
SCOTTISH STATUTORY INSTRUMENTS

2013 No. 60

The Police Service of Scotland (Conduct) Regulations 2013

PART 3

Misconduct hearings

Arrangement of misconduct hearing

15.—(1) The deputy chief constable must make all necessary arrangements for the misconduct hearing, including determining the time, date and place of the hearing.

(2) The deputy chief constable must by notice in writing require the constable to attend the misconduct hearing at the time, date and place specified in the notice.

(3) Where—

(a) the hearing arises from a report, allegation or complaint made by a member of the public; and

(b) the constable denies the allegation of misconduct (or any part of that allegation),

the deputy chief constable must give notice to the member of the public of the time, date and place of the hearing and explain to that individual the effect of regulation 19(4).

(4) Any notice required to be given under paragraph (2) or (3) must be sent by the deputy chief constable not less than 21 days before the date of the misconduct hearing.

(5) The constable may waive in writing the constable's entitlement to receive 21 days' notice of the misconduct hearing.

(6) The deputy chief constable must take all reasonable steps to secure the attendance at the hearing of any witnesses required to give evidence.

(7) Where the deputy chief constable considers it necessary or expedient, the misconduct hearing may be postponed to such later date as the deputy chief constable determines.

(8) The procedures set out in this regulation apply to a postponed hearing, except that a notice given under paragraph (2) in relation to a postponed misconduct hearing may be sent less than 21 days before the date of that hearing.

Variation of constable's decision as to legal representation

16.—(1) Where the constable has, under regulation 14(1)(e), notified the deputy chief constable of an intention not to be legally represented, the constable may by notice in writing to the deputy chief constable vary that decision.

(2) A notice given under paragraph (1)—

(a) is valid only—

(i) if received by the deputy chief constable not less than 48 hours before the time fixed for the misconduct hearing; or

- (ii) if received less than 48 hours before that time, where the deputy chief constable accepts it late; and
- (b) if valid, has the effect of permitting the constable to be legally represented.
- (3) Where the deputy chief constable accepts a notice late under paragraph (1), the misconduct hearing may be postponed for a period not exceeding 48 hours from the time fixed for that hearing.

Representation at misconduct hearing

17.—(1) The deputy chief constable must appoint a constable of a rank equal to or above that of the constable to present the case against the constable and that individual may be assisted by—

- (a) another constable; or
- (b) a member of the police staff.

(2) But if the constable has given notice of an intention to be legally represented, the case against the constable may be presented by an advocate or a solicitor (whether or not the constable is legally represented).

(3) The deputy chief constable must not appoint under paragraph (1) or (2)—

- (a) the chief constable;
- (b) the deputy chief constable;
- (c) the investigating officer; or
- (d) any individual who is a witness to the conduct forming the subject matter of the proceedings under these Regulations.

(4) The case for the constable may be presented by—

- (a) the constable;
- (b) another constable chosen by the constable; or
- (c) in a case where the constable has given notice of an intention to be legally represented, an advocate or a solicitor.

(5) References in this regulation to the constable having given notice of an intention to be legally represented are to a notice of intention given in accordance with regulation 14(1)(e) or a valid notice varying a decision as to legal representation given in pursuance of regulation 16.

Misconduct hearing: preliminary procedure

18.—(1) The deputy chief constable must appoint a constable of at least the rank of superintendent to act as the chairing constable at the misconduct hearing.

(2) The chairing constable may appoint—

- (a) up to two other constables of at least the rank of superintendent to assist the chairing constable as assessors; and
- (b) in a case where the constable has given notice of an intention to be legally represented, an advocate or a solicitor to assist the chairing constable as a legal assessor.

(3) Where the constable considers that the facts alleged in the misconduct form in relation to any allegation of misconduct are not such as to support that allegation, the constable may, not less than 7 days before the date of the misconduct hearing, send a notice of objection to the deputy chief constable.

(4) Where such a notice is received by the deputy chief constable it must, as soon as reasonably practicable, be provided to the chairing constable.

(5) The chairing constable must consider any objection made under paragraph (3) at the beginning of the misconduct hearing and must—

- (a) determine whether to uphold that objection; and
- (b) if that objection is upheld, make a finding that there has been no misconduct on the part of the constable in relation to the allegation against which the objection was made.

