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SCOTTISH STATUTORY INSTRUMENTS

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**2014 No. 68**

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

**PART 3**

**Misconduct proceedings**

**Arrangement of misconduct proceedings**

**15.**—(1) This regulation applies if the deputy chief constable has referred a case to misconduct proceedings.

- (2) The deputy chief constable must send a misconduct form to the constable.
- (3) A misconduct form sent in accordance with paragraph (2) must give notice of—
  - (a) the conduct forming the subject matter of the misconduct allegation;
  - (b) the date, time and location of the misconduct proceedings;
  - (c) in summary, the facts established by the investigator;
  - (d) why, in the deputy chief constable'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) gross misconduct;
  - (e) the constable's right to seek advice from a staff association;
  - (f) the effect of regulations 6 and 7;
  - (g) the requirement to provide a notice in response to the misconduct form in accordance with paragraphs (5) to (7);
  - (h) the name of the person appointed to conduct the misconduct proceedings.
- (4) The deputy chief constable must send with the misconduct form—
  - (a) copies of any statements made by the constable during the investigation;
  - (b) the name and address of any witness on whom the deputy chief constable proposes to rely at the misconduct proceedings and a summary of the evidence each witness will give (or notice that the deputy chief constable does not intend to rely on any witnesses); and
  - (c) unless paragraph (13) applies, a copy of—
    - (i) the report submitted by the investigator in accordance with regulation 13(1)(b); and
    - (ii) any other relevant documents obtained during the course of the misconduct investigation.
- (5) Not more than 10 working days from the date of receipt of the misconduct form, the constable must provide to the deputy chief constable written notice of whether the constable accepts that—
  - (a) the conduct which is the subject matter of the misconduct allegation is conduct of the constable; 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 constable's account of the circumstances giving rise to the misconduct allegation and must include—

- (a) in a case where the constable accepts that any conduct of the constable amounts to misconduct or (as the case may be) gross misconduct, any written submissions in mitigation;
- (b) in a case where the constable does not accept that any conduct of the constable amounts to misconduct or (as the case may be) gross misconduct, details of any allegation which the constable denies;
- (c) the details of any legal arguments (if any) the constable wishes the person conducting the misconduct proceedings to consider; and
- (d) the names and addresses of any witnesses on whom the constable proposes to rely at the misconduct proceedings and a summary of the evidence each witness will give (or notice that the constable does not intend to rely on any witnesses).

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

(8) Following receipt of a notice under paragraph (5), the deputy chief constable must, by notice in writing, require the constable to attend misconduct proceedings.

(9) A notice under paragraph (8) must—

- (a) specify the time, date and place of the misconduct proceedings;
- (b) be sent not less than 15 working days before the date of those proceedings.

(10) But a constable may waive in writing the entitlement to 15 working days' notice of the date of the misconduct proceedings.

(11) If, having sent a notice in accordance with paragraph (8), the deputy chief constable considers it necessary or expedient to do so, the misconduct proceedings may be postponed to such later date as the deputy chief constable determines.

(12) If the misconduct proceedings are postponed, the deputy chief constable must send a further written notice requiring the constable to attend those proceedings at a specified time, date and place (and paragraph (9)(b) does not apply to such a notice).

(13) This paragraph applies if the deputy chief constable considers that preventing the disclosure of any document mentioned in paragraph (4)(c) 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.

(14) If any document is withheld by virtue of the application of paragraph (13), the deputy chief constable must, so far as is reasonably possible without prejudicing any of the matters mentioned in that paragraph, provide the constable with a summary of the content of that document.

### **Appointment of person to conduct misconduct proceedings**

16.—(1) If the deputy chief constable refers a misconduct allegation to misconduct proceedings, the deputy chief constable must appoint another constable to conduct those proceedings.

- (2) In the case of a misconduct meeting, a constable appointed under paragraph (1)—
  - (a) must be of a higher rank than the constable who is the subject of the misconduct allegation; and
  - (b) may appoint another constable to be an assessor.
- (3) In the case of a misconduct hearing, a constable appointed under paragraph (1)—
  - (a) must be of at least the rank of superintendent;
  - (b) must be at least two ranks higher than the constable who is the subject of the misconduct allegation; and
  - (c) may appoint as an assessor—
    - (i) another constable of at least the rank of superintendent; and
    - (ii) an advocate or a solicitor.

