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**STATUTORY INSTRUMENTS**

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**1985 No. 1758 (S. 133)****FIRE SERVICES****The Fire Services (Discipline) (Scotland) Regulations 1985**

*Made* - - - - - 13th November 1985  
*Laid before Parliament* 28th November 1985  
*Coming into Operation* 16th December 1985

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## CODE OF DISCIPLINE

In exercise of the powers conferred on me by section 17 of the Fire Services Act 1947(a), and after consultation and approval in accordance with subsection (4) of the said section 17, and of all other powers enabling me in that behalf, I hereby make the following regulations:—

## PART I

## GENERAL

*Citation, commencement and extent*

1.— (1) These regulations may be cited as the Fire Services (Discipline) (Scotland) Regulations 1985 and shall come into operation on 16th December 1985.

(2) These regulations shall extend to Scotland only.

*Revocations and transitional provisions*

2.— (1) The Fire Services (Discipline) (Scotland) Regulations 1953(b) and the Fire Services (Discipline) (Scotland) Regulations 1965(c) are hereby revoked.

(2) Without prejudice to section 16 of the Interpretation Act 1978(d), in relation to a charge preferred before [16th December 1985] under regulations revoked by paragraph (1), the said regulations shall continue to have effect and nothing in these regulations shall apply.

*Application and interpretation*

3.— (1) These regulations shall apply to any fireman, including any person whose employment is temporary only, who is appointed on terms under which he is or may be required to engage in fire-fighting, or who is engaged in duties in connection with the reception, transmission and recording of calls for the assistance of a brigade and with the transmission of instructions regarding the

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(a) 1947 c. 41, as amended by the Fire Services Act 1959 (c. 44).

(b) S.I. 1953/1086.

(c) S.I. 1965/1741.

(d) 1978 c. 30.

provision of such assistance by a brigade, notwithstanding that he is appointed on terms under which he is not required to engage in fire-fighting.

(2) In these regulations the following expressions have the meanings hereby respectively assigned to them that is to say—

“appeal committee” has the meaning assigned thereto by regulation 13(2);

“brigade” means a fire brigade maintained by a fire authority in Scotland under the provisions of the Fire Services Act 1947;

“disciplinary body” in relation to a particular case means the firemaster or disciplinary tribunal by whom the case falls to be heard under regulation 9 or a fireman nominated to hear the case under paragraph (3) of that regulation;

“disciplinary tribunal” or “disciplinary tribunal of the fire authority” has the meaning assigned to the latter expression by regulation 9(1)(b);

“firemaster” means the chief officer of the brigade;

“fireman” means a member of a brigade and includes any of the categories mentioned in paragraph (1) of this regulation;

“offence” has the meaning assigned thereto by regulation 4;

“principal officer” means a fireman holding the rank of assistant firemaster or above or the post of deputy firemaster;

“investigating officer” has the meaning assigned thereto by regulation 5.

(3) In these regulations any reference to a regulation shall be construed as a reference to a regulation contained in these regulations and a reference to a paragraph shall be construed as a reference to a paragraph in the same regulation.

(4) In these regulations any reference to a firemaster shall include a reference to the deputy firemaster acting in place of the firemaster in the absence of the firemaster.

(5) In these regulations any reference to a firemaster shall include a reference to a principal officer to whom the firemaster’s powers under the regulations have been delegated by the firemaster.

## PART II

### INVESTIGATION OF OFFENCES

#### *Disciplinary offences*

4. A fireman commits an offence against discipline if he commits an offence set out in the code of discipline contained in the Schedule hereto.

#### *Investigation*

5.—(1) Where a report or allegation is received from which it appears that a fireman or a principal officer (hereinafter referred to as “the accused fireman”) may have committed an offence, the report or allegation shall be referred to a fireman nominated by the firemaster or, where the accused fireman is a principal officer, nominated by the fire authority (hereinafter in these

regulations referred to as “the investigating officer”) who shall cause such report or allegation to be investigated.

(2) The investigating officer shall be a uniformed fireman of a rank equal to or above the rank of the fireman subject to investigation and, in any event, not below the rank which, in that fireman’s brigade, comes next below the rank immediately below that held by the firemaster.

(3) For the purposes of paragraph (2) the post of deputy firemaster, where it exists in a brigade, shall be treated as a rank.

