
STATUTORY INSTRUMENTS

2020 No. 4

The Police (Conduct) Regulations 2020

PART 4

Misconduct proceedings

General

22. Any period of time specified in this Part in relation to misconduct proceedings may be reduced by agreement between the appropriate authority or, as the case may be, the originating authority, the officer concerned, where the Director General is presenting the case, the Director General, and the person conducting or chairing the misconduct proceedings.

Referral of case to misconduct proceedings

23.—(1) Subject to regulation 49, on receipt of the investigator's report under regulation 21(1), the appropriate authority must, as soon as practicable, determine—

- (a) whether the officer concerned has a case to answer in respect of misconduct or gross misconduct or whether the officer has no case to answer;
- (b) if there is a case to answer, whether or not misconduct proceedings should be brought against the officer, and
- (c) if so, and subject to paragraph (10), what form the misconduct proceedings should take.

(2) Subject to regulation 49, on receipt of a report submitted under paragraph 22 of Schedule 3 to the 2002 Act (final reports on investigations)(**1**), in making a determination under paragraph 24(6) of that Schedule (action in response to an investigation report)(**2**) as to what action to take in respect of matters dealt with in that report, the appropriate authority must, as soon as practicable determine—

- (a) whether the officer concerned has a case to answer in respect of misconduct (within the meaning of paragraph 29 of Schedule 3 to the 2002 Act)(**3**) or gross misconduct or whether the officer has no case to answer;
- (b) where under paragraph (a) the appropriate authority determines that there is a case to answer in respect of misconduct (within the meaning of paragraph 29 of Schedule 3 to the 2002 Act), whether the case amounts to misconduct(**4**);

(1) Paragraph 22 was substituted by paragraphs 1, 11 and 21 of Schedule 12 to the Serious Organised Crime and Police Act 2005 and was amended by section 19(1) and (3)(b)(i) of, and paragraph 47(h)(vi) of Schedule 5 and paragraphs 15 and 56 of Schedule 9 to, the Policing and Crime Act 2017; there are other amendments to paragraph 22 but none are relevant.

(2) Paragraph 24(6) was substituted by paragraphs 1, 3 and 14(1) and (6) of Schedule 23 to the Criminal Justice and Immigration Act 2008 and amended by paragraphs 1 and 14(1) and (3) of Schedule 14 to the Police Reform and Social Responsibility Act 2011 and paragraph 47(h)(xiii) of Schedule 5 to the Policing and Crime Act 2017.

(3) Paragraph 29 of Schedule 3 to the 2002 Act was inserted by section 127 of, and paragraphs 1, 3 and 19 of Schedule 23 to, the Criminal Justice and Immigration Act 2008 and amended by section 95 of, and paragraphs 1, 5 and 21 of Schedule 14 to, the Police Reform and Social Responsibility Act 2011 and by section 16 of, and paragraph 47(h)(xxvi) of Schedule 5 to, the Policing and Crime Act 2017.

(4) See regulation 2(1) for definition of "misconduct" in these Regulations.

- (c) where there is a case to answer in respect of misconduct or gross misconduct, whether or not misconduct proceedings should be brought against the officer concerned, and
 - (d) if so, and subject to paragraph (10), what form the misconduct proceedings should take.
- (3) In a case where the misconduct proceedings have been delayed by virtue of regulation 10(3), as soon as practicable after—
- (a) the appropriate authority considers that such proceedings would no longer prejudice any criminal proceedings, or
 - (b) any criminal proceedings have concluded (whatever the outcome of those proceedings),
- the appropriate authority must, subject to regulation 49(3) and paragraph (10) and unless the appropriate authority must refer the case to misconduct proceedings in accordance with paragraph (9), make a further determination as to the matters set out in paragraph (1)(a) to (c) or, as the case may be, paragraph (2)(a) to (d).
- (4) Where the appropriate authority determines under paragraph (2)(b) or under paragraph (3) in so far as the determination relates to the matter set out in paragraph (2)(b), that the case does not amount to misconduct, the case is to be dealt with under these Regulations as if the appropriate authority had determined that there was no case to answer.
- (5) Where the appropriate authority determines there is no case to answer or that no misconduct proceedings will be brought, it must assess whether—
- (a) the case amounts to practice requiring improvement;
 - (b) the matter should be referred to be dealt with under the Performance Regulations, or
 - (c) it should take no further action.
- (6) The appropriate authority must consult the line manager of the officer concerned before making an assessment in terms of paragraph (5)(a) or (b).
- (7) As soon as practicable after it has completed the assessment under paragraph (5), the appropriate authority must—
- (a) inform the officer concerned of the outcome of its assessment, and
 - (b) subject to the harm test, give the officer a copy of the investigator's report or such parts of that report as relate to the officer.
- (8) Where the appropriate authority assesses that the case amounts to practice requiring improvement, it must direct that the matter is dealt with under the reflective practice review process set out in Part 6.
- (9) Where the appropriate authority —
- (a) has a duty under paragraph 23(5B) of Schedule 3 to the 2002 Act (duties with respect to disciplinary proceedings)(5) to comply with a direction to bring misconduct proceedings of a form specified in a determination of the Director General;
 - (b) accepts a recommendation made under paragraph 25(4C)(c) or (4E)(c) of that Schedule (reviews with respect to an investigation)(6) that misconduct proceedings of the form specified in the recommendation are brought, or
 - (c) has a duty under paragraph 27(4)(b) of that Schedule (duties with respect to disciplinary proceedings etc.) to comply with a direction to give effect to a recommendation to bring misconduct proceedings of a form specified in a recommendation made under paragraph 25(4C) of that Schedule,
- it must, subject to regulation 10(3), refer the case to misconduct proceedings of the form specified.

(5) Paragraph 23(5A) to (5F) was inserted by paragraphs 9 and 26(1) and (2) of Schedule 5 to the Policing and Crime Act 2017.

(6) Paragraph 25(4A) to (4J) was inserted by paragraphs 29 and 34(1) and (5) of Schedule 5 to the Policing and Crime Act 2017.

(10) Where the appropriate authority determines under paragraph (1), (2) or (3) to refer the case to misconduct proceedings—

- (a) having determined that the officer concerned has a case to answer in respect of gross misconduct, those proceedings must be a misconduct hearing;
- (b) where the officer had a final written warning in force at the date of the severity assessment under regulation 14(1) of these Regulations or, as the case may be, regulation 16 of the Complaints and Misconduct Regulations (special procedure: severity assessment), those proceedings must be a misconduct hearing;
- (c) where the officer has been reduced in rank under the Police (Conduct) Regulations 2004(7) or these Regulations less than 2 years prior to the severity assessment under regulation 14(1) of these Regulations or, as the case may be, regulation 16 of the Complaints and Misconduct Regulations, those proceedings must be a misconduct hearing, and
- (d) having determined that the officer has a case to answer in respect of misconduct and that the case does not fall under sub-paragraphs (a), (b) or (c), those proceedings must be a misconduct meeting.

(11) Where the appropriate authority fails to make the determination referred to in paragraph (1) or (2) before the end of 15 working days beginning with the first working day after receipt of the report, it must notify the officer concerned of the reason for this.

(12) In determining whether any criminal proceedings are to be treated as concluded for the purposes of this regulation, any right of appeal is to be disregarded.

Presenting of case by the Director General

24.—(1) The Director General may decide to present the case on behalf of the appropriate authority where—

- (a) paragraph (2) applies and the case is referred to a misconduct hearing or an accelerated misconduct hearing, or
 - (b) paragraph (4) applies and the case is referred to an accelerated misconduct hearing.
- (2) This paragraph applies to a case where—
- (a) it is a case in respect of which the duty referred to in regulation 23(9)(a) arises, and
 - (b) one of the conditions set out in paragraph (3) is satisfied.
- (3) The conditions are—
- (a) the appropriate authority, when its views were sought in respect of the case under paragraph 23(5A)(a)(i) of Schedule 3 to the 2002 Act (action by the Director General in relation to an investigation report under paragraph 22)(**8**), or subsequently, expressed a view on the matter referred to in that paragraph that differed from the determination of the Director General under paragraph 23(5A)(b)(i) of that Schedule;
 - (b) the appropriate authority notified the Director General under paragraph 25(4D)(a) of Schedule 3 to the 2002 Act (reviews with respect to an investigation) that it did not accept a recommendation of the Director General under paragraph 25(4C)(c)(i) of Schedule 3 to the 2002 Act (reviews with respect to an investigation)(**9**);

(7) [S.I. 2004/645](#).

