
SCOTTISH STATUTORY INSTRUMENTS

2013 No. 62

POLICE

The Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013

Made - - - - - *21st February 2013*
Laid before the Scottish
Parliament - - - - - *25th February 2013*
Coming into force - - - - - *1st April 2013*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 15(3), 48 and 125(1) of the Police and Fire Reform (Scotland) Act 2012⁽¹⁾ and all other powers enabling them to do so.

In accordance with section 54(2) of that Act, they have consulted and shared a draft of the Regulations with the persons mentioned in section 54(2)(a)(i) to (vi) and have considered any representations made.

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Police Service of Scotland (Senior Officers) (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⁽²⁾;

“appeal hearing” means a hearing held by virtue of regulation 26(5)(a) to determine an appeal by the senior officer;

“appeal notice” means a written appeal notice sent under regulation 25(4);

(1) 2012 asp 8.
(2) 2012 asp 8.

“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 member of the panel” means the individual appointed by virtue of regulation 18(2) (a);

“Commissioner” means the Police Investigations and Review Commissioner;

“conduct” includes acts and omissions;

“disciplinary action” means the action mentioned in regulation 23(3);

“gross misconduct” means a breach of the Standards of Professional Behaviour so serious that dismissal may be justified;

“investigator” means—

(a) in a case where the Commissioner is required or decides to carry out a misconduct investigation by virtue of regulation 9, a member of the Commissioner’s staff appointed in accordance with regulation 10(2)(b) to carry out that investigation on the Commissioner’s behalf; or

(b) in any other case, an individual appointed in accordance with regulation 11;

“improvement action” means action intended to improve the conduct of the senior officer;

“misconduct” means conduct which amounts to a breach of the Standards of Professional Behaviour;

“misconduct allegation” means any report, allegation or complaint from which it can reasonably be inferred that any conduct of the senior officer may amount to misconduct or gross misconduct;

“misconduct form” means the form sent in accordance with regulation 16(2);

“misconduct hearing” means a hearing arranged under regulation 16 to determine whether any conduct of the senior officer amounts to misconduct or, as the case may be, gross misconduct;

“misconduct investigation” means an investigation into whether the senior officer has a case to answer in relation to a misconduct allegation;

“panel” means the panel appointed under regulation 18(1);

“police friend” means an individual chosen by the senior officer in accordance with regulation 4;

“proved” means established on a balance of probabilities;

“Standards of Professional Behaviour” means the standards set out in Schedule 1;

“the senior officer” means a senior officer in respect of whom a misconduct allegation has been made and who is subject, in relation to that allegation, to any proceedings under these Regulations;

“working day” means any day other than—

(a) a Saturday or Sunday;

(b) a day which is a bank holiday in Scotland within the meaning given by paragraph 2 of Schedule 1 to the Banking and Financial Dealings Act 1971(3); or

(c) a day which is a public holiday in Scotland.

(3) 1971 c.80. Paragraph 2 of Schedule 1 has been amended by section 1 of the St Andrew’s Day Bank Holiday (Scotland) Act 2007 (asp 2).

Application

3.—(1) These Regulations apply only to conduct of a senior officer occurring on or after 1st April 2013.

(2) These Regulations do not apply to conduct on the part of any individual engaged in service as a constable of the Police Service—

- (a) under arrangements made under section 16 of the Act; or
- (b) by virtue of paragraph 8(2) of schedule 5 to the Act.

Police friend

4.—(1) The senior officer may choose any of the following to act as the senior officer's police friend—

- (a) a constable;
- (b) a member of the police staff; or
- (c) an individual nominated by the senior officer's staff association.

(2) But the senior officer may not choose as a police friend any individual who is otherwise involved in the conduct under investigation in accordance with these Regulations.

(3) A police friend may—

- (a) advise the senior officer throughout any proceedings under these Regulations;
- (b) unless the senior officer is entitled to be legally represented and chooses to be so represented, represent the senior officer at the misconduct hearing; and
- (c) accompany the senior officer to any interview or hearing which forms part of any proceedings under these Regulations.

(4) The chief constable must permit any constable or member of the police staff acting as a police friend under these Regulations to use a reasonable amount of duty time for the purpose of performing the functions mentioned in paragraph (3).

Legal representation

5.—(1) The senior officer is, in accordance with this regulation, entitled to be legally represented at any misconduct hearing or appeal hearing by an advocate or solicitor of the senior officer's choice.

(2) If the senior officer intends to be represented in accordance with paragraph (1), the senior officer must—

- (a) in the case of a misconduct hearing, notify the chairing member of the panel of that intention not less than 5 working days before the date of that hearing; and
- (b) in the case of an appeal hearing, notify the Authority of that intention not less than 5 working days before the date of that hearing.

(3) Where the senior officer does not make a notification under paragraph (2), the senior officer—

- (a) is not entitled to be legally represented; and
- (b) may be dismissed or receive, in accordance with these Regulations, any other disciplinary or improvement action without being so represented.

(4) This regulation is without prejudice to the senior officer's right to be represented by a police friend at a misconduct hearing or appeal hearing.

Suspension

6.—(1) The Authority may suspend a senior officer from the office of constable where an allegation comes to the Authority's attention from which it can reasonably be inferred that any conduct of that officer may—

- (a) constitute a criminal offence; or
- (b) amount to misconduct.

(2) But the Authority must not suspend a senior officer unless at least one of the conditions mentioned in paragraph (3) (“the suspension conditions”) is satisfied.

(3) The suspension conditions are that—

- (a) an effective criminal or misconduct investigation may be prejudiced if the senior officer is not suspended; and
- (b) having regard to the nature of the allegation and any other relevant considerations, the public interest requires the senior officer's suspension.

(4) The Authority must notify the senior officer in writing of any decision to suspend that officer and the reasons for that decision.

(5) A suspension under this regulation—

- (a) has effect from the date of the written notice given under paragraph (4); and
- (b) must be reviewed by the Authority—
 - (i) not more than 4 weeks from that date;
 - (ii) not more than 4 weeks from the date of the previous review (if any); and
 - (iii) where the Authority is notified that circumstances relevant to the suspension conditions may have changed.

(6) In carrying out a review in accordance with paragraph (5)(b), the Authority must consider any representations made by the senior officer.

(7) The Authority may terminate a suspension imposed under paragraph (1) with effect either from the date of the suspension or any other date and must do so where—

- (a) it determines that the suspension conditions are no longer satisfied;
- (b) a decision is taken not to proceed with proceedings under these Regulations; or
- (c) subject to paragraph (8), proceedings under these Regulations have concluded.

(8) Where a senior officer who is suspended is dismissed with notice, that suspension is to subsist until the end of the notice period.