(4) An assessor appointed under paragraph (2) or (3) may provide the person conducting the proceedings with such advice as that person requests, but may not otherwise participate in the proceedings.

(5) The deputy chief constable must not appoint to conduct any misconduct proceedings any constable whose appointment could give rise to a reasonable concern as to whether that constable could act impartially in relation to those proceedings.

(6) The constable may object to the appointment of any person under this regulation.

(7) An objection under paragraph (6) must be made not later than 3 working days from receipt of the misconduct form and must indicate the constable's reasons for objecting.

(8) The deputy chief constable must decide whether to uphold an objection and must—

- (a) notify the constable in writing of that decision; and
- (b) if the objection is upheld—
  - (i) make a new appointment in accordance with this regulation; and
  - (ii) notify the constable in writing of the name of the individual appointed.

### **Witnesses**

17.—(1) The constable and the deputy chief constable must, not more than 10 working days after a notice is given under regulation 15(5), seek to agree a joint list of witnesses based on the lists provided under regulation 15(4) and (6) and provide that list to the person conducting the misconduct proceedings.

(2) If it is not possible for the constable and the deputy chief constable to agree a joint list of witnesses, they must each supply to the person conducting the misconduct proceedings the lists provided under regulation 15(4) and (6).

(3) Not more than 10 working days after receiving lists of witnesses under paragraph (2), the person conducting the misconduct proceedings must—

- (a) decide which, if any, of the listed witnesses should give evidence at those proceedings; and
- (b) notify the constable and the deputy chief constable of that decision.

(4) The person conducting the misconduct proceedings may determine that witnesses not included in any list under this regulation or regulation 15(4) and (6) (whether joint or otherwise) are to give evidence at those proceedings.

(5) The person conducting the misconduct proceedings must not decide, in pursuance of paragraphs (3) or (4), that any witness is to give evidence at those proceedings unless the person conducting the misconduct proceedings reasonably considers that it is necessary for the witness to do so.

(6) The deputy chief constable must, not less than 5 working days before the date of the misconduct proceedings, notify in writing any witness who is to give evidence at those proceedings.

### **Procedure at misconduct proceedings**

**18.**—(1) Subject to the following paragraphs of this regulation and regulations 19 and 20, the person conducting the misconduct proceedings is to determine the procedure at those proceedings.

(2) The person conducting the misconduct proceedings must permit—

- (a) the constable or any person representing the constable to make representations;
- (b) evidence to be heard from any witnesses in attendance; and
- (c) subject to paragraph (3), the constable or any person representing the constable to ask questions of any witness.

(3) Whether any question is to be put to a witness is to be determined by the person conducting the proceedings.

(4) The person conducting the proceedings may, with the agreement of the constable, permit the admission of written statements in lieu of oral evidence.

(5) An audio recording may be made of the misconduct proceedings and, where such a recording is made, the constable must be provided with a copy of that recording as soon as reasonably practicable after the conclusion of the proceedings.

(6) Where no audio recording is made under paragraph (5), a written record of the misconduct proceedings must be prepared and—

- (a) the person conducting the misconduct proceedings must provide a draft of that record to the constable;
- (b) the constable must be given the opportunity to make representations in relation to that draft;
- (c) the person conducting the misconduct proceedings must consider any representations made; and
- (d) having considered those representations (if any), that person must send a copy of the final written record of the proceedings to the constable.

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

**19.**—(1) The person conducting the misconduct proceedings may permit the constable to participate in those proceedings by video link or other suitable means if satisfied that the constable is unable, on reasonable grounds, to attend those proceedings.

(2) Paragraph (3) applies where the constable—

- (a) participates in the misconduct proceedings in accordance with paragraph (1); or
- (b) otherwise does not attend those proceedings.

(3) Where this paragraph applies—

- (a) the constable may be represented at the misconduct proceedings by the constable's police representative or, in the case of a misconduct hearing, an advocate or a solicitor; and
- (b) the proceedings may be proceeded with and concluded in the constable's absence (whether or not the constable is so represented).

### **Attendance of third parties**

**20.**—(1) Subject to the following paragraphs of this regulation, the misconduct proceedings are to be held in private.

(2) Where the misconduct proceedings have arisen from a complaint made by a member of the public, the person conducting the misconduct proceedings may—

- (a) inform that member of the public of the time, date and location of the proceedings; and
- (b) permit that member of the public to attend, as an observer, those proceedings, or such part or parts of those proceedings as the person conducting them considers appropriate.