(8) Paragraph 23(5A) was amended by paragraphs 15 and 56(1) to (3) and (16)(c)(ii) of Schedule 9 to the Policing and Crime Act 2017.

(9) Paragraph 25(4C) and (4D) was amended by paragraphs 15 and 56(1) and (2) of Schedule 9 to the Policing and Crime Act 2017.

- (c) the appropriate authority and the Director General agree that the Director General should present the case, or
- (d) the Director General is of the view that in the particular circumstances of the case there is a compelling public interest for the Director General to present the case.

(4) This paragraph applies to a case where the appropriate authority submitted a memorandum to the Director General under regulation 26(5) of the Complaints and Misconduct Regulations (determination by the appropriate authority not to certify a case for accelerated procedure) and the Director General directed the appropriate authority to certify the case under regulation 26(8)(b) of those Regulations.

(5) Where the Director General makes a decision under paragraph (1) to present a case, the Director General must as soon as practicable inform the appropriate authority of the decision.

(6) The appropriate authority must give the Director General any assistance the Director General reasonably requires for the purpose of presenting a case.

Joint misconduct proceedings

25.—(1) Subject to paragraphs (6) and (7), where under regulation 23 the appropriate authority refers two or more cases arising from the same matter or incident, which relate to more than one police officer, to a misconduct hearing, the cases may be referred to a joint misconduct hearing.

(2) Subject to paragraph (6), where under regulation 23 the appropriate authority refers two or more cases arising from the same matter or incident, which relate to more than one police officer, to a misconduct meeting, the cases may be referred to a joint misconduct meeting.

(3) Where cases are referred to joint misconduct proceedings, a reference to “the officer concerned” in regulations 26 to 44, if the context so requires, means—

- (a) any of the officers concerned, or
- (b) each of the officers concerned.

(4) Where cases are referred to joint misconduct proceedings, the officer concerned in any of the cases may object and request separate proceedings.

(5) The person conducting or chairing the misconduct proceedings must consider any objection under paragraph (4) and determine whether the request for separate proceedings should be allowed.

(6) Cases may only be referred to joint misconduct proceedings where all or none of the officers concerned are senior officers.

(7) A case in respect of which the Director General has made a decision to present a case under regulation 24(1) may only be referred to a joint misconduct hearing on the direction of the Director General, following consultation with the appropriate authority.

(8) The appropriate authority must comply with a direction given under paragraph (7).

Delegation of functions

26.—(1) Where—

- (a) the appropriate authority is the chief officer of any police force, and
- (b) under regulation 23 a case is referred to a misconduct hearing,

the appropriate authority may, if it considers it appropriate in a particular case, delegate functions in relation to the administration of the hearing (but not in relation to representing it at the hearing) to the chief officer of police of another police force.

(2) Subject to regulation 25(4) to (8), where functions have been delegated to the same chief officer of police, in respect of more than one case which relates to the same matter or incident, the cases may be dealt with at a joint misconduct hearing.

(3) In these Regulations—

(a) where functions have been delegated under paragraph (1), “appropriate authority”, in relation to the exercise of such functions, means the chief officer of police to whom the functions have been delegated;

(b) “originating authority” means the chief officer of police of the force of which the officer concerned is a member which has delegated functions under paragraph (1).

(4) Where functions have been delegated, any requirement on a person other than the originating authority to supply a document to another person must be read as including a requirement to supply such document also to the originating authority.

Withdrawal of misconduct proceedings

27.—(1) Subject to paragraph (4), at any time before the beginning of the misconduct proceedings, the appropriate authority—

(a) if it is no longer satisfied that there is a case to answer in respect of misconduct or gross misconduct, must direct that the case be withdrawn, and

(b) where sub-paragraph (a) does not apply, may direct that the case be withdrawn.

(2) Where a direction is given under paragraph (1)—

(a) the appropriate authority may—

(i) take no further action against the officer concerned;

(ii) refer the matter to the reflective practice review process, or

(iii) refer the matter to be dealt with under the Performance Regulations, and

(b) the appropriate authority must as soon as practicable give the officer concerned—

(i) written notice of the direction, indicating whether any action will be taken under paragraph (2)(a), and

(ii) where the investigation has been completed, on request and subject to the harm test, a copy of the investigator’s report or such parts of that report as relate to the officer.

(3) Before referring a matter to the reflective practice review process or to be dealt with under the Performance Regulations, the appropriate authority must consult the line manager of the officer concerned.

(4) A case to which paragraph 16, 18 or 19 of Schedule 3 to the 2002 Act (investigations) applied may only be withdrawn—

(a) on the direction of the Director General, following consultation with the appropriate authority, in a case where the Director General—

(i) made a recommendation under paragraph 25(4C)(c) of that Schedule (duties with respect to disciplinary proceedings) which the appropriate authority accepted, or

(ii) gave a direction under paragraph 23(5A)(e) or paragraph 27(4)(a) of that Schedule to bring disciplinary proceedings, or

(b) following consultation with the Director General, in all other cases.

Persons conducting misconduct proceedings

28.—(1) Where the officer concerned is an officer other than a senior officer—

- (a) where the case is referred to a misconduct meeting, that meeting must be conducted by a person appointed by the appropriate authority in accordance with paragraph (3) who is not an interested party;
 - (b) where the case is referred to a misconduct hearing, that hearing must be conducted by a panel of three persons appointed in accordance with paragraph (4).
- (2) Where the officer concerned is a senior officer and the case is referred to misconduct proceedings, those misconduct proceedings must be conducted by a panel of three persons appointed in accordance with paragraphs (4) and (5).
- (3) The person appointed by the appropriate authority under paragraph (1)(a)—
- (a) where the officer concerned is a member of a police force, must be either another member of a police force of at least one rank higher than the officer or, unless the case substantially involves operational policing matters, a police staff member who, in the opinion of the appropriate authority, is more senior than the officer concerned;
 - (b) where the officer concerned is a special constable, must be—
 - (i) a member of a police force of the rank of sergeant or above;
 - (ii) a senior human resources professional, or
 - (iii) unless the case substantially involves operational policing matters, a police staff member who, in the opinion of the appropriate authority, is more senior than the officer concerned.
- (4) Subject to paragraph (5), the panel of persons must comprise—
- (a) a chair appointed by the local policing body, selected on a fair and transparent basis from the list of legally qualified persons maintained by the local policing body for the purpose of these Regulations;
 - (b) a member of a police force of the rank of superintendent or above (provided the member is of a more senior rank than the officer concerned), appointed by the appropriate authority, and
 - (c) a person appointed by the local policing body, selected on a fair and transparent basis from a list of candidates maintained by the local policing body for the purpose of these Regulations.
- (5) Where the officer concerned is a senior officer, for paragraph (4)(b) there is substituted—
- “(b) HMCIC or an inspector of constabulary nominated by HMCIC.”
- (6) In this regulation “legally qualified person” means a person who satisfies the judicial-appointment eligibility condition on a 5-year basis⁽¹⁰⁾.
- (7) For the purpose of section 84(4) of the 1996 Act (power to prescribe “the panel” for the purpose of representation at proceedings), the panel of persons or the person specified by this regulation to conduct misconduct proceedings is prescribed as “the panel”.

Role of chair of misconduct hearing

29.—(1) The chair of the panel appointed under regulation 28 must take appropriate action to ensure the efficient and effective bringing of the proceedings and that they are conducted in a timely, fair and transparent manner.

(2) In particular, and subject to paragraph (6)(a), the chair must ensure that the first day of the misconduct hearing is not more than 100 working days beginning with the day after the date on which notice is given under regulation 30(1).

⁽¹⁰⁾ See section 50 of the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(3) The chair must decide, before the end of 5 working days beginning with the first working day after the day on which the documents were supplied to the chair under regulation 32(6), whether to conduct a misconduct pre-hearing, in order to agree directions and to fix a date for the hearing in accordance with regulation 33.

