
STATUTORY INSTRUMENTS

1996 No. 1642 (S.138)

POLICE

The Police (Conduct) (Scotland) Regulations 1996

<i>Made</i>	- - - -	<i>19th June 1996</i>
<i>Laid before Parliament</i>		<i>11th July 1996</i>
<i>Coming into force</i>	- -	<i>1st August 1996</i>

The Secretary of State, in exercise of the powers conferred on him by section 26 of the Police (Scotland) Act 1967(1), and of all other powers enabling him in that behalf, after taking into consideration any representations made by the Police Advisory Board for Scotland following the submission of a draft of the Regulations in accordance with section 26(9) of the said Act of 1967, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Police (Conduct) (Scotland) Regulations 1996 and shall come into force on 1st August 1996.

Application

2. These Regulations shall apply only—
- (a) in relation to misconduct on the part of a constable below the rank of assistant chief constable;
 - (b) to any report, allegation or complaint from which it may reasonably be inferred that any act or omission which was committed or made by a constable below that rank on or after 1st August 1996 may amount to misconduct; and
 - (c) to any case where there is in respect of such a constable a finding of guilt as mentioned in paragraph 9 of Schedule 1 on or after that date, even although the act or omission which constituted the criminal offence of which the constable was found guilty was committed or made before that date.

(1) 1967 c. 77; section 26(9) was amended by the Police Negotiating Board Act 1980 (c. 10), section 2(4); section 26(1A) and (10) were inserted by the Police and Criminal Evidence Act 1984 (c. 60), section 111; section 26(1) was amended by the Police and Magistrates' Courts Act 1994 (c. 29) ("the 1994 Act"), section 53(1); section 26(2) was amended by the 1994 Act, section 52(2) and Schedule 9; section 26(2A) to (2C) were inserted by the 1994 Act, section 52(3) which came into force for certain purposes only on 8th August 1994 (see S.I. 1994/2025) and 1st January 1995 (see S.I. 1994/3075) and for all other purposes on 1st August 1996 (see S.I. 1996/1646); section 26(5A) was inserted by the 1994 Act, section 53(1); section 26(7) was repealed by the 1994 Act, section 52(4) and Schedule 9.

Interpretation

3.—(1) Unless the context otherwise requires, in these Regulations—

“the assistant chief constable” means a constable of that rank who is required by the chief constable to exercise any function of the assistant chief constable specified in these Regulations in relation to any particular report, allegation or complaint which is subject to investigation or consideration in terms of these Regulations and shall include a constable acting in place of that assistant chief constable;

“audio recording” means a recording made on any disc, tape, soundtrack or other device in which sounds or other data are recorded so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom;

“complainer” means the person who, aggrieved by the act or omission of a constable, originates a complaint which may give rise to a misconduct hearing, notwithstanding that the complaint is made through some other person or body;

“the constable” means the constable of a police force in respect of whom a report, allegation or complaint is received from which it may reasonably be inferred that an act or omission of that constable may amount to misconduct on his part and who is the subject of any proceedings taken in relation to the allegation of misconduct in terms of these Regulations;

“constable of a police force” includes, in this regulation and in regulations 9(1)(c) and 10(3), a constable of a police force who is engaged on relevant service within the meaning given by section 38A(1) of the Police (Scotland) Act 1967(2);

“the former discipline provisions” means the provisions relating to the determination of any question whether a disciplinary offence has been committed by a constable of a police force, and for the imposition of punishments in respect thereof, contained in the Police (Discipline) (Scotland) Regulations 1967(3) in force immediately before 1st August 1996;

“investigating officer” means a constable who is appointed under regulation 5(4);

“misconduct” shall be construed in accordance with regulation 4;

“misconduct form” means such a form as is mentioned in regulation 6(4)(a);

“misconduct hearing” means a hearing arranged in terms of regulation 10;

“presenting officer” means the person presenting the case against the constable in terms of regulation 12(1) and includes an advocate or a solicitor presenting the case where relevant in terms of regulation 12(5);

“representative” means a constable of a police force, an advocate or a solicitor, who may represent the constable at a misconduct hearing.

(2) In these Regulations, unless the context otherwise requires, any reference to a numbered regulation or Schedule is a reference to the regulation or Schedule in these Regulations which bears that number and any reference in a regulation to a numbered paragraph is a reference to a paragraph bearing that number in that regulation.

Misconduct

4. For the purposes of these Regulations, an act or omission of a constable shall amount to misconduct on the part of the constable if it falls within any of the kinds of conduct described in Schedule 1.

(2) Section 38A was inserted by the Police and Magistrates' Courts Act 1994, section 60.

(3) S.I. 1967/1021, amended by S.I. 1971/843, 1975/1544, 1976/1073, 1982/902, 1987/2226 and 1995/647.

Preliminary investigation procedure

5.—(1) The assistant chief constable shall prepare and maintain procedures in order to secure that where any report, allegation or complaint is received from which it may reasonably be inferred that an act or omission, or an alleged act or omission, of a constable of the police force concerned amounts, or may amount, to misconduct—

- (a) the report, allegation or complaint is in the first instance considered by another constable of the same force of an appropriate rank; and
- (b) any such constable who is authorised to consider the report, allegation, or complaint is also authorised to arrange for the matter—
 - (i) if in the opinion of that constable it involves an allegation of misconduct of a minor or trivial nature, to be dealt with in accordance with the procedures; or
 - (ii) in any other case, to be referred to the assistant chief constable.

(2) The assistant chief constable shall ensure that the procedures for dealing with an allegation of misconduct of a minor or trivial nature make provision for—

- (a) the constable to be given an opportunity to comment upon the report, allegation or complaint; and
- (b) in any case where it is considered that in view of the circumstances it is appropriate that the constable be given a warning—
 - (i) the warning to be given by a constable of the same force of a rank above that of the constable; and
 - (ii) the person giving the warning to arrange for a record of it to be kept.