Alleged offences

7.—(1) Where the Authority considers that it can reasonably be inferred that a senior officer may have committed a criminal offence, it—

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

(2) Where proceedings are suspended or postponed under paragraph (1)(b), the Authority must inform the senior officer that—

- (a) those proceedings have been suspended or postponed; and
 - (b) those proceedings, or any other proceedings under these Regulations, may be taken against the senior officer whether or not criminal proceedings are brought against the senior officer 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

Investigations

Preliminary assessment

8.—(1) This regulation applies where a misconduct allegation comes to the attention of the Authority.

(2) The Authority 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) Where the Authority assesses that the conduct would, if proved, amount to neither misconduct nor gross misconduct, it may—

- (a) take no action;
- (b) take improvement action; or
- (c) refer the matter to be dealt with under procedures maintained under regulation 23 of the Police Service of Scotland (Performance) Regulations 2013.

(4) Where the Authority assesses that the conduct would, if proved, amount to either misconduct or gross misconduct, it must decide whether the misconduct allegation is to be investigated and—

- (a) if it is to be investigated, it must refer the allegation to the Commissioner; and
- (b) if it is not to be investigated, it may—
 - (i) take no further action; or
 - (ii) take improvement action.

Assessment by Commissioner

9.—(1) Where a misconduct allegation is referred to the Commissioner in pursuance of regulation 8(4)(a), the Commissioner must assess whether the conduct which is the subject matter of that allegation would, if that conduct were proved, amount to—

- (a) misconduct;
- (b) gross misconduct; or

(c) neither.

(2) Where the Commissioner assesses that the conduct which is the subject matter of the misconduct allegation would, if proved, amount to gross misconduct, the Commissioner must investigate the allegation.

(3) Where the Commissioner assesses that the conduct which is the subject matter of the misconduct allegation would, if proved, amount to misconduct, the Commissioner may—

- (a) investigate the allegation; or
- (b) refer the allegation back to the Authority (with such recommendations as are considered appropriate).

(4) Where the Commissioner assesses that the conduct which is the subject matter of the misconduct allegation would amount to neither misconduct nor gross misconduct, the Commissioner must refer the allegation back to the Authority (with such recommendations as are considered appropriate).

Investigation by Commissioner

10.—(1) This regulation applies where the Commissioner—

- (a) is required by virtue of regulation 9(2); or
- (b) decides in pursuance of regulation 9(3)(a),

to carry out a misconduct investigation.

(2) Where this regulation applies, the Commissioner must—

- (a) inform the Authority that the Commissioner is to carry out a misconduct investigation; and
- (b) appoint a member of the Commissioner's staff to carry out that investigation on the Commissioner's behalf.

Investigation by the Authority

11.—(1) Where the Commissioner has referred a misconduct allegation back to the Authority under regulation 9(3)(b) or (4), the Authority may—

- (a) carry out a misconduct investigation;
- (b) take improvement action; or
- (c) refer the matter to be dealt with under procedures maintained under regulation 23 of the Police Service of (Scotland) Performance Regulations 2013.

(2) Where the Authority decides, in accordance with paragraph (1)(a), to carry out a misconduct investigation it must—

- (a) appoint a member of the Authority's staff as an investigator;
- (b) make arrangements with the chief constable for the appointment of a constable as an investigator; or
- (c) make arrangements for the appointment of an individual falling within paragraph (3) as an investigator.

(3) An individual falls within this paragraph if the individual is a member of—

- (a) a police force maintained under section 2 of the Police Act 1996(4);
- (b) the metropolitan police force;
- (c) the City of London police force;

(4) 1996 c.16. Section 2 has been amended by Schedule 16 to the Police Reform and Social Responsibility Act 2011 (c.13).

- (d) the Police Service of Northern Ireland;
- (e) the British Transport Police Force;
- (f) the States of Jersey Police Force;
- (g) the salaried police force of the Island of Guernsey; or
- (h) the Isle of Man Constabulary.

(4) A constable appointed in pursuance of paragraph (2)(b) is, for the purposes of the misconduct investigation—

- (a) engaged on temporary service outwith the Police Service; and
- (b) under the direction and control of the Authority.

(5) The Authority is liable in respect of the carrying out of any unlawful conduct on the part of a constable appointed under arrangements made under paragraph (2)(b) in the carrying out (or purported carrying out) of that constable's functions in relation to the misconduct investigation in the same manner as an employer is liable in respect of any unlawful conduct on the part of an employee in the course of employment.

(6) An individual appointed in accordance with paragraph (2) must not be—

- (a) a senior officer;
- (b) a constable working directly under the management of the senior officer; or
- (c) any other individual whose appointment could give rise to a reasonable concern as to whether that individual could act impartially in relation to the misconduct investigation.

(7) An individual appointed in accordance with paragraph (2) must have, in the opinion of the Authority, the necessary knowledge, skills and expertise to plan and manage the misconduct investigation in relation to which the appointment is made.

(8) If, during the course of the misconduct investigation, the Authority considers that by reason of the scale or complexity of the case a different investigator should be appointed it may—

- (a) appoint, or arrange for the appointment of, an individual to replace the investigator originally appointed; or
- (b) request the Commissioner to carry out the misconduct investigation.

(9) Paragraphs (2) to (7) apply to the appointment of a replacement investigator.

Notice of investigation

12. The investigator must, as soon as reasonably practicable following appointment, give the senior officer written notice—

- (a) that the senior officer 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; and
- (d) providing the senior officer with an opportunity to make written or oral representations.

Misconduct interview

13.—(1) The investigator—

- (a) in a case where the senior officer intimates an intention to make oral representations, must arrange an interview with the senior officer; and
 - (b) in any other case, may arrange such an interview.
- (2) The investigator must seek to agree with the senior officer 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 senior officer 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 senior officer with such information as the investigator considers appropriate in the circumstances to enable the senior officer to prepare for the interview.
- (6) Without prejudice to the generality of paragraph (5), the information provided to the senior officer in advance of the interview must include details of the allegations made against that officer, 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, where such a recording is made, the senior officer must be provided with a copy of that recording.
- (8) Where 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 senior officer;
 - (b) the senior officer 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 the final written record of the interview to the senior officer.

Investigator's report

- 14.—**(1) At the conclusion of the misconduct investigation, the investigator must—
- (a) determine whether, in the investigator's opinion, the senior officer has a case to answer in relation to the misconduct allegation; and
 - (b) submit a written report to the Authority.
- (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 a misconduct hearing.
- (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 13(7); and
 - (b) any written record of such an interview.

