
SCOTTISH STATUTORY INSTRUMENTS

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.

(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⁽³⁾ 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⁽⁴⁾ 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.

⁽³⁾ S.S.I. 2013/35.

⁽⁴⁾ 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.