(4) Where the chair decides not to conduct a misconduct pre-hearing, the chair must determine the date, time and duration of the misconduct hearing, following consultation with the parties by telephone or by such other electronic means as may be agreed between the parties or, where the parties fail to agree, as decided by the chair.

(5) Subject to paragraphs (6)(b) and (7), where paragraph (4) applies, the misconduct hearing must take place before the end of the period of 30 working days beginning with the first working day after the day on which the documents were supplied to the chair under regulation 32(6).

(6) Where the chair considers that it would be in the interests of justice to do so, the chair may extend—

- (a) the period of 100 working days specified in paragraph (2);
- (b) the period of 30 working days specified in paragraph (5).

(7) Any of the parties may apply to the chair for the misconduct hearing to take place later than is provided for in paragraph (5).

(8) Any such application must set out the reasons for the application.

(9) The chair must determine whether it would be in the interests of justice for the application to be granted, provided that the date fixed for the commencement of the hearing must be within the period specified in paragraph (2), or such period as extended under paragraph (6)(a).

(10) For the purposes of this regulation “parties” means the appropriate authority or, as the case may be, the originating authority, the officer concerned, the officer’s representatives and, where the Director General is presenting the case, the Director General.

Notice of referral to misconduct proceedings

30.—(1) Where a case is referred to misconduct proceedings, the appropriate authority must as soon as practicable give the officer concerned—

- (a) written notice of—
 - (i) the referral;
 - (ii) the conduct that is the subject matter of the case and how that conduct is alleged to amount to misconduct or gross misconduct, as the case may be;
 - (iii) where functions in relation to the administration of the hearing have been delegated under regulation 26(1), the details of the authority to whom they have been delegated;
 - (iv) the name of the person appointed to conduct (in the case of a misconduct meeting for an officer other than a senior officer) or chair (in any other case) the misconduct proceedings and, in the case of a chair, confirmation that the person has been selected on a fair and transparent basis;
 - (v) the effect of paragraphs (3) to (6) of this regulation;
 - (vi) the effect of regulation 8(1) to (3) in relation to the form of misconduct proceedings to which the case is being referred;
 - (vii) where relevant, the fact that the Director General has made a decision under regulation 24(1) to present the case, and
 - (viii) where relevant, the fact that the case has been referred to joint misconduct proceedings under regulation 25;

- (b) a copy of any statement the officer may have made to the investigator during the course of the investigation, and
 - (c) subject to the harm test, a copy of—
 - (i) the investigator’s report or such parts of that report as relate to the officer (together with any document attached to or referred to in that report which relates to the officer), and
 - (ii) any other document which might reasonably be considered capable of undermining or assisting the case.
- (2) As soon as practicable after any person has been appointed under regulation 8(6) to advise the person conducting or chairing the misconduct proceedings, the appropriate authority must give the officer concerned written notice of the name of that person and of the effect of paragraphs (3) to (6) of this regulation.
- (3) The officer concerned may object to any person whom the officer is notified under the preceding provisions of this regulation is to—
- (a) conduct or, as the case may be, chair the misconduct proceedings, or
 - (b) advise the person conducting or, as the case may be, chairing the misconduct proceedings.
- (4) Any such objection must be—
- (a) made in writing to—
 - (i) the local policing body, where the person in relation to whom the objection is made was appointed by that body, or
 - (ii) the appropriate authority in all other cases, and
 - (b) in the case of joint misconduct proceedings, copied to each other officer concerned,
- before the end of 3 working days beginning with the first working day after the officer is given notice of the person’s name and must set out the grounds of objection of the officer.
- (5) The appropriate authority or, as the case may be, the local policing body must notify the officer concerned in writing whether it upholds or rejects an objection to a person appointed to conduct or, as the case may be, chair the misconduct proceedings or to any person appointed under regulation 8(6) to advise the person conducting or chairing the misconduct proceedings.
- (6) If the appropriate authority or, as the case may be, the local policing body upholds the objection, the person to whom the officer concerned objects must be replaced (in accordance with regulation 8(6) and (7) or 28 as appropriate).
- (7) As soon as reasonably practicable after any such appointment, the appropriate authority must give a written notice to the officer concerned of the name of the new person appointed to conduct or, as the case may be, chair the misconduct proceedings or of the new adviser to the person conducting or chairing the misconduct proceedings, and of the effect of paragraphs (8) and (9) of this regulation.
- (8) The officer concerned may object to the appointment of a person appointed under paragraph (6) of this regulation.
- (9) In relation to an objection under paragraph (8) of this regulation—
- (a) paragraph (4) applies except in so far as it specifies the period of time for making an objection;
 - (b) the objection must be made before the end of 3 working days beginning with the first working day after the officer concerned has been given the notice referred to in paragraph (7);
 - (c) paragraphs (5) to (7) apply, with the exception of the requirement in paragraph (7) for the appropriate authority to give written notice of the effects of paragraphs (8) and (9).

(10) Where the Director General has made a decision under regulation 24(1) to present a case, the appropriate authority must—

- (a) consult the Director General about—
 - (i) the contents of the written notice to be given under paragraph (1)(a) to the extent to which they relate to the conduct that is the subject matter of the case and how that conduct is alleged to amount to misconduct or gross misconduct, as the case may be;
 - (ii) the application of the harm test under paragraph (1)(c), and
 - (iii) the documents that may be provided under paragraph (1)(c)(ii);
- (b) comply with any direction given by the Director General in relation to the matters specified in sub-paragraph (a), and
- (c) provide the Director General with a copy of the written notices given under paragraphs (1) and (2).

Procedure on receipt of notice

31.—(1) Before the end of —

- (a) 15 working days beginning with the first working day after the documents have been supplied to the officer concerned under regulation 30(1), or
- (b) where that period is extended by the person conducting or chairing the misconduct proceedings for exceptional circumstances, such extended period,

the officer concerned must comply with paragraphs (2) and (3).

(2) The officer concerned must give the appropriate authority—

- (a) written notice of whether or not they accept that their conduct amounts to misconduct or gross misconduct, as the case may be;
- (b) where they accept that their conduct amounts to misconduct or gross misconduct, as the case may be, any written submission they wish to make in mitigation, and
- (c) where they do not accept that their conduct amounts to misconduct or gross misconduct, as the case may be, or they dispute part of the case against them, written notice of—
 - (i) the allegations they dispute and their account of the relevant events, and
 - (ii) any arguments on points of law they wish to be considered by the person or persons conducting the misconduct proceedings.

(3) The officer concerned must provide the appropriate authority with a copy of any document they intend to rely on at the misconduct proceedings.

(4) Before the end of 3 working days beginning with the first working day after the date on which the officer concerned has complied with paragraph (2), the appropriate authority or, as the case may be, the originating authority, and the officer concerned must each—

- (a) supply to the other a list of proposed witnesses and include brief details of the evidence that each witness is able to adduce, or
- (b) give notice to the other that they do not propose any witnesses.

(5) Where the Director General has made a decision under regulation 24(1) to present a case—

- (a) the officer concerned must, within the time period specified in paragraph (1), provide the Director General with a copy of the documents specified in paragraphs (2) and (3), and
- (b) the duty specified in paragraph (4) to supply a list of proposed witnesses or give notice that there are no proposed witnesses lies with the Director General, and not with the appropriate authority or the originating authority.

Witnesses and documents to be supplied

32.—(1) The appropriate authority or, as the case may be, the originating authority must supply to the person conducting or chairing the misconduct proceedings any lists of proposed witnesses supplied or notice given under regulation 31(4).

(2) Any such lists or notice must be supplied before the end of 10 working days beginning with the first working day after the parties supplied the lists or notice under regulation 31(4).

(3) The person conducting or chairing the misconduct proceedings must—

- (a) consider any lists of proposed witnesses;
- (b) consider any documents supplied under paragraph (6), and
- (c) subject to paragraph (5), determine as soon as practicable, which, if any, witnesses should attend the misconduct proceedings.

(4) Paragraph (3) does not apply where regulation 33(8) applies (matters to be decided at misconduct pre-hearing).