Referral to misconduct hearing

15.—(1) On receipt of the investigator’s report, the Authority must, as soon as reasonably practicable, determine whether the senior officer has a case to answer in respect of—

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

(2) Where the Authority determines that the senior officer has no case to answer in respect of either misconduct or gross misconduct, it may—

- (a) take no action;
- (b) take improvement action; or
- (c) refer the matter to be dealt with under procedures maintained under regulation 23 of the Police Service of Scotland (Performance) Regulations 2013.

(3) Where the Authority determines that the senior officer has a case to answer in respect of either misconduct or gross misconduct, it must refer the misconduct allegation to a misconduct hearing.

PART 3

Misconduct hearings

Arrangement of misconduct hearing

16.—(1) This regulation applies where the Authority has referred a case to a misconduct hearing.

(2) The Authority must, not less than 20 working days before the date of the misconduct hearing, send a misconduct form to the senior officer.

(3) A misconduct form sent in accordance with paragraph (2) must give notice of—

- (a) the date, time and location of the misconduct hearing;
- (b) the conduct forming the subject matter of the misconduct allegation;
- (c) in summary, the facts established by the investigator;
- (d) why, in the Authority’s opinion, it can be inferred from the established facts that the conduct which is the subject matter of the misconduct allegation amounts to—
 - (i) misconduct; or
 - (ii) (as the case may be) gross misconduct;
- (e) the senior officer’s right to seek advice from a staff association;
- (f) the effect of regulations 4 and 5;
- (g) the senior officer’s right to provide a statement, either orally or in writing, in response to the misconduct form not more than 15 working days from the date of receipt of that form; and
- (h) the names of the members of the panel.

(4) The Authority must send with the misconduct form—

- (a) copies of any statements made by the senior officer during the investigation; and
- (b) unless paragraph (8) applies, a copy of—
 - (i) the report submitted by the investigator in accordance with regulation 14(1)(b); and

(ii) any other relevant documents obtained during the course of the misconduct investigation.

(5) Not more than 15 working days from the date of receipt of the misconduct form, the senior officer must provide to the Authority written notice of whether the senior officer accepts that—

- (a) the conduct which is the subject matter of the misconduct allegation is conduct of the senior officer; and
- (b) that conduct amounts to misconduct or (as the case may be) gross misconduct.

(6) A notice provided under paragraph (5) must give the senior officer's account of the circumstances giving rise to the misconduct allegation and must include—

- (a) in a case where the senior officer accepts that any conduct of the senior officer amounts to misconduct or (as the case may be) gross misconduct, any written submissions in mitigation;
- (b) in a case where the senior officer does not accept that any conduct of the senior officer amounts to misconduct or (as the case may be) gross misconduct, details of any allegation or allegations which the senior officer denies; and
- (c) in every case details of any legal arguments (if any) the senior officer wishes the panel to consider.

(7) The senior officer must send with the notice sent under paragraph (5) a copy of any document or other information on which the senior officer intends to rely at the misconduct hearing.

(8) This paragraph applies where the Authority considers that preventing the disclosure of any document mentioned in paragraph (4)(b) is—

- (a) necessary to avoid prejudicing current or future criminal proceedings;
- (b) necessary in the interests of national security;
- (c) necessary for the purpose of the prevention or detection of crime or the apprehension or prosecution of offenders;
- (d) necessary for the purpose of the prevention or detection of misconduct by other constables or police staff;
- (e) necessary and proportionate for the protection of the welfare and safety of any informant or witness; or
- (f) otherwise in the public interest.

(9) Where any document is withheld by virtue of the application of paragraph (8), the Authority must, so far as is reasonably possible without prejudicing any of the matters mentioned in that paragraph, provide the senior officer with a summary of the content of that document.

Witnesses

17.—(1) As soon as reasonably practicable before the misconduct hearing—

- (a) the Authority must—
 - (i) provide to the senior officer a list of witnesses whom the Authority intends will give evidence at the misconduct hearing together with brief details of the evidence each witness is able to adduce; or
 - (ii) notify the senior officer that it does not intend that any witnesses will give evidence; and
- (b) the senior officer must—

- (i) provide to the Authority a list of witnesses whom the senior officer intends will give evidence at the misconduct hearing together with brief details of the evidence each witness is able to adduce; or
 - (ii) notify the Authority that the senior officer does not intend that any witnesses will give evidence.
- (2) The Authority must make arrangements for the attendance at the misconduct hearing of any witnesses specified in a list mentioned in paragraph (1).

Appointment of panel

18.—(1) The Authority must appoint a panel of 3 individuals to conduct the misconduct hearing.

(2) A panel appointed under paragraph (1) must comprise—

- (a) a chairing member who is—
 - (i) a member of the Authority; or
 - (ii) a member of the Authority’s staff;
 - (b) one member who is—
 - (i) a member of the Authority;
 - (ii) a member of the Authority’s staff;
 - (iii) a member of any committee of the Authority established under paragraph 9(1) of schedule 1 to the Act; or
 - (iv) any other individual the Authority considers appropriate, based on that individual’s skills, knowledge and expertise; and
 - (c) one member who is—
 - (i) an individual considered appropriate by the Authority, based on that individual’s skills, knowledge and expertise;
 - (ii) not a member of the Authority;
 - (iii) not a member of the Authority’s staff; and
 - (iv) not a member of any committee of the Authority established under paragraph 9(1) of schedule 1 to the Act.
- (3) The Authority may not appoint to a panel—
- (a) a senior officer;
 - (b) a constable working directly under the management of the senior officer; or
 - (c) any other individual whose appointment could give rise to a reasonable concern as to whether that individual could act impartially in relation to the misconduct hearing.
- (4) The chairing member of the panel may appoint to assist the panel—
- (a) up to two individuals to act as assessors; and
 - (b) in a case where the senior officer has notified an intention to be legally represented, an advocate or a solicitor to act as a legal assessor.

Procedure at misconduct hearing

19.—(1) Subject to the following paragraphs of this regulation and regulations 20 and 21, the chairing member of the panel is to determine the procedure at the misconduct hearing.

(2) At the misconduct hearing the panel must permit—

- (a) the senior officer or any individual representing the senior officer to make representations;
 - (b) evidence to be heard from any witnesses in attendance; and
 - (c) subject to paragraph (3), the senior officer or any individual representing the senior officer to ask questions of any witness.
- (3) Whether any question is to be put to a witness is to be determined by the chairing member of the panel.
- (4) The chairing member of the panel may, with the agreement of the senior officer, permit the admission of written statements in lieu of oral evidence.
- (5) An audio recording may be made of the misconduct hearing and, where such a recording is made, the senior officer must be provided with a copy of that recording as soon as reasonably practicable after the conclusion of the hearing.
- (6) Where no audio recording is made under paragraph (5), a written record of the misconduct hearing must be prepared and—
- (a) the chairing member of the panel must provide a draft of that record to the senior officer;
 - (b) the senior officer must be given the opportunity to make representations in relation to that draft;
 - (c) the chairing member of the panel must consider any representations made; and
 - (d) having considered those representations (if any), the chairing member of the panel must send the final written record of the interview to the senior officer.