#### *Summary dismissal*

6.— (1) Where from a preliminary investigation of the report or allegation, which shall include giving the accused fireman an opportunity to explain his conduct and hearing that explanation, if any, the investigating officer is of the opinion that—

- (a) commission of an offence by the accused fireman is established; and
- (b) that offence is of so serious a nature as to be capable of being punished only by dismissal; and
- (c) that no further investigation of the report or allegation is called for,

he shall report accordingly to the firemaster or, in the case of a principal officer, to the fire authority, and the firemaster or, as the case may be, the fire authority may dismiss the accused fireman forthwith.

(2) The firemaster or, as the case may be, the fire authority shall not dismiss any accused fireman in terms of this regulation unless the accused fireman shall have been given the opportunity to explain his conduct to the firemaster or, as the case may be, the fire authority, and for that purpose the accused fireman shall be entitled to the advice and assistance of another fireman, selected by him.

(3) Where an accused fireman is given an opportunity under paragraph (1) or (2) to explain his conduct to the investigating officer, the firemaster or the fire authority, he shall be—

- (a) informed that he is not obliged to say anything concerning the matter, and
- (b) warned that any explanation he does make may be used in any subsequent disciplinary proceedings.

(4) If the firemaster or, as the case may be, the fire authority—

- (a) on receiving such a report from the investigating officer, or
- (b) after hearing the accused fireman’s explanation

consider that commission of the offence by him is not sufficiently established or would not merit dismissal they shall remit the case to the investigating officer for further investigation and, if necessary, action under regulation 8.

(5) Where a case has been remitted under paragraph (4) above the provisions of paragraphs (1) to (4) and (6) of this regulation shall not thereafter apply.

(6) A fireman who has been dismissed under this regulation shall be entitled under these regulations to appeal against the dismissal as if he had been dismissed after a hearing under regulation 9.

(7) Except as otherwise expressly provided, regulations 7, 8, 9, 10 and 11 shall not apply in the case of any proceedings to which this regulation applies.

#### *Right of reply*

7. The investigating officer shall, as soon as practicable (and without prejudice to his or any other investigation of the matter) in writing—

- (a) inform the accused fireman that he is the subject of an investigation;
- (b) give him an opportunity to reply; and
- (c) warn him that he is not obliged to say anything but that any statement he does make in reply may be used in any subsequent disciplinary proceedings.

#### *Formulation of charges*

8.— (1) On completion of an investigation the investigating officer shall decide whether the accused fireman should be charged with an offence.

(2) If the investigating officer decides that the accused fireman should not be charged with an offence he shall forthwith so inform the accused fireman in writing.

(3) If the investigating officer decides that the accused fireman shall be charged with an offence he shall, as soon as possible, in writing charge the accused fireman, setting out the disciplinary offence with which he is charged together with such particulars as will clearly show the precise nature of the alleged offence.

(4) When the accused fireman is charged he shall also be given, as soon as possible, copies of any report, complaint, or other written allegation on which the charge is founded, and any reports or statements made to the investigating officer in relation to the charge, notwithstanding that they may be confidential.

### PART III

#### HEARINGS AND INTERNAL APPEALS

##### *Hearing*

9.— (1) Save as provided in paragraphs (2) and (3), where an accused fireman has been charged with an offence under regulation 8(3), the case shall be heard as the firemaster may determine, by—

- (a) the firemaster, or
- (b) the disciplinary tribunal of the fire authority, that is to say, a committee of the fire authority designated as such by the authority or a sub-committee of such a committee.

(2) A case shall be heard by the disciplinary tribunal of the fire authority if either—

- (a) the fireman is a principal officer, or
- (b) the case is of a class or description which the fire authority has directed should be so heard.

(3) Where, in the case of an accused fireman who is not a principal officer, the investigating officer is of the view that the nature of the alleged offence is such that it is unlikely to merit greater punishment than a reprimand he shall so inform the firemaster, who shall nominate another fireman to conduct the hearing.

(4) The firemaster (where a case falls to be heard by him) or the fire authority (where a case falls to be heard by its disciplinary tribunal) may appoint not more than 2 persons to act as assessors at the hearing.

(5) The firemaster, where the case falls to be heard by him, may at any time before its conclusion remit the case to the disciplinary tribunal for hearing or re-hearing.

(6) A fireman nominated by the firemaster to conduct the hearing under paragraph (3) may at any time before the case is concluded remit the case to the firemaster for hearing or re-hearing.

#### *Decision*

**10.—** (1) At the conclusion of the hearing of the case, the disciplinary body shall either find the charge proved or dismiss the case.

(2) Subject to the following provisions of these regulations, if the disciplinary body finds the charge proved it shall award one of the punishments set out in regulation 11.