(5) No witness may give evidence at misconduct proceedings unless the person conducting or chairing the proceedings reasonably believes that it is necessary for the witness to do so in the interests of justice, in which case the person conducting or chairing the proceedings must—

- (a) where the witness is a police officer, cause that person to be ordered to attend the misconduct proceedings, and
- (b) in any other case, cause the witness to be given notice that their attendance is necessary and of the date, time and place of the proceedings.

(6) Before the end of 10 working days beginning with the first working day after the date on which the officer concerned has complied with regulation 31(2), the appropriate authority or, as the case may be, the originating authority must supply to the person conducting or chairing the misconduct proceedings a copy of—

- (a) the documents given to the officer under regulation 30(1);
- (b) the documents provided by the officer under—
 - (i) regulation 31(2) and (3), and
 - (ii) where paragraph (7) applies, regulation 54, and
- (c) where the officer—
 - (i) does not accept that the conduct amounts to misconduct or gross misconduct, as the case may be, or
 - (ii) disputes any part of the case,
 any other documents that, in the opinion of the appropriate authority or, as the case may be, the originating authority should be considered at the misconduct proceedings.

(7) This paragraph applies where the appropriate authority has directed, in accordance with regulation 50(1), that the case be dealt with under this Part.

(8) Prior to the misconduct proceedings, the appropriate authority or, as the case may be, the originating authority, must supply the officer concerned with—

- (a) a list of the documents supplied under paragraph (6), and
- (b) a copy of any such document, where it has not already been supplied.

(9) The appropriate authority or, as the case may be, the originating authority may apply to the person conducting or chairing the misconduct proceedings for an extension of—

- (a) the period of 10 working days referred to in paragraph (2);
- (b) the period of 10 working days referred to in paragraph (6).

(10) Any such application must set out the period of the required extension and the reasons for the application.

(11) On receipt of such an application the person conducting or chairing the misconduct proceedings must determine whether the period should be extended and if so by how long.

(12) Where a period is extended, paragraph (2) or, as the case may be, paragraph (6), has effect as if for the period specified in those provisions there were substituted the extended period.

(13) Where the Director General has made a decision under regulation 24(1) to present a case—

- (a) the duty specified in paragraph (1) to supply any lists of witnesses or notice lies with the Director General and not with the appropriate authority or the originating authority;
- (b) the duty specified in paragraph (6) to supply the specified documents to the person conducting or chairing the misconduct proceedings lies with the Director General and not with the appropriate authority or the originating authority;
- (c) paragraph (6)(c) must be read as if “or the Director General” were inserted after “the originating authority”, and
- (d) the power referred to in paragraph (9) to apply for an extension of the periods of time referred to in paragraphs (2) and (6) lies with the Director General and not with the appropriate authority or the originating authority.

Misconduct pre-hearing

33.—(1) Where the person chairing a misconduct hearing (“the chair”) has decided under regulation 29(3) to conduct a misconduct pre-hearing, the chair must as soon as practicable—

- (a) specify a date and time for a misconduct pre-hearing, which must be within a period of 15 working days, or such extended period as the chair may specify under paragraph (10)(a), beginning with the first working day after the day on which the documents were supplied to the chair under regulation 32(6), and
- (b) give written notice of the date, time and place of the misconduct pre-hearing to—
 - (i) the officer concerned;
 - (ii) the appropriate authority;
 - (iii) the originating authority, where functions have been delegated under regulation 26(1);
 - (iv) the Director General, where the Director General—
 - (aa) is presenting the case, or
 - (bb) would be entitled to attend the misconduct hearing under regulation 38(1).

(2) Subject to paragraph (4), where a date and time is specified under paragraph (1) and—

- (a) the officer concerned or their police friend will not be available, and
- (b) the officer proposes an alternative date or time which satisfies paragraph (3),

the misconduct pre-hearing must be postponed to the date or time proposed by the officer.

(3) An alternative time must—

- (a) be reasonable, and
- (b) fall before the end of 5 working days beginning with the first working day after the day specified by the chair.

(4) In the case of joint misconduct proceedings, where a date and time is specified under paragraph (1) and one or more of the officers concerned or their police friend will not be available at that time, the chair must—

- (a) consult each of the officers concerned as regards the timing of the misconduct pre-hearing, and
 - (b) determine the date and time of the misconduct pre-hearing, which must fall within the period specified in paragraph (3)(b).
- (5) The following are entitled to attend the misconduct pre-hearing—
- (a) those listed in paragraph (1)(b);
 - (b) the officer's police friend;
 - (c) the officer's relevant lawyer;
 - (d) the relevant lawyer representing the appropriate authority or, as the case may be, the originating authority, and
 - (e) the Director General's relevant lawyer, where the Director General is presenting the case or would be entitled to attend the misconduct hearing under regulation 38(1).
- (6) Subject to paragraph (5), a misconduct pre-hearing must be in private.
- (7) A misconduct pre-hearing may be conducted by telephone or by such other electronic means as may be agreed between the parties, or, where the parties fail to agree, as decided by the chair.
- (8) At the misconduct pre-hearing the chair must—
- (a) determine the date, time and duration of the misconduct hearing, following consultation with the parties;
 - (b) consider any lists of proposed witnesses supplied under regulation 32(1) and, in accordance with regulation 32(5), determine which, if any, witnesses should attend the misconduct hearing;
 - (c) consider any documents supplied under regulation 32(6);
 - (d) consider any procedural or preliminary legal arguments or points of law raised and whether it is appropriate for those matters to be dealt with at the misconduct pre-hearing or the misconduct hearing;
 - (e) consider any issues related to disclosure of documents for the purposes of the misconduct hearing, and
 - (f) seek representations from the parties as to whether to—
 - (i) exclude any person under regulation 39(3)(a);
 - (ii) impose conditions under regulation 39(3)(b), or
 - (iii) prohibit the publication of any matter under regulation 39(3)(c).
- (9) Subject to paragraph (10)(b) and (11), the misconduct hearing must take place before the end of 30 working days beginning with the date of the misconduct pre-hearing.
- (10) Where the chair considers that it would be in the interests of justice to do so, the chair may extend—
- (a) the period of 15 working days specified in paragraph (1)(a);
 - (b) the period of 30 working days specified in paragraph (9).
- (11) Any of the parties may apply to the chair for the misconduct hearing to take place later than is provided for in paragraph (9).
- (12) Any such application must set out the reasons for the application.
- (13) The chair must determine whether it would be in the interests of justice for the application to be granted, provided that the date fixed for the commencement of the hearing must be within the period specified in regulation 29(2), or such extended period as the chair may specify under regulation 29(6)(a).

(14) At the misconduct pre-hearing the chair may issue directions including, but not limited to, the matters set out in this regulation, other than paragraph (8)(f).

(15) Within the period of 5 working days beginning with the date of the misconduct pre-hearing, the chair must serve on the parties a summary of the key matters discussed and a record of any directions issued.

(16) The parties must comply with any directions issued under paragraph (15).

(17) For the purposes of this regulation “parties” means the appropriate authority or, as the case may be, the originating authority, the officer concerned, the officer’s representatives and, where the Director General is presenting the case, the Director General.

Timing of misconduct meeting

34.—(1) Subject to paragraphs (2), (6) and (8), the misconduct meeting must take place before the end of 20 working days beginning with the first working day after—

- (a) the officer complies with regulation 31(2) and (3);
- (b) the expiry of the 15 working day period referred to in regulation 31(1)(a), if the officer has not complied with regulation 31(2) and (3) within that period, or
- (c) where the 15 working day period referred to in regulation 31(1)(a) is extended in accordance with regulation 31(1)(b), the expiry of such extended period.

(2) The person conducting or chairing the misconduct meeting may extend the period specified in paragraph (1) where they consider that it would be in the interests of justice to do so.

(3) Where the person conducting or chairing the misconduct meeting decides to extend the period under paragraph (2), or decides not to do so following representations from the officer concerned or the appropriate authority, they must provide written notification of the reasons for that decision to the authority and the officer.

(4) The person conducting or chairing the misconduct meeting must, if reasonably practicable, agree a date and time for the misconduct meeting with the officer concerned.

(5) Where no date and time is agreed under paragraph (4), the person conducting or chairing the misconduct meeting must specify a date and time for that meeting.

