
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the procedures for dealing with cases where an act or omission of a constable of the Police Service of Scotland (“the Police Service”) below the rank of assistant chief constable is 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. Regulation 4 requires the chief constable of the Police Service to designate a deputy chief constable (“the deputy chief constable”) to carry out functions under the Regulations. Regulation 5 and Schedule 1 describe the types of acts and omissions of a constable which amount to misconduct. Regulation 6 provides for a power to suspend a constable subject to a criminal or misconduct allegation and the circumstances in which a suspension may be terminated. Regulation 7 requires the deputy chief constable to maintain records of complaints against constables and of misconduct proceedings. Regulation 8 details powers to suspend or postpone proceedings under these Regulations in cases where there is an inference that a constable may have committed a criminal offence and permits the resumption of those proceedings where any criminal process is concluded.

Part 2 sets out the preliminary procedures for determining whether allegations of misconduct are to proceed to a misconduct hearing or are to be dealt with without recourse to such proceedings. Regulation 9 gives the deputy chief constable overall responsibility for misconduct matters and in particular requires that individual to establish and maintain procedures for the preliminary consideration of misconduct allegations and for the referral of those allegations, if appropriate, to formal investigation and adjudication processes.

Regulation 10 permits the deputy chief constable to deal personally with cases of minor or trivial misconduct and to appoint a constable of the Police Service to carry out a formal investigation in more serious cases. A constable carrying out such an investigation must, in accordance with regulation 11, report the findings of that investigation to the deputy chief constable. The deputy chief constable is empowered to require a constable under investigation to attend a misconduct hearing.

Regulation 12 allows the deputy chief constable to direct, if new information arises, that any allegation of misconduct previously referred to a misconduct hearing is not to be considered at that hearing.

Regulations 13 and 14 make provision about the preliminary steps to be taken before a misconduct hearing is arranged, including requirements as to the provision of information to the constable under investigation.

Part 3 establishes the procedures in relation to misconduct hearings. Regulation 15 places the general duty for arranging those hearings on the deputy chief constable and makes provision about the notification of the constable and witnesses. Regulation 16 allows the constable to vary a previous election not to be legally represented at a misconduct hearing. Regulation 17 makes provision about representation more generally, including provision about the appointment of an individual to present the case against the constable.

Regulation 18 requires the deputy chief constable to appoint a chairing constable for every misconduct hearing. That chairing constable is in turn permitted to appoint constables and, in certain cases, an advocate or solicitor to assist.

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

Regulations 19 to 22 make provision about the procedure to be followed at a misconduct hearing, including provision about the admission of written statements in lieu of oral evidence, adjournments, and the carrying on of proceedings in the absence of the constable being investigated.

Regulation 23 requires the chairing constable to determine any allegation being considered at the misconduct hearing. Regulations 24 and 25 specify the disposals available to the chairing constable in cases where the constable has either been found by the chairing constable to be guilty of misconduct or has admitted misconduct.

Part 4 makes provision about the appeal process in relation to findings of misconduct or disposals (or both). Regulations 26 to 28 require an appeal to be made to and determined by the chief constable of the Police Service in accordance with the procedures set out in those regulations.

Part 5 and Schedule 2 revoke the Police (Conduct) (Scotland) Regulations 1996 with savings and transitional modifications to deal with proceedings under those Regulations in relation to constables of police forces who are transferred to the Police Service which are not concluded on the date these Regulations come into force.