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SCOTTISH STATUTORY INSTRUMENTS

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**2013 No. 62**

**The Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013**

**PART 1**

**General**

**Citation and commencement**

1. These Regulations may be cited as the Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013 and come into force on 1st April 2013.

**Interpretation**

2. In these Regulations—

“the Act” means the Police and Fire Reform (Scotland) Act 2012<sup>(1)</sup>;

“appeal hearing” means a hearing held by virtue of regulation 26(5)(a) to determine an appeal by the senior officer;

“appeal notice” means a written appeal notice sent under regulation 25(4);

“audio recording” means a recording made on any disc, tape or other device on which sounds are recorded so as to be capable of being reproduced;

“chairing member of the panel” means the individual appointed by virtue of regulation 18(2)(a);

“Commissioner” means the Police Investigations and Review Commissioner;

“conduct” includes acts and omissions;

“disciplinary action” means the action mentioned in regulation 23(3);

“gross misconduct” means a breach of the Standards of Professional Behaviour so serious that dismissal may be justified;

“investigator” means—

(a) in a case where the Commissioner is required or decides to carry out a misconduct investigation by virtue of regulation 9, a member of the Commissioner’s staff appointed in accordance with regulation 10(2)(b) to carry out that investigation on the Commissioner’s behalf; or

(b) in any other case, an individual appointed in accordance with regulation 11;

“improvement action” means action intended to improve the conduct of the senior officer;

“misconduct” means conduct which amounts to a breach of the Standards of Professional Behaviour;

“misconduct allegation” means any report, allegation or complaint from which it can reasonably be inferred that any conduct of the senior officer may amount to misconduct or gross misconduct;

“misconduct form” means the form sent in accordance with regulation 16(2);

“misconduct hearing” means a hearing arranged under regulation 16 to determine whether any conduct of the senior officer amounts to misconduct or, as the case may be, gross misconduct;

“misconduct investigation” means an investigation into whether the senior officer has a case to answer in relation to a misconduct allegation;

“panel” means the panel appointed under regulation 18(1);

“police friend” means an individual chosen by the senior officer in accordance with regulation 4;

“proved” means established on a balance of probabilities;

“Standards of Professional Behaviour” means the standards set out in Schedule 1;

“the senior officer” means a senior officer in respect of whom a misconduct allegation has been made and who is subject, in relation to that allegation, to any proceedings under these Regulations;

“working day” means any day other than—

- (a) a Saturday or Sunday;
- (b) a day which is a bank holiday in Scotland within the meaning given by paragraph 2 of Schedule 1 to the Banking and Financial Dealings Act 1971(2); or
- (c) a day which is a public holiday in Scotland.

### **Application**

**3.—**(1) These Regulations apply only to conduct of a senior officer occurring on or after 1st April 2013.

(2) These Regulations do not apply to conduct on the part of any individual engaged in service as a constable of the Police Service—

- (a) under arrangements made under section 16 of the Act; or
- (b) by virtue of paragraph 8(2) of schedule 5 to the Act.

### **Police friend**

**4.—**(1) The senior officer may choose any of the following to act as the senior officer’s police friend—

- (a) a constable;
- (b) a member of the police staff; or
- (c) an individual nominated by the senior officer’s staff association.

(2) But the senior officer may not choose as a police friend any individual who is otherwise involved in the conduct under investigation in accordance with these Regulations.

(3) A police friend may—

- (a) advise the senior officer throughout any proceedings under these Regulations;

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(2) 1971 c.80. Paragraph 2 of Schedule 1 has been amended by section 1 of the St Andrew’s Day Bank Holiday (Scotland) Act 2007 (asp 2).

- (b) unless the senior officer is entitled to be legally represented and chooses to be so represented, represent the senior officer at the misconduct hearing; and
- (c) accompany the senior officer to any interview or hearing which forms part of any proceedings under these Regulations.