(3) As soon as possible after the disciplinary body has made a decision under paragraph (1) or (2) the accused shall be notified in writing of that decision.

#### *Punishments*

**11.—** (1) Subject to paragraph (2), where the accused fireman is found guilty of an offence one of the following punishments shall be imposed, namely:—

- (a) dismissal;
- (b) requirement to resign from the brigade at the date when the punishment takes effect or such later date as may be specified in the decision;
- (c) reduction in rank;
- (d) stoppage of pay or, in the case of a retained fireman, stoppage of retaining fee;
- (e) a reprimand; or
- (f) a caution;

and separate punishments shall be imposed for separate offences in respect of any one case.

(2) A fireman nominated to conduct a hearing under regulation 9(3) may impose only punishments specified either in paragraph (1)(e) or (f) of this regulation.

(3) Where a fireman has been required to resign from the brigade and he has not resigned at the date specified in the decision he shall be deemed to have been dismissed on that date.

(4) A stoppage of pay or retaining fee in respect of any one offence shall not continue after the expiration of 13 weeks from the date on which the punishment takes effect; and the amount of any stoppages (whether in respect of one or more offences) shall not exceed in the aggregate, in any pay or fee period, one-seventh of the pay or fee of the fireman for that period as determined in relation to his rank.

(5) Where a firemaster, or a disciplinary tribunal, in deciding to impose a punishment, other than a caution, under paragraph (1), is of the opinion that any further offence by the accused might warrant his dismissal they shall each be under a duty to issue a warning to him to that effect, and where such a warning is issued it shall be subject to an appeal under these regulations as if it were a punishment under paragraph (1), save that—

- (a) any decision on such an appeal shall be limited to allowing or dismissing the appeal; and
- (b) the right of appeal to the Secretary of State under regulation 15 shall be limited to those cases where the punishment imposed itself carries such a right of appeal.

(6) Where a punishment is imposed under paragraph (1)(e) or (f) there shall be no right of appeal against either the finding or the punishment and the punishment shall take effect on the date when imposed or such later date as may be specified in the punishment.

(7) A punishment imposed under paragraphs (a) to (d) of paragraph (1) shall not take effect until—

- (a) it has been confirmed on appeal under regulation 12 or 13, or
- (b) the period for submitting notice of appeal under regulation 12 or 13 has expired without any such notice having been submitted in accordance with those regulations.

(8) Where a punishment has been confirmed as mentioned in paragraph (7)(a), or the period referred to in paragraph (7)(b) has expired without any notice of appeal being submitted, the punishment shall take effect forthwith or on such later date as may be specified in the award.

#### *Appeal to disciplinary tribunal*

**12.—** (1) Where the case has been heard by the firemaster in the first instance or on being remitted under regulation 9(6) and a punishment other than a reprimand or caution has been imposed, or where the firemaster has dismissed a fireman under regulation 6, the accused fireman may, within 7 days

of being notified that such a punishment has been imposed, submit to the firemaster written notice of appeal.

(2) An appeal under this regulation shall be heard by the disciplinary tribunal of the fire authority.

(3) Subject to paragraph (4) below, any such appeal shall be by way of a re-hearing.

(4) Where the appeal is against the punishment alone and a transcript of the original hearing is available, the disciplinary tribunal may, if it thinks fit, and with the consent of both parties, decide the appeal without a re-hearing.

(5) The disciplinary tribunal may allow the appeal, dismiss the appeal or vary the punishment by the imposition of a greater or lesser punishment.

(6) Where the disciplinary tribunal allows the appeal or varies the punishment under paragraph (5) its decision shall be substituted for the decision appealed against and any punishment which it imposes shall take effect from the date of the appeal decision or such later date as may be specified in the award.

(7) As soon as possible after the decision of the disciplinary tribunal has been taken it shall be notified in writing to the appellant.

#### *Appeal committee*

13.— (1) Where the case has been heard by the disciplinary tribunal in the first instance or on being remitted under regulation 9(5), and a punishment other than a reprimand or caution imposed, or where a fire authority has dismissed a principal officer under regulation 6, the accused may within 7 days of being notified that such a punishment has been imposed submit to the disciplinary tribunal written notice of appeal.

(2) An appeal under this regulation shall be heard by a committee of the fire authority (hereinafter in these regulations referred to as “the appeal committee”) none of whose members shall be members of the disciplinary tribunal.

(3) Paragraphs (3), (4), (5), (6) and (7) of regulation 12 shall apply to an appeal under paragraph (1) as they apply to an appeal under paragraph (1) of that regulation.

