented.

(3) Where a disposal under regulation 24(2)(d) is ordered, the total reduction in pay must not reduce the constable's pay to an amount which is—

- (a) two categories lower than the pay category which is applicable to the constable;
- (b) lower than point 2 on the pay scale determined by Ministers under regulation 16 of the Police Service of Scotland Regulations 2013(5).

(4) Where a disposal under regulation 24(2)(e) is ordered in relation to one or more findings of misconduct—

- (a) the sum of all fines imposed must not exceed one week of the constable's pay; and
- (b) those fines are to be recovered by weekly deductions from pay not exceeding one seventh of the constable's weekly pay (unless the constable leaves the Police Service, in which case the whole amount of any unpaid fines may be deducted from any pay due).

(5) A fine or a reduction in the rate of pay must not result in any increment in pay being deferred or withheld.

## PART 4

### Appeals

#### Appeal to the chief constable

- 26.—(1) This regulation applies where—
- (a) the charring constable has found (in pursuance of regulation 23) that an act or omission of the constable recorded on the misconduct form amounted to misconduct; or
  - (b) the constable has admitted (in pursuance of regulation 19(2)) that such an act or omission amounted to misconduct.
- (2) Where this regulation applies, the constable may appeal against—
- (a) in a case mentioned in paragraph (1)(a)—
    - (i) any finding of misconduct and any disposal; or
    - (ii) any disposal only; and
  - (b) in a case mentioned in paragraph (1)(b), any disposal.
- (3) An appeal under this regulation is to be made by the appellant submitting to the chief constable, not later than 28 days from the date on which the copy of the misconduct form was sent to the constable in pursuance of regulation 23(4)(a), a written notice of appeal specifying—
- (a) the name and address of the appellant;
  - (b) that the notice is a notice of appeal;
  - (c) the date of the charring constable's determination;
  - (d) whether the appeal is against—
    - (i) the finding;
    - (ii) the disposal; or
    - (iii) both;
  - (e) the grounds upon which the appeal is made;
  - (f) the name and address of the appellant's representative (if any);
  - (g) where the appellant has specified a representative, whether any documents relating to the appeal should be sent to that representative rather than the appellant; and
  - (h) whether the chief constable is requested to obtain a transcript of all or a specified part of the audio recording made of the proceedings at the misconduct hearing.
- (4) The appellant must send with the notice of appeal—
- (a) any documentary evidence upon which the appellant intends to rely; and
  - (b) a copy of the misconduct form recording the charring constable's determination.
- (5) The notice of appeal must be signed by—
- (a) the appellant; or
  - (b) the appellant's representative.
- (6) A notice of appeal may be submitted late and such a notice may include—
- (a) a request for the notice to be accepted late; and
  - (b) a statement of the reasons why it was not submitted on time.
- (7) The chief constable may accept a late notice of appeal if satisfied that there are special circumstances which justified the appeal being submitted late.

(8) Where it is considered necessary or expedient to do so, the chief constable may send to the chairing constable a copy of the notice of appeal and any document provided with that notice.

(9) Within 7 days of receipt of a notice sent in pursuance of paragraph (8), the chairing constable may send to the chief constable and the appellant a copy of any document—

- (a) to which regard was had by the chairing constable in making the determination under regulation 23(1) on any allegation of misconduct; and
- (b) which was not submitted by the appellant with the notice of appeal.

### **Transcript of the hearing**

**27.**—(1) The chief constable may, if it is considered necessary or expedient, obtain a transcript of all or part of the audio recording made of the proceedings at the misconduct hearing.

(2) Where a transcript is obtained in pursuance of paragraph (1), the chief constable must, as soon as reasonably practicable, send a copy of that transcript to—

- (a) the appellant; and
- (b) the chairing constable.

(3) Where the appellant has requested the chief constable to obtain a transcript, the chief constable must, as soon as reasonably practicable—

- (a) determine the request; and
- (b) notify both the appellant and the chairing constable of that determination.

(4) Where the chief constable has refused a request to obtain a transcript, the appellant may (at the appellant's own expense)—

- (a) obtain a transcript; and
- (b) not later than 21 days after the date on which the chief constable notified the appellant of the decision not to obtain a transcript, submit that transcript to the chief constable.