(4) The chief constable must permit any constable or member of the police staff acting as a police friend under these Regulations to use a reasonable amount of duty time for the purpose of performing the functions mentioned in paragraph (3).

### **Legal representation**

5.—(1) The senior officer is, in accordance with this regulation, entitled to be legally represented at any misconduct hearing or appeal hearing by an advocate or solicitor of the senior officer's choice.

(2) If the senior officer intends to be represented in accordance with paragraph (1), the senior officer must—

- (a) in the case of a misconduct hearing, notify the chairing member of the panel of that intention not less than 5 working days before the date of that hearing; and
- (b) in the case of an appeal hearing, notify the Authority of that intention not less than 5 working days before the date of that hearing.

(3) Where the senior officer does not make a notification under paragraph (2), the senior officer—

- (a) is not entitled to be legally represented; and
- (b) may be dismissed or receive, in accordance with these Regulations, any other disciplinary or improvement action without being so represented.

(4) This regulation is without prejudice to the senior officer's right to be represented by a police friend at a misconduct hearing or appeal hearing.

### **Suspension**

6.—(1) The Authority may suspend a senior officer from the office of constable where an allegation comes to the Authority's attention from which it can reasonably be inferred that any conduct of that officer may—

- (a) constitute a criminal offence; or
- (b) amount to misconduct.

(2) But the Authority must not suspend a senior officer unless at least one of the conditions mentioned in paragraph (3) ("the suspension conditions") is satisfied.

(3) The suspension conditions are that—

- (a) an effective criminal or misconduct investigation may be prejudiced if the senior officer is not suspended; and
- (b) having regard to the nature of the allegation and any other relevant considerations, the public interest requires the senior officer's suspension.

(4) The Authority must notify the senior officer in writing of any decision to suspend that officer and the reasons for that decision.

(5) A suspension under this regulation—

- (a) has effect from the date of the written notice given under paragraph (4); and
- (b) must be reviewed by the Authority—
  - (i) not more than 4 weeks from that date;
  - (ii) not more than 4 weeks from the date of the previous review (if any); and

(iii) where the Authority is notified that circumstances relevant to the suspension conditions may have changed.

(6) In carrying out a review in accordance with paragraph (5)(b), the Authority must consider any representations made by the senior officer.

(7) The Authority may terminate a suspension imposed under paragraph (1) with effect either from the date of the suspension or any other date and must do so where—

- (a) it determines that the suspension conditions are no longer satisfied;
- (b) a decision is taken not to proceed with proceedings under these Regulations; or
- (c) subject to paragraph (8), proceedings under these Regulations have concluded.

(8) Where a senior officer who is suspended is dismissed with notice, that suspension is to subsist until the end of the notice period.

### **Alleged offences**

7.—(1) Where the Authority considers that it can reasonably be inferred that a senior officer may have committed a criminal offence, it—

- (a) must refer the matter to the appropriate prosecutor; and
- (b) may suspend or postpone any proceedings under these Regulations until the appropriate prosecutor intimates that—
  - (i) criminal proceedings are not to be brought in respect of any matter mentioned in the misconduct allegation; or
  - (ii) any criminal proceedings which have been brought have been concluded.

(2) Where proceedings are suspended or postponed under paragraph (1)(b), the Authority must inform the senior officer that—

- (a) those proceedings have been suspended or postponed; and
- (b) those proceedings, or any other proceedings under these Regulations, may be taken against the senior officer whether or not criminal proceedings are brought against the senior officer and regardless of the outcome of those proceedings.

(3) In this regulation, “appropriate prosecutor” means—

- (a) where the offence is alleged to have been committed in Scotland, the procurator fiscal; or
- (b) where the offence is alleged to have been committed in any other part of the United Kingdom, Channel Islands or Isle of Man the person who—
  - (i) has responsibility for deciding whether to institute criminal proceedings in that place; or
  - (ii) has instituted such proceedings in relation to the offence.