
STATUTORY INSTRUMENTS

2020 No. 4

The Police (Conduct) Regulations 2020

PART 4

Misconduct proceedings

Referral of case to misconduct proceedings

23.—(1) Subject to regulation 49, on receipt of the investigator’s report under regulation 21(1), the appropriate authority must, as soon as practicable, determine—

- (a) whether the officer concerned has a case to answer in respect of misconduct or gross misconduct or whether the officer has no case to answer;
- (b) if there is a case to answer, whether or not misconduct proceedings should be brought against the officer, and
- (c) if so, and subject to paragraph (10), what form the misconduct proceedings should take.

(2) Subject to regulation 49, on receipt of a report submitted under paragraph 22 of Schedule 3 to the 2002 Act (final reports on investigations)(1), in making a determination under paragraph 24(6) of that Schedule (action in response to an investigation report)(2) as to what action to take in respect of matters dealt with in that report, the appropriate authority must, as soon as practicable determine—

- (a) whether the officer concerned has a case to answer in respect of misconduct (within the meaning of paragraph 29 of Schedule 3 to the 2002 Act)(3) or gross misconduct or whether the officer has no case to answer;
- (b) where under paragraph (a) the appropriate authority determines that there is a case to answer in respect of misconduct (within the meaning of paragraph 29 of Schedule 3 to the 2002 Act), whether the case amounts to misconduct(4);
- (c) where there is a case to answer in respect of misconduct or gross misconduct, whether or not misconduct proceedings should be brought against the officer concerned, and
- (d) if so, and subject to paragraph (10), what form the misconduct proceedings should take.

(3) In a case where the misconduct proceedings have been delayed by virtue of regulation 10(3), as soon as practicable after—

- (a) the appropriate authority considers that such proceedings would no longer prejudice any criminal proceedings, or

(1) Paragraph 22 was substituted by paragraphs 1, 11 and 21 of Schedule 12 to the Serious Organised Crime and Police Act 2005 and was amended by section 19(1) and (3)(b)(i) of, and paragraph 47(h)(vi) of Schedule 5 and paragraphs 15 and 56 of Schedule 9 to, the Policing and Crime Act 2017; there are other amendments to paragraph 22 but none are relevant.

(2) Paragraph 24(6) was substituted by paragraphs 1, 3 and 14(1) and (6) of Schedule 23 to the Criminal Justice and Immigration Act 2008 and amended by paragraphs 1 and 14(1) and (3) of Schedule 14 to the Police Reform and Social Responsibility Act 2011 and paragraph 47(h)(xiii) of Schedule 5 to the Policing and Crime Act 2017.

(3) Paragraph 29 of Schedule 3 to the 2002 Act was inserted by section 127 of, and paragraphs 1, 3 and 19 of Schedule 23 to, the Criminal Justice and Immigration Act 2008 and amended by section 95 of, and paragraphs 1, 5 and 21 of Schedule 14 to, the Police Reform and Social Responsibility Act 2011 and by section 16 of, and paragraph 47(h)(xxvi) of Schedule 5 to, the Policing and Crime Act 2017.

(4) See regulation 2(1) for definition of “misconduct” in these Regulations.

(b) any criminal proceedings have concluded (whatever the outcome of those proceedings), the appropriate authority must, subject to regulation 49(3) and paragraph (10) and unless the appropriate authority must refer the case to misconduct proceedings in accordance with paragraph (9), make a further determination as to the matters set out in paragraph (1)(a) to (c) or, as the case may be, paragraph (2)(a) to (d).

(4) Where the appropriate authority determines under paragraph (2)(b) or under paragraph (3) in so far as the determination relates to the matter set out in paragraph (2)(b), that the case does not amount to misconduct, the case is to be dealt with under these Regulations as if the appropriate authority had determined that there was no case to answer.

(5) Where the appropriate authority determines there is no case to answer or that no misconduct proceedings will be brought, it must assess whether—

- (a) the case amounts to practice requiring improvement;
- (b) the matter should be referred to be dealt with under the Performance Regulations, or
- (c) it should take no further action.

(6) The appropriate authority must consult the line manager of the officer concerned before making an assessment in terms of paragraph (5)(a) or (b).

(7) As soon as practicable after it has completed the assessment under paragraph (5), the appropriate authority must—

- (a) inform the officer concerned of the outcome of its assessment, and
- (b) subject to the harm test, give the officer a copy of the investigator's report or such parts of that report as relate to the officer.

(8) Where the appropriate authority assesses that the case amounts to practice requiring improvement, it must direct that the matter is dealt with under the reflective practice review process set out in Part 6.

(9) Where the appropriate authority —

- (a) has a duty under paragraph 23(5B) of Schedule 3 to the 2002 Act (duties with respect to disciplinary proceedings)⁽⁵⁾ to comply with a direction to bring misconduct proceedings of a form specified in a determination of the Director General;
- (b) accepts a recommendation made under paragraph 25(4C)(c) or (4E)(c) of that Schedule (reviews with respect to an investigation)⁽⁶⁾ that misconduct proceedings of the form specified in the recommendation are brought, or
- (c) has a duty under paragraph 27(4)(b) of that Schedule (duties with respect to disciplinary proceedings etc.) to comply with a direction to give effect to a recommendation to bring misconduct proceedings of a form specified in a recommendation made under paragraph 25(4C) of that Schedule,

it must, subject to regulation 10(3), refer the case to misconduct proceedings of the form specified.

(10) Where the appropriate authority determines under paragraph (1), (2) or (3) to refer the case to misconduct proceedings—

- (a) having determined that the officer concerned has a case to answer in respect of gross misconduct, those proceedings must be a misconduct hearing;
- (b) where the officer had a final written warning in force at the date of the severity assessment under regulation 14(1) of these Regulations or, as the case may be, regulation 16 of the Complaints and Misconduct Regulations (special procedure: severity assessment), those proceedings must be a misconduct hearing;

(5) Paragraph 23(5A) to (5F) was inserted by paragraphs 9 and 26(1) and (2) of Schedule 5 to the Policing and Crime Act 2017.
 (6) Paragraph 25(4A) to (4J) was inserted by paragraphs 29 and 34(1) and (5) of Schedule 5 to the Policing and Crime Act 2017.

- (c) where the officer has been reduced in rank under the Police (Conduct) Regulations 2004(7) or these Regulations less than 2 years prior to the severity assessment under regulation 14(1) of these Regulations or, as the case may be, regulation 16 of the Complaints and Misconduct Regulations, those proceedings must be a misconduct hearing, and
 - (d) having determined that the officer has a case to answer in respect of misconduct and that the case does not fall under sub-paragraphs (a), (b) or (c), those proceedings must be a misconduct meeting.
- (11) Where the appropriate authority fails to make the determination referred to in paragraph (1) or (2) before the end of 15 working days beginning with the first working day after receipt of the report, it must notify the officer concerned of the reason for this.
- (12) In determining whether any criminal proceedings are to be treated as concluded for the purposes of this regulation, any right of appeal is to be disregarded.