(3) If a witness is giving evidence, the person conducting the misconduct proceedings may allow such other persons to attend those proceedings 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 person conducting the misconduct proceedings may, with the agreement of the constable, allow any other person to attend the misconduct proceedings.

(5) Paragraphs (2) to (4) do not apply to any part of the misconduct proceedings at which the determination under regulation 21 or disciplinary action is being considered.

### **Determination**

**21.**—(1) At the conclusion of the misconduct proceedings, the person conducting those proceedings must—

- (a) determine whether the conduct which is the subject matter of the misconduct allegation is conduct of the constable;
- (b) in a case where the deputy chief constable has determined, in accordance with regulation 14(1)(a), that the constable has a case to answer in respect of misconduct, determine whether it is established that any conduct of the constable amounts to misconduct; and
- (c) in a case where the deputy chief constable has determined, in accordance with regulation 14(1)(b), that the constable has a case to answer in respect of gross misconduct, determine whether it is established that any conduct of the constable amounts to—
  - (i) gross misconduct;
  - (ii) misconduct; or
  - (iii) neither.

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

(3) In a case mentioned in paragraph (1)(b), the person conducting the misconduct proceedings may not determine that any conduct of the constable amounts to gross misconduct.

(4) If the person conducting the misconduct proceedings determines that the conduct of the constable amounts to neither misconduct nor gross misconduct the person conducting those proceedings may—

- (a) take no further action;
- (b) take improvement action; or
- (c) refer the matter to be dealt with under procedures established by the Performance Regulations.

### **Disciplinary action**

**22.**—(1) This regulation applies if—

- (a) the person conducting the misconduct proceedings determines that any conduct of the constable amounts to misconduct or, as the case may be, gross misconduct; or
  - (b) the constable admits misconduct or, as the case may be, gross misconduct.
- (2) If this regulation applies, the person conducting the misconduct proceedings must order—
- (a) in a case where the constable’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 constable’s conduct amounts to gross misconduct, subject to paragraphs (4) to (7), 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) demotion in rank;
  - (e) dismissal with notice; or
  - (f) dismissal without notice.
- (4) If, at a time when any of the conduct forming the subject matter of the misconduct allegation occurred, the constable was subject to a written warning which was in effect, neither a verbal warning nor a written warning may be given.
- (5) If, at a time when any of the conduct forming the subject matter of the misconduct allegation occurred, the constable was subject to a final written warning which was 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) If the person conducting the misconduct proceedings determines that any conduct of the constable amounts to misconduct, the disciplinary action mentioned in paragraph (3)(d) to (f) may be taken only if, at a time when any of the conduct forming the subject matter of the misconduct allegation occurred, the constable was subject to a final written warning which was in effect.
- (7) A written warning remains in effect for a period of 12 months from the date on which it is given.
- (8) 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)).
- (9) For the purposes of this regulation and regulation 14(4), the following disposals, if ordered under regulation 24 of the 2013 Regulations in relation to the constable in the period of 12 months preceding the earliest occurrence of any conduct forming the subject matter of a misconduct allegation under these Regulations, are to be treated as if they were a written warning ordered under paragraph (2) which remains in effect—
- (a) reduction in pay for a specified period;
  - (b) fine; or
  - (c) admonition.

### **Notification of determination and action to be taken**

**23.**—(1) The person conducting the misconduct proceedings must, as soon as reasonably practicable after the conclusion of those proceedings (and not later than 10 working days from the date of conclusion of the proceedings), notify the constable in writing of—

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

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

- (a) in a case where a written warning is given, explain the effect of regulation 22(4) and (7) in relation to any future misconduct allegation; and
- (b) in a case where a final written warning is given, explain the effect of regulation 22(5), (6) and (8) in relation to such an allegation.

(3) If it is determined that any conduct of the constable amounts to misconduct or, as the case may be, gross misconduct, a notice under paragraph (1) must give notice of—

- (a) the constable's right to appeal under regulation 24; and
- (b) the name of the person to whom an appeal should be submitted.

(4) If the misconduct proceedings have arisen out of a complaint made by a member of the public, the deputy chief constable must notify that member of the public in writing of the determination and any disciplinary action ordered.