
STATUTORY INSTRUMENTS

1999 No. 1072 (S. 83)

POLICE

The Police (Conduct) (Scotland) Amendment Regulations 1999

Made - - - - *24th March 1999*
Laid before Parliament *6th April 1999*
Coming into force - - *1st May 1999*

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, commencement and interpretation

1.—(1) These Regulations may be cited as the Police (Conduct) (Scotland) Amendment Regulations 1999 and shall come into force on 1st May 1999.

(2) In these Regulations “the principal Regulations” means the Police (Conduct) (Scotland) Regulations 1996⁽²⁾.

Amendment of regulation 2 of the principal Regulations

2.—(1) Regulation 2 of the principal Regulations (application) is amended in accordance with paragraph (2) of this regulation.

(2) In regulation 2(b), after the word “made”, there are inserted the words “, or is alleged to have been committed or made,”.

(1) 1967 c. 77; section 26(9) was amended by the Police Negotiating Board Act 1980 (c. 10), section 2(4) and by the Police Act 1996 (c. 16) (“the 1996 Act”), Schedule 7, paragraph 14(3); 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, sections 47(5) and 52(2) and Schedule 9 and by the 1996 Act, Schedule 7, paragraph 14(2); 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on 1st August 1996 (see S.I. 1996/1646); section 26(5A) was inserted by the 1994 Act, section 53(1); section 26(7) was repealed by the 1994 Act, section 52(4) and Schedule 9.

(2) S.I. 1996/1642.

Amendment of regulation 6 of the principal Regulations

3.—(1) Regulation 6 of the principal Regulations (requirement to appear before a misconduct hearing) is amended in accordance with the following paragraphs of this regulation.

(2) In paragraph (1), after the words “due investigation” there are inserted the words “in which he shall take all reasonable steps to obtain statements from witnesses”.

(3) Paragraph (8) is omitted.

Amendment of regulation 7 of the principal Regulations

4.—(1) Regulation 7 of the principal Regulations (alleged criminal offence) is amended in accordance with paragraph (2) of this regulation.

(2) For sub-paragraph (a) of paragraph (1) there is substituted the following sub-paragraph:—

“(a) shall, as soon as possible, refer the matter to the procurator fiscal appearing to him to be concerned;”.

Insertion of new regulation 7A into the principal Regulations

5. After regulation 7 of the principal Regulations (alleged criminal offence) there is inserted the following regulation:—

“Termination of proceedings

7A.—(1) If, at any time after a copy of a misconduct form has been sent to the constable in accordance with regulation 6(4)(b) but before the conclusion of the misconduct hearing, it appears to the assistant chief constable that, in the light of any new information or event, it is no longer appropriate that the allegation of misconduct against the constable should be heard, he may direct that the allegation shall no longer be considered at the misconduct hearing.

(2) Where the assistant chief constable makes a direction in terms of paragraph (1), he shall, as soon as possible—

- (a) cause that direction to be noted on the misconduct form; and
- (b) notify the constable in writing.”.

Amendment of regulation 13 of the principal Regulations

6.—(1) Regulation 13 of the principal Regulations (procedure at misconduct hearing) is amended in accordance with paragraph (2) of this regulation.

(2) For paragraph (13) there is substituted the following paragraph:—

“(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 and, where any such evidence is given, the chairman and the person presenting the case against the constable may put questions to the constable or, as the case may be, the other witness.”.

Substitution of regulation 15 of the principal Regulations

7. For regulation 15 of the principal Regulations there is substituted the following regulation:—

“Adjournment of misconduct hearing

15.—(1) The chairman may from time to time adjourn the misconduct hearing to a later time or date if it appears to him necessary or expedient to do so for the due hearing of the case.

(2) Where the chairman adjourns the hearing to a later date he shall forthwith provide the constable with a written notice of the time, date and place of the adjourned hearing.”.

Amendment of regulation 16 of the principal Regulations

8.—(1) Regulation 16 of the principal Regulations (hearing in absence of the constable) is amended in accordance with paragraph (2) of this regulation.

(2) For sub-paragraph (a) of paragraph (2) there is substituted the following sub-paragraph:–

“(a) if the constable is detained while serving the sentence of a court in a prison or other institution in any part of the British Islands 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;”.

Amendment of regulation 20 of the principal Regulations

9.—(1) Regulation 20 of the principal Regulations (appeal to the chief constable) is amended in accordance with paragraph (2) of this regulation.

(2) After paragraph (8) there are inserted the following paragraphs:–

“(8A) The chief constable may, if he considers it necessary or expedient to do so, send a copy of the notice of appeal and of any document which was sent in accordance with paragraph (4) to the chairman of the misconduct hearing.

(8B) The chairman of the misconduct hearing may, within 7 days of receipt of the copy of the notice of appeal in accordance with paragraph (8A), send to the chief constable and to the appellant a copy of any document to which he had regard in reaching a decision on the allegation of misconduct if it appears to him that the document has not been submitted by the appellant with his notice of appeal.”.

Amendment of regulation 21 of the principal Regulations

10.—(1) Regulation 21 of the principal Regulations (determination of appeal) is amended in accordance with the following paragraphs of this regulation.

(2) In paragraph (1), after sub-paragraph (b), there is inserted the following sub-paragraph:–

“(bb) any document which has been submitted by the chairman of the misconduct hearing in accordance with regulation 20(8B);”.

(3) For paragraph (4) there are substituted the following paragraphs:–

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

(a) subject to the following provisions of this regulation, the procedure shall be such as the chief constable determines;

(b) 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

(c) the chief constable may put questions to the appellant and to the chairman of the misconduct hearing or to any representative of them.

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

(4A) If the chief constable considers it necessary or expedient to do so, he may appoint an advocate or solicitor to sit with him at any hearing fixed for the purposes of paragraph (2) as a legal assessor.

(4B) The chief constable may from time to time adjourn the hearing fixed for the purposes of paragraph (2) to a later time or date if it appears to him necessary or expedient to do so.

(4C) Where the chief constable adjourns the hearing in accordance with paragraph (4B) he shall forthwith provide the appellant and the chairman of the misconduct hearing with a written notice of the time, date and place of the adjourned hearing.”.

St Andrew’s House,
Edinburgh
24th March 1999

Henry B McLeish
Minister of State, Scottish Office

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to the Police (Conduct) (Scotland) Regulations 1996 (“the principal Regulations”).

In addition to minor and drafting amendments these Regulations make the following amendments of substance.

New provision is made with respect to the power of the assistant chief constable who is in charge of the investigation of the allegation of misconduct to terminate proceedings brought in terms of the Regulations. A new regulation 7A is inserted into the principal Regulations which enables the assistant chief constable to terminate the proceedings at any time before the conclusion of the misconduct hearing if in the light of any new information or event it is no longer appropriate to consider the allegation of misconduct (regulations 3(3) and 5).

These Regulations make minor amendments to the provisions regulating procedure at a misconduct hearing (regulations 6, 7 and 8).

New provision with respect to the procedure in appeals to the chief constable is made (regulations 9 and 10). The chairman of the misconduct hearing may be provided with a copy of the notice of appeal and is given the opportunity to lodge any relevant documents which have not been submitted by the appellant. The chief constable’s powers in dealing with an appeal are extended. He may now appoint a legal assessor. He is also permitted to adjourn any hearing which he decides to hold to permit the appellant to make oral representations.