
SCOTTISH STATUTORY INSTRUMENTS

2013 No. 62

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

PART 2

Investigations

Preliminary assessment

8.—(1) This regulation applies where a misconduct allegation comes to the attention of the Authority.

(2) The Authority must assess whether the conduct which is the subject matter of the misconduct allegation would, if that conduct were proved, amount to—

- (a) misconduct;
- (b) gross misconduct; or
- (c) neither.

(3) Where the Authority assesses that the conduct would, if proved, amount to neither misconduct nor gross misconduct, it may—

- (a) take no action;
- (b) take improvement action; or
- (c) refer the matter to be dealt with under procedures maintained under regulation 23 of the Police Service of Scotland (Performance) Regulations 2013.

(4) Where the Authority assesses that the conduct would, if proved, amount to either misconduct or gross misconduct, it must decide whether the misconduct allegation is to be investigated and—

- (a) if it is to be investigated, it must refer the allegation to the Commissioner; and
- (b) if it is not to be investigated, it may—
 - (i) take no further action; or
 - (ii) take improvement action.

Assessment by Commissioner

9.—(1) Where a misconduct allegation is referred to the Commissioner in pursuance of regulation 8(4)(a), the Commissioner must assess whether the conduct which is the subject matter of that allegation would, if that conduct were proved, amount to—

- (a) misconduct;
- (b) gross misconduct; or
- (c) neither.

(2) Where the Commissioner assesses that the conduct which is the subject matter of the misconduct allegation would, if proved, amount to gross misconduct, the Commissioner must investigate the allegation.

(3) Where the Commissioner assesses that the conduct which is the subject matter of the misconduct allegation would, if proved, amount to misconduct, the Commissioner may—

- (a) investigate the allegation; or
- (b) refer the allegation back to the Authority (with such recommendations as are considered appropriate).

(4) Where the Commissioner assesses that the conduct which is the subject matter of the misconduct allegation would amount to neither misconduct nor gross misconduct, the Commissioner must refer the allegation back to the Authority (with such recommendations as are considered appropriate).

Investigation by Commissioner

10.—(1) This regulation applies where the Commissioner—

- (a) is required by virtue of regulation 9(2); or
- (b) decides in pursuance of regulation 9(3)(a),

to carry out a misconduct investigation.

(2) Where this regulation applies, the Commissioner must—

- (a) inform the Authority that the Commissioner is to carry out a misconduct investigation; and
- (b) appoint a member of the Commissioner's staff to carry out that investigation on the Commissioner's behalf.

Investigation by the Authority

11.—(1) Where the Commissioner has referred a misconduct allegation back to the Authority under regulation 9(3)(b) or (4), the Authority may—

- (a) carry out a misconduct investigation;
- (b) take improvement action; or
- (c) refer the matter to be dealt with under procedures maintained under regulation 23 of the Police Service of (Scotland) Performance Regulations 2013.

(2) Where the Authority decides, in accordance with paragraph (1)(a), to carry out a misconduct investigation it must—

- (a) appoint a member of the Authority's staff as an investigator;
- (b) make arrangements with the chief constable for the appointment of a constable as an investigator; or
- (c) make arrangements for the appointment of an individual falling within paragraph (3) as an investigator.

(3) An individual falls within this paragraph if the individual is a member of—

- (a) a police force maintained under section 2 of the Police Act 1996(1);
- (b) the metropolitan police force;
- (c) the City of London police force;
- (d) the Police Service of Northern Ireland;

(1) 1996 c.16. Section 2 has been amended by Schedule 16 to the Police Reform and Social Responsibility Act 2011 (c.13).

- (e) the British Transport Police Force;
- (f) the States of Jersey Police Force;
- (g) the salaried police force of the Island of Guernsey; or
- (h) the Isle of Man Constabulary.

(4) A constable appointed in pursuance of paragraph (2)(b) is, for the purposes of the misconduct investigation—

- (a) engaged on temporary service outwith the Police Service; and
- (b) under the direction and control of the Authority.

(5) The Authority is liable in respect of the carrying out of any unlawful conduct on the part of a constable appointed under arrangements made under paragraph (2)(b) in the carrying out (or purported carrying out) of that constable's functions in relation to the misconduct investigation in the same manner as an employer is liable in respect of any unlawful conduct on the part of an employee in the course of employment.

