

2014 No. 68

POLICE

The Police Service of Scotland (Conduct) Regulations 2014

Made - - - - *28th February 2014*

Laid before the Scottish Parliament *3rd March 2014*

Coming into force - - *1st April 2014*

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

In accordance with section 54(2) of that Act, the Scottish Ministers 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 (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(a);

“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(b);

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

“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(d); 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(e) (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.

(a) S.S.I. 2014/67.

(b) S.S.I. 2013/60. This instrument has been amended by S.S.I. 2013/125.

(c) 2012 asp 8.

(d) 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).

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

- (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 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.

PART 2

Misconduct investigations

Preliminary assessment

10.—(1) This regulation applies if a misconduct allegation comes to the attention of the deputy chief constable.

(2) The deputy chief constable 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) If the deputy chief constable assesses that the conduct would, if proved, amount to neither misconduct nor gross misconduct, the deputy chief constable may—

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

(4) If the deputy chief constable assesses that the conduct would, if proved, amount to either misconduct or gross misconduct, the deputy chief constable must decide whether the misconduct allegation is to be investigated and—

- (a) if it is to be investigated, appoint an investigator; and
- (b) if it is not to be investigated—
 - (i) take no further action; or
 - (ii) take improvement action.

(5) An investigator appointed under paragraph (4)(a) must—

- (a) be a constable of a higher rank than the constable being investigated; and
- (b) have the necessary knowledge, skills and expertise to plan and manage the misconduct investigation in relation to which the appointment is made.

(6) The deputy chief constable must not appoint as an investigator any constable whose appointment could give rise to a reasonable concern as to whether that constable could act impartially in relation to the misconduct investigation.

(7) If, during the course of the misconduct investigation, the deputy chief constable considers that by reason of the scale or complexity of the case a different investigator should be appointed, the deputy chief constable may appoint, or arrange for the appointment of, a constable to replace the investigator originally appointed.

(8) Paragraph (5) and (6) apply to the appointment of a replacement investigator under paragraph (7).

Notice of investigation

11.—(1) The investigator must, as soon as reasonably practicable following appointment, give the constable written notice—

- (a) that the constable 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;
- (d) providing the constable with an opportunity to make written or oral representations; and
- (e) informing the constable of the right to seek advice from the constable's staff association and police representative.

(2) If, at any time after the notice mentioned in paragraph (1) is issued but before the report mentioned in regulation 13(1) is issued, the investigator's assessment of whether the constable's conduct would amount to misconduct or gross misconduct changes, the investigator must issue a further notice of investigation in accordance with this regulation notifying the constable of that change.

Misconduct interview

12.—(1) The investigator—

- (a) must arrange an interview with the constable in a case where the constable intimates, following receipt of a notice under regulation 11(1), an intention to make oral representations; and
- (b) in any other case, may arrange such an interview.

(2) The investigator must seek to agree with the constable 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 constable 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 constable with such information as the investigator considers appropriate in the circumstances to enable the constable to prepare for the interview.

(6) Without prejudice to the generality of paragraph (5), the information provided to the constable in advance of the interview must include details of the allegations made against the constable, 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, if such a recording is made, the constable must be provided with a copy of that recording.

(8) If 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 constable;
- (b) the constable 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 a copy of the final written record of the interview to the constable.

Investigator's report

13.—(1) At the conclusion of the misconduct investigation, the investigator must—

- (a) determine whether, in the investigator's opinion, the constable has a case to answer in relation to the misconduct allegation; and
- (b) submit a written report to the deputy chief constable.

(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 misconduct proceedings.

(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 12(7); and
- (b) a copy of any written record of such an interview prepared under regulation 12(8).

Referral to misconduct proceedings

14.—(1) On receipt of the investigator's report, the deputy chief constable must, as soon as reasonably practicable, determine whether the constable has a case to answer in respect of—

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

(2) If the deputy chief constable determines that the constable has a case to answer in respect of misconduct and paragraph (4) does not apply, the deputy chief constable must refer the misconduct allegation to a misconduct meeting.