Procedure at misconduct hearing

19.—(1) Subject to regulation 18(5) and the following paragraphs of this regulation, the procedure at the misconduct hearing is to be determined by the chairing constable.

(2) The constable must be given an opportunity to admit any allegation of misconduct and if an admission is made the chairing constable—

- (a) must provide an opportunity for representations to be made by—
 - (i) the presenting officer; and
 - (ii) the constable; and
- (b) may, having considered any representations made, act in accordance with regulation 24 in relation to any allegation admitted.

(3) The misconduct hearing is to be held in private, but—

- (a) where a person is giving evidence, the chairing constable may allow such other persons to attend as seem reasonable by virtue of any special circumstances (and, in particular, a parent or guardian may be allowed to attend where a child is giving evidence);
- (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 of that allegation), the chairing constable may allow the complainer to attend while witnesses are giving evidence; and
- (c) the chairing constable may allow the attendance of such other persons as may be agreed by the presenting officer and the constable.

(4) A complainer who is allowed to attend the misconduct hearing by virtue of paragraph (3)(b)—

- (a) must not participate in the proceedings in any way unless giving evidence as a witness;
- (b) must not, if being called as a witness, be allowed to attend before giving evidence;
- (c) must be excluded from the proceedings where—
 - (i) the chairing constable considers that information may be disclosed which should not, in the public interest, be disclosed to a member of the public; or
 - (ii) the complainer behaves in a disorderly manner; and
- (d) may be excluded from the proceedings in any other circumstances.

(5) The constable may give evidence at the misconduct hearing.

(6) The constable may call witnesses to give evidence in support of the denial of any allegation of misconduct.

(7) The chairing constable or the presenting officer may ask questions of—

- (a) the constable; and
- (b) any person called to give evidence in support of the constable's case.

(8) The presenting officer may call witnesses and the constable may ask questions of those witnesses.

(9) Any question as to the admissibility of evidence or whether any question should or should not be put to a witness is to be determined by the chairing constable.

- (10) When all evidence has been led, concluding submissions may be made—
 - (a) by the presenting officer; and
 - (b) thereafter, by the constable.
- (11) The chairing constable must—
 - (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.
- (12) References in paragraphs (2)(a)(ii), (6), (8) and (10)(b) of this regulation and regulation 20(1) and (3)(a) to “the constable” include a reference to any person presenting the constable’s case.

Written statements

- 20.**—(1) The presenting officer or the constable may, in lieu of oral evidence, propose to submit a written statement of evidence.
- (2) The individual proposing to submit a written statement of evidence in pursuance of paragraph (1) must—
 - (a) not less than 21 days (or such shorter period as may be agreed in writing) before the date of the misconduct 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 without the maker of the statement being called as a witness; and
 - (b) not less than 10 days (or such shorter period as may be agreed in writing) before the date of the misconduct hearing lodge the resulting minute of agreement with the deputy chief constable.
- (3) The chairing constable may admit evidence by way of a written statement in lieu of oral evidence only if—
 - (a) that statement is accompanied by a minute of agreement between the presenting officer and the constable;
 - (b) either of those parties requests the chairing constable to admit the written statement and the other party does not object; and
 - (c) the evidence contained in the statement would have been admissible if given orally.
- (4) Despite the admission of a written statement under paragraph (3), the chairing constable may—
 - (a) determine that the person who gave the statement should be called to give oral evidence; and
 - (b) disregard the evidence contained in the written statement should that person fail to give oral evidence.
- (5) Nothing in this regulation affects the admission of written evidence which would otherwise be admissible.

Adjournments

- 21.**—(1) The chairing constable may from time to time adjourn the misconduct hearing to a later time or date should it appear necessary or expedient to do so.
- (2) Where a hearing is adjourned to a later date under this regulation, the chairing constable must as soon as reasonably practicable provide a written notice of the time, date and place of the adjourned hearing to—

- (a) the constable;
- (b) any person representing the constable;
- (c) the complainer; and
- (d) any witnesses.