Proceedings in senior officer's absence

20.—(1) Where the senior officer informs the chairing member of the panel that the senior officer is unable to attend the misconduct hearing on grounds which the chairing member considers to be reasonable, the chairing member may permit the senior officer to participate in the proceedings by video link or other suitable means.

- (2) Paragraph (3) applies where the senior officer—
 - (a) participates in the misconduct hearing in accordance with paragraph (1); or
 - (b) otherwise does not attend that hearing.
- (3) Where this paragraph applies—
 - (a) the senior officer may be represented at the misconduct hearing by the senior officer's police friend, an advocate or a solicitor; and
 - (b) the hearing may be proceeded with and concluded in the senior officer's absence (whether or not the senior officer is so represented).

Attendance of third parties

21.—(1) Subject to the following paragraphs of this regulation, the misconduct hearing is to be held in private.

- (2) Where the misconduct hearing has arisen from a complaint made by a member of the public, the chairing member of the panel may—
 - (a) inform that member of the public of the time, date and location of that hearing; and
 - (b) permit that member of the public to attend, as an observer, that hearing, or such part or parts of that hearing as the chairing member considers appropriate.

(3) Where a witness is giving evidence, the chairing member of the panel may allow such other persons to attend the misconduct hearing 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).

(4) The chairing member of the panel may, with the agreement of the senior officer, allow any other person to attend the misconduct hearing.

(5) Paragraphs (2) to (4) do not apply to any part of the misconduct hearing at which disciplinary action is being considered.

Determination

22.—(1) At the conclusion of the misconduct hearing, the panel must—

- (a) determine whether the conduct which is the subject matter of the misconduct allegation is conduct of the senior officer;
- (b) in a case where the Authority has determined, in accordance with regulation 15(1)(a), that the senior officer has a case to answer in respect of misconduct, determine whether it is established that any conduct of the senior officer amounts to misconduct; and
- (c) in a case where the Authority has determined, in accordance with regulation 15(1)(b), that the senior officer has a case to answer in respect of gross misconduct, determine whether it is established that any conduct of the senior officer amounts to—
 - (i) gross misconduct;
 - (ii) misconduct; or
 - (iii) neither.

(2) A determination under paragraph (1) is to be made on the balance of probabilities.

(3) In a case mentioned in paragraph (1)(b), the panel may not determine that any conduct of the senior officer amounts to gross misconduct.

(4) Where the panel has determined that the conduct of the senior officer amounts to neither misconduct nor gross misconduct the Authority may—

- (a) take no further action;
- (b) take improvement action; or
- (c) refer the matter to be dealt with under procedures maintained under regulation 23 of the Police Service of Scotland (Performance) Regulations 2013.

Disciplinary action

23.—(1) This regulation applies where—

- (a) the panel has determined that any conduct of the senior officer amounted to misconduct or, as the case may be, gross misconduct; or
 - (b) the senior officer has admitted misconduct or, as the case may be, gross misconduct.
- (2) Where this regulation applies, the panel must determine whether the Authority is to take—
- (a) in a case where the senior officer's conduct amounts to misconduct—
 - (i) improvement action; or
 - (ii) subject to paragraphs (4) to (7), any such disciplinary action as is mentioned in paragraph (3); or
 - (b) in a case where the senior officer's conduct amounts to gross misconduct—
 - (i) improvement action; or

(ii) any such disciplinary action as is mentioned in paragraph (3).

(3) The disciplinary action is—

- (a) a verbal warning;
- (b) a written warning;
- (c) a final written warning;
- (d) dismissal with such notice as the Authority may specify; or
- (e) dismissal without notice.

(4) Where, on the date of the determination under regulation 22(1)(b), the senior officer was subject to a written warning which remains in effect, neither a verbal warning nor a written warning may be given.

(5) Where, on the date of the determination under regulation 22(1)(b), the senior officer was subject to a final written warning which remains in effect—

- (a) none of a verbal warning, a written warning or a final written warning may be given; but
- (b) in exceptional circumstances, the final written warning may be extended, provided that such a warning may be extended on one occasion only and for a period of no more than 18 months.

(6) Where the panel has determined that any conduct of the senior officer amounts to misconduct, the disciplinary action mentioned in paragraph (3)(d) or (e) may be taken only where the senior officer is subject, on the date of the determination under regulation 22(1)(b), to a final written warning which remains in effect.

(7) A final written warning remains in effect for a period of 18 months from the date on which it is given (unless extended under paragraph (5)(b)).

(8) The chairing member of the panel must, as soon as reasonably practicable (and not later than 5 working days from the date of conclusion of the misconduct hearing) notify the Authority of—

- (a) the panel's determination under regulation 22(1); and
- (b) the action to be taken in accordance with this regulation.

Notification of determination and action to be taken

24.—(1) The Authority must, as soon as reasonably practicable after the conclusion of the misconduct hearing (and not later than 10 working days from the date of conclusion of that hearing), notify the senior officer in writing of—

- (a) the panel's determination as to whether any conduct of the senior officer amounts to misconduct or, as the case may be, gross misconduct;
- (b) what improvement or, as the case may be, disciplinary action is to be taken; and
- (c) the reasons for the determination and the action to be taken.

(2) A notification under paragraph (1) must—

- (a) in a case where a written warning has been given, explain the effect of regulation 23(4) in relation to any future misconduct allegation; and
- (b) in a case where a final written warning has been given, explain the effect of regulation 23(5), (6) and (7) in relation to such an allegation.

(3) Where it has been determined that any conduct of the senior officer amounts to misconduct or, as the case may be, gross misconduct, a notice under paragraph (1) must give notice of—

- (a) the senior officer's right to an appeal under regulation 25; and
- (b) the name of the individual to whom an appeal should be submitted.

(4) If the misconduct hearing has arisen out of a complaint made by a member of the public, the Authority must notify that member of the public in writing of the determination under this regulation.

PART 4

Appeals

Appeals

25.—(1) This regulation applies where—

- (a) it has been determined by the panel that any conduct of the senior officer amounts to misconduct or, as the case may be, gross misconduct; or
- (b) the senior officer has admitted that any conduct of the senior officer amounts to misconduct or, as the case may be, gross misconduct.

(2) Where this regulation applies, the senior officer may appeal against—

- (a) in a case mentioned in paragraph (1)(a)—
 - (i) any determination made under regulation 22(1); and
 - (ii) any disciplinary action to be taken; or
- (b) in a case mentioned in paragraph (1)(b), any disciplinary action to be taken.