(3) If—

- (a) the deputy chief constable determines that the constable has a case to answer in respect of gross misconduct; or
- (b) the deputy chief constable determines that the constable has a case to answer in respect of misconduct and paragraph (4) applies,

the deputy chief constable must refer the misconduct allegation to a misconduct hearing.

(4) This paragraph applies 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.

(5) If the deputy chief constable determines that the constable has no case to answer in respect of either misconduct or gross misconduct, the deputy chief constable may—

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

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.

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.

PART 5

Modifications

28. Schedule 2 modifies certain Scottish instruments.

St Andrew's House,
Edinburgh
28th February 2014

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 constables which has fallen below the Standards of Professional Behaviour.

SCHEDULE 2

Regulation 28

Modifications

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

1.—(1) The Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013(a) are modified as follows.

(2) In regulation 2 (interpretation)—

(a) in the definition of “misconduct”, at the end insert “(but does not, unless the context otherwise requires, include gross misconduct)”; and

(b) for “police friend” substitute “police representative”.

(3) In regulation 4 (police friend), for “police friend”, in each place it occurs, substitute “police representative”.

(4) In regulation 5(4) (legal representation), for “police friend” substitute “police representative”.

(5) In regulation 6(1)(b) (suspension), after “misconduct” insert “or gross misconduct”.

(6) In regulation 16(3) (arrangement of misconduct hearing), for sub-paragraph (g) substitute—

“(g) the requirement to provide a notice in response to the misconduct form in accordance with paragraphs (5) to (7);”.

(7) In regulation 20(3)(a) (proceedings in senior officer’s absence), for “police friend” substitute “police representative”.

(8) In regulation 23 (disciplinary action)—

(a) for paragraph (2)(a) and (b) substitute—

“(a) improvement action; or

(b) subject to paragraphs (4) to (7), any such disciplinary action as is mentioned in paragraph (3).”;

(b) in paragraphs (4) and (5)—

(i) for “on” to “22(1)(b)” substitute “at a time when any of the conduct forming the subject matter of the misconduct allegation occurred”; and

(ii) for “remains” substitute “was”; and

(c) in paragraph (6)—

(i) for “is” substitute “was”;

(ii) for “on” to “22(1)(b)” substitute “at a time when any of the conduct forming the subject matter of the misconduct allegation occurred”; and

(iii) for “remains” substitute “was”.

(9) In regulation 25(4) (appeals), for “10” substitute “30”.

(10) In regulation 26 (appeal procedure)—

(a) for paragraph (6) substitute—

“(6) The senior officer may, by notice in writing to the Authority, request the postponement of the appeal hearing to a later date and time.”;

(b) in paragraph (7)(a), for “police friend” substitute “police representative”;

(c) in paragraph (9), for “as soon as reasonably practicable” substitute “not more than 60 working days from the date the appeal notice was submitted under regulation 25(4)”; and

(a) S.S.I. 2013/62.

(d) after that paragraph, insert—

“(9A) The period mentioned in paragraph (9) may be extended to not more than 120 working days if the Authority considers there to be exceptional circumstances to justify doing so.”.

The Police Service of Scotland Regulations 2013

2. In regulation 2 (interpretation and application) of the Police Service of Scotland Regulations 2013(a), in the definition of “Conduct Regulations”, for “2013”, where it first appears, substitute “2014”.

The Police Appeals Tribunal (Scotland) Rules 2013

3. In rule 2 (interpretation) of the Police Appeals Tribunal (Scotland) Rules 2013(b), in the definition of “Conduct Regulations”, for “2013” substitute “2014”.

(a) S.S.I. 2013/35. This instrument has been amended by S.S.I. 2013/122, 2013/125 and 2014/1.
(b) S.S.I. 2013/63.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the procedures for dealing with cases where the conduct of constables of the Police Service of Scotland (“the Police Service”) below the rank of assistant chief constable are 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. Regulation 4 revokes the existing Regulations dealing with the conduct of constables and makes transitional provision in relation to that revocation.

Regulation 5 requires the chief constable of the Police Service to designate a deputy chief constable to carry out certain functions under the Regulations and allows that deputy chief constable, in turn, to delegate those functions to another constable of chief inspector rank or above.