#### *Representation*

14.— (1) At the hearing of a case before the firemaster or a fireman nominated by the firemaster, the accused fireman in presenting his defence shall be entitled to have the assistance of a person selected by himself who shall also be a fireman: Provided that the person so selected shall not be of a rank equal or superior to that of the officer hearing the case at first instance.

(2) At the hearing of a case before the fire authority or at any appeal before the disciplinary tribunal or appeal committee the appellant in presenting his appeal shall be entitled to the assistance of a person selected by himself who need not be a fireman.



## PART IV

## APPEAL TO SECRETARY OF STATE

*Right of appeal to Secretary of State*

15.— (1) Where on appeal the disciplinary tribunal or the appeal committee has imposed or, as the case may be, confirmed one of the punishments specified in regulation 11(1)(a), (b) or (c), the appellant may appeal in writing to the Secretary of State within 14 days of receiving written notice of such decision or such longer period as the Secretary of State may allow.

(2) A statement of the grounds of appeal shall be submitted by the appellant with the written notice of appeal or within 50 days, or such longer period as the Secretary of State may allow in any particular case, of receiving written notice of the decision of the disciplinary tribunal or appeal committee as the case may be.

(3) If the appellant fails to submit written grounds of appeal within the period referred to in paragraph (2), the Secretary of State shall be entitled to treat the notice of appeal as having been withdrawn.

(4) Regulations 16, 17 and 18 shall apply in the case of any appeal under this regulation.

*Inquiries*

16.— (1) The Secretary of State may in any case appoint one or more persons to hold an inquiry and report to him and shall do so where it appears to him that the appeal cannot properly be determined without hearing the evidence.

(2) The Secretary of State may also appoint not more than 2 persons to act as assessors at the inquiry.

*Power to remit a case*

17. The Secretary of State may at any time remit the case for further consideration by the disciplinary tribunal of the fire authority or the appeal committee or, if an inquiry has been held, for further investigation by the persons appointed to hold the inquiry.

*Decision of Secretary of State*

18.— (1) The Secretary of State may allow the appeal, or dismiss the appeal or vary the punishment by the imposition of some other punishment appearing to him to be less severe.

(2) If the Secretary of State allows the appeal or varies the punishment, his decision shall take effect by way of substitution for the decision appealed against, and as from the date when the decision imposing the punishment took effect.

(3) As soon as possible after it has been taken the decision of the Secretary of

State shall be notified in writing to the appellant and the fire authority against whom the appeal is made.

*George Younger,*  
One of Her Majesty's Principal  
Secretaries of State.

New St Andrew's House,  
Edinburgh.  
13th November 1985.

## Regulation 4

## SCHEDULE

## CODE OF DISCIPLINE

A fireman commits an offence against discipline if he is guilty of—

1. *Disobedience to orders*, which offence is committed where a fireman disobeys or, without reasonable cause, fails to carry out, any lawful order whether such order is in writing or not.

2. *Insubordination*, which offence is committed where a fireman is insubordinate by word, act or demeanour.

3. *Abuse of authority*, which offence is committed where a fireman's conduct in line of his duty towards another fireman or a member of the public is oppressive or abusive.

4. *Absence from duty*, which offence is committed where a fireman—

- (a) without reasonable cause is absent from duty; or
- (b) without reasonable cause is late in reporting for any parade, drill or other attendance; or
- (c) without reasonable cause leaves his place of duty.

5. *Neglect of duty*, which offence is committed where a fireman—

- (a) without reasonable cause fails to attend to or carry out his duty promptly and diligently; or
- (b) by carelessness or neglect suffers any loss, damage or injury to occur to any person or property; or
- (c) fails to report any matter which it is his duty to report; or
- (d) fails to make an entry, which it is his duty to make, in any book or document; or
- (e) fails properly to account for, or to make a prompt and true return of, any money or property which comes into his possession as a result of his employment.

6. *Falsehood*, which offence is committed where a fireman—

- (a) knowingly or through wilful neglect makes any false, misleading or inaccurate oral or written statement or entry in any record or document made, kept or required for fire services purposes; or
- (b) has knowingly or through wilful neglect made any false, misleading or inaccurate statement in connection with his appointment to a fire brigade.

7. *Misconduct in relation to official documents*, which offence is committed where a fireman, without reasonable cause, destroys or mutilates any record or document made, kept or required for fire services purposes, or otherwise alters, erases or adds to any entry in such a record or document.