(3) An appeal under this regulation may be requested only on the grounds that—

- (a) any determination under regulation 22(1) or any disciplinary action to be taken is unreasonable;
- (b) there is evidence that could not reasonably have been considered at the misconduct hearing which could have affected materially such a determination or the determination that particular disciplinary action is to be taken; or
- (c) there was a breach of the procedures set out in these Regulations which could have affected materially such a determination or the determination that particular disciplinary action is to be taken.

(4) An appeal may be requested by the senior officer sending a written appeal notice to the Authority not more than 10 working days from the date on which the senior officer received a notice under regulation 24(1).

(5) The appeal notice must specify—

- (a) whether the senior officer appeals against;
 - (i) a determination made under regulation 22(1);
 - (ii) the disciplinary action to be taken; or
 - (iii) both;
- (b) the ground (or grounds) of appeal; and
- (c) whether the senior officer requests an appeal hearing.

(6) The senior officer must—

- (a) send with the appeal notice a copy of any document or other information which it is considered supports the senior officer's appeal; and
- (b) without prejudice to the generality of sub-paragraph (a), where the senior officer seeks to rely on the ground of appeal mentioned in paragraph (3)(b), submit with the appeal notice details of the evidence which the senior officer considers could have affected materially any determination or decision of the panel.

Appeal procedure

26.—(1) Subject to the following provisions of this regulation, the appeal may be determined in such manner as the Authority determines.

(2) The appeal is not to be determined by any individual who was a member of the panel at the misconduct hearing.

(3) Where the senior officer does not request an appeal hearing, the Authority must determine the appeal on the basis of—

- (a) the appeal notice and any documents or other information sent with that notice;
- (b) the audio or written record of the misconduct hearing;
- (c) any notices, submissions or other documents or information provided by the Authority or the senior officer in accordance with regulation 16;

(4) Where the senior officer does request an appeal hearing, the following paragraphs of this regulation apply.

(5) The Authority must determine whether the appeal notice sets out arguable grounds of appeal and—

- (a) if it determines that it does, it must hold an appeal hearing;
- (b) if it determines that it does not, it must dismiss the appeal;
- (c) in either case, it must inform the senior officer in writing of its decision under this paragraph; and
- (d) where an appeal hearing is to be held, it must as soon as reasonably practicable specify by notice in writing to the senior officer a date and time for that hearing.

(6) The appeal hearing is to be held not more than 10 working days from the date on which the decision to hold that hearing was made in accordance with paragraph (5)(a).

(7) The appeal hearing is to be conducted in such manner as the Authority may determine, provided that—

- (a) the senior officer's police friend must be permitted to attend; and
- (b) the senior officer (or any individual representing the senior officer) must be permitted to make oral representations.

(8) After the appeal hearing the Authority may—

- (a) confirm or reverse any determination made under regulation 22(1);
- (b) confirm the disciplinary action to be taken in accordance with the determination of the panel under regulation 23(2);
- (c) require disciplinary action to be taken which is less serious than that which was to be taken in accordance with that determination;
- (d) require improvement action to be taken instead of disciplinary action;
- (e) refer the matter to be dealt with under procedures maintained under regulation 23 of the Police Service of Scotland (Performance) Regulations 2013; or
- (f) in a case where the ground of appeal mentioned in regulation 25(3)(b) is found to be established, remit the misconduct allegation back to the panel.

(9) The Authority must, as soon as reasonably practicable, give notice to the senior officer of—

- (a) the outcome of the appeal; and
- (b) the reasons for that outcome.

(10) In a case where a decision to dismiss the senior officer has been confirmed, a notice under paragraph (9) must inform the senior officer of that officer's right under section 56 of the Act to appeal to a police appeals tribunal.

Procedure where misconduct allegation remitted back to panel

27.—(1) This regulation applies where a misconduct allegation is remitted back to the panel in accordance with regulation 26(8)(f).

(2) Where this regulation applies, the panel must—

(a) consider the evidence submitted by the senior officer in accordance with regulation 25(6)(b); and

(b) determine whether it should—

(i) reverse any determination made under regulation 22(1);

(ii) require disciplinary action to be taken which is less serious than that which was to be taken in accordance with the decision of the panel under regulation 23(2);

(iii) require improvement action to be taken instead of disciplinary action; or

(iv) refer the matter to be dealt with under procedures maintained under regulation 23 of the Police Service of Scotland (Performance) Regulations 2013.

(3) Before making a determination under paragraph (2), the panel may, by notice in writing, require the senior officer to attend a further hearing (and regulations 5, 17, 19, 20 and 22 apply to such a hearing as they apply to a misconduct hearing).

(4) As soon as reasonably practicable after a determination is made under paragraph (2), the panel must notify the senior officer of that determination.

PART 5

Expenses

Expenses

28.—(1) All reasonable expenses incurred by the senior officer in connection with any misconduct hearing or appeal hearing (including reasonable expenses incurred in the course of preparing for such a hearing) are to be met by the Authority.

(2) Any expenses payable by virtue of paragraph (1) may be subject to taxation in such manner as the Scottish Ministers direct.

(3) The Authority may reimburse to any extent any other expenses reasonably incurred by the senior officer in connection with proceedings under these Regulations.

PART 6

Revocations, savings and transitional provisions

Revocations, savings and transitional provisions

29. Schedule 2 contains a revocation and savings and transitional provision.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

St Andrew's House, Edinburgh
21st February 2013

KENNY MACASKILL
A member of the Scottish Government

SCHEDULE 1

Regulation 2

Standards of Professional Behaviour

Honesty and integrity

Constables are honest, act with integrity and do not compromise or abuse their position.

Authority, respect and courtesy

Constables act with self-control and tolerance, treating members of the public and colleagues with respect and courtesy.

Constables do not abuse their powers or authority and respect the rights of all individuals.

Equality and diversity

Constables act with fairness and impartiality. They do not discriminate unlawfully or unfairly.

Use of force

Constables use force only to the extent that it is necessary, proportionate and reasonable in all the circumstances.

Orders and instructions

Constables give and carry out only lawful orders and instructions.

Duties and responsibilities

Constables are diligent in the exercise of their duties and responsibilities.

Confidentiality

Constables treat information with respect and access or disclose it only in the proper course of their duties.

Fitness for duty

Constables when on duty or presenting themselves for duty are fit to carry out their responsibilities.

Discreditable conduct

Constables behave in a manner which does not discredit the Police Service or undermine public confidence in it, whether on or off duty.

Constables report any action taken against them for a criminal offence, any conditions imposed on them by a court or the receipt of any penalty notice.