(3) Where a report, allegation or complaint has been referred to the assistant chief constable in terms of paragraph (1)(b)(ii) and he is satisfied there is sufficient evidence of misconduct of a minor or trivial nature on the part of the constable—

- (a) he may arrange for the constable to be given an opportunity to comment upon a statement of the report, allegation or complaint and, where appropriate, thereafter to be given a warning (whether orally or in writing) by a constable of the same force of a rank above that of the constable; and
- (b) where a warning is given, the person giving the warning may arrange for a record of it to be kept.

(4) In relation to any report, allegation or complaint which has been referred to the assistant chief constable in terms of paragraph (1)(b)(ii), the assistant chief constable shall, unless he—

- (a) has dealt with the report, allegation or complaint in terms of paragraph (3); or
- (b) decides to deal with the report, allegation or complaint in terms of regulation 7,

appoint an investigating officer who shall cause the matter to be investigated.

(5) The investigating officer shall be—

- (a) a constable of the police force concerned (other than its chief constable) or, if the chief constable of some other force is requested by the assistant chief constable and agrees to provide an investigating officer, a constable of that other force;
- (b) of at least the rank of inspector; and
- (c) of at least the rank of the constable subject to investigation.

(6) The assistant chief constable shall not appoint himself as the investigating officer nor shall he appoint as the investigating officer any constable—

- (a) who it appears to him may be a material witness or is interested in the matter otherwise than as a constable; or

- (b) of the police force concerned serving in the same sub-division or branch as the constable.
- (7) Subject to regulation 7, as soon as practicable after being appointed, the investigating officer shall—
- (a) cause to be prepared an investigation form—
 - (i) containing a statement of the report, allegation or complaint;
 - (ii) informing the constable that although he is not obliged to do so following receipt of the form, he may make a written or oral statement concerning the matter to the investigating officer and provide the names and addresses of any persons whom he may wish to give evidence; and
 - (iii) warning him that such a statement may be used in evidence in any subsequent misconduct proceedings; and
 - (b) send a copy of the investigation form to the constable.
- (8) Paragraph (7)(a)(ii) is without prejudice to any obligation on the constable to make a written or oral statement in the ordinary course of duty.

Requirement to appear before a misconduct hearing

- 6.—(1) Subject to regulation 7, the investigating officer shall, after due investigation, submit to the assistant chief constable a report on the allegation of misconduct, together with—
- (a) the investigation form;
 - (b) any written statement, or a record of any oral statement, which the constable has made by virtue of regulation 5(7)(a)(ii); and
 - (c) any statement obtained from any witness.
- (2) Except where he decides to delay reaching a decision in accordance with regulation 7, the assistant chief constable, after considering the report of the investigating officer and the other papers mentioned in paragraph (1), shall decide whether or not the constable should be required to appear before a misconduct hearing.
- (3) Where the assistant chief constable decides that the constable should not be required to appear before a misconduct hearing, he shall cause to be sent to the constable a written notice of his decision as soon as possible.
- (4) Where the assistant chief constable decides that the constable should be required to appear before a misconduct hearing, he shall cause—
- (a) to be prepared a form (hereinafter referred to as “the misconduct form”) containing—
 - (i) particulars of the alleged act or omission which it is considered amounts to misconduct on the part of the constable;
 - (ii) a statement of the reasons why the assistant chief constable considers that the alleged act or omission amounts to misconduct; and
 - (iii) a notice that the constable is required to attend a misconduct hearing, at a time and place to be notified, at which the allegation of misconduct will be heard; and
 - (b) a copy of the misconduct form to be sent to the constable.
- (5) Where the assistant chief constable decides that the constable should be required to appear before a misconduct hearing, and is of the opinion that there should be available to the hearing any such disposal as is mentioned in sub-paragraphs (a), (b) and (c) of regulation 18(1), he shall inform the constable by giving notice of that opinion in the misconduct form and shall give the constable an opportunity to elect to be legally represented at the hearing in accordance with the provisions of regulation 12.

(6) Without prejudice to paragraph (3), where the assistant chief constable is satisfied that there is sufficient evidence of minor misconduct on the part of the constable he may, where it appears to him appropriate to do so and instead of requiring the constable to appear before a misconduct hearing, decide to arrange for the constable to be given an opportunity to comment upon that evidence (other than the report of the investigating officer) and, where appropriate, thereafter to be given a warning (whether orally or in writing) by a constable of the same force of a rank above that of the constable.

(7) Where a warning is given in terms of paragraph (6), the constable giving the warning may arrange for a record of it to be kept.

(8) At any time before the misconduct hearing commences, the assistant chief constable may direct that the allegation shall not be considered at a misconduct hearing and thereafter cause—

- (a) such direction to be noted on the misconduct form; and
- (b) to be sent to the constable written notice of such direction.

(9) For the purposes of section 40A(2) of the Police (Scotland) Act 1967(4), proceedings by virtue of section 26(2A)(a) of that Act, insofar as relating to a constable to whom these Regulations apply, shall be taken to have commenced on the day on which a misconduct form is sent to the constable in terms of paragraph (4).

Alleged criminal offence

7.—(1) Notwithstanding regulations 5 and 6, where a report, allegation or complaint is received from which it may reasonably be inferred that a constable of a police force may have committed a criminal offence, the assistant chief constable—

- (a) shall as soon as possible refer the matter to the procurator fiscal; and
- (b) may decide—
 - (i) not to appoint an investigating officer in terms of regulation 5(4) for the purpose of investigating the matter;
 - (ii) where an investigating officer was appointed in terms of regulation 5(4), to instruct the officer not to prepare or not to send a copy of the investigation form to the constable or not to carry out any investigation into any matter arising out of or referred to in that report, allegation or complaint, insofar as it might be the subject of criminal proceedings; or
 - (iii) to delay considering whether or not the constable should be required to appear before a misconduct hearing,

until the procurator fiscal has intimated either that criminal proceedings are not to be brought in respect of any matter arising out of or referred to in that report, allegation or complaint or, if he has intimated that criminal proceedings are to be brought, those proceedings are completed.

