

## SCHEDULE 1

Regulation 4(2)

Modifications to these Regulations in their application to former officers

### **Modification to regulation 2 (interpretation and delegation)**

**1. Regulation 2 is to be read as if—**

**(a) in paragraph (1)—**

**(i) the following definitions were inserted in the appropriate places—**

““Condition C person” means a person in relation to whom regulation 4(2)(a) and (5)(a) and (b) is satisfied;”;

““Condition C special determination” has the meaning given in regulation 4A(2);”;

““disciplinary action for gross misconduct” means a finding that the officer concerned would have been dismissed if the officer had not ceased to be a member of a police force or a special constable;”;

““relevant time” means the time immediately before the officer concerned ceased to be a member of a police force or a special constable;”;

**(ii) the definitions of “the Performance Regulations”, “appeal meeting”, “disciplinary action”, “human resources professional”, “line manager”, “misconduct meeting”, “practice requiring improvement” and “reflective practice review process” were omitted;**

**(iii) in the definition of “allegation”, for “, conduct matter or practice requiring improvement” there were substituted “or conduct matter”;**

**(iv) for the definition of “appropriate authority”, there were substituted—**

““appropriate authority” means, subject to regulation 26(3), where the officer concerned was—

**(a) the chief officer or acting chief officer of any police force at the relevant time, the local policing body for the force’s area;**

**(b) any other police officer at the relevant time, the chief officer of police of the police force concerned;”;**

**(v) in the definition of “gross misconduct”, for “as to justify dismissal” there were substituted “that the officer concerned would have been dismissed if the officer had not ceased to be a member of a police force or a special constable”;**

**(vi) in the definition of “gross misconduct”, for “as to justify dismissal” there were substituted “that the officer concerned would have been dismissed if the officer had not ceased to be a member of a police force or a special constable”;**

**(vii) in the definition of “misconduct”—**

**(aa) “, other than in regulation 23(2)(a) and the first reference to “misconduct” in regulation 23(2)(b),” were omitted;**

**(bb) for “so serious as to justify disciplinary action” there were substituted “not so serious that the officer concerned would have been dismissed if the officer had not ceased to be a member of a police force or a special constable”;**

**(viii) in the definition of “misconduct hearing”, after “disciplinary action”, there were inserted “for gross misconduct”;**

**(ix) for the definition of “misconduct proceedings”, there were substituted—**

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““misconduct proceedings” means a misconduct hearing;”;

(x) for the definition of “police force concerned”, there were substituted—

““police force concerned” means—

- (a) the police force of which the officer concerned was a member at the relevant time, or
- (b) where the officer concerned was a special constable at the relevant time, the police force maintained for the police area for which the officer was appointed at that time;”;

(i) for the definition of “police officer”, except in its application to regulations 4, 7 and 8, there were substituted—

““police officer” and “officer” mean a person who has ceased to be a member of a police force or a special constable;”;

(ii) in the definition of “proposed witness”, “conducting or” were omitted;

(iii) for the definition of “staff association”, there were substituted—

““staff association” means—

- (a) in relation to an officer who was a member of a police force of the rank of chief inspector or below at the relevant time, the Police Federation of England and Wales;
- (b) in relation to an officer who was a member of a police force of the rank of superintendent or chief superintendent at the relevant time, the Police Superintendents’ Association, and
- (c) in relation to an officer who was a senior officer at the relevant time, the Chief Police Officers’ Staff Association;”;

(b) for paragraph (4), there were substituted—

“(4) Where the appropriate authority delegates its functions under regulation 49, a decision under that regulation as to whether to certify a case as one where the special conditions are satisfied must be authorised by a senior officer.”.

#### **Modification: insertion of Part 1A**

2. These Regulations apply as if after regulation 4, there were inserted—

### **“PART 1A**

#### **Condition C special determination**

##### **Condition C special determination: matters to be taken into account**

**4A.—**(1) This Part applies where the Director General is required under paragraph 23(5A)(ba)(1) of Schedule 3 to the 2002 Act (as applied with modifications by regulation 42 of, and Schedule 2 to, the Complaints and Misconduct Regulations) to make a Condition C special determination.