Challenging and reporting improper conduct

Constables report, challenge or take action against the conduct of other senior officers which has fallen below the Standards of Professional Behaviour.

SCHEDULE 2

Regulation 29

Revocation, savings and transitional provisions

Interpretation

1. In this Schedule—

“the 1999 Regulations” means the Police (Conduct) (Senior Officers) (Scotland) Regulations 1999⁽⁵⁾;

“investigating officer” has the meaning given by regulation 3 of the 1999 Regulations;

“police authority” means a police authority which was, until 1st April 2013, maintained under the Police (Scotland) Act 1967⁽⁶⁾;

“police force” means a police force which was, until 1st April 2013, maintained by a police authority;

“the senior officer” has the meaning given by regulation 3 of the 1999 Regulations; and

“transferred senior officer” means an individual who—

- (a) immediately before 1st April 2013 was serving as a constable of a police force in the rank of assistant chief constable, deputy chief constable or chief constable; and
- (b) has transferred to serve as a constable of the Police Service under paragraph 6 of schedule 5 to the Act.

Revocation and saving

2. Subject to paragraph 3, the 1999 Regulations are revoked.

3.—(1) Despite their revocation by paragraph 2, the 1999 Regulations continue to have effect on and after 1st April 2013 as they had effect immediately before that date, subject to the modifications set out in paragraph 9, where—

- (a) it can reasonably be inferred from a report, allegation or complaint made before 1st April 2013 that any conduct of a transferred senior officer may amount to misconduct within the meaning given by regulation 2 of the 1999 Regulations and any proceedings under those Regulations in relation to that report, allegation or complaint have not been concluded before that date; and
- (b) it can reasonably be inferred from a report, allegation or complaint made on or after 1st April 2013 that any conduct of a transferred senior officer occurring before that date may amount to misconduct within the meaning given by regulation 2 of the 1999 Regulations.

(2) For the purposes of sub-paragraph (1)(a), in cases where no misconduct hearing has taken or is to take place and regulation 13(1) of the 1999 Regulations does not apply, proceedings in relation to a report, allegation or complaint are to be treated as having been concluded—

- (a) in a case where no investigating officer was appointed, when the police authority notified the senior officer of—
 - (i) a finding under regulation 5(3) of those Regulations that a report, allegation or complaint did not contain any allegation of an act or omission of a senior officer which would, if proved, amount to misconduct; or
 - (ii) a finding under regulation 5(4) of those Regulations that a report, allegation or complaint is unfounded or frivolous in nature or contains allegations of acts or omissions which would, if proved, amount to misconduct of a minor or trivial nature only;
- (b) in a case where an investigating officer was appointed but no independent solicitor was appointed, when a decision was taken under regulation 6(2) of those Regulations that there was insufficient evidence of misconduct to justify a misconduct hearing; and
- (c) in a case where both an investigating officer and an independent solicitor were appointed—

(5) S.I. 1999/1074.

(6) 1967 c.77.

- (i) when a decision was taken under regulation 8(2) of those Regulations that the senior officer should not be required to appear before a misconduct hearing; or
 - (ii) when a direction was given under regulation 10 of those Regulations that an allegation was not to be considered at a misconduct hearing.
- (3) For the purposes of sub-paragraph (1)(a), in cases where a misconduct hearing has taken place or to which regulation 13(1) of the 1999 Regulations has applied, proceedings in relation to a report, allegation or complaint are to be treated as having been concluded—
- (a) when a decision was made to dismiss the case in accordance with regulation 22(1) of those Regulations; or
 - (b) where a finding was made that any act or omission of the senior officer amounted to misconduct—
 - (i) when a decision that no further action is to be taken was notified to the senior officer in accordance with regulation 22(2) of those Regulations; or
 - (ii) when a decision in accordance with regulation 23(9) of those Regulations was notified to the senior officer in accordance with paragraph (10)(b) of that regulation.

Transitional provisions

4. Any proceedings commenced under the 1999 Regulations in relation to a case in relation to which those Regulations continue to have effect by virtue of paragraph 3—

- (a) may be continued under those Regulations as modified by paragraph 9; and
- (b) where continued, are to be treated as proceedings under those Regulations as so modified.

5. Anything done before 1st April 2013 under the 1999 Regulations by or in relation to a police authority in relation to a case in relation to which those Regulations continue to have effect by virtue of paragraph 3 is to be treated, on and after that date, as if it had been done by or in relation to the Authority.

6.—(1) Sub-paragraph (2) applies to an individual who—

- (a) before 1st April 2013 was appointed under regulation 5(1) of the 1999 Regulations as an investigating officer in relation to a case in relation to which those Regulations continue to have effect by virtue of paragraph 3; and
- (b) is a transferred senior officer.

(2) An individual to whom this sub-paragraph applies is to continue to be the investigating officer in relation to the case in relation to which that individual's appointment was made.

(3) Sub-paragraphs (4) and (5) apply where an individual appointed before 1st April 2013 to act as the investigating officer in relation to a case in relation to which the 1999 Regulations continue to have effect by virtue of paragraph 3 is not a transferred senior officer.

(4) Where this sub-paragraph applies, the Authority must, in accordance with regulation 5 of the 1999 Regulations, appoint, or make arrangements for the appointment of, an individual to replace the individual mentioned in sub-paragraph (3) as investigating officer.

(5) Anything done before 1st April 2013 by or in relation to an investigating officer who is not a transferred senior officer is, on and after that date, to be treated as having been done by or in relation to the individual appointed to replace that investigating officer.

7.—(1) This paragraph applies to—

- (a) a decision to dismiss an individual from a police force made under regulation 23(9) of the 1999 Regulations where—

- (i) that decision was made before 1st April 2013;
- (ii) the individual in relation to whom the decision was made had not been dismissed by that date; and
- (iii) that individual is a transferred senior officer; and
- (b) a decision to require an individual to resign from a police force made under regulation 23(9) of the 1999 Regulations where—
 - (i) that decision was made before 1st April 2013;
 - (ii) the individual in relation to whom the decision was made had not resigned by that date; and
 - (iii) that individual is a transferred senior officer.
- (2) Where this paragraph applies—
 - (a) a transferred senior officer who was to be dismissed from a police force is, on and after 1st April 2013, to be dismissed from the Police Service; and
 - (b) a requirement to resign from a police force by a specified date is, on and after 1st April 2013, to be treated as a requirement to resign from the Police Service by that specified date.
- (3) Where a transferred senior officer has not resigned from the Police Service by the date specified in a decision mentioned in sub-paragraph (1)(b), the effect of that decision is to dismiss that transferred senior officer from the Police Service on the specified date.