(6) Subject to paragraph (8), where a date and time is specified under paragraph (5) and—

- (a) the officer concerned or the officer’s police friend will not be available, and
- (b) the officer proposes an alternative date or time which satisfies paragraph (7),

the misconduct meeting must be postponed to the date or time proposed by the officer.

(7) An alternative time must—

- (a) be reasonable, and
- (b) fall before the end of 5 working days beginning with the first working day after the day specified by the person conducting or chairing the misconduct meeting.

(8) In the case of a joint misconduct meeting, where a date and time is specified under paragraph (5) and one or more of the officers concerned or their police friend will not be available at that time, the person conducting or chairing the misconduct meeting must—

- (a) consult each of the officers concerned as regards the timing of the misconduct meeting, and
- (b) determine the date and time of the misconduct meeting, which must fall within the period specified in paragraph (7)(b).

(9) When a date and time for the misconduct meeting has been agreed under this regulation, the person conducting or chairing the misconduct meeting must inform the appropriate authority of the date, time and place of the misconduct meeting.

Notice of misconduct proceedings and panel

35.—(1) The appropriate authority must give the officer concerned written notice of the date, time and place of the misconduct proceedings.

(2) Where the misconduct proceedings are to be conducted by a panel, as soon as practicable after the persons comprising that panel (other than the chair) have been determined, the appropriate authority must give the officer concerned written notice of the names of such persons and of the effect of paragraphs (3) to (6) of this regulation.

(3) The officer concerned may object to any person whom the officer is notified under the preceding provisions of this regulation is to conduct (other than as chair) the misconduct proceedings.

(4) Any such objection must be made in writing to the chair before the end of 3 working days beginning with the first working day after the officer concerned is given notice of the person's name and must set out the grounds of objection of the officer.

(5) The chair must notify the officer concerned in writing whether it upholds or rejects an objection to any panel member.

(6) If the chair upholds the objection, the person to whom the officer concerned objects must be replaced (in accordance with regulation 28).

(7) As soon as reasonably practicable after any such appointment, the chair must give a written notice to the officer concerned of the name of the new panel member and of the effect of paragraphs (8) and (9) of this regulation.

(8) The officer concerned may object to the appointment of a person appointed under paragraph (6).

(9) In relation to an objection under paragraph (8) of this regulation—

- (a) paragraph (4) applies except in so far as it specifies the period of time for making an objection;
- (b) the objection must be made before the end of 3 working days beginning with the first working day after the officer concerned has been given the notice referred to in paragraph (7), and
- (c) paragraphs (5) to (7) apply, with the exception of the requirement in paragraph (7) for the chair to give written notice of the effects of paragraphs (8) and (9).

(10) Where the Director General is entitled to attend the misconduct proceedings to make representations under regulation 38(1), or to nominate a person to attend the proceedings as an observer under regulation 40(6), the appropriate authority must give the Director General written notice of the date, time and place of the proceedings.

(11) Where the Director General has made a decision under regulation 24(1) to present a case, each of paragraphs (1), (2) and (7) must be read as if “and the Director General” were inserted after “the officer concerned”.

Public notification of misconduct hearings

36.—(1) The person chairing a misconduct hearing (“the chair”) may require the appropriate authority or, as the case may be, the originating authority, to give notice of the hearing which contains information relating to one or more of—

- (a) the name of the officer concerned;
- (b) the date of the hearing;
- (c) the time of the hearing;
- (d) the place at which the hearing will take place, and

- (e) the conduct that is the subject matter of the case and how that conduct is alleged to amount to misconduct or gross misconduct, as the case may be, as set out in the notice given in accordance with regulation 30(1)(a).
- (2) Where the chair requires notice to be given in accordance with paragraph (1), the appropriate authority or, as the case may be, the originating authority, must publish the notice on its website as soon as practicable after notice of the hearing is given under regulation 35(1).
- (3) Any person to whom this paragraph applies may make written representations to the chair in relation to—
 - (a) whether, and (if so) the extent to which, the chair should exclude any person from the whole or part of the hearing under regulation 39(3)(a);
 - (b) whether the chair should impose any conditions under regulation 39(3)(b);
 - (c) whether the chair should give directions prohibiting the publication of any matter relating to the proceedings under regulation 39(3)(c);
 - (d) in the light of the representations made under sub-paragraphs (a) to (c)—
 - (i) whether the chair should require notice to be given under paragraph (1);
 - (ii) which types of information mentioned in paragraph (1)(a) to (e) should be included in any such notice.
- (4) Paragraph (3) applies to—
 - (a) the officer concerned;
 - (b) the appropriate authority or, as the case may be, the originating authority;
 - (c) the complainant;
 - (d) any interested person;
 - (e) any witness, and
 - (f) the Director General.
- (5) Written representations in relation to the matters specified in paragraph (3)(a) to (c) may also be made by any representative of the media to the chair.
- (6) Any written representations made in accordance with paragraph (3) or (5), as the case may be, must be provided no later than the date specified by the chair for provision of such representations.

Attendance of officer concerned at misconduct proceedings

- 37.**—(1) Subject to paragraph (2), the officer concerned must attend the misconduct proceedings.
- (2) Where the officer concerned informs the person conducting or chairing the misconduct proceedings in advance that the officer is unable to attend on grounds which the person conducting or chairing those proceedings considers reasonable, that person may allow the officer to participate in the proceedings by video link or other means.
 - (3) Where under paragraph (2) the officer concerned is allowed to and does so participate in the misconduct proceedings, or where the officer otherwise does not attend the misconduct proceedings—
 - (a) the officer may nonetheless be represented at those proceedings by —
 - (i) a police friend, or
 - (ii) in the case of a misconduct hearing, a relevant lawyer (in which case the police friend may also attend), and
 - (b) the proceedings may be proceeded with and concluded in the absence of the officer whether or not the officer is so represented.

(4) Where the officer concerned is represented in accordance with paragraph (3), the police friend or relevant lawyer of the officer, or both, as the case may be, may participate using the video link or other means where such means are also used by the officer.

Participation of the Director General and investigator at misconduct proceedings

38.—(1) Subject to paragraph (6), in any case where—

- (a) paragraph 18 or 19 of Schedule 3 to the 2002 Act (directed and independent investigations) applied, or
- (b) paragraph 16 of Schedule 3 to the 2002 Act (investigations by the appropriate authority on its own behalf) applied and the Director General—
 - (i) made a recommendation under paragraph 25(4C)(c) of that Schedule (duties with respect to disciplinary proceedings) which the appropriate authority accepted, or
 - (ii) gave a direction under paragraph 27(4)(a) of that Schedule (duties with respect to disciplinary proceedings),

the Director General may attend the misconduct proceedings to make representations.

(2) Where the Director General so attends the misconduct proceedings—

- (a) if it is a misconduct hearing the Director General may be represented by a relevant lawyer;
- (b) the Director General must notify the complainant or any interested person prior to those proceedings, and
- (c) the person conducting or chairing the misconduct proceedings must notify the officer concerned prior to those proceedings.

(3) The investigator or a nominated person must attend the misconduct proceedings on the request of the person conducting or chairing those proceedings to answer questions.

(4) For the purposes of this regulation, a “nominated person” is a person who, in the opinion of—

- (a) the appropriate authority or, as the case may be, the originating authority, or
- (b) in a case to which paragraph 18 or 19 of Schedule 3 to the 2002 Act (directed and independent investigations) applied, the Director General,

has sufficient knowledge of the investigation of the case to be able to assist the person conducting or chairing the misconduct proceedings.

(5) Where more than one allegation is considered in the same misconduct proceedings in accordance with regulation 4(9), this regulation applies to the whole of the proceedings and accordingly the Director General may make representations in respect of any allegation.

(6) Paragraph (1) does not apply in a case where the Director General has made a decision under regulation 24(1) to present a case.

Reporting restrictions, participation and exclusions from proceedings

39.—(1) Subject to paragraph (3), a misconduct hearing must be in public.

(2) Subject to regulations 38 and 40, a misconduct meeting must be in private.