(2) If he decides to exercise any power conferred by paragraph (1)(b), the assistant chief constable shall arrange for the constable to be informed and warned that misconduct proceedings may subsequently be taken, irrespective of whether or not criminal proceedings are brought against him or of the disposal of any such proceedings.

(3) Where the criminal offence referred to in paragraph (1) may have been committed in any part of the United Kingdom (other than Scotland) or in any of the Channel Islands or the Isle of Man, the references in that paragraph to “the procurator fiscal” shall be construed as references to the person who either has responsibility for considering whether to institute criminal proceedings in relation to the matter or has instituted such proceedings.

(4) Section 40A was inserted by the Police and Magistrates' Courts Act 1994, section 61.

Documents to be supplied to the constable

8.—(1) Where the assistant chief constable decides pursuant to regulation 6(2) that the constable should be required to appear before a misconduct hearing, he shall arrange for the constable to be supplied, as soon as possible and in addition to the misconduct form to be sent pursuant to regulation 6(4), with a copy of—

- (a) any statement which the constable may have made by virtue of regulation 5(7)(a)(ii);
- (b) the report, allegation or complaint on which the decision to arrange a misconduct hearing is founded (or so much thereof as relates to the constable) and any reports thereon (other than the report of the investigating officer), notwithstanding that they may be confidential;
- (c) any statement relating to the alleged misconduct made by any witness who may be called by the presenting officer, together with the name and address of each such witness; and
- (d) any statement relating to the alleged misconduct made by any person, other than a witness to be called by the presenting officer, to the investigating officer or to anyone on his behalf, together with the name and address of each such person.

(2) Where the decision to arrange a misconduct hearing is founded on a report, allegation or complaint and a statement arising therefrom made by the same person, the reference in paragraph (1) (b) to the report, allegation or complaint shall, without prejudice to paragraph (1)(c) or (d), be construed as including a reference to that statement.

(3) Notwithstanding anything in paragraph (1)(b), the assistant chief constable may withhold from the constable a report upon the report, allegation or complaint on which the decision to arrange a misconduct hearing is founded if he is satisfied that considerations of national security require that it should not be supplied, but, where he withholds such a report, he shall inform the constable, but only so far as is practicable without prejudicing the purposes for which that information is not disclosed, of the gist of that report.

(4) In this regulation, any reference to a copy of a statement, report, allegation or complaint shall, where it was not made in writing, be construed as a reference to a copy of a record thereof.

Information from the constable in response to the misconduct form

9.—(1) Where a copy of the misconduct form has been sent to the constable, he shall within the time limits specified in paragraph (2) give notice to the assistant chief constable—

- (a) whether he admits or denies the allegation of misconduct on his part;
- (b) whether he wishes to offer any explanation;
- (c) whether he intends to be represented or assisted by a constable of a police force at the misconduct hearing;
- (d) whether he wishes witnesses to be called to give evidence to relevant facts at the misconduct hearing and, if he does, notice of the names and addresses of any such witnesses; and
- (e) in any case in which in terms of regulation 6(5) the constable has been given the opportunity to elect to be legally represented, whether he intends to be represented by an advocate or a solicitor.

(2) Subject to paragraph (3), the constable shall give notice of the information required by paragraph (1) by entering on the copy of the misconduct form the relevant information, signing the form and returning it to the assistant chief constable within the period of 14 days after the date on which—

- (a) the form was sent to the constable; or

(b) the last of the documents required by regulation 8 to be supplied is supplied to the constable,

whichever is the later date.

(3) The assistant chief constable may, on the application of the constable, extend the period of time mentioned in paragraph (2), notwithstanding that that time limit may have expired.

(4) Notwithstanding paragraph (1)(d), the assistant chief constable may, on the written application of the constable at any time before the misconduct hearing is commenced, permit him to nominate further witnesses whom he wishes to call to give evidence to relevant facts at the hearing.

(5) Where in terms of paragraph (1) or (4) the assistant chief constable is informed by the constable that he wishes to lead the evidence of any witness, and where the constable identifies that witness, then the assistant chief constable shall inform the investigating officer, and the investigating officer shall so far as is reasonable and practicable invite that witness to provide a statement and shall supply to the constable a copy of any such statement.

(6) Paragraph (5) is without prejudice to the right of the constable to invite the witness to provide a statement to the constable or his representative.

Arrangement of misconduct hearing

10.—(1) Where the assistant chief constable has in terms of regulation 6(2) decided that the constable should be required to attend a misconduct hearing, he shall make all necessary arrangements for the hearing and shall determine the time, date and place of the hearing.

(2) The assistant chief constable shall by notice in writing require the constable to appear at the hearing at the time, date and place specified in the notice.

(3) Where the constable has intimated that he wishes to be accompanied at the hearing by a representative who is a constable of a police force other than his own, the assistant chief constable shall inform the chief constable of that other force of that intimation and shall give notice of the time, date and place of the hearing.

(4) Where the hearing arises out of a complaint by a member of the public, the assistant chief constable shall, if the constable has denied the allegation or any part thereof, give notice to the complainer specifying the time, date and place of the hearing and shall draw the complainer's attention to the provisions of regulation 13(8)(b) and (9).

(5) The assistant chief constable shall take all reasonable steps to secure the attendance at the hearing of any witnesses required to give evidence to relevant facts at the hearing.

(6) In any case in which in terms of paragraphs (2) to (4) the assistant chief constable is required to give notice to any person, such notice shall be sent not less than 21 days prior to the commencement of the hearing, provided that the constable may, in writing, waive his entitlement to receive 21 days' notice of the hearing.

(7) At any time before the date fixed for hearing in accordance with paragraph (2), the assistant chief constable may, if he is of the opinion that it is expedient or necessary to do so, discharge the hearing and shall make all necessary arrangements in accordance with paragraphs (1) to (6) for the misconduct hearing to be held at a later date.

