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STATUTORY INSTRUMENTS

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**2008 No. 2864**

**The Police (Conduct) Regulations 2008**

**PART 3**

**Investigations**

**Application of this Part**

**11.** This Part shall not apply to a case to which paragraph 16, 17, 18 or 19 of Schedule 3 to the 2002 Act (investigations) applies.

**Assessment of conduct**

**12.—(1)** Subject to paragraph (6) the appropriate authority shall assess whether the conduct which is the subject matter of the allegation, if proved, would amount to misconduct or gross misconduct or neither.

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

- (a) take no action;
- (b) take management action against the officer concerned; or
- (c) refer the matter to be dealt with under the Performance Regulations.

(3) Where the appropriate authority assesses that the conduct, if proved, would amount to misconduct, it shall determine whether or not it is necessary for the matter to be investigated and—

- (a) if so, the matter shall be investigated and the appropriate authority shall further determine whether, if the matter were to be referred to misconduct proceedings, those would be likely to be a misconduct meeting or a misconduct hearing;
- (b) if not, the appropriate authority may—
  - (i) take no action; or
  - (ii) take management action against the officer concerned.

(4) Where the appropriate authority determines that the conduct, if proved, would amount to gross misconduct, the matter shall be investigated.

(5) At any time before the start of misconduct proceedings, the appropriate authority may revise its assessment of the conduct under paragraph (1) if it considers it appropriate to do so.

(6) Where the appropriate authority decides under this regulation to take no action, take management action or to refer the matter to be dealt with under the Performance Regulations, it shall so notify the officer concerned in writing as soon as practicable.

**Appointment of investigator**

**13.—(1)** This regulation applies where the matter is to be investigated in accordance with regulation 12.

(2) The appropriate authority shall, subject to paragraph (3), appoint a person to investigate the matter.

(3) If the officer concerned is the Commissioner of Police of the Metropolis or the Deputy Commissioner of Police of the Metropolis—

- (a) the appropriate authority shall notify the Secretary of State; and
- (b) the Secretary of State shall appoint a person to investigate the matter.

(4) No person shall be appointed to investigate the matter under this regulation—

- (a) unless he has an appropriate level of knowledge, skills and experience to plan and manage the investigation;
- (b) if he is an interested party;
- (c) if he works, directly or indirectly, under the management of the officer concerned; or
- (d) in a case where the officer concerned is a senior officer, if he is—
  - (i) the chief officer of police of the police force concerned; or
  - (ii) a member of the same police force as the officer concerned, or where the officer concerned is a member of the metropolitan police force, serving in the same division as the officer concerned.

(5) The reference in paragraph (4)(d)(ii) to a member of the police force shall include a reference to a special constable appointed for the area of that force and a police staff member serving in that force.

### **Investigation**

**14.** The purpose of the investigation is to—

- (a) gather evidence to establish the facts and circumstances of the alleged misconduct or gross misconduct; and
- (b) assist the appropriate authority to establish whether there is a case to answer in respect of misconduct or gross misconduct or whether there is no case to answer.

### **Written notices**

**15.—**(1) The investigator shall as soon as is reasonably practicable after being appointed, and subject to paragraph (3), cause the officer concerned to be given written notice—

- (a) describing the conduct that is the subject matter of the allegation and how that conduct is alleged to fall below the Standards of Professional Behaviour;
- (b) of the appropriate authority's assessment of whether that conduct, if proved, would amount to misconduct or gross misconduct;
- (c) that there is to be an investigation into the matter and the identity of the investigator;
- (d) of whether, if the matter were to be referred to misconduct proceedings, those would be likely to be a misconduct meeting or a misconduct hearing and the reason for this;
- (e) that if the likely form of any misconduct proceedings to be held changes, further notice (with reasons) will be given;
- (f) informing him that he has the right to seek advice from his staff association or any other body and of the effect of regulation 6(1);
- (g) of the effect of regulations 7(1) to (3) and 16; and
- (h) informing him that whilst he does not have to say anything it may harm his case if he does not mention when interviewed or when providing any information under regulations 16(1)

or 22(2) or (3) something which he later relies on in any misconduct proceedings or special case hearing or at an appeal meeting or appeal hearing.