8. *Improper disclosure of information*, which offence is committed where a fireman without proper authority communicates to any person information which he acquires in confidence as a fireman.

9. *Corrupt or improper practice*, which offence is committed where a fireman improperly uses, or attempts to use, his position as a fireman for his own private advantage or for the private advantage of some other person.

10. *Loss of, or damage to, fire authority property*, which offence is committed where a fireman—

- (a) wilfully or negligently causes any waste or loss of, or damage to, any property of the fire authority, or fails to take reasonable care thereof; or
- (b) fails to report as soon as is reasonably practicable any loss of, or damage to, any property issued to, or used by, him or entrusted to his care.

11. *Unfitness for duty*, which offence is committed where a fireman renders himself unfit through drink or drugs or similar means for duties which he is or will be required to perform or which it is reasonable to foresee that he will have to perform.

12. *Criminal conduct*, which offence is committed where a fireman has been found guilty by a court of law of a criminal offence, which either—

- (a) occurs in connection with his duties as a member of a fire brigade; or
- (b) does not so occur but has a bearing on his suitability for his job; or
- (c) is liable to bring the service into disrepute.

13. *Untidiness*, which offence is committed where a fireman while on duty, or while off duty but wearing uniform in a public place, is without reasonable cause dirty or untidy in his person, clothing or personal equipment.

14. *Conduct prejudicial to discipline*, which offence is committed where a fireman while on duty or in uniform acts in a manner which is, or is likely to be, prejudicial to the discipline of the brigade.

15. *Conduct prejudicial to the reputation of the brigade*, which offence is committed where a fireman intentionally or recklessly and without reasonable cause acts in a manner which damages, or is likely to damage, the reputation of the brigade.

## EXPLANATORY NOTE

*(This Note is not part of the Regulations.)*

These regulations, which are made under section 17 of the Fire Services Act 1947, and revoke and replace the Fire Services (Discipline) (Scotland) Regulations 1953 and amending Regulations of 1965, provide for the maintenance of discipline in fire brigades under the 1947 Act. The principal changes from the 1953 Regulations are described below.

Regulation 3(1) applies these regulations to all members of a brigade who are liable to engage in fire-fighting or who are fire control staff. Regulation 5 provides for the nomination of an officer to investigate alleged offences against discipline. There is provision in regulation 6 for a preliminary investigation of the alleged offence, for summary dismissal in cases of gross misconduct (including, in both instances, the right to a hearing) and a right of appeal against such dismissal. Under regulation 8 the investigating officer has the responsibility of deciding, at the end of an investigation, whether the accused fireman should be charged with an offence. Regulation 9 provides for cases involving accused firemen holding the rank of assistant firemaster or above or the post of deputy firemaster. Such cases, and such other cases as the firemaster determines, are to be heard in the first instance by a disciplinary tribunal consisting of a committee of the fire authority. Provision is also made, in regulation 9, for minor cases, where the highest punishment likely is a reprimand, to be heard under a less formal procedure presided over by an officer nominated by the firemaster. Punishments to be imposed under such a procedure are limited to reprimand or caution. Regulation 11 provides for a final warning as to future conduct to be given with any punishment other than a caution, except where the hearing is held by an officer nominated by the firemaster. Both the final warning and the punishment are to be subject to appeal. Reprimands no longer carry a right of appeal. Regulation 11 also provides that punishments carrying a right of appeal are not to take effect until they are confirmed on appeal or the time limit for appeal has expired. There is no longer any requirement, in the absence of an appeal, for punishments imposed by the firemaster to be confirmed by the fire authority. Regulation 13 provides a right of appeal to a committee of the fire authority (known as "the appeal committee") from a decision, at first instance, of the disciplinary tribunal. At each level of appeal the time limit for submitting an appeal is extended. Regulation 16 enables the Secretary of State to appoint not more than 2 persons to act as assessors at an inquiry held under that regulation for the purpose of determining an appeal.

The Schedule to these regulations sets out the code of discipline. The offence of falsehood (paragraph 6) specifically includes the making of a false, misleading or inaccurate statement in connection with appointment to a fire brigade. There is a separate offence of misconduct in relation to official documents (paragraph 7). It is now an offence to render oneself unfit for duty through drugs as well as drink (paragraph 11). There is a new offence of criminal conduct (paragraph 12) and the offence of discreditable conduct is replaced by the separate offences of untidiness (paragraph 13), conduct prejudicial to discipline (paragraph 14) and conduct prejudicial to the reputation of the brigade (paragraph 15).

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