(1) Paragraph 23(5A) was inserted by section 16 of, and paragraphs 9 and 26(1) and (2) of Schedule 5 to, the Policing and Crime Act 2017.

(2) A Condition C special determination is a determination by the Director General as to whether the taking of disciplinary proceedings against a Condition C person in respect of alleged gross misconduct would be reasonable and proportionate having regard to—

- (a) the seriousness of the alleged gross misconduct;
- (b) the impact of the allegation on public confidence in the police, and
- (c) the public interest.

(3) When assessing the seriousness of the alleged gross misconduct for the purposes of paragraph (2)(a), the matters which the Director General must take into account are—

- (a) whether it appears that the alleged gross misconduct amounts to a criminal offence;
- (b) whether it appears that a complainant or other person has been harmed (whether physically or psychologically) by the alleged gross misconduct and, if so, the extent and seriousness of the harm;
- (c) where it appears that a complainant or other person has been so harmed, whether that person was a vulnerable person;
- (d) whether it appears that the alleged gross misconduct was intentional;
- (e) whether it appears that the purpose or one of the purposes of the alleged gross misconduct was personal gain or benefit for the officer concerned;
- (f) whether it appears that the alleged gross misconduct is aggravated by discriminatory behaviour on the grounds of a person's race, gender, disability, age, religion or belief, sexual orientation or gender identity;
- (g) whether it appears that the officer concerned acted with one or more other persons serving with the police within the meaning of section 12(7)(a) or (c) of the 2002 Act (member of a police force or special constable under the direction and control of a chief officer);
- (h) the extent to which the alleged gross misconduct involved abuse of a position of trust or authority held by the officer concerned;
- (i) whether it appears that the officer concerned has taken steps to prevent the alleged gross misconduct being identified or to obstruct investigations into it, other than lawful steps in the officer's defence;
- (j) whether it appears that the alleged gross misconduct has had an adverse effect on community relations;
- (k) whether it appears that there are mitigating circumstances arising out of the health (whether physical or mental) of the officer concerned at the time of the alleged gross misconduct, and
- (l) any other matters that the Director General considers relevant.

(4) When assessing the impact of the allegation on public confidence in the police for the purposes of paragraph (2)(b), the matters which the Director General must take into account are—

- (a) whether it appears that the alleged gross misconduct has had an effect on relations between the public and the police, including relations between the members of the community where the alleged gross misconduct occurred and the police force concerned;
- (b) the extent of any apparent harm to public confidence in the police, and, in particular, in the police force concerned;

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- (c) the effect that a decision not to take disciplinary proceedings might have on public confidence in the police, and
  - (d) any other matters that the Director General considers relevant.
- (5) When assessing the public interest for the purposes of paragraph (2)(c), the matters which the Director General must take into account are—
- (a) whether it appears that the officer concerned should be prevented from future employment or appointment by a person mentioned in section 88C(5) of the 1996 Act (effect of inclusion in police barred list: persons who may not employ or otherwise appoint a barred person)(2);
  - (b) where it appears that the officer concerned should be so prevented, whether disciplinary proceedings are necessary for this purpose;
  - (c) the length of time since the alleged gross misconduct occurred;
  - (d) whether it appears that the officer concerned will be held to account in respect of the alleged gross misconduct through other means, such as criminal or other proceedings;
  - (e) where it appears that a complainant or other person has been harmed (whether physically or psychologically) by the alleged gross misconduct, whether it appears that a decision not to take disciplinary proceedings would adversely affect that person;
  - (f) whether it appears that the officer concerned is unfit to be subject to or to participate in disciplinary proceedings by reason of disability or ill-health, and
  - (g) any other matters that the Director General considers relevant.
- (6) In paragraph (3)(c), “vulnerable person” means a person who, by reason of age, disability or ill-health, is, or may be, unable to—
- (a) take care of themselves, or
  - (b) protect themselves against harm or exploitation.

