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SCOTTISH STATUTORY INSTRUMENTS

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**2014 No. 68**

**The Police Service of Scotland (Conduct) Regulations 2014**

**PART 1**

**General**

**Citation and commencement**

1. These Regulations may be cited as the Police Service of Scotland (Conduct) Regulations 2014 and come into force on 1st April 2014.

**Interpretation**

2. In these Regulations—

“appeal hearing” means a hearing held to determine an appeal under regulation 24;

“appeal notice” means a written appeal notice sent under regulation 24(4);

“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;

“conduct” includes acts and omissions;

“disciplinary action” means the action mentioned in regulation 22(3);

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

“investigator” means a constable appointed under regulation 10(4)(a);

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

“misconduct” means, unless the context otherwise requires, conduct which amounts to a breach of the Standards of Professional Behaviour (but does not, unless the context otherwise requires, include gross misconduct);

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

“misconduct form” means the form sent in accordance with regulation 15(2);

“misconduct hearing” means a hearing to which a misconduct allegation is referred under regulation 14(3) where the deputy chief constable determines that the constable has a case to answer in respect of misconduct or gross misconduct;

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

“misconduct meeting” means a meeting to which a misconduct allegation is referred under regulation 14(2) where the deputy chief constable determines that the constable has a case to answer in respect of misconduct;

“misconduct proceedings” means a misconduct meeting or a misconduct hearing;

“Performance Regulations” means the Police Service of Scotland (Performance) Regulations 2014(1);

“person conducting the misconduct proceedings” means the constable appointed under regulation 16 to conduct the misconduct proceedings;

“person determining the appeal” means the constable appointed under regulation 25(2) to determine an appeal under regulation 24;

“police representative” means an individual chosen by the constable in accordance with regulation 6;

“proved” means established on a balance of probabilities;

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

“the 2013 Regulations” means the Police Service of Scotland (Conduct) Regulations 2013(2);

“the Act” means the Police and Fire Reform (Scotland) Act 2012(3);

“the constable” means, unless the context otherwise requires, a constable 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(4); or
- (c) a day which is a public holiday in Scotland; and

“writing” includes electronic communications within the meaning given by section 15 of the Electronic Communications Act 2000(5) (and “written” is to be construed accordingly).

### **Application**

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

(2) These Regulations do not apply in relation to—

- (a) conduct occurring before 1st April 2014;
- (b) conduct on the part of any person engaged in service as a constable of the Police Service—
  - (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
- (c) conduct of a special constable appointed under section 9 of the Act.

### **Revocation and transitional provision**

4.—(1) Subject to paragraph (2) and (4), the 2013 Regulations are revoked.

(2) The 2013 Regulations continue to have effect in cases where—

- (a) it can reasonably be inferred from a report, allegation or complaint made before 1st April 2014 that any conduct of a constable to whom those Regulations applied may amount

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(1) [S.S.I. 2014/67](#).

(2) [S.S.I. 2013/60](#). This instrument has been amended by [S.S.I. 2013/125](#).

(3) [2012 asp 8](#).

(4) [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](#)).

(5) [2000 c.7](#). Section 15 has been amended by the Schedule 17 to the Communications Act 2003 ([c.21](#)).

to misconduct 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 2014 that any conduct of a constable to whom those Regulations applied occurring before that date may amount to misconduct.

(3) In paragraph (2), “misconduct” has the meaning given by regulation 5 of, and Schedule 1 to, the 2013 Regulations as they had effect immediately before 1st April 2014.

(4) Paragraph (1) does not revoke regulation 29 of, or Schedule 2 to, the 2013 Regulations.

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

**5.—**(1) The chief constable must designate a deputy chief constable to exercise functions under these Regulations (and references in these Regulations to the “deputy chief constable” are, unless the context otherwise requires, references to that individual).

(2) The deputy chief constable may direct or authorise another constable of at least the rank of chief inspector to carry out any of the deputy chief constable’s functions under these Regulations.

(3) A direction or authorisation under paragraph (2) does not affect the deputy chief constable’s—

- (a) responsibility for the carrying out of delegated functions; or
- (b) ability to carry out delegated functions.

### **Police representative**

**6.—**(1) The constable may choose a person mentioned in paragraph (2) to act as the constable’s police representative.

(2) The persons are—

- (a) in a case where the constable is of the rank of superintendent or chief superintendent, another constable or a representative of any person representing the interests of superintendents (including chief superintendents); and
- (b) in any other case, another constable or a representative of the Police Federation for Scotland.

(3) But the constable may not choose as a police representative any person who is otherwise involved in the conduct under investigation in accordance with these Regulations.

(4) A police representative may—

- (a) advise the constable throughout any proceedings under these Regulations;
- (b) accompany the constable to any interview, meeting or hearing which the constable attends under these Regulations;
- (c) unless the constable is entitled to be legally represented and chooses to be so represented, make representations on the constable’s behalf at any meeting or hearing under these Regulations (including asking questions of any witness where the constable would be entitled to do so); and
- (d) make representations to the deputy chief constable concerning any aspect of the proceedings under these Regulations.

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

### **Legal representation**

7.—(1) The constable is, in accordance with this regulation, entitled to be legally represented by a solicitor or advocate of the constable’s choice at any—

- (a) misconduct hearing; or
- (b) appeal hearing, provided that the appeal relates to the outcome of a misconduct hearing.

(2) If the constable intends to be legally represented, the constable must notify the person conducting the misconduct hearing or appeal hearing (as the case may be) of that intention not less than 5 working days before the date of that hearing.

(3) If the constable does not make a notification under paragraph (2), the constable—

- (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.

### **Suspension**

8.—(1) A constable may be suspended from the office of constable by a senior constable if an allegation comes to the senior constable’s attention from which it can reasonably be inferred that any conduct of the constable may—

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

(2) But a senior constable must not suspend another constable 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 constable is not suspended; and
- (b) having regard to the nature of the allegation and any other relevant considerations, the public interest requires the constable’s suspension.

(4) A senior constable must notify the suspended constable and the deputy chief constable in writing of any decision to suspend a constable 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 deputy chief constable—
  - (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) if the deputy chief constable 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 deputy chief constable must consider any representations made by the suspended constable.

(7) The deputy chief constable 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 if—

- (a) the deputy chief constable 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) If a constable who is suspended is dismissed with notice, that suspension is to subsist until the end of the notice period.

(9) In this regulation “senior constable” means a constable of a higher rank than the suspended constable.

### **Alleged offences**

9.—(1) If the deputy chief constable considers that it can reasonably be inferred that a constable may have committed a criminal offence, the deputy chief constable—

- (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) If proceedings are suspended or postponed under paragraph (1)(b), the deputy chief constable must inform the constable 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 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.