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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision for the procedures for dealing with cases where the conduct of constables of the Police Service of Scotland (“the Police Service”) below the rank of assistant chief constable are 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 including, with Schedule 1, setting out the meaning of misconduct and gross misconduct. Regulation 4 revokes the existing Regulations dealing with the conduct of constables and makes transitional provision in relation to that revocation.

Regulation 5 requires the chief constable of the Police Service to designate a deputy chief constable to carry out certain functions under the Regulations and allows that deputy chief constable, in turn, to delegate those functions to another constable of chief inspector rank or above.

Regulations 6 and 7 make provision about the representation to which a constable is entitled in relation to proceedings under these Regulations.

Regulation 8 provides constables with a power to suspend other constables who are junior in rank where those junior constables are suspected of misconduct or of commission of a criminal offence. Certain conditions must be satisfied before suspension is permitted. Regulation 9 requires the deputy chief constable to report to an appropriate prosecutor in cases where a constable is suspected of having committed an offence. Proceedings under these Regulations may be suspended or postponed in such circumstances.

Part 2 deals with the investigation of misconduct allegations. Regulation 10 requires the deputy chief constable to carry out a preliminary assessment as to whether an allegation, if proved, would amount to misconduct or gross misconduct. Where the deputy chief constable considers the allegation would not amount to misconduct, no further action may be taken, action to improve the constable’s conduct may be ordered or the matter may be referred to be dealt with under procedures relating to performance. If the deputy chief constable assesses that the conduct would amount to misconduct an investigator may be appointed to investigate the allegation.

Regulation 11 requires an investigator to notify the constable that a misconduct investigation is to take place. Regulation 12 makes provision for the investigator to interview the constable as part of that investigation. Regulation 13 requires the investigator to report to the deputy chief constable on whether the constable has a case to answer in relation to the misconduct allegation. The deputy chief constable must then determine, in accordance with regulation 14, whether to refer the matter to a misconduct meeting or a misconduct hearing. The former is available where the misconduct allegation infers misconduct and no final written warning is in effect in respect of the constable. The latter is available only where gross misconduct is alleged or where simple misconduct is alleged and such a warning is in effect. Meetings and hearings are referred to collectively as “misconduct proceedings”.

Part 3 makes provision about misconduct proceedings and the sanctions available in those proceedings. Regulation 15 requires a misconduct form to be sent to the constable detailing the conduct forming the subject matter of the misconduct allegation and the date, time and location of the misconduct hearing or meeting. Copies of the investigator’s report and a list of witnesses are among the items which must be sent with the form. The constable is required to respond to the misconduct form indicating whether the misconduct allegation is accepted and any information the constable intends to rely on at the misconduct proceedings.

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

By virtue of regulation 16 the deputy chief constable must appoint another constable to conduct the misconduct proceedings and regulation 17 makes provision about the witnesses who may be asked to attend those proceedings. The process to be followed at the proceedings themselves is set out in regulations 18 to 20 which make provision in particular about proceedings when the constable is not present (regulation 19) and the attendance of third parties (regulation 20).

At the conclusion of the misconduct proceedings the person conducting those proceedings must determine whether the conduct forming the subject matter of the misconduct allegation is conduct of the constable and whether it amounts to misconduct or (as the case may be) gross misconduct (regulation 21).

Where the constable is found to be guilty of misconduct or gross misconduct, regulation 22 sets out the disciplinary action which may be taken. This includes a verbal warning, a written warning, a final written warning, demotion and dismissal (with or without notice). The constable must be notified in writing both of the finding in relation to the misconduct allegation and the disciplinary action to be taken.

Part 4 sets out the process for appealing against the outcome of misconduct proceedings. The constable is, by virtue of regulation 24, entitled to appeal against the finding that the constable is guilty of misconduct, the disciplinary action ordered or both. Such an appeal may be made by submission of an appeal notice to the deputy chief constable. Regulation 25 provides that the deputy chief constable must appoint another constable to determine the appeal. This may be done either with or without holding an appeal hearing. Regulation 26 specifies the possible outcomes of an appeal which include confirming or reversing the finding that the constable is guilty of misconduct, confirming the disciplinary action ordered, ordering less severe disciplinary action, requiring improvement action to be taken instead of disciplinary action, referring the matter to be dealt with under performance procedures or remitting the case back to the person who conducted the misconduct proceedings. Regulation 27 sets out the procedure to be followed when a case is remitted back.

Part 5 and Schedule 2 modify the Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013, the Police Service of Scotland Regulations 2013 and the Police Appeals Tribunal (Scotland) Rules 2013.