(6) An individual appointed in accordance with paragraph (2) must not be—

- (a) a senior officer;
- (b) a constable working directly under the management of the senior officer; or
- (c) any other individual whose appointment could give rise to a reasonable concern as to whether that individual could act impartially in relation to the misconduct investigation.

(7) An individual appointed in accordance with paragraph (2) must have, in the opinion of the Authority, the necessary knowledge, skills and expertise to plan and manage the misconduct investigation in relation to which the appointment is made.

(8) If, during the course of the misconduct investigation, the Authority considers that by reason of the scale or complexity of the case a different investigator should be appointed it may—

- (a) appoint, or arrange for the appointment of, an individual to replace the investigator originally appointed; or
- (b) request the Commissioner to carry out the misconduct investigation.

(9) Paragraphs (2) to (7) apply to the appointment of a replacement investigator.

Notice of investigation

12. The investigator must, as soon as reasonably practicable following appointment, give the senior officer written notice—

- (a) that the senior officer is the subject of a misconduct investigation;
- (b) specifying—
 - (i) the conduct forming the subject matter of the misconduct allegation; and
 - (ii) how that conduct is alleged to fall below the Standards of Professional Behaviour;
- (c) providing an initial assessment of whether, if proved, that conduct would amount to misconduct or gross misconduct; and
- (d) providing the senior officer with an opportunity to make written or oral representations.

Misconduct interview

13.—(1) The investigator—

- (a) in a case where the senior officer intimates an intention to make oral representations, must arrange an interview with the senior officer; and

- (b) in any other case, may arrange such an interview.
- (2) The investigator must seek to agree with the senior officer a time and date for the interview.
- (3) If no agreement is made under paragraph (2), the investigator must specify a date and time for the interview.
- (4) The senior officer must be provided with a written notice of the date, time and place of the interview.
- (5) The investigator must, in advance of the interview, provide the senior officer with such information as the investigator considers appropriate in the circumstances to enable the senior officer to prepare for the interview.
- (6) Without prejudice to the generality of paragraph (5), the information provided to the senior officer in advance of the interview must include details of the allegations made against that officer, including—
 - (a) the dates on which (or approximate dates on which); and
 - (b) the places at which,any misconduct or gross misconduct is alleged to have occurred.
- (7) An audio recording may be made of an interview and, where such a recording is made, the senior officer must be provided with a copy of that recording.
- (8) Where no audio recording is made under paragraph (7), a written record of the interview must be prepared by the investigator and—
 - (a) a draft of that record must be provided to the senior officer;
 - (b) the senior officer must be given the opportunity to make representations in relation to that draft;
 - (c) the investigator must consider any representations made; and
 - (d) having considered those representations (if any), the investigator must send the final written record of the interview to the senior officer.

Investigator's report

- 14.—(1) At the conclusion of the misconduct investigation, the investigator must—
 - (a) determine whether, in the investigator's opinion, the senior officer has a case to answer in relation to the misconduct allegation; and
 - (b) submit a written report to the Authority.
- (2) A report submitted in accordance with paragraph (1) must contain—
 - (a) a summary of any evidence obtained by the investigator; and
 - (b) the investigator's opinion as to whether the misconduct allegation should be referred to a misconduct hearing.
- (3) The investigator must send with the report mentioned in paragraph (1) any documents or other information relevant to that report or to the investigation including, in particular—
 - (a) a copy of any audio recording made of an interview under regulation 13(7); and
 - (b) any written record of such an interview.

Referral to misconduct hearing

- 15.—(1) On receipt of the investigator's report, the Authority must, as soon as reasonably practicable, determine whether the senior officer has a case to answer in respect of—

- (a) misconduct;
 - (b) gross misconduct; or
 - (c) neither.
- (2) Where the Authority determines that the senior officer has no case to answer in respect of either misconduct or gross misconduct, it may—
- (a) take no action;
 - (b) take improvement action; or
 - (c) refer the matter to be dealt with under procedures maintained under regulation 23 of the Police Service of Scotland (Performance) Regulations 2013.
- (3) Where the Authority determines that the senior officer has a case to answer in respect of either misconduct or gross misconduct, it must refer the misconduct allegation to a misconduct hearing.