(3) Having considered any representations received under regulations 33(8)(f), 36(3) and 36(5), the person conducting or chairing the misconduct proceedings may—

- (a) in relation to the attendance at the proceedings of a person under regulation 40 or this regulation, exclude any person as they see fit from the whole or a part of those proceedings;

- (b) impose such conditions as they see fit relating to the attendance under regulation 40 or this regulation of any person at the proceedings in order to facilitate the proper conduct of those proceedings, and
 - (c) in the case of a chair appointed under regulation 28(4), give such directions as they think appropriate prohibiting the publication of any matter relating to the proceedings.
- (4) Where it appears to the person conducting or chairing the misconduct proceedings that any person may, in giving evidence, disclose information which ought not to be disclosed to any person, other than a party to the proceedings, attending the proceedings because it is information to which paragraph (7) applies, they must require such attendees to withdraw while the evidence is given.
- (5) Subject to any contrary decision by the person conducting or chairing a misconduct meeting, a witness other than a complainant, interested person or the officer concerned may only attend the misconduct meeting for the purpose of giving their evidence.
- (6) Where a person is to give evidence as a witness at misconduct proceedings, the witness (and any person accompanying the witness) must not be allowed to attend the proceedings before giving evidence.
- (7) This paragraph applies to information in so far as the person conducting or chairing the misconduct proceedings considers that preventing disclosure of it to an attendee is—
- (a) necessary for the purpose of preventing the premature or inappropriate disclosure of information that is relevant to, or may be used in, any criminal proceedings;
 - (b) necessary in the interests of national security;
 - (c) necessary for the purpose of the prevention or detection of crime, or the apprehension or prosecution of offenders;
 - (d) necessary for the purpose of the prevention or detection of misconduct by other police officers or police staff members or their apprehension for such matters;
 - (e) necessary and proportionate for the protection of the welfare and safety of any informant or witness;
 - (f) otherwise in the public interest.

Attendance of complainant, interested persons and others at misconduct proceedings

- 40.**—(1) This regulation applies in the case of misconduct proceedings arising from—
- (a) a conduct matter under Schedule 3 to the 2002 Act (handling of complaints and conduct matters etc.), or
 - (b) the investigation of a complaint to which paragraph 19A of that Schedule (special procedure where investigation relates to police officer or special constable)(**11**) applied.
- (2) The appropriate authority must notify the complainant and any interested person of the date, time and place of the misconduct proceedings and, if applicable, of their right to make representations under regulation 36(3).
- (3) Subject to regulation 39(3) and (5), the complainant or any interested person may attend the misconduct meeting as an observer.
- (4) Subject to regulation 39(3) and (5), a complainant or interested person may be accompanied at a misconduct meeting by one other person, and if the complainant or interested person has a special need, by one further person to accommodate that need.

(11) Paragraph 19A was substituted for paragraphs 19A to 19E by paragraphs 9 and 21 of Schedule 5 to the Policing and Crime Act 2017.

(5) The person conducting or chairing the misconduct proceedings may, at the person's discretion, put any questions to the officer concerned that the complainant or interested person may request be put to the officer.

(6) A person nominated by the Director General may, as an observer, attend a misconduct meeting which arises from a case to which—

- (a) paragraph 18 or 19 of Schedule 3 to the 2002 Act (directed and independent investigations) applied, or
- (b) paragraph 16 of Schedule 3 to the 2002 Act (investigations by the appropriate authority on its own behalf) applied and in relation to which the Director General—
 - (i) made a recommendation under paragraph 25(4C)(c) of that Schedule (duties with respect to disciplinary proceedings) which the appropriate authority accepted, or
 - (ii) gave a direction under paragraph 27(4)(a) of that Schedule (duties with respect to disciplinary proceedings).

Procedure at misconduct proceedings

41.—(1) The person conducting or chairing the misconduct proceedings must determine the procedure at those proceedings and, in so far as it is set out in these Regulations, must determine it in accordance with these Regulations.

(2) The misconduct proceedings must not proceed unless the officer concerned has been notified of the effect of regulation 8(1) to (3) in relation to the form of misconduct proceedings taking place.

(3) Subject to paragraph (4), the person conducting or chairing the misconduct proceedings may from time to time adjourn the proceedings if it appears to the person to be necessary or expedient to do so.

(4) The misconduct proceedings must not, except in exceptional circumstances, be adjourned solely to allow the complainant or any witness or interested person to attend.

(5) At the beginning of the misconduct proceedings, the person conducting or chairing the misconduct proceedings must give the officer concerned the opportunity to say whether or not the officer accepts that the officer's conduct amounts to misconduct or gross misconduct, as the case may be.

(6) The person representing the appropriate authority or, as the case may be, the originating authority may—

- (a) address the proceedings in order to do any or all of the following—
 - (i) put the case of the authority;
 - (ii) sum up that case;
 - (iii) respond on behalf of the authority to any view expressed at the proceedings;
 - (iv) make representations concerning any aspect of proceedings under these Regulations, and
 - (v) subject to paragraph (10), ask questions of any witnesses, and
 - (b) confer with the authority.
- (7) The person representing the officer concerned may—
- (a) address the proceedings in order to do all or any of the following—
 - (i) put the case of the officer;
 - (ii) sum up that case;
 - (iii) respond on behalf of the officer to any view expressed at the proceedings;

(iv) make representations concerning any aspect of proceedings under these Regulations, and

(v) subject to paragraph (10), ask questions of any witnesses, and

(b) confer with the officer.

(8) Where (at a misconduct hearing) the person representing the officer concerned is a relevant lawyer, the police friend of the officer may also confer with the officer.

(9) The police friend or relevant lawyer of the officer concerned may not answer any questions asked of the officer during the misconduct proceedings.

(10) The person conducting or chairing the misconduct proceedings must determine whether any question should be put to a witness.

(11) The person conducting or chairing the misconduct proceedings may allow any document to be considered at those proceedings notwithstanding that a copy of it has not been supplied—

(a) by the officer concerned to the appropriate authority or, as the case may be, the originating authority in accordance with regulation 31(3), or

(b) to the officer concerned in accordance with regulation 30(1).

(12) Where evidence is given or considered at the misconduct proceedings that the officer concerned—

(a) on being questioned by an investigator at any time after the officer was given written notice under regulation 17(1) of these Regulations or regulation 17(1) of the Complaints and Misconduct Regulations, or

(b) in submitting any information or by not submitting any information at all under regulation 18(1) or 31(2) or (3) (or, where paragraph (13) applies, regulation 54) of these Regulations or under regulation 20 of the Complaints and Misconduct Regulations,

failed to mention any fact relied on in the officer's case at the misconduct proceedings, being a fact which in the circumstances existing at the time, the officer could reasonably have been expected to mention when so questioned or when providing such information, paragraph (14) applies.

(13) This paragraph applies where the appropriate authority has directed, in accordance with regulation 50(1), that the case be dealt with under this Part.

(14) Where this paragraph applies, the person or persons conducting the misconduct proceedings may draw such inferences from the failure as appear proper.

(15) The person or persons conducting the misconduct proceedings must review the facts of the case and decide whether the conduct of the officer concerned amounts—

(a) in the case of a misconduct meeting, to misconduct or not, or

(b) in the case of a misconduct hearing, to misconduct, gross misconduct or neither.

(16) The person or persons conducting the misconduct proceedings must not find that the conduct of the officer concerned amounts to misconduct or gross misconduct unless—

(a) they are satisfied on the balance of probabilities that this is the case, or

(b) the officer admits it is the case.

(17) At misconduct proceedings conducted by a panel, any decision must be based on a majority but must not indicate whether it was taken unanimously or by a majority.

(18) Where the Director General has made a decision under regulation 24(1) to present a case, paragraph (6) must be read as if for "The person representing the appropriate authority or, as the case may be, the originating authority" there were substituted "The Director General".

Outcome of misconduct proceedings

42.—(1) The person conducting or chairing misconduct proceedings may, subject to the provisions of this regulation—

- (a) impose any disciplinary action mentioned in paragraph (2) or (3) as appropriate;
- (b) where they find the conduct amounts to neither gross misconduct nor misconduct, direct that the matter is referred to be dealt with under the reflective practice review process.

(2) The disciplinary action available at a misconduct meeting is—

- (a) a written warning;
- (b) a final written warning.