Variation of election on legal representation

11.—(1) In any case in which the constable has elected in terms of regulation 9 not to be legally represented, then he may by notice in writing to the assistant chief constable vary the election.

(2) A notice under paragraph (1)—

(a) shall only be valid if it is received by the assistant chief constable not later than 48 hours before the time fixed for the misconduct hearing to commence; and

- (b) subject to sub-paragraph (a) above, shall have the effect of deeming the constable as having elected in terms of regulation 9 to be legally represented.

Representation at misconduct hearing

12.—(1) Subject to paragraph (5), the case against the constable shall be presented by a constable (other than the chief constable, the assistant chief constable, the investigating officer or any witness) of a rank equal to or above that of the constable.

(2) The constable shall be entitled to conduct his case in person and be represented by another constable of a police force selected by him, or he may be represented subject to and in accordance with paragraph (4).

(3) The presenting officer may be assisted by a member of a police force.

(4) In any case in which the constable has given notice in terms of regulation 9 that he wishes to be legally represented, or has varied his election under regulation 11, the constable may be represented, at his option, at the misconduct hearing, either by an advocate or by a solicitor.

(5) Notwithstanding the terms of paragraph (1) of this regulation, if the constable has given notice in terms of regulation 9 that he wishes to be legally represented, or has in terms of regulation 11 varied his election, the case against him may be presented by an advocate or solicitor whether or not he is so represented.

Procedure at misconduct hearing

13.—(1) An allegation of misconduct against a constable shall be heard by a constable (other than the chief constable) who is appointed for the purpose by the assistant chief constable and who shall act as chairman of the misconduct hearing.

(2) The chairman shall be—

(a) a constable of the police force concerned, or, if the chief constable of some other force is requested by the assistant chief constable and agrees to provide a constable for the purpose, a constable of that other force; and

(b) of at least the rank of superintendent.

(3) The chairman may be assisted by up to two other constables who are also of at least the rank of superintendent who shall act as assessors.

(4) In any case in which the constable has given notice in terms of regulation 9 that he wishes to be legally represented, or has in terms of regulation 11 varied his election, the chairman may, if he thinks fit, appoint an advocate or a solicitor to sit with him at the misconduct hearing as a legal assessor.

(5) Subject to the provisions of this regulation and regulations 14 to 16, the procedure at the misconduct hearing shall be such as the chairman may determine.

(6) If the constable admits the allegation of misconduct, the chairman, after giving the presenting officer and thereafter the constable or his representative an opportunity of making a statement, may dispose of the case forthwith.

(7) Subject to paragraph (8), the misconduct hearing shall be held in private.

(8) Notwithstanding paragraph (7)—

(a) where a child is giving evidence, the chairman may allow a parent or guardian to be present and, when any witness is giving evidence, the chairman may, subject to consideration of any objections raised by the constable, allow such other persons to be present as may seem reasonable to him because of any special circumstances;

- (b) where the hearing arises out of a complaint made by a member of the public and the constable denies the allegation of misconduct or any part thereof, the chairman may allow the complainer to be present at the hearing while witnesses are giving evidence; and
 - (c) the chairman may allow any other person to be present if the presenting officer and the constable agree.
- (9) In any case to which paragraph (8)(b) applies—
- (a) the complainer shall not be entitled to put questions to the constable, or except where the complainer is giving evidence as a witness, to participate in the proceedings in any way;
 - (b) where the complainer is to be called as a witness at the hearing, he shall not be allowed to attend before giving evidence; and
 - (c) the chairman may exclude the complainer from the whole or any part of the hearing and, without prejudice to the foregoing generality, shall exclude the complainer—
 - (i) during any period when he considers that a witness may, in giving evidence, disclose information which, in the public interest, ought not to be disclosed to a member of the public; or
 - (ii) if the complainer behaves in a disorderly manner.
- (10) If the constable wishes to make an objection to the effect that the facts alleged in the misconduct form in relation to any allegation are not such as to amount to misconduct on the part of the constable, he shall give written notice of the objection to the assistant chief constable at least 7 days before the misconduct hearing is due to commence.
- (11) Where the constable has given notice of an objection in terms of paragraph (10), the assistant chief constable shall forthwith provide the chairman with a copy of the notice of objection and the chairman shall determine any such objection at the beginning of the misconduct hearing and, if he upholds the objection, he shall make a finding that there has been no misconduct on the part of the constable in relation to the allegation in question.
- (12) The constable or his representative, or both of them, may put questions to any witness called by the presenting officer.
- (13) The constable may give evidence on his own behalf and he or his representative may call witnesses in support of his denial of the allegation of misconduct.
- (14) Any question as to whether any evidence is admissible, or whether any question should or should not be put to a witness, shall be determined by the chairman.
- (15) After all the evidence has been led, the presenting officer and thereafter the constable or his representative shall be entitled to make oral submissions on the case before the hearing is concluded.
- (16) The chairman shall—
- (a) prepare a written note summarising the proceedings at the misconduct hearing; and
 - (b) arrange for an audio recording to be made of those proceedings.

Statements in lieu of oral evidence

14.—(1) Subject to the provisions of this regulation, the chairman may, in lieu of oral evidence, admit evidence by way of a written statement but evidence shall not be admissible in pursuance of this regulation if it would not have been admissible had it been given orally.

(2) If either the presenting officer or the constable (in this regulation referred to as “the parties”) proposes in pursuance of this regulation to adduce written evidence at the misconduct hearing, he shall—

- (a) at least 21 days, or such shorter period as the parties may agree in writing, before the date of the hearing—

- (i) give the other party a copy of the statement; and
- (ii) invite that party to join in a minute of agreement to the admission of the statement in evidence without the maker thereof being called as a witness; and
- (b) at least 10 days, or such shorter period as the parties may agree in writing, before the date of the hearing, lodge any such minute of agreement with the assistant chief constable.
- (3) The chairman shall admit evidence by way of written statement under paragraph (1) only if—
 - (a) such statement is accompanied by a minute of agreement signed by the parties; or
 - (b) either party requests the chairman to admit the written statement and the other party does not object.
- (4) Where, notwithstanding that a written statement has been admitted in evidence without the person who made the statement being called and being available, the chairman is of the opinion that oral evidence should be given, he may request that the person be called as a witness and, in such case, unless that person gives oral evidence, the chairman shall be entitled to disregard the written evidence.
- (5) Nothing in this regulation shall prejudice the admission of written evidence which would be admissible apart from the provisions thereof.