#### **Condition C special determination: procedure**

**4B.**—(1) Before making a Condition C special determination the Director General must give a notification in writing to—

- (a) any complainant;
  - (b) any interested person, and
  - (c) the officer concerned.
- (2) A notification under paragraph (1) must—
- (a) state that the Director General is to make a Condition C special determination and the consequences under Schedule 3 to the 2002 Act of such a determination;
  - (b) explain the effect of regulation 4A;
  - (c) explain that—
    - (i) if disciplinary proceedings are taken and the allegation of gross misconduct is proved, the officer concerned may be subject to a finding that the officer would have been dismissed if the officer had not ceased to be a member of a police force or a special constable, and

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(2) Section 88C was inserted by Schedule 8 to the Policing and Crime Act 2017 and subsection (5) of that section was amended by paragraph 65(1) and (3)(b) of Schedule 9 to that Act. There was another amendment of that section but it is not relevant.

- (ii) if the officer concerned is subject to such a finding, the officer will be included in the police barred list;
  - (d) subject to the harm test, set out any findings relating to the conduct to which the investigation relates in any investigation report submitted to the Director General under Schedule 3 to the 2002 Act;
  - (e) set out the person's rights under paragraph (3);
  - (f) in the case of the officer concerned, state that the officer has the right to seek advice from the officer's staff association or any other body and the effect of regulation 7(1) and (2).
- (3) A person given a notification under paragraph (1) may, within the period of 21 days beginning with the day on which the notice is given or such longer period as the Director General may agree with that person, provide a written statement and any document which the person wishes the Director General to take into account for the purposes of the Condition C special determination.
- (4) Before making a Condition C special determination the Director General may consult any other person the Director General thinks fit.
- (5) When making a Condition C special determination the Director General must take into account in addition to the matters specified in regulation 4A—
- (a) any written statement or document provided under paragraph (3);
  - (b) any response to a consultation carried out under paragraph (4);
  - (c) any findings relating to the conduct to which the investigation relates in any investigation report submitted to the Director General under Schedule 3 to the 2002 Act, and
  - (d) any other relevant evidence.
- (6) The Director General must give notification in writing of a Condition C special determination and the consequences under Schedule 3 to the 2002 Act of the determination to the persons mentioned in paragraph (1).”.

### **Modification to regulation 7 (police friend)**

3. Regulation 7 is to be read as if—
- (a) in paragraph (1), for sub-paragraph (c), there were substituted—
    - “(c) any other person nominated by the officer concerned and approved by the chief officer of the police force concerned,”;
  - (b) in paragraph (2)—
    - (i) “Subject to regulation 66(1),” were omitted;
    - (ii) in sub-paragraph (b), “or appeal meeting” were omitted;
    - (iii) in sub-paragraph (d), “, meeting” were omitted.

### **Modification to regulation 8 (legal and other representation)**

4. Regulation 8 is to be read as if—
- (a) in paragraph (3), for “the officer may be dismissed or”, there were substituted “disciplinary action for gross misconduct may be imposed in relation to the officer or the officer may”;
  - (b) in paragraph (4), “or an appeal meeting” were omitted;
  - (c) in paragraph (5)—

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- (i) in the opening words, “or an appeal meeting” were omitted;
- (ii) in sub-paragraph (b) “only,” and the words before it were omitted;
- (d) in paragraph (6), “Subject to paragraph (7)”, “conducting or” and “or appeal meeting” were omitted;
- (e) paragraph (7) were omitted.

**Modification to regulation 9 (provision of notices or documents)**

- 5. Regulation 9 is to be read as if—
  - (a) the existing text were paragraph (1);
  - (b) after paragraph (1), there were inserted—
    - “(2) The appropriate authority must make reasonable enquiries in order to determine the last known address of the officer concerned for the purposes of paragraph (1)(b).”.

**Modification: omission of regulation 11 (suspension)**

- 6. These Regulations are to be read as if regulation 11 were omitted.

**Modification to regulation 12 (record of disciplinary proceedings)**

- 7. Regulation 12 is to be read as if for “and decision on disciplinary action”, there were substituted “, any decision on disciplinary action for gross misconduct”.