Regulations 6 and 7 make provision about the representation to which a constable is entitled in relation to proceedings under these Regulations.

Regulation 8 provides constables with a power to suspend other constables who are junior in rank where those junior constables are suspected of misconduct or of commission of a criminal offence. Certain conditions must be satisfied before suspension is permitted. Regulation 9 requires the deputy chief constable to report to an appropriate prosecutor in cases where a constable is suspected of having committed an offence. Proceedings under these Regulations may be suspended or postponed in such circumstances.

Part 2 deals with the investigation of misconduct allegations. Regulation 10 requires the deputy chief constable to carry out a preliminary assessment as to whether an allegation, if proved, would amount to misconduct or gross misconduct. Where the deputy chief constable considers the allegation would not amount to misconduct, no further action may be taken, action to improve the constable’s conduct may be ordered or the matter may be referred to be dealt with under procedures relating to performance. If the deputy chief constable assesses that the conduct would amount to misconduct an investigator may be appointed to investigate the allegation.

Regulation 11 requires an investigator to notify the constable that a misconduct investigation is to take place. Regulation 12 makes provision for the investigator to interview the constable as part of that investigation. Regulation 13 requires the investigator to report to the deputy chief constable on whether the constable has a case to answer in relation to the misconduct allegation. The deputy chief constable must then determine, in accordance with regulation 14, whether to refer the matter to a misconduct meeting or a misconduct hearing. The former is available where the misconduct allegation infers misconduct and no final written warning is in effect in respect of the constable. The latter is available only where gross misconduct is alleged or where simple misconduct is alleged and such a warning is in effect. Meetings and hearings are referred to collectively as “misconduct proceedings”.

Part 3 makes provision about misconduct proceedings and the sanctions available in those proceedings. Regulation 15 requires a misconduct form to be sent to the constable detailing the conduct forming the subject matter of the misconduct allegation and the date, time and location of the misconduct hearing or meeting. Copies of the investigator’s report and a list of witnesses are among the items which must be sent with the form. The constable is required to respond to the misconduct form indicating whether the misconduct allegation is accepted and any information the constable intends to rely on at the misconduct proceedings.

By virtue of regulation 16 the deputy chief constable must appoint another constable to conduct the misconduct proceedings and regulation 17 makes provision about the witnesses who may be asked to attend those proceedings. The process to be followed at the proceedings themselves is set out in regulations 18 to 20 which make provision in particular about proceedings when the constable is not present (regulation 19) and the attendance of third parties (regulation 20).

At the conclusion of the misconduct proceedings the person conducting those proceedings must determine whether the conduct forming the subject matter of the misconduct allegation is conduct of the constable and whether it amounts to misconduct or (as the case may be) gross misconduct (regulation 21).

Where the constable is found to be guilty of misconduct or gross misconduct, regulation 22 sets out the disciplinary action which may be taken. This includes a verbal warning, a written warning, a final written warning, demotion and dismissal (with or without notice). The constable must be notified in writing both of the finding in relation to the misconduct allegation and the disciplinary action to be taken.

Part 4 sets out the process for appealing against the outcome of misconduct proceedings. The constable is, by virtue of regulation 24, entitled to appeal against the finding that the constable is guilty of misconduct, the disciplinary action ordered or both. Such an appeal may be made by submission of an appeal notice to the deputy chief constable. Regulation 25 provides that the deputy chief constable must appoint another constable to determine the appeal. This may be done either with or without holding an appeal hearing. Regulation 26 specifies the possible outcomes of an appeal which include confirming or reversing the finding that the constable is guilty of misconduct, confirming the disciplinary action ordered, ordering less severe disciplinary action, requiring improvement action to be taken instead of disciplinary action, referring the matter to be dealt with under performance procedures or remitting the case back to the person who conducted the misconduct proceedings. Regulation 27 sets out the procedure to be followed when a case is remitted back.

Part 5 and Schedule 2 modify the Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013, the Police Service of Scotland Regulations 2013 and the Police Appeals Tribunal (Scotland) Rules 2013.

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