Hearing in the constable's absence

- 22.**—(1) If the constable fails to attend the misconduct hearing—
- (a) the hearing may be proceeded with and concluded in the constable's absence, provided that the chairing constable considers it just and appropriate to do so; and
 - (b) any part of the procedure described in these Regulations which cannot be complied with in the constable's absence may be treated as if it had been complied with.
- (2) But the hearing must not be proceeded with and concluded in the constable's absence if—
- (a) the constable is detained while serving the sentence of a court in a prison or other institution in the United Kingdom, Channel Islands or Isle of Man and wishes to make representations in person at the hearing; or
 - (b) any other reason is given by virtue of which the chairing constable considers that the hearing should not be proceeded with and concluded in the constable's absence.
- (3) In a case mentioned in paragraph (2), the misconduct hearing must be postponed.

Determination on allegation of misconduct

23.—(1) At the conclusion of the misconduct hearing, the chairing constable must make a determination on any allegation of misconduct against the constable.

(2) A determination under paragraph (1) may be deferred until a later time or date if the chairing constable considers that it is necessary to do so.

(3) The chairing constable's determination must be recorded on the misconduct form and must state—

- (a) whether the chairing constable finds that any act or omission recorded in the misconduct form amounts to misconduct;
- (b) the disposal (or, as the case may be, disposals) ordered under regulation 24; and
- (c) the reasons for the chairing constable's finding and any disposal ordered.

(4) When the chairing constable's determination has been recorded in the misconduct form, the chairing constable must, as soon as reasonably practicable, send to the deputy chief constable and the constable—

- (a) the completed misconduct form;
- (b) the chairing constable's written note of the misconduct hearing (see regulation 19(11)); and
- (c) the audio recording of the misconduct hearing.

(5) If the misconduct hearing has arisen out of a complaint made by a member of the public, the chairing constable must notify the complainer in writing of the determination under this regulation.

Disposals

- 24.**—(1) This regulation applies where—
- (a) the constable admits an allegation of misconduct in pursuance of regulation 19(2); or
 - (b) the chairing constable finds that an act or omission of the constable amounts to misconduct.

(2) Where this regulation applies, the chairing constable may order in relation to the constable one of the following disposals—

- (a) dismissal (with or without notice);
- (b) requirement to resign from the Police Service at a specified date as an alternative to dismissal;
- (c) demotion in rank;
- (d) reduction in pay for a specified period (not exceeding 12 months);
- (e) fine; or
- (f) admonition.

(3) Where separate admissions or findings of misconduct have been made in relation to separate acts or omissions detailed in the misconduct form, separate disposals may be ordered in relation to each admission or finding.

(4) When considering whether to order a disposal, the chairing constable—

- (a) must have regard to the constable's personal record; and
- (b) may invite another constable of a rank higher than the constable to give an oral statement on the character of the constable, provided that, where such a statement is made, the constable and any individual representing the constable is given an opportunity to comment on that statement.

(5) Where a disposal under paragraph (2)(b) is ordered and the constable fails to resign by the specified date, the constable is to be treated as having been dismissed from that date.

Limitations on disposals

25.—(1) The disposals mentioned in regulation 24(2)(a), (b) or (c) must not be ordered if the constable has not been given an opportunity to be legally represented at the misconduct hearing in accordance with regulation 11(5).

(2) A disposal mentioned in regulation 24(2)(a), (b) or (c) may be ordered if the constable has been given the opportunity to be legally represented, but—

- (a) has failed without reasonable cause to notify an intention to be legally represented; or
- (b) has given notice of an intention not to be legally represented.

(3) Where a disposal under regulation 24(2)(d) is ordered, the total reduction in pay must not reduce the constable's pay to an amount which is—

- (a) two categories lower than the pay category which is applicable to the constable;
- (b) lower than point 2 on the pay scale determined by Ministers under regulation 16 of the Police Service of Scotland Regulations 2013(1).

(4) Where a disposal under regulation 24(2)(e) is ordered in relation to one or more findings of misconduct—

- (a) the sum of all fines imposed must not exceed one week of the constable's pay; and
- (b) those fines are to be recovered by weekly deductions from pay not exceeding one seventh of the constable's weekly pay (unless the constable leaves the Police Service, in which case the whole amount of any unpaid fines may be deducted from any pay due).

(5) A fine or a reduction in the rate of pay must not result in any increment in pay being deferred or withheld.

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