**Modification to regulation 14 (severity assessment)**

- 8. Regulation 14 is to be read as if—
  - (a) in paragraph (1)—
    - (i) at the beginning, there were inserted “Subject to paragraph (6A),”;
    - (ii) “misconduct or” and “or neither” were omitted;
  - (b) in paragraph (2), for the words from “amount”, in the first place that word occurs, to the end, there were substituted “not amount to gross misconduct, it must take no further action.”;
  - (c) paragraphs (3) and (4) were omitted;
  - (d) in paragraph (5)—
    - (i) at the beginning, there were inserted “Subject to paragraph (6A),”;
    - (ii) for the words from “misconduct or” to the end, there were substituted “gross misconduct, the matter must be investigated.”;
  - (e) in paragraph (6), at the beginning, there were inserted “Subject to paragraph (6A),”;
  - (f) after paragraph (6), there were inserted—
    - “(6A) The appropriate authority must take no action or no further action under paragraph (1), (5) or (6) if —
      - (a) it is satisfied that the officer concerned is unfit for disciplinary proceedings to be brought against the officer by reason of disability or ill-health, or
      - (b) the appropriate authority has made reasonable enquiries in order to determine the last known address of the officer but it has been unsuccessful.”;

- (g) in paragraph (7), for the words from “or to refer” to the end, there were substituted “or is required under paragraph (6A)(a) to take no action or no further action, it must so notify the officer concerned in writing as soon as practicable.”.

**Modification to regulation 15 (appointment of investigator)**

- 9. Regulation 15 is to be read as if in paragraph (3)—
  - (a) for sub-paragraph (c), there were substituted—
    - “(c) if they worked, directly or indirectly, under the management of the officer concerned at the relevant time”;
  - (b) in sub-paragraph (d)—
    - (i) for “is a senior officer, if they are”, there were substituted “was a senior officer at the relevant time, if they were at that time”;
    - (ii) in paragraph (ii), for “where the officer is a member of the metropolitan police force”, there were substituted “, where the officer was a member of the metropolitan police force at the relevant time”.

**Modification to regulation 16 (investigation)**

- 10. Regulation 16 is to be read as if “misconduct or”, in both places where those words appear, were omitted.

**Modification to regulation 17 (written notices)**

- 11. Regulation 17 is to be read as if in paragraph (1)—
  - (a) sub-paragraph (d) were omitted;
  - (b) for sub-paragraph (e), there were substituted—
    - “(e) that if the allegation of gross misconduct is proved, the officer may be subject to a finding that the officer would have been dismissed if the officer had not ceased to be a member of a police force or a special constable;
    - (ea) that if the officer is subject to such a finding, information including the officer’s full name and a description of the conduct which would have led to the officer’s dismissal will be added to the police barred list and may be subject to publication for a period of up to 5 years;”;
  - (c) after sub-paragraph (g), “and” were omitted and there were inserted—
    - “(ga) that it may harm the officer’s case if the officer fails to attend an interview of which the officer has been given notice under regulation 20(6) (interviews during investigation), and”;
  - (d) in sub-paragraph (h), after “18(1)”, there were inserted “, 20A(2)”.

**Modification to regulation 20 (interviews during investigation)**

- 12. Regulation 20 is to be read as if—
  - (a) in paragraph (1), after “practicable” there were inserted “and subject to regulation 20A”;
  - (b) in paragraph (5), for the words from “must” to the end there were substituted “must be reasonable.”.

**Modification: insertion of regulation 20A**

13. These Regulations are to be read as if after regulation 20 there were inserted—

**“Notice of enquiry of police officer during investigation**

**20A.**—(1) Where the investigator is satisfied that, having regard to the circumstances of the officer concerned, it would be unreasonable to require the officer to attend an interview, the investigator may cause the officer concerned to be given a written notice of enquiry.

(2) A notice of enquiry given under paragraph (1) must—

- (a) state any question the investigator wishes to ask the officer concerned, and
- (b) request a response to any such question from the officer concerned within a specified period.

(3) The investigator must make a written record of any notice of enquiry and response received under this regulation.”.