8.—(1) Sub-paragraph (2) applies to an individual who—

- (a) was, immediately before 1st April 2013, suspended from duty and from the office of constable of a police force under regulation 25 of the 1999 Regulations; and
- (b) is a transferred senior officer.

(2) An individual to whom this sub-paragraph applies is to continue (subject to the provisions of regulation 25 of the 1999 Regulations), on and after 1st April 2013, to be suspended and may, on and after that date, be dealt with under that regulation as modified by this Schedule.

Modifications

9.—(1) The 1999 Regulations are modified as follows.

(2) In regulation 2(b), for “police authority” substitute “Authority”.

(3) In regulation 3—

- (a) in the definition of “complainer”, before “senior” insert “transferred”;
- (b) omit the definition of “constable of a police force”;
- (c) for the definition of “investigating officer” substitute—

““investigating officer” means—

- (a) a transferred senior officer appointed under regulation 5(1) of these Regulations as it had effect immediately before 1st April 2013; or
- (b) an individual appointed under that regulation as it had effect on and after that date;”;

(d) in the definition of “representative”, for “a police force” substitute “the Police Service”;

(e) for the definition of “a senior officer” substitute—

““senior officer” has the meaning given by section 99(1) of the 2012 Act;”;

(f) in the definition of “the senior officer”, before the second “senior” insert “transferred”; and

(g) in the appropriate places, insert—

““the 2012 Act” means the Police and Fire Reform (Scotland) Act 2012(7);”;

““the Authority” means the Scottish Police Authority;”;

““chief constable” means the chief constable of the Police Service;”;

““the Commissioner” means the Police Investigations and Review Commissioner;”;

““constable of the Police Service” means an individual holding the office of constable, other than a special constable, who is serving as a constable of the Police Service and includes (unless the context otherwise requires)—

(a) the chief constable;

(b) any deputy chief constable;

(c) any assistant chief constable;

(d) any individual on temporary service outwith the Police Service under arrangements made under section 15 of the 2012 Act; and

(e) any individual engaged on temporary service as a constable of the Police Service under arrangements made under section 16 of the 2012 Act;”;

““police force” means a police force which was, until 1st April 2013, maintained under the Police (Scotland) Act 1967(8);”;

““Police Service” means the Police Service of Scotland;”;

““transferred senior officer” means an individual who—

(a) before 1st April 2013 was serving as a constable of a police force in the rank of assistant chief constable, deputy chief constable or chief constable; and

(b) has transferred to serve as a constable of the Police Service under paragraph 6 of schedule 5 to the 2012 Act.”.

(4) In regulation 5—

(a) in paragraph (1)—

(i) after the first “officer” insert “which occurred before 1st April 2013”; and

(ii) omit the words from “for” to “constable”;

(b) in paragraph (5), for the words from “he” to “member” substitute “the Authority may—”;

(c) at the end of that paragraph insert—

appoint a member of the Authority’s staff as an investigating officer;

(b) in a case where the senior officer is not the chief constable, make arrangements with the chief constable for the appointment of a constable of the Police Service as an investigating officer;

(c) make arrangements for the appointment of an individual falling within paragraph (5A) as an investigating officer; or

(d) request the Commissioner to act as investigating officer (and regulation 10 of the Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013 applies in relation to a such a request).

(5A) An individual falls within this paragraph if the individual is a member of—

(7) 2012 asp 8.

(8) 1967 c.77.

- (a) a police force maintained under section 2 of the Police Act 1996⁽⁹⁾;
- (b) the metropolitan police force;
- (c) the City of London police force;
- (d) the Police Service of Northern Ireland;
- (e) the British Transport Police Force;
- (f) the States of Jersey Police Force;
- (g) the salaried police force of the Island of Guernsey; or
- (h) the Isle of Man Constabulary.

(5B) A constable appointed in pursuance of paragraph (5)(b) is, for the purposes of the investigation—

- (a) engaged on temporary service outwith the Police Service; and
- (b) under the direction and control of the Authority.

(5C) The Authority is liable in respect of the carrying out of any unlawful conduct on the part of any constable appointed under arrangements made under paragraph (5)(b) in the carrying out (or purported carrying out) of that constable's functions in relation to the misconduct investigation in the same manner as an employer is liable in respect of any unlawful conduct on the part of an employee in the course of employment.

(5D) An individual appointed in accordance with paragraph (5) must not be—

- (a) a senior officer;
- (b) a constable working directly under the management of the senior officer; or
- (c) any other individual whose appointment could give rise to a reasonable concern as to whether that individual could act impartially in relation to the investigation.

(5E) An individual appointed to act as an investigating officer must have, in the opinion of the Authority, the necessary knowledge, skills and expertise to plan and manage that investigation.

(5F) Where the Authority considers, by reason of the scale or complexity of the investigation, that the investigating officer should be replaced, it may—

- (a) appoint, or arrange for the appointment of, an individual to replace that investigating officer; or
- (b) request the Commissioner to carry out the investigation on its behalf (and regulation 10 of the Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013 applies in relation to a such a request).

(5G) Paragraphs (5) to (5E) apply to the appointment of a replacement investigating officer.”; and

(d) in paragraph (6)—

- (i) for “chief constable”, in each place it occurs, substitute “individual”;
- (ii) omit the words from the first “or” to “force”; and
- (iii) omit the words “or is so interested”.

(5) In regulation 7(3)—

(a) for sub-paragraph (a) substitute—

- “(a) a member of the Authority or a member of the Authority's staff;”;

⁽⁹⁾ 1996 c.16. Section 2 has been amended by Schedule 16 to the Police Reform and Social Responsibility Act 2011 (c.13).

- (b) in sub-paragraph (b), for “is” substitute “was, before 1st April 2013,”; and
- (c) at the end of that sub-paragraph insert—
 - “; or
 - (c) a former constable of the Police Service.”.
- (6) In regulation 8—
 - (a) in paragraph (2) omit the words from “and” to the end of that paragraph;
 - (b) in paragraph (4), for the words from “If” to “solicitor” substitute “Where the Authority decides that the senior officer should be required to appear before a misconduct hearing it”; and
 - (c) omit paragraph (5).
- (7) In regulation 9(1), for “member of the same force” substitute “constable of the Police Service”.
- (8) In regulation 12(1)(c), for “a police force” substitute “the Police Service”.
- (9) In regulation 14—
 - (a) in paragraph (2), for the words from the second “person” to the end of that paragraph substitute “member of the Authority or a member of the Authority’s staff”; and
 - (b) in paragraph (4)—
 - (i) in sub-paragraph (b), for the words from “police” to the end of that sub-paragraph, substitute “Police Service”;
 - (ii) in sub-paragraph (c) omit the words from second “or” to the end of that sub-paragraph; and
 - (iii) in sub-paragraph (f), at the end insert “or the Police Service”.
- (10) In regulation 15 omit paragraph (3).
- (11) In regulation 16—
 - (a) in paragraph (2)(b), for the words “a police force” substitute “the Police Service”; and
 - (b) in paragraph (3), after “of” insert “the Police Service, or a former constable of”.
- (12) In regulation 22(2)(d)—
 - (a) After the first “constable” insert “of the Police Service”;
 - (b) for the fourth “the” substitute “that”; and
 - (c) omit “of the police force concerned”.
- (13) In regulation 23—
 - (a) in paragraph (1), for “force”, in both places, substitute “Police Service”;
 - (b) in paragraph (4), for the second “authority” substitute “Authority”;
 - (c) in paragraph (5), for “a police force” substitute “the Police Service”; and
 - (d) in paragraphs (11) and (12), for “force”, in each place it occurs, substitute “Police Service”.
- (14) In regulation 25(1) omit “of a police force”.
- (15) Omit regulation 26.
- (16) In regulation 27(1)—
 - (a) omit “of a police force”; and
 - (b) omit “or 26”.
- (17) In regulation 28—
 - (a) in paragraph (1), for “the authority”, in both places, substitute “the Authority”; and