(2) If following service of the notice under paragraph (1), the appropriate authority revises its assessment of the conduct in accordance with regulation 12(5) or its determination of the likely form of any misconduct proceedings to be taken, the appropriate authority shall, as soon as practicable, give the officer concerned further written notice of—

- (a) the assessment of whether the conduct, if proved, would amount to misconduct or gross misconduct as the case may be and the reason for that assessment; and
- (b) whether, if the case were to be referred to misconduct proceedings, those would be likely to be a misconduct meeting or a misconduct hearing and the reason for this.

(3) The requirement to give a written notice to the officer concerned under paragraph (1) does not apply for so long as the investigator considers that giving such a notice might prejudice the investigation or any other investigation (including, in particular, a criminal investigation).

(4) Once a written notice has been given in accordance with paragraph (1), the investigator shall notify the officer concerned of the progress of the investigation—

- (a) if there has been no previous notification following the supply of the written notice under paragraph (1), before the end of 4 weeks beginning with the first working day after the start of the investigation; and
- (b) in any other case, before the end of 4 weeks beginning with the first working day after the previous notification.

### **Representations to the investigator**

**16.**—(1) Before the end of 10 working days starting with the first working day after which the notice is given under regulation 15(1), (unless this period is extended by the investigator)—

- (a) the officer concerned may provide a written or oral statement relating to any matter under investigation to the investigator; and
- (b) the officer concerned or his police friend may provide any relevant documents to the investigator.

(2) The investigator shall, as part of his investigation, consider any such statement or document and shall make a record of having received it.

(3) In this regulation “relevant document”—

- (a) means a document relating to any matter under investigation, and
- (b) includes such a document containing suggestions as to lines of inquiry to be pursued or witnesses to be interviewed.

### **Interviews during investigation**

**17.**—(1) Where an investigator wishes to interview the officer concerned as part of his investigation, he shall, if reasonably practicable, agree a date and time for the interview with the officer concerned.

(2) Where no date and time is agreed under paragraph (1), the investigator shall specify a date and time for the interview.

(3) Where a date and time is specified under paragraph (2) and—

- (a) the officer concerned or his police friend will not be available at that time; and
- (b) the officer concerned proposes an alternative time which satisfies subsection (4),

the interview shall be postponed to the time proposed by the officer concerned.

- (4) An alternative time must—
  - (a) be reasonable; and
  - (b) fall before the end of the period of 5 working days beginning with the first working day after the day specified by the investigator.
- (5) The officer concerned shall be given written notice of the date, time and place of the interview.
- (6) The investigator shall, in advance of the interview, provide the officer concerned with such information as the investigator considers appropriate in the circumstances of the case to enable the officer concerned to prepare for the interview.
- (7) The officer concerned shall attend the interview.
- (8) A police friend may not answer any questions asked of the officer concerned during the interview.

### **Report of investigation**

**18.**—(1) On completion of his investigation the investigator shall as soon as practicable submit a written report on his investigation to the appropriate authority.

- (2) The written report shall—
  - (a) provide an accurate summary of the evidence;
  - (b) attach or refer to any relevant documents; and
  - (c) indicate the investigator’s opinion as to whether there is a case to answer in respect of misconduct or gross misconduct or whether there is no case to answer.
- (3) If at any time during his investigation the investigator believes that the appropriate authority would, on consideration of the matter, be likely to determine that the special conditions are satisfied, he shall, whether or not the investigation is complete, submit to the appropriate authority—
  - (a) a statement of his belief and the grounds for it; and
  - (b) a written report on his investigation to that point.