(5) Where the chief constable receives a transcript by virtue of paragraph (4), the chief constable must, as soon as reasonably practicable—

- (a) send a copy of that transcript to the chairing constable; and
- (b) invite the chairing constable to make, not later than 14 days from the date on which the transcript was sent to the chairing constable, such written representations as may be required as to the accuracy of the transcript.

(6) If the chairing constable disputes the accuracy of the transcript submitted by the appellant, the chief constable must—

- (a) send a copy of the chairing constable's written representations to the appellant;
- (b) allow the appellant to make, not later than 7 days from the date on which the chairing constable's representations are sent to the appellant, written representations in response; and
- (c) after considering the audio recording of the misconduct hearing and the representations made by the chairing constable and (as the case may be) the appellant, determine whether any amendment of the transcript is required.

### **Determination of appeal**

**28.**—(1) The chief constable must determine the appeal on the basis of—

- (a) the notice of appeal and any documents submitted with that notice (including the misconduct form);

- (b) the chairing constable's written summary of the misconduct hearing (see regulation 19(11)(a));
  - (c) any document sent by the chairing constable in pursuance of regulation 26(9);
  - (d) to such extent as is considered necessary, the audio recording made of the misconduct hearing in accordance with regulation 19(11)(b);
  - (e) any transcript of such a recording obtained or submitted in pursuance of regulation 27; and
  - (f) if applicable, any representations made at an appeal hearing.
- (2) Where the chief constable considers it necessary for the purpose of determining the appeal, the chief constable may fix an appeal hearing for the purpose of affording the opportunity of making oral representations to—
- (a) the appellant; and
  - (b) the chairing constable.
- (3) Where the chief constable fixes an appeal hearing, the chief constable must give reasonable notice of the date, time and place at which that hearing is to take place.
- (4) Subject to paragraphs (5) and (6), the procedure at the appeal hearing is for the chief constable to determine.
- (5) At an appeal hearing—
- (a) each of the appellant and the chairing constable may be represented by—
    - (i) another constable;
    - (ii) an advocate; or
    - (iii) a solicitor;
  - (b) the chief constable may appoint an advocate or solicitor to assist the chief constable as a legal assessor; and
  - (c) the chief constable may put questions to the appellant and the chairing constable (or to any person representing them).
- (6) The chief constable may from time to time adjourn the appeal hearing to a later time or date where it is necessary or expedient to do so.
- (7) Where the appeal hearing is adjourned under paragraph (6) the chief constable must, as soon as is reasonably practicable, provide the appellant and the chairing constable with a written notice of the date, time and place of the adjourned hearing.
- (8) As soon as is reasonably practicable after considering the documents and recording mentioned in paragraph (1) and, if applicable, any representations made at the appeal hearing, the chief constable must determine the appeal.
- (9) A determination under paragraph (8) may—
- (a) confirm or reverse any finding of misconduct; and
  - (b) vary any disposal ordered by the chairing constable (and the power to vary a disposal includes the power to substitute one disposal for another).
- (10) Any variation by the chief constable of a disposal ordered by the chairing constable must not have the effect of ordering a disposal which is more severe than that ordered by the chairing constable.
- (11) The chief constable's determination is to be recorded in a notice—
- (a) specifying the terms of the chief constable's determination, including any variation of a disposal ordered by the chairing constable;
  - (b) giving reasons for that determination; and



- (c) signed and dated by the chief constable.
- (12) The chief constable must send a copy of the notice mentioned in paragraph (11) to—
- (a) the appellant;
  - (b) the appellant’s representative (if any); and
  - (c) the chairing constable.
- (13) The determination of the chief constable under paragraph (8) is to have effect from the date of the chairing constable’s determination under regulation 23, but where the disposal, as varied, is—
- (a) a requirement to resign at a specified date as an alternative to dismissal and the constable fails to resign by the date specified, the constable is to be treated as having been dismissed from that date; or
  - (b) a reduction in rank, that disposal may have effect only from or after the date of the chief constable’s determination.
- (14) Where the appellant submits a transcript in pursuance of regulation 27(4) and the chief constable allows the appeal, the Authority must reimburse the appellant the reasonable costs incurred in obtaining that transcript.

## PART 5

### Revocations, savings and transitional provisions

#### **Revocations, savings and transitional provisions**

- 29.** Schedule 2 contains revocations, savings and transitional provisions.

St Andrew’s House,  
Edinburgh  
21st February 2013

*KENNY MACASKILL*  
A member of the Scottish Government