(3) The disciplinary action available at a misconduct hearing is—

- (a) where the person conducting or chairing the misconduct proceedings decides the conduct of the officer concerned amounts to misconduct, in accordance with regulation 41(15)—
 - (i) a written warning;
 - (ii) a final written warning;
 - (iii) reduction in rank, where paragraph (5) or (6) applies;
 - (iv) dismissal without notice, where paragraph (5) or (6) applies;
- (b) where the person conducting or chairing the misconduct proceedings decides the conduct of the officer concerned amounts to gross misconduct, in accordance with regulation 41(15)—
 - (i) a final written warning;
 - (ii) reduction in rank;
 - (iii) dismissal without notice.

(4) The disciplinary action referred to in paragraph (3) has effect from the date on which it is notified to the officer concerned.

(5) This paragraph applies where a final written warning was in force on the date of the severity assessment under regulation 14(1) of these Regulations or under regulation 16 of the Complaints and Misconduct Regulations.

(6) This paragraph applies where it is decided at misconduct proceedings that the officer's conduct amounts to misconduct and the decision is based on the officer's conduct arising from more than one incident and those incidents are not closely factually connected.

(7) Where, on the date of the severity assessment under regulation 14(1) of these Regulations or under regulation 16 of the Complaints and Misconduct Regulations, the officer concerned had a written warning in force, a written warning must not be given.

(8) Where, on the date of the severity assessment under regulation 14(1) of these Regulations or under regulation 16 of the Complaints and Misconduct Regulations, the officer concerned had a final written warning in force, neither a written warning nor a final written warning may be given.

(9) Where a written warning or final written warning is given, that warning remains in force for—

- (a) a period of 18 months beginning with the day on which it was notified to the officer concerned, in the case of a written warning, or
- (b) a period of 2 years beginning with the day on which it was notified to the officer concerned, in the case of a final written warning.

(10) Where a final written warning is given under paragraph (3), the period in paragraph (9) (b) may be extended, by the persons considering the question of disciplinary action, to a maximum period of 5 years.

(11) The references to a period in paragraph (9)(a) and (b), including any such period as extended, if relevant, in accordance with paragraph (10), does not include any time when the officer is taking a career break (under regulation 33(12) of the Police Regulations (leave) and the determination of the Secretary of State made under that regulation)(12).

(12) Reduction in rank may only be imposed under this regulation where the persons imposing the disciplinary action consider this is an appropriate sanction, taking into account the views of the appropriate authority or, as the case may be, the originating authority, including in relation to the likely operational impact.

(13) Where, on the date of the severity assessment under regulation 14(1) of these Regulations or under regulation 16 of the Complaints and Misconduct Regulations, the officer concerned had been reduced in rank under the Police (Conduct) Regulations 2004(13) or under these Regulations, a reduction in rank may not be imposed.

(14) Where the question of disciplinary action is being considered, the person or persons considering it—

- (a) must have regard to the record of police service of the officer concerned as shown on the officer's personal record;
- (b) may receive evidence from any witness whose evidence would, in their opinion, assist them in determining the question, including evidence of mitigating circumstances disclosed prior to the hearing to—
 - (i) a police force;
 - (ii) a registered medical practitioner, or
 - (iii) a staff association;
- (c) must give—
 - (i) the officer;
 - (ii) if the officer is legally represented, the officer's relevant lawyer or, if the officer is not legally represented, the officer's police friend;
 - (iii) the appropriate authority or, as the case may be, the originating authority or the person appointed to represent such authority in accordance with regulation 8(5), and
 - (iv) the Director General or the Director General's relevant lawyer, where the Director General made a decision under regulation 24(1) to present the case,an opportunity to make oral or written representations before any such question is determined, including on the appropriate level of disciplinary action, and
- (d) where representations are received in relation to mitigating circumstances—
 - (i) must consider whether those circumstances have been mentioned at an earlier stage in the proceedings and, if they have not been so mentioned, whether the officer could reasonably have been expected to so mention them, and
 - (ii) in the light of their conclusions under paragraph (i), may determine that it is appropriate to place less weight on those circumstances.

(15) Paragraph (16) applies where an officer is dismissed at a misconduct hearing.

(16) The person chairing a misconduct hearing must provide any information to the appropriate authority or, as the case may be, the originating authority, that the person considers ought to be included by virtue of regulation 3(2)(1) of the Police Barred List and Police Advisory List

(12) Regulation 33 was amended by S.I. 2006/3449 and 2011/3026.

(13) S.I. 2004/645.

Regulations 2017(14) in the barred list report relating to the officer concerned (information relating to whether exemptions to requirement to publish the barred list entry apply).

Notification of outcome

43.—(1) The person conducting or chairing the misconduct proceedings must, before the end of a period of 5 working days beginning with the first working day after the completion of the misconduct hearing or misconduct meeting, submit a report to the appropriate authority or, where functions have been delegated under regulation 26(1), to the originating authority setting out—

- (a) the finding of the person or persons conducting the misconduct proceedings;
- (b) the reasons for that finding;
- (c) any disciplinary action imposed;
- (d) any direction that the matter be dealt with under the reflective practice review process.

(2) The appropriate authority or, as the case may be, the originating authority, must, as soon as practicable after receiving the report under paragraph (1), notify the officer concerned of the outcome by sending the officer a copy of—

- (a) the report submitted under paragraph (1), and
- (b) where there was a finding of misconduct or gross misconduct, a notice of the right of appeal in accordance with paragraph (3).

(3) A notice of the right of appeal under paragraph (2) is a notice—

- (a) where the officer concerned is an officer other than a senior officer—
 - (i) if the case was decided at a misconduct meeting, of the right of appeal under regulation 45, or
 - (ii) if the case was decided at a misconduct hearing, of the right of appeal to a police appeals tribunal(15);
- (b) where the officer concerned is a senior officer, of the right of appeal to a police appeals tribunal.

(4) In all cases referred to in paragraph (3) the notice of the right of appeal must be in writing and include the name of the person to whom an appeal should be sent.

(5) The appropriate authority or, as the case may be, the originating authority, must send a copy of any report under this regulation to—

- (a) the Director General, in any case where the Director General—
 - (i) presented the case, or
 - (ii) was entitled to attend to make representations under regulation 38(1), and
- (b) the complainant and any interested person, in any case to which regulation 40 applies.

(6) Subject to the harm test and to paragraph (10), the person chairing a misconduct hearing must require the appropriate authority or, as the case may be, the originating authority, to publish the report submitted under paragraph (1).

(7) Where the appropriate authority or, as the case may be, the originating authority is required to publish the report in accordance with paragraph (6), it must do so as soon as practicable after the officer has been notified of the outcome of the proceedings under paragraph (2).

(8) Where the appropriate authority or the originating authority publishes a report in accordance with paragraph (6), it must publish the report on its website for a period of not less than 28 days.

(14) S.I. 2017/1135.

(15) “Police appeals tribunal” has the same meaning as in section 85 of the 1996 Act.

(9) Prior to publication of a report under paragraph (6) the appropriate authority or, as the case may be, the originating authority may, subject to paragraph (12), redact the document—

(a) in so far as the authority considers redaction is—

- (i) necessary for the purpose of preventing the premature or inappropriate disclosure of information that is relevant to, or may be used in, any criminal proceedings;
- (ii) necessary in the interests of national security;
- (iii) necessary for the purpose of the prevention or detection of crime, or the apprehension or prosecution of offenders;
- (iv) necessary for the purpose of the prevention or detection of misconduct by other police officers or police staff members or their apprehension for such matters;
- (v) necessary and proportionate for the protection of the welfare and safety of any informant or witness;
- (vi) otherwise in the public interest, and

(b) in line with any restrictions imposed on the disclosure of information during the course of the proceedings.

(10) The person chairing the misconduct hearing may dispense with the requirement under paragraph (6) to publish the report if in the particular circumstances of the case the person considers it is appropriate to do so on any of the grounds set out in paragraph (9)(a) or (b).

(11) In making a decision under paragraph (10), the person chairing the misconduct hearing may have regard to any representations—

- (a) provided under regulation 36(3) or (5), or
- (b) made at the misconduct hearing.

