
SCOTTISH STATUTORY INSTRUMENTS

2014 No. 68

The Police Service of Scotland (Conduct) Regulations 2014

PART 4

Appeals

Appeals

- 24.—**(1) This regulation applies where—
- (a) it has been determined at misconduct proceedings that any conduct of the constable amounts to misconduct or, as the case may be, gross misconduct; or
 - (b) the constable has admitted that any conduct of the constable amounts to misconduct or, as the case may be, gross misconduct and disciplinary action has been ordered.
- (2) Where this regulation applies, the constable may appeal against—
- (a) in a case mentioned in paragraph (1)(a)—
 - (i) any determination made under regulation 21(1); and
 - (ii) any disciplinary action ordered; or
 - (b) in a case mentioned in paragraph (1)(b), any disciplinary action ordered.
- (3) An appeal under this regulation may be made only on the grounds that—
- (a) any determination under regulation 21(1) or any disciplinary action ordered is unreasonable;
 - (b) there is evidence that could not reasonably have been considered at the misconduct proceedings which could have affected materially such a determination or the decision to order particular disciplinary action; or
 - (c) there was a breach of the procedures set out in these Regulations which could have affected materially such a determination or decision.
- (4) An appeal may be requested by the constable sending a written appeal notice to the deputy chief constable not more than 30 working days from the date on which the constable received a notice under regulation 23(1).
- (5) The appeal notice must specify—
- (a) whether the constable appeals against;
 - (i) a determination made under regulation 21(1);
 - (ii) the disciplinary action ordered; or
 - (iii) both;
 - (b) the grounds of appeal; and
 - (c) whether the constable requests an appeal hearing.
- (6) The constable must—

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

Appeal procedure

- 25.**—(1) An appeal under regulation 24 is to be determined in accordance with this regulation.
- (2) The appeal must be determined by a constable (other than the constable who conducted the misconduct proceedings) who is—
- (a) appointed by the deputy chief constable;
 - (b) in a case where the appellant is a chief superintendent, a deputy chief constable other than the deputy chief constable designated by virtue of regulation 5; and
 - (c) in any other case, of a higher rank than the constable who conducted the misconduct proceedings.
- (3) If the constable requests an appeal hearing, the person determining the appeal must decide whether to—
- (a) hold an appeal hearing; or
 - (b) determine the appeal without holding such a hearing.
- (4) If the constable does not request an appeal hearing or the person determining the appeal decides not to hold such a hearing, the appeal must be determined 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; and
 - (c) any notices, submissions or other documents or information provided by the deputy chief constable or the constable in accordance with regulation 15.
- (5) If the person determining the appeal decides to hold an appeal hearing, the following paragraphs of this regulation apply.
- (6) The person determining the appeal must send a notice in writing—
- (a) requiring the constable to attend an appeal hearing; and
 - (b) specifying a date and time for that hearing.
- (7) The constable may, by notice in writing to the person determining the appeal, request the postponement of the appeal hearing to a later date and time.
- (8) The appeal hearing is to be conducted in such manner as the person determining the appeal determines, provided that—
- (a) the constable's police representative must be permitted to attend;
 - (b) in a case where any disciplinary action mentioned in regulation 22(3)(d) to (f) has been ordered, any advocate or solicitor representing the constable must be permitted to attend; and
 - (c) the constable (or any person representing the constable) must be permitted to make oral representations.

Outcome of appeal

- 26.**—(1) The person determining the appeal may, whether after an appeal hearing or otherwise—

- (a) confirm or reverse any determination made under regulation 21(1);
- (b) confirm the disciplinary action ordered under regulation 22(2);
- (c) order disciplinary action to be taken which is less severe than that which was ordered under that regulation;
- (d) require improvement action to be taken instead of disciplinary action;
- (e) refer the matter to be dealt with under the procedures established by the Performance Regulations; or
- (f) in a case where the ground of appeal mentioned in regulation 24(3)(b) is found to be established, remit the misconduct allegation back to the person who conducted the misconduct proceedings.

(2) The person determining the appeal must notify the constable in writing of the decision under paragraph (1) and the reasons for that decision.

(3) A notice under paragraph (2) must be given not more than 60 working days from the date the appeal notice was submitted under regulation 24(4).

(4) But the period mentioned in paragraph (3) may be extended to not more than 120 working days if the person determining the appeal considers there to be exceptional circumstances to justify doing so.

(5) In a case where—

- (a) dismissal of the constable is confirmed; or
- (b) demotion in rank of the constable is confirmed or ordered,

a notice under paragraph (2) must inform the constable of the right to appeal to a police appeals tribunal and the procedure for making such an appeal.

Procedure where misconduct allegation remitted back to person who conducted misconduct proceedings

27.—(1) This regulation applies where a misconduct allegation is remitted back to the person who conducted the misconduct proceedings in accordance with regulation 26(1)(f).

(2) Where this regulation applies, the person who conducted the misconduct proceedings must—

- (a) consider the evidence submitted by the constable in accordance with regulation 24(6)(b); and
- (b) determine whether to—
 - (i) confirm the original determination made under regulation 21(1) and any disciplinary action ordered;
 - (ii) reverse any determination made under regulation 21(1);
 - (iii) order disciplinary action which is less serious than that originally ordered;
 - (iv) require improvement action to be taken instead of disciplinary action; or
 - (v) refer the matter to be dealt with under the procedures established by the Performance Regulations.

(3) Before making a determination under paragraph (2), the person conducting the misconduct proceedings may, by notice in writing, require the constable to attend a further meeting or hearing (and regulations 7, 16, 18, 19 and 21 apply to such a meeting or hearing).

(4) As soon as reasonably practicable after a determination is made under paragraph (2), the person conducting the misconduct proceedings must notify the constable of that determination.