
SCOTTISH STATUTORY INSTRUMENTS

2013 No. 60

The Police Service of Scotland (Conduct) Regulations 2013

PART 2

Misconduct investigations

Preliminary investigation procedures

9.—(1) The deputy chief constable must establish and maintain procedures (“the procedures”) for the investigation of any report, allegation or complaint from which it can reasonably be inferred that an act or omission of a constable to whom these Regulations apply may amount to misconduct.

(2) The procedures must provide, in particular, for a report, allegation or complaint—

- (a) to be first considered by a constable of appropriate rank;
- (b) to be dealt with in accordance with the procedures where that constable considers that it involves an allegation of misconduct of a minor or trivial nature; and
- (c) where that constable considers that it involves an allegation of misconduct of any other type, to be referred to the deputy chief constable.

(3) The deputy chief constable must ensure that where a constable acting in pursuance of paragraph (2) considers that a report, allegation or complaint involves an allegation of misconduct of a minor or trivial nature, the procedures—

- (a) permit the constable against whom the allegation has been made an opportunity to make representations in relation to that report, allegation or complaint; and
- (b) permit a warning to be given by a constable of a higher rank (and require that constable to keep a record of any warning so given).

Cases referred to deputy chief constable

10.—(1) This regulation applies where a report, allegation or complaint of misconduct is referred to the deputy chief constable under regulation 9(2)(c).

(2) Where this regulation applies, the deputy chief constable may—

- (a) if there is sufficient evidence only of misconduct of a minor or trivial nature—
 - (i) give the constable an opportunity to make representations in relation to the report, allegation or complaint; and
 - (ii) arrange for a warning to be given by a constable of a rank higher than the constable (and require the constable giving the warning to keep a record of it); or
- (b) if there is sufficient evidence of misconduct of any other kind, appoint an investigating officer.

(3) An investigating officer must—

- (a) be of a higher rank than the constable under investigation; and

- (b) have, in the opinion of the deputy chief constable, the necessary skills, knowledge and expertise to carry out a misconduct investigation.
- (4) An investigating officer must not be—
 - (a) the chief constable;
 - (b) the deputy chief constable; or
 - (c) any other constable who—
 - (i) may be a witness to any act or omission giving rise to the allegation of misconduct; or
 - (ii) is interested in the matter otherwise than as a constable.
- (5) As soon as reasonably practicable after being appointed, the investigating officer must—
 - (a) prepare an investigation form containing details of the report, allegation or complaint of misconduct and informing the constable—
 - (i) that the constable may make representations in writing to the investigating officer in relation to that report, allegation or complaint;
 - (ii) that the constable may provide the names and addresses of any persons whom the constable may wish to provide evidence; and
 - (iii) that any representations made may be used as evidence during any future misconduct proceedings; and
 - (b) send a copy of the investigation form to the constable.
- (6) Paragraph (5)(a)(i) is without prejudice to any obligation on the constable to make a written or oral statement in the ordinary course of duty.

Investigating officer's report

- 11.—**(1) When an investigation form has been sent to the constable, the investigating officer must—
- (a) investigate the report, allegation or complaint of misconduct (including the taking of all reasonable steps to obtain statements from witnesses); and
 - (b) submit a report to the deputy chief constable.
- (2) A report submitted under paragraph (1)(b) must be accompanied by—
- (a) the investigation form;
 - (b) details of any representations made by the constable; and
 - (c) any statements obtained from witnesses.
- (3) The deputy chief constable must consider a report and any other papers submitted under this regulation and determine whether the constable is required to attend a misconduct hearing.
- (4) Where the deputy chief constable determines that the constable is required to attend a misconduct hearing, the deputy chief constable must—
- (a) prepare a misconduct form containing—
 - (i) details of the alleged acts or omissions which it is considered may amount to misconduct;
 - (ii) a statement of the deputy chief constable's reasons for considering that those acts or omissions may amount to misconduct; and
 - (iii) a notice requiring the constable to attend a misconduct hearing at a specified time and place; and
 - (b) send a copy of the misconduct form to the constable.