Adjournment of misconduct hearing

15. The chairman may from time to time adjourn the hearing to a later time or date, if it appears necessary or expedient to do so for the due hearing of the case.

Hearing in absence of the constable

16.—(1) If the constable does not attend at the misconduct hearing or at any adjournment thereof, the hearing may be proceeded with and concluded in his absence if it appears to the chairman just and proper to do so.

- (2) Notwithstanding the terms of paragraph (1)—
 - (a) if the constable is detained while serving the sentence of a court in—
 - (i) a prison or other institution to which the Prisons (Scotland) Act 1989⁽⁵⁾ applies; or
 - (ii) any prison or other institution or place in any part of the United Kingdom (other than Scotland) or in any of the Channel Islands or the Isle of Man, being a prison, institution or place mentioned in subsection (1) or (1A) of section 29 of the Criminal Justice Act 1961⁽⁶⁾ (transfer of prisoners for certain judicial purposes),
 and expresses a desire to make representations in person at the hearing, the hearing shall not be concluded until the constable has been able to make such representations; and
 - (b) if any other good reason is given to the chairman by, or on behalf of, the constable why he is unable to attend the hearing, the hearing shall be postponed or adjourned, as the case may be.

(3) Subject to paragraph (2), where, owing to the absence of the constable, it is not possible to comply with the whole or any part of the procedure described in these Regulations, the case may be proceeded with as if that procedure had been complied with.

(5) 1989 c. 45.

(6) 1961 c. 39; subsection (1) was amended by the Children and Young Persons Act 1963 (c. 37), Schedule 3, paragraph 50, by the Children and Young Persons Act 1969 (c. 54), Schedule 6, by the Criminal Law Act 1977 (c. 45), Schedule 12, by the Criminal Justice (Scotland) Act 1980 (c. 62), Schedule 7, paragraph 8, by S.I. 1980/1088, article 2(1) (b), by the Criminal Justice Act 1982 (c. 48), Schedule 14, paragraph 12 and by the Criminal Justice and Public Order Act 1994 (c. 33), Schedule 10, paragraph 12(2); subsection (1A) was inserted by the Criminal Law Act 1977, Schedule 12.

Finding

17.—(1) Subject to paragraph (2), at the conclusion of the misconduct hearing, the chairman shall reach a decision on the allegation of misconduct.

(2) The chairman may, at the conclusion of the hearing, defer reaching his decision until a later time or date if it appears necessary to do so.

(3) The decision of the chairman, which shall be recorded in the misconduct form, shall state—

- (a) the finding and any disposal which he makes in terms of regulation 18; and
- (b) his reasons.

(4) After recording his decision in the misconduct form in terms of paragraph (3), the chairman shall forthwith send—

- (a) to the constable, a copy of the completed misconduct form together with a copy of each of the written note and the audio recording made in accordance with regulation 13(16); and
- (b) to the assistant chief constable, the completed misconduct form, the written note and the audio recording.

(5) Where the hearing arises out of a complaint made by a member of the public, the assistant chief constable shall notify the complainer in writing of the finding made.

Disposal

18.—(1) Subject to regulation 19, where the chairman makes a finding that an act or omission of the constable amounts to misconduct, he shall make in relation to that constable one of the following disposals:—

- (a) dismissal from the force;
- (b) requirement to resign from the force either forthwith or at such date as shall be specified in the decision as an alternative to dismissal;
- (c) reduction in rank;
- (d) reduction in rate of pay for such period, not exceeding 12 months, as shall be specified in the decision;
- (e) fine;
- (f) reprimand; or
- (g) caution;

and separate disposals may be made in relation to separate findings of misconduct in relation to the subject matter considered at the misconduct hearing.

(2) In considering which disposal to make, the chairman—

- (a) shall have regard to the constable's personal record; and
- (b) may invite a constable of the force above the rank of the constable to give an oral report on the character of the constable, provided that, where such oral report is made, the constable or his representative shall be given the opportunity to comment thereon.

(3) Where the disposal under regulation 18(1)(b) is made and where the constable has not resigned from the force in accordance with the requirement specified in the decision, then the effect of the decision shall be to dismiss the constable from the force either forthwith or on the date specified in the decision.

Limitations on disposals

19.—(1) None of the disposals mentioned in sub-paragraphs (a), (b) and (c) of regulation 18(1) shall be made by the chairman unless the constable has been given an opportunity in terms of regulation 6(5) to elect to be legally represented at the misconduct hearing.

(2) If the constable—

- (a) fails without reasonable cause to give notice in accordance with regulation 9 that he intends to be legally represented; or
- (b) gives notice in accordance with regulation 9 that he does not intend to be legally represented,

any such disposal as is mentioned in paragraph (1) may be made without him being legally represented.

(3) If the chairman decides to make a disposal in terms of regulation 18(1)(d), he shall not specify a reduction in pay in relation to the subject matter considered at the misconduct hearing (irrespective of the number of separate findings of misconduct) which would reduce the constable's pay below the amount applicable to the pay category for a constable of the same rank which is—

- (a) 2 categories lower than the pay category applicable to the constable; or
- (b) if the constable is at pay category A or B of the pay categories for constables of the same rank, category A.

(4) If the chairman decides to make a disposal in terms of regulation 18(1)(e)—

- (a) he shall not specify a fine in relation to the subject matter considered at the misconduct hearing (irrespective of the number of separate findings of misconduct) which exceeds in the aggregate one week's pay; and
- (b) the fine shall be recovered by stoppage of pay in amounts not exceeding one-seventh of the constable's weekly pay, except in the event that he leaves the force when the whole amount of any fine then unpaid may be deducted from any pay then due.