(12) Information that has already been published during the course of the proceedings may not be redacted under paragraph (9).

Record of misconduct proceedings

44.—(1) A record of the misconduct proceedings must be taken and in the case of a misconduct hearing that record must be verbatim.

(2) The officer concerned must, on request, be supplied with a copy of the record of the proceedings at the misconduct proceedings.

Appeal from misconduct meeting: officers other than senior officers

45.—(1) Where the officer concerned is an officer, other than a senior officer, whose case was decided at a misconduct meeting, the officer may, subject to the provisions of this regulation, appeal—

- (a) if the officer admitted the officer's conduct amounted to misconduct, against any disciplinary action imposed under regulation 42, or
- (b) if (after the officer denied misconduct) the person conducting or chairing the misconduct meeting found that the officer's conduct amounted to misconduct, against that finding or any disciplinary action imposed under regulation 42.

(2) The only grounds of appeal under this regulation are that—

- (a) the finding or disciplinary action imposed was unreasonable;
- (b) there is evidence that could not reasonably have been considered at the misconduct meeting which could have materially affected the finding or decision on disciplinary action, or

- (c) there was a serious breach of the procedures set out in these Regulations or other unfairness which could have materially affected the finding or decision on disciplinary action.
- (3) An appeal under this regulation must be commenced by the officer concerned giving written notice of appeal to the appropriate authority—
 - (a) before the end of 7 working days beginning with the first working day after the report is given to the officer under regulation 43 (unless this period is extended by the appropriate authority for exceptional circumstances), and
 - (b) stating the grounds of appeal and whether a meeting is requested.
- (4) An appeal under this regulation must be determined—
 - (a) where the person who conducted the misconduct meeting was a member of a police force, by—
 - (i) a member of a police force of at least one rank higher than that person, or
 - (ii) unless the case substantially involves operational policing matters, a police staff member who, in the opinion of the appropriate authority, is more senior than that person;
 - (b) where the person who conducted the misconduct meeting was a police staff member, by—
 - (i) a member of a police force who, in the opinion of the appropriate authority is more senior than that person, or
 - (ii) a more senior police staff member,who is not an interested party, appointed by the appropriate authority.
- (5) The appropriate authority must as soon as practicable give the officer concerned written notice of—
 - (a) the name of the person appointed to determine the appeal under paragraph (4);
 - (b) the name of any person appointed under regulation 8(6) to advise the person determining the appeal, and
 - (c) the effect of paragraphs (6) to (9) of this regulation.
- (6) The officer concerned may object to any person whom the officer is notified under this regulation is to—
 - (a) determine the appeal, or
 - (b) advise the person determining the appeal.
- (7) Any such objection must be made in writing to the appropriate authority before the end of 3 working days beginning with the first working day after the officer concerned is given notice of the person's name and must set out the grounds of objection of the officer.
- (8) The appropriate authority must notify the officer concerned in writing whether it upholds or rejects an objection to the person appointed to determine the appeal or to any person appointed under regulation 8(6) to advise the person determining the appeal.
- (9) If the appropriate authority upholds the objection, the person to whom the officer concerned objects must be replaced (in accordance with regulation 8(6) and (7) or paragraph (4) as appropriate).
- (10) As soon as reasonably practicable after any such appointment, the appropriate authority must give a written notice to the officer concerned of the name of the new person appointed to determine the appeal or the advisor to the person determining the appeal, as the case may be, and of the effect of paragraphs (11) and (12) of this regulation.
- (11) The officer concerned may object to the appointment of a person appointed under paragraph (9).
- (12) In relation to an objection under paragraph (11) of this regulation—

- (a) paragraph (7) applies except in so far as it specifies the period of time for making an objection;
 - (b) the objection must be made before the end of 3 working days beginning with the first working day after the officer concerned is given the notice referred to in paragraph (10);
 - (c) paragraphs (8) to (10) apply, with the exception of the requirement in paragraph (10) for the appropriate authority to give written notice of the effects of paragraphs (11) and (12).
- (13) The appropriate authority must supply the person determining the appeal with a copy of—
- (a) the documents given to the person who held the misconduct meeting as specified in regulation 32(6);
 - (b) the notice of appeal given by the officer concerned under regulation 45(3);
 - (c) the record of the misconduct meeting taken under regulation 44(1), and
 - (d) any evidence of a kind referred to in regulation 45(2)(b) that the officer wishes to submit in support of the appeal.
- (14) The person determining the appeal must determine whether the notice of appeal sets out arguable grounds of appeal and if they decide that it does not, they must dismiss the appeal.

Appeal meeting

46.—(1) This regulation applies where the officer concerned requests a meeting in the written notice of appeal under regulation 45(3).

(2) If the person determining the appeal determines under regulation 45(14) that the notice of appeal sets out arguable grounds of appeal, they must hold an appeal meeting with the officer concerned, subject to paragraphs (3) and (5), before the end of 5 working days beginning with the first working day after that determination.

(3) The person determining the appeal may extend the time period specified in paragraph (2) where they consider that it would be in the interests of justice to do so.

(4) The person determining the appeal must specify a date and time for the appeal meeting.

(5) Where—

- (a) the officer concerned or the officer's police friend will not be available, and
- (b) the officer proposes an alternative date or time which satisfies paragraph (6),

the appeal meeting must be postponed to the date or time proposed by the officer.

(6) An alternative time must—

- (a) be reasonable, and
- (b) fall before the end of 5 working days beginning with the first working day after the day specified by the person determining the appeal.

(7) The appropriate authority must give written notice of the date, time and place of the appeal meeting to—

- (a) the officer concerned;
- (b) where the Director General was entitled to attend the misconduct meeting to make representations under regulation 38(1), or to nominate a person to attend the meeting as an observer under regulation 40(6), the Director General;
- (c) where the misconduct meeting arose from a complaint to which paragraph 19A of Schedule 3 to the 2002 Act (special procedure where investigation relates to a police officer or special constable) applied, the complainant, and

- (d) where the misconduct meeting arose from the investigation of a conduct matter under Schedule 3 to the 2002 Act (handling of complaints and conduct matters etc.), any interested person.
- (8) The appeal meeting must not be held until the person determining the appeal has received a copy of the documents under regulation 45(13).
- (9) The person determining the appeal must determine the procedure at the appeal meeting and, in so far as it is set out in these Regulations, must determine it in accordance with these Regulations.
- (10) Subject to the provisions of this regulation, any interested person or complainant entitled to be given notice of the appeal meeting under paragraph (7) may attend the appeal meeting as an observer.
- (11) Where the officer concerned objects to the complainant or interested person being present whilst a submission is made in mitigation on the officer's behalf, the person determining the appeal may require the complainant or interested person to withdraw while the submission is made.
- (12) The person determining the appeal may impose such conditions as they see fit relating to the attendance of persons under paragraph (10) at the appeal meeting (including circumstances in which they may be excluded) in order to facilitate the proper conduct of the appeal meeting.

Finding of the appeal

- 47.—**(1) The person determining the appeal may—
- (a) confirm or reverse the decision appealed against;
 - (b) deal with the officer concerned in any manner in which the person conducting or chairing the misconduct meeting could have dealt with the officer under regulation 42.
- (2) Before the end of 3 working days beginning with the first working day after the determination of the appeal, the appropriate authority must give the officer concerned written notice of that determination with a summary of the reasons.
- (3) The decision of the person determining the appeal takes effect by way of substitution for the decision of the person conducting or chairing the misconduct meeting and as from the date of the written notice of the outcome of that meeting.
- (4) In a case where—
- (a) paragraph 18 or 19 of Schedule 3 to the 2002 Act (directed and independent investigations) applied, or
 - (b) paragraph 16 of Schedule 3 to the 2002 Act (investigations by appropriate authority on its own behalf) applied and the Director General—
 - (i) made a recommendation under paragraph 25(4C)(c) of that Schedule (duties with respect to disciplinary proceedings) which the appropriate authority accepted, or
 - (ii) gave a direction to the appropriate authority under paragraph 27(4)(a) of that Schedule (duties with respect to disciplinary proceedings),
- the appropriate authority must give the Director General written notice of the determination of the appeal with a summary of the reasons.