**Modification to regulation 21 (report of investigation)**

14. Regulation 21 is to be read as if—

(a) in paragraph (2)—

(i) after sub-paragraph (b), “and” were inserted;

(ii) for sub-paragraphs (c) and (d) there were substituted—

“**(c)** indicate the investigator’s opinion as to whether—

(i) there is a case to answer in respect of gross misconduct or there is no case to answer;

(ii) where the investigator’s opinion is that there is no such case to answer, there may nevertheless have been a breach of the Standards of Professional Behaviour that would have justified the bringing of disciplinary proceedings had the officer still been serving.”;

(b) in paragraph (4)—

(i) for “would amount to neither misconduct nor”, there were substituted “would not amount to”;

(ii) in sub-paragraph (a), for “it;” there were substituted “it, and”;

(iii) sub-paragraph (c), and “and” before it were omitted;

(c) in paragraphs (6) and (7), “misconduct or” were omitted.

**Modification to regulation 22 (general)**

15. Regulation 22 is to be read as if “conducting or” were omitted.

**Modification to regulation 23 (referral of case to misconduct proceedings)**

16. Regulation 23 is to be read as if—

(a) in paragraph (1)—

(i) in sub-paragraph (a), in the first place it occurs, “misconduct or” were omitted;

(ii) for sub-paragraphs (b) and (c), there were substituted—

“(b) whether or not misconduct proceedings should be brought against the officer concerned, and



- (c) if the appropriate authority determines the officer has no case to answer, whether there may have been a breach of the Standards of Professional Behaviour that would have justified the bringing of disciplinary proceedings had the officer still been serving.”;
- (b) in paragraph (2)—
  - (i) in sub-paragraph (a), “misconduct (within the meaning of paragraph 29 of Schedule 3 to the 2002 Act) or” were omitted;
  - (ii) for sub-paragraphs (b) to (d), there were substituted—
    - “(b) whether or not misconduct proceedings should be brought against the officer concerned, and
    - (c) if the appropriate authority determines the officer has no case to answer, whether there may have been a breach of the Standards of Professional Behaviour that would have justified the bringing of disciplinary proceedings had the officer still been serving.”;
- (c) in paragraph (3)—
  - (i) “and paragraph (10)” were omitted;
  - (ii) for “paragraph (2)(a) to (d)”, there were substituted “paragraph (2)(a) to (c)”;
- (d) paragraphs (4), (6), (8) and (10) were omitted;
- (e) in paragraph (5), for the words from “assess” to the end, there were substituted “take no disciplinary action for gross misconduct against the officer concerned.”;
- (f) in paragraph (7)—
  - (i) for “completed the assessment under paragraph (5)”, there were substituted “determined there is no case to answer or that no misconduct proceedings will be brought”;
  - (ii) in subparagraph (a), for “the outcome of its assessment”, there were substituted “its determination”;
- (g) in paragraph (9)—
  - (i) in sub-paragraph (a), the words from “of a form” to the end were omitted;
  - (ii) in sub-paragraph (b), “of the form specified in the recommendation” were omitted;
  - (iii) in sub-paragraph (c), “of a form specified in a recommendation” were omitted;
  - (iv) in the words after sub-paragraph (c), “of the form specified” were omitted.

#### **Modification to regulation 25 (joint misconduct proceedings)**

**17.** Regulation 25 is to be read as if—

- (a) paragraph (2) were omitted;
- (b) in paragraph (5), “conducting or” were omitted;
- (c) in paragraph (6), for “are senior officers” there were substituted “were senior officers at the relevant time”.

#### **Modification to regulation 26 (delegation of functions)**

**18.** Regulation 26 is to be read as if—

- (a) in paragraph (1)(a), for “is” there were substituted “was at the relevant time”;

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- (b) in paragraph (3)(b), in the definition of “originating authority”, for “is” there were substituted “was at the relevant time”.