(5) A fine or reduction in the rate of pay shall not result in any increment in pay being retarded or withheld.

Appeal to the chief constable

20.—(1) Where in terms of regulation 17 the chairman has made a finding that an act or omission of the constable amounts to misconduct, the constable may appeal in accordance with this regulation against—

- (a) both the finding and the disposal made in terms of regulation 18; or
- (b) the disposal only.

(2) The appeal shall be instituted by the appellant giving written notice of appeal to the chief constable specifying whether he is appealing under sub-paragraph (a) or (b) of paragraph (1).

(3) The notice of appeal shall state—

- (a) the name and address of the appellant;
- (b) that the notice is a notice of appeal;
- (c) the date of the relevant finding and disposal;
- (d) the grounds upon which the appeal is made;
- (e) the name and address of any representative of the appellant and whether the chief constable should send replies or notices concerning the appeal to the representative instead of the appellant; and

- (f) whether he requests the chief constable to obtain a transcript of all or a specified part of the proceedings at the misconduct hearing.
- (4) The appellant shall attach to the notice of appeal—
 - (a) any documentary evidence upon which he intends to rely for the purposes of the appeal; and
 - (b) a copy of the misconduct form containing the finding and disposal of the chairman.
- (5) The appellant or his representative shall sign the notice of appeal.
- (6) The appellant shall send the notice of appeal, together with the documents referred to in paragraph (4), to the chief constable not later than 28 days after the date on which notification of the finding of the chairman was sent in accordance with regulation 17(4).
- (7) Where the appellant is unable to send the notice of appeal within the period specified in paragraph (6), he may include in his notice of appeal a request for the appeal to be received late and shall state the reasons why he was unable to send it timeously.
- (8) The chief constable may receive a notice of appeal which is late where he is satisfied, by reason of the special circumstances of the case, that it is just and right that the appeal should be entertained after the expiry of the period specified in paragraph (6).
- (9) The chief constable may obtain a transcript of all or part of the audio recording made of the proceedings at the misconduct hearing—
 - (a) where in the appellant's notice of appeal he requests the chief constable to obtain a transcript of all or a specified part of the proceedings and the chief constable considers that it is necessary to obtain such a transcript; or
 - (b) notwithstanding that no request has been made by the appellant, where the chief constable considers that it is necessary to obtain a transcript.
- (10) Where in accordance with paragraph (9) the chief constable obtains a transcript of all or part of the audio recording, he shall forthwith send a copy of that transcript to the appellant and to the chairman of the misconduct hearing.
- (11) Where the appellant requests the chief constable to obtain a transcript of all or a specified part of the audio recording made of the proceedings at the misconduct hearing, the chief constable shall determine that request as soon as reasonably practicable and thereafter shall forthwith notify the appellant and the chairman of the misconduct hearing of his decision.
- (12) Where pursuant to paragraph (11) the chief constable refuses the appellant's request, the appellant may, at his own expense, obtain a transcript of all or part of the audio recording made of the proceedings at the misconduct hearing and submit the transcript no later than 21 days after the date on which the chief constable notified him of his decision in terms of paragraph (11).
- (13) Where the chief constable receives a transcript in terms of paragraph (12), he shall forthwith send a copy of it to the chairman of the misconduct hearing and invite him, if he so wishes, to make any written representations with respect to the accuracy of the transcript within 14 days after the date on which it was sent to him.
- (14) If the chairman of the misconduct hearing disputes the accuracy of the transcript submitted by the appellant, the chief constable shall—
 - (a) send a copy of any representations to the appellant and afford him the opportunity of making written representations in reply within 7 days after the date on which the chairman's representations are sent to him; and
 - (b) after considering the representations of the chairman and any representations by the appellant, determine what, if any, amendment of the transcript is required.
- (15) Where at the time at which the notice of appeal is sent in accordance with paragraph (6)—

- (a) the chief constable of the force is absent, incapacitated or suspended from duty and it is likely that his absence, incapacity or suspension will continue for a period of more than 28 days; or
- (b) there is a vacancy in the office of chief constable for the force,

the assistant chief constable shall arrange for a chief constable of another police force to carry out the functions of the chief constable specified in this regulation and regulation 21 in relation to the appeal.

Determination of appeal

21.—(1) Subject to the following provisions of this regulation, the chief constable shall consider the appeal on the basis of—

- (a) the notice of appeal, the misconduct form and any other documents submitted with the notice;
- (b) the written note summarising the proceedings at the misconduct hearing which the chairman prepared in accordance with regulation 13(16);
- (c) to such extent as he considers necessary, the audio recording made of the proceedings at the misconduct hearing in accordance with regulation 13(16); and
- (d) any transcript of all or part of such an audio recording where such a transcript is obtained in terms of regulation 20(9) or is submitted in terms of regulation 20(12).

(2) Where the chief constable considers that it is necessary for the purpose of determining the appeal, he may afford the opportunity to the appellant and the chairman of the misconduct hearing of making oral representations in relation to the subject matter of the appeal.

(3) Where the chief constable decides to afford the opportunity to make oral representation, he shall give reasonable notice of the time and place at which those representations may be made.

(4) At any hearing fixed for the purposes of paragraph (2)—

- (a) each of the appellant and the chairman of the misconduct hearing may be represented by another constable of a police force selected by him or by an advocate or a solicitor; and
- (b) the chief constable may put questions to the appellant and the chairman of the misconduct hearing or any representative of them.

(5) The chief constable shall determine the appeal as soon as reasonably practicable after considering the documents and recording referred to in paragraph (1) and, where applicable, any representations made in accordance with paragraph (4).

(6) The decision of the chief constable shall be recorded in a document which shall contain—

- (a) the terms of the decision which shall specify any variation of the disposal made by the chairman of the misconduct hearing; and
- (b) a statement of the reasons for the decision,

and shall be signed and dated by the chief constable.