- (b) in paragraph (3)—
- (i) for the words from “section” to “Act” substitute “section 56 of the Police and Fire Reform (Scotland) Act 2012(10)”; and
 - (ii) for “authority’s” substitute “Authority’s”.
- (18) Omit regulation 29.
- (19) In regulations 5 to 10, 12 to 15, 21 to 25, 28 and 30 for “police authority”, in each place it occurs, substitute “the Authority”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the procedures for dealing with cases where an act or omission of a senior officer of the Police Service of Scotland (“the Police Service”) is alleged to amount to misconduct.

Part 1 makes general provision. Regulations 1 to 3 make provision about the commencement, interpretation and application of the Regulations, including, with Schedule 1, setting out the meaning of misconduct and gross misconduct. Regulations 4 and 5 make provision about the representation to which a senior officer is entitled during misconduct proceedings. Regulation 6 provides the Scottish Police Authority (“the Authority”) with a power to suspend senior officers whose conduct is alleged either to amount to misconduct or to constitute a criminal offence. Regulation 7 details the further action to be taken by the Authority in cases where a senior officer is suspected of having committed a criminal offence, including the action it must take in relation to any misconduct proceedings already underway.

Part 2 establishes how misconduct allegations are to be investigated. A preliminary assessment of any such allegation is, by virtue of regulation 8, to be carried out by the Authority. Where the Authority considers that the conduct forming the subject matter of the allegation would, if proved, amount to either misconduct or gross misconduct, it must refer the matter to the Police Investigations and Review Commissioner (“the Commissioner”). Regulation 9 sets out how the Commissioner is to deal with such a referral. The Commissioner must investigate allegations of gross misconduct and may either investigate allegations of misconduct or refer those back to the Authority. Regulation 10 makes provision about the steps to be taken by the Commissioner when the Commissioner is either obliged or decides to carry out a misconduct investigation, including provision about the appointment of an investigator. Regulation 11 makes similar provision in relation to misconduct investigations to be carried out by the Authority. Regulations 12 and 13 deal with some of the formal steps to be taken during a misconduct investigation, including the issue of a notice of the investigation to the senior officer and the arrangement and form of an interview with the senior officer. Regulation 14 requires the investigator, at the conclusion of the misconduct investigation, to submit a report of the investigation to the Authority. On receipt of that report, the Authority must, by virtue of regulation 15, consider whether the officer has a case to answer in relation to the misconduct allegation. Where it decides that the senior officer does have a case to answer, it must refer the matter to a misconduct hearing.

(10) 2012 asp 8.

Part 3 establishes the procedure in relation to misconduct hearings. Regulation 16 sets out the general procedure for the arrangement of such hearings, including the requirement on the Authority to prepare and issue a misconduct form to which the senior officer is required to respond. Regulation 17 creates a process for the agreement between the Authority and the senior officer of the witnesses, if any, who should attend a misconduct hearing. By virtue of regulation 18, the Authority must appoint a panel of three people to conduct a misconduct hearing. The chairing member of the panel must be either a member of the Authority or of its staff. The second member may be a member of the Authority or of its staff, a member of a committee of the Authority, or any other person considered appropriate by the Authority based on that person's skills, knowledge and expertise. The third member must be a person considered appropriate by the Authority based on that person's skills, knowledge or expertise, but must not be a member of the Authority, its staff or one of its committees. Assessors may be appointed to assist the panel.

Regulation 19 sets out the procedure at the misconduct hearing and regulation 20 details how such a hearing is to proceed in the senior officer's absence. Regulation 21 permits the attendance at the hearing of third parties, subject to certain restrictions.

Regulation 22 requires the panel, at the conclusion of the misconduct hearing, to determine whether the conduct forming the subject matter of the misconduct allegation is conduct of the senior officer and whether that conduct constitutes misconduct or, as the case may be, gross misconduct. That determination is to be made on the balance of probabilities. Regulation 23 sets out the disciplinary action which may be taken where the senior officer has either been found guilty of misconduct or gross misconduct or has admitted misconduct or gross misconduct. The disciplinary action which may be imposed is a verbal warning, a written warning, a final written warning and dismissal from the Police Service with or without notice. Dismissal is only available where the senior officer has either been found guilty of gross misconduct or has been found guilty of misconduct and is subject to a final written warning which remains in effect. Regulation 24 requires the Authority to notify the senior officer in writing of the panel's finding and the disciplinary action to be taken.

Part 4 establishes a procedure for appealing against a finding that conduct of the senior officer is either misconduct or gross misconduct and any disciplinary action which is to be taken. Such an appeal is to be made to the Authority and may be made on the grounds that the finding or the action to be taken are unreasonable, that there is new evidence available or that there was a breach of the procedures set out in these Regulations. An appeal is to be made by submitting a notice of appeal to the Authority.

The appeal procedure is set out in regulation 26. This allows the senior officer to request an appeal hearing and the Authority must, if the notice of appeal sets out arguable grounds of appeal, grant such a request. On conclusion of consideration of the appeal and, if applicable, any hearing, the Authority may confirm or reverse a finding as to misconduct, confirm or vary the disciplinary action to be taken, refer the matter to be dealt with under procedures for managing performance or remit the case back to the panel which conducted the misconduct hearing. A notice of the Authority's decision must be given to the senior officer. Regulation 27 sets out the procedure in cases which are, following an appeal, remitted back to the panel which conducted the misconduct hearing.

Part 5 deals with the expenses of misconduct proceedings.

Part 6 and Schedule 2 contain a revocation and savings and transitional provision.