(5) The misconduct form must, where the deputy chief constable considers that a disposal mentioned in regulation 24(2)(a), (b) or (c) should be available to the chairing constable of the misconduct hearing—

- (a) inform the constable that those disposals will be available; and
- (b) notify the constable that the constable may elect to be legally represented at the misconduct hearing in accordance with regulation 14(1)(e).

(6) Where the deputy chief constable determines that the constable is not required to attend a misconduct hearing the deputy chief constable must, as soon as reasonably practicable, send to the constable a notice of that determination.

(7) Where the deputy chief constable has made a determination as mentioned in paragraph (6), but considers that there is sufficient evidence of misconduct of a minor or trivial nature, the deputy chief constable may—

- (a) arrange for the constable to be given an opportunity to comment on that evidence; and
- (b) if it is considered appropriate, arrange for the constable to be given a warning by another constable of a rank higher than the constable.

Dismissal of allegations

12. At any time before the conclusion of the misconduct hearing, the deputy chief constable may, if satisfied in the light of any new event or information received that it is not appropriate that any allegation as to misconduct be considered at that hearing—

- (a) direct that the allegation is not to be considered;
- (b) note that direction on the misconduct form; and
- (c) notify the constable in writing of that direction.

Documents to be supplied to the constable

13.—(1) As soon as reasonably practicable after notifying the constable of the requirement to attend a misconduct hearing (and before that hearing takes place), the deputy chief constable must provide the constable with a copy of—

- (a) the report, allegation or complaint giving rise to the misconduct proceedings;
- (b) any representations the constable may have made in response to the investigation form;
- (c) any statement relating to the alleged misconduct made by—
 - (i) any witness on whom the presenting officer intends to rely at the misconduct hearing; and
 - (ii) any other person.

(2) Where the decision to arrange a misconduct hearing is based on both a report, allegation or complaint of misconduct and a statement made by the complainer in relation to that report, allegation or complaint, that statement must be sent to the constable at the same time as the report, allegation or complaint.

(3) If satisfied on grounds of national security that any report, allegation or complaint should not be disclosed, the deputy chief constable may withhold that report, allegation or complaint from the constable.

(4) Where a report, allegation or complaint is withheld under paragraph (3), the deputy chief constable must, so far as is reasonably possible without prejudicing national security, disclose to the constable a summary of that report, allegation or complaint.

(5) In this regulation, any reference to a copy of a statement, report, allegation or complaint which was not made in writing includes a reference to a copy of any record of that statement, report, allegation or complaint.

Response to misconduct form

14.—(1) On receipt of the misconduct form, the constable must notify the deputy chief constable as to whether the constable—

- (a) admits or denies any or all allegations of misconduct;
- (b) intends to make representations at the misconduct hearing;
- (c) intends to be represented at that hearing by another constable;
- (d) proposes to lead evidence from witnesses at that hearing (and, if so, the constable must provide the names of those witnesses); and
- (e) intends to be legally represented in any case where legal representation is permitted (see regulation 11(5)).

(2) The constable must provide the notification required by paragraph (1) by—

- (a) entering the information mentioned in that paragraph on the copy of the misconduct form;
- (b) signing that copy; and
- (c) returning that copy to the deputy chief constable within the specified time period.

(3) For the purposes of paragraph (2), the specified time period is the period of 14 days beginning on the later of the days on which—

- (a) the misconduct form was sent to the constable; or
- (b) the last of the documents mentioned in regulation 13(1), (2) and (as the case may be) (4) was sent to the constable.

(4) The deputy chief constable may extend the specified time period.

(5) The deputy chief constable may, on an application made in writing by the constable at any time before the misconduct hearing, permit the constable to lead evidence at the misconduct hearing from any witnesses not specified in accordance with paragraph (1)(d).

(6) The deputy chief constable must provide the investigating officer with the details of any witnesses from whom the constable proposes to lead evidence and the investigating officer must—

- (a) so far as is reasonably practicable, invite those witnesses to provide a statement; and
- (b) provide a copy of any such statements to the constable.