(7) The chief constable shall forthwith send a copy of the document to the appellant and, if any, his representative and to the chairman of the misconduct hearing.

(8) The chief constable shall have power in determining an appeal to vary the disposal made by the chairman of the misconduct hearing in terms of regulation 18 but shall not have power to make a disposal which is more severe than that made by the chairman.

(9) A decision of the chief constable to allow an appeal or to vary a disposal shall have effect from the date of the finding of the chairman of the misconduct hearing except that—

- (a) where the disposal as varied is such as in sub-paragraph (b) of regulation 18(1) and where the constable has not resigned from the force in accordance with the requirement specified

in the decision of the chief constable in terms of paragraph (6), the effect of the decision shall be to dismiss the constable from the force either forthwith or on the date specified in the decision; and

- (b) where the disposal as varied is such as is specified in sub-paragraph (c) of regulation 18(1), that disposal shall have effect from a date not earlier than, or from the date of, the decision of the chief constable in terms of paragraph (6).

(10) Where in an appeal under sub-paragraph (a) or (b) of regulation 20(1)–

- (a) the appellant submitted pursuant to regulation 20(12) a transcript of all or part of the audio recording made of the proceedings at the misconduct hearing; and
- (b) the chief constable allowed the appeal either in whole or in part,

the police authority shall reimburse the appellant the reasonable costs incurred by the appellant in obtaining the transcript.

Suspension

22.—(1) Where a report, allegation or complaint is received from which it may reasonably be inferred that an act or omission of a constable may amount to misconduct or that he may have committed a criminal offence, the constable may be suspended from duty by any constable of the force of higher rank.

(2) The assistant chief constable may terminate a suspension imposed under paragraph (1) with effect from the date of the constable’s suspension or from any subsequent date and shall do so–

- (a) when he has decided that the constable shall not be required to appear before a misconduct hearing, unless the constable has submitted his resignation; or
- (b) when misconduct proceedings have been completed but have not resulted in a disposal of dismissal from the force or a requirement to resign from the force as an alternative to dismissal.

(3) Where the assistant chief constable has terminated the suspension of a constable, that constable may not be suspended again in respect of the report, allegation or complaint which led to the suspension which has been terminated.

(4) Subject to the provisions of paragraph (6), where the constable suspended from duty–

- (a) has been found guilty of a criminal offence; or
- (b) is absent from duty and his whereabouts are unknown to the assistant chief constable,

he shall not in respect of any period of imprisonment or, as the case may be, in respect of the period during which his whereabouts are unknown to the assistant chief constable, be entitled to pay under the Police (Scotland) Regulations 1976(7).

(5) Subject to the provisions of paragraph (6), the constable suspended from duty shall not in respect of the period of suspension be entitled to any allowances under the Police (Scotland) Regulations 1976, except–

- (a) insofar as he is entitled in terms of the Schedule to the Police (Scotland) Amendment (No.2) Regulations 1994(8), a replacement allowance mentioned in paragraph 2, 3, 4, 5 or 6 of that Schedule; or
- (b) a provided accommodation allowance.

(6) Where the constable who has been suspended from duty returns to duty and–

- (a) it has been decided that he shall not be required to appear before a misconduct hearing;

(7) S.I. 1976/1073.

(8) S.I. 1994/2231.

- (b) he has been required to appear before a misconduct hearing and no finding of misconduct has been made in relation to any of the allegations; or
- (c) he has been required to appear before a misconduct hearing and has received a reduction in rate of pay for a period of less than 12 months, a fine, a reprimand or a caution,

he shall receive, for the period of suspension, the pay or allowances to which, but for the provisions of paragraphs (4) and (5), he would have been entitled by virtue of the Police (Scotland) Regulations 1976.

(7) The Police (Scotland) Regulations 1976 and these Regulations shall apply to a constable suspended from duty subject to the provisions of this regulation.

Misconduct by constables of different police forces

23.—(1) Where a report, allegation or complaint is received from which it may reasonably be inferred that acts or omissions of constables of two or more police forces acting together may amount to misconduct on the part of those constables, the provisions of these Regulations shall apply, subject to the modifications mentioned in paragraphs (2) to (4).

(2) The assistant chief constables of the forces concerned may appoint one investigating officer to investigate the matter.

(3) Where the assistant chief constables decide, after considering the report of that investigating officer, that the constables should be required to appear before a misconduct hearing, they may arrange for the case to be determined by a misconduct hearing comprising a chairman from a force other than the forces of the constables concerned.

(4) Where the chairman of the misconduct hearing makes a finding that an act or omission of any of the constables amounts to misconduct, he shall make any of the disposals as mentioned in regulation 18 and shall submit a report to the chief constable concerned together with—

- (a) the misconduct form;
- (b) a statement as to the act or omission of the constable which he has found amounted to misconduct;
- (c) a statement as to any disposal made in respect of the constable; and
- (d) a copy of the audio recording.

Records

24.—(1) The assistant chief constable shall keep at the headquarters office of the police force and, where the police force is divided into divisions, may also cause to be kept at the divisional headquarters—

- (a) a record of every complaint made by a member of the public against any constable of the force or, as the case may be, of the division concerned, together with an account of the action taken in connection therewith;
- (b) a misconduct record of every report, allegation or complaint from which it was inferred that an act or omission of a constable of the force or, as the case may be, of the division concerned, may have amounted to misconduct, together with an account of the action taken in connection therewith;
- (c) where any such report, allegation or complaint results in a constable being required to appear before a misconduct hearing, on the misconduct record, details of the allegation, together with the finding of the hearing and any disposal made; and
- (d) where any appeal is made in terms of regulation 20, details of the decision of the chief constable including any variation of the disposal.

- (2) The chief constable shall retain—
- (a) any audio recording made in accordance with regulation 13(16) for a period of not less than 3 years from the date on which the recording was sent pursuant to regulation 17(4); and
 - (b) any transcript of all or part of such an audio recording where it has been obtained in terms of regulation 20(9) or was submitted in terms of regulation 20(12) for a period of not less than 3 years from the date on which the audio recording was sent pursuant to regulation 17(4).

