

## 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(1);

“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(2);

“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

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(1) S.I. 1999/1074.  
(2) 1967 c.77.

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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—
  - (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

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- (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(3);”;
    - ““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(4);”;
    - ““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—
    - “(a) 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;

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(3) 2012 asp 8.

(4) 1967 c.77.

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- (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—
- (a) a police force maintained under section 2 of the Police Act 1996(5);
  - (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”;

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(5) 1996 c.16. Section 2 has been amended by Schedule 16 to the Police Reform and Social Responsibility Act 2011 (c.13).

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- (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;”;
  - (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<sup>(6)</sup>”; 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”.

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(6) 2012 asp 8.