Revocations, savings and transitional provisions

25.—(1) Subject to the following provisions of this regulation, the Regulations specified in column 1 of Schedule 2 to these Regulations are, insofar as not previously revoked, hereby revoked to the extent mentioned in relation thereto in column 3 of that Schedule.

(2) Notwithstanding paragraph (1), the Regulations specified in column 1 of Schedule 2 to these Regulations, insofar as not previously revoked, shall continue to apply to an existing case within the meaning given in article 1(2) of the Police and Magistrates' Courts Act 1994 (Commencement No.10 and Savings) (Scotland) Order 1996⁽⁹⁾ where the constable concerned is below the rank of assistant chief constable.

St Andrew's House,
Edinburgh
19th June 1996

James Douglas-Hamilton
Minister of State, Scottish Office

(9) S.I. 1996/1646.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

SCHEDULE 1

Regulation 4

CONDUCT CONSTITUTING MISCONDUCT

1. Conduct likely to bring discredit on the police force or service, including—
 - (a) insubordination or incivility;
 - (b) corrupt practice;
 - (c) breach of confidence;
 - (d) drinking any intoxicating liquor while on duty or being unfit for duty through such liquor;
 - (e) suppression of complaints;
 - (f) wilful or careless damage to, or loss of, property belonging to the police authority or within the care of the police;
 - (g) disorderly conduct; or
 - (h) acting towards, or treating, any person in an oppressive or improper manner.
2. Failure to comply, without good and sufficient cause, with a lawful order.
3. Failure to report any matter which it is the constable's duty to report or to account for any act or omission occurring in the ordinary course of duty which he has a duty to account for.
4. Neglect of duty.
5. Wilful or careless falsehood.
6. Malingering.
7. Being absent from duty, or being late for duty, without leave.
8. Contravention of regulation 5 of, or Schedule 1 to, the Police (Scotland) Regulations 1976(10).
9. Having been found guilty by a criminal court of a criminal offence in any part of the United Kingdom or in any of the Channel Islands or the Isle of Man.

SCHEDULE 2

Regulation 25(1)

REVOCATIONS

Column 1 Regulations revoked	Column 2 References	Column 3 Extent of revocation
The Police (Discipline) (Scotland) Regulations 1967	SI 1967/1021	The whole Regulations.
The Police (Discipline) (Scotland) Amendment Regulations 1971	SI 1971/843	The whole Regulations.
The Police (Discipline) (Scotland) Amendment Regulations 1975	SI 1975/1544	The whole Regulations.

(10) Regulation 5 was amended by [S.I. 1985/111](#) and [1995/596](#); Schedule 1 was amended by [S.I. 1990/469](#) and [1993/3081](#).

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Column 1 Regulations revoked	Column 2 References	Column 3 Extent of revocation
The Police (Scotland) Regulations 1976	SI 1976/1073	Regulation 72(3).
The Police (Discipline) (Scotland) Amendment Regulations 1982	SI 1982/902	The whole Regulations.
The Police (Discipline) (Scotland) Amendment Regulations 1987	SI 1987/2226	The whole Regulations.
The Police (Discipline) (Miscellaneous Amendments) (Scotland) Regulations 1995	SI 1995/647	The whole Regulations.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations replace the Police (Discipline) (Scotland) Regulations 1967 (“the 1967 Regulations”).

The Regulations make revised provision for the procedures for cases in which a constable below the rank of assistant chief constable who is the subject of an allegation of misconduct may be dealt with by dismissal, requirement to resign, reduction in rank, reduction in rate of pay, fine, reprimand or caution.

Regulations 1 to 3 make provision with respect to citation, commencement, application and interpretation.

Regulation 4 of, and Schedule 1 to, the Regulations define what is meant by misconduct on the part of a constable to whom the Regulations apply.

Regulation 5 prescribes the preliminary procedure to be followed where an allegation or complaint of misconduct is made against a constable. It enables the assistant chief constable of the force who is required to deal with matters under the Regulations to establish procedures to deal with allegations of misconduct of a minor or trivial nature. Except where an allegation or complaint appears to involve a minor or trivial matter, the allegation or complaint will be referred to the assistant chief constable who must appoint an investigating officer unless he is of the opinion that there is only evidence of misconduct of a minor or trivial nature. The investigating officer is required to prepare and provide to the constable who is the subject of the complaint an investigation form containing relevant information.

Regulation 6 makes provision for considering whether a misconduct hearing should be held and as to the procedure where the constable concerned is to be required to attend such a hearing.

Regulation 7 enables the assistant chief constable to delay investigations where the matter is also the subject of criminal investigations.

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Regulations 8 and 9 specify the documents and other information to be supplied where a misconduct hearing is required. Regulation 10 provides for the arranging of the hearing. Regulations 11 and 12 provide for representation at the hearing.

Regulations 13 to 16 make provision with respect to the holding of a misconduct hearing at which evidence may be heard and a full opportunity given to the constable to defend the allegations made against him.

In terms of regulation 17 the chairman of the misconduct hearing (who must be a constable of at least the rank of superintendent) must record his decision and reasons on the misconduct form, a copy of which must also be sent to the constable.

Regulation 18 specifies the action which may be taken by the chairman in disposing of the case if he finds that there has been misconduct.

Regulation 19 specifies certain conditions which apply in respect of certain disposals.

Regulations 20 and 21 make provision for an appeal to the chief constable where the constable concerned is aggrieved by the finding of misconduct or the disposal made, or both.

Regulations 22 to 24 deal with supplementary matters.

Regulation 25(1) and Schedule 2 revoke the 1967 Regulations and Regulations which amended them.

By virtue of regulation 25(2), the 1967 Regulations continue to apply where an act or omission of a constable which may amount to a disciplinary offence under the 1967 Regulations occurs before the date on which these Regulations come into force.