**Modification to regulation 27 (withdrawal of misconduct proceedings)**

**19.** Regulation 27 is to be read as if—

- (a) in paragraph (1)(a), “misconduct or” were omitted;
- (b) in paragraph (2)—
  - (i) in sub-paragraph (a), for the words from “may” to the end, there were substituted “must take no further action against the officer concerned,”;
  - (ii) in sub-paragraph (b)(i), “, indicating whether any action will be taken under paragraph (2)(a)” were omitted;
- (c) paragraph (3) were omitted.

**Modification to regulation 28 (persons conducting misconduct proceedings)**

**20.** Regulation 28 is to be read as if—

- (a) paragraphs (1) to (3) were omitted;
- (b) in paragraph (4)—
  - (i) for “the panel of persons must comprise” there were substituted “where the case is referred to a misconduct hearing, that hearing must be conducted by a panel of three persons, comprising”;
  - (ii) in sub-paragraph (b), after “officer concerned” there were inserted “was at the relevant time”;
- (c) in paragraph (5), for “is a senior officer” there were substituted “was a senior officer at the relevant time”.

**Modification to regulation 30 (notice of referral to misconduct proceedings)**

**21.** Regulation 30 is to be read as if—

- (a) in paragraph (1)—
  - (i) in sub-paragraph (a)—
    - (aa) in paragraph (ii), “misconduct or” and “, as the case may be” were omitted;
    - (bb) in paragraph (iv), for the words from “conduct” to “a chair,” there were substituted “chair the misconduct proceedings and”;
    - (cc) in paragraph (vi), “in relation to the form of misconduct proceedings to which the case is being referred” were omitted;
    - (dd) after paragraph (vii), “and” were omitted;
    - (ee) after paragraph (viii), there were inserted—
      - “(ix) the fact that the officer will be subject to disciplinary proceedings under these Regulations, and
      - (x) the fact that, if the allegation of gross misconduct is proved, the officer may be subject to a finding that the officer would have been dismissed if the officer had not ceased to be a member of a police force or a special constable;”;
  - (ii) in sub-paragraph (c), after paragraph (i), “and” were omitted and there were inserted—

“(ia) in the case of a Condition C person, any written statement or document provided to the Director General under regulation 4B(3) and any response to a consultation carried out under regulation 4B(4), and”;

- (b) in paragraph (2), “conducting or” were omitted;
- (c) in paragraph (3)—
  - (i) in sub-paragraph (a), for “conduct or, as the case may be, chair”, there were substituted “chair”;
  - (ii) in sub-paragraph (b), “conducting or, as the case may be,” were omitted;
- (d) in paragraph (5)—
  - (i) “conduct or, as the case may be,” were omitted;
  - (ii) “conducting or” were omitted;
- (e) in paragraph (6), “and (7)” were omitted;
- (f) in paragraph (7)—
  - (i) “conduct or, as the case may be,” were omitted;
  - (ii) “conducting or” were omitted.

**Modification to regulation 31 (procedure on receipt of notice)**

22. Regulation 31 is to be read as if—
- (a) in paragraph (1)(b), “conducting or” were omitted;
  - (b) in paragraph (2)(a), (b) and (c), “misconduct or” and “, as the case may be” were omitted;
  - (c) in paragraph (2)(c)(ii), “person or” were omitted.

**Modification to regulation 32 (witnesses and documents to be supplied)**

23. Regulation 32 is to be read as if—
- (a) in paragraphs (1), (3), (5), in both places where the words appear, (6), (9), (11) and (13) (b), “conducting or” were omitted;
  - (b) in paragraph (6)(c), for “misconduct or gross misconduct, as the case may be” there were substituted “gross misconduct”.

**Modification: omission of regulation 34 (timing of misconduct meeting)**

24. These Regulations are to be read as if regulation 34 were omitted.

**Modification to regulation 35 (notice of misconduct proceedings and panel)**

25. Regulation 35 is to be read as if—
- (a) in paragraph (2)—
    - (i) the words from the beginning to “panel,” were omitted;
    - (ii) for “that panel” there were substituted “the panel”;
  - (b) in paragraph (10), the words from “or to” to “regulation 40(6),” were omitted.

**Modification to regulation 36 (public notification of misconduct hearings)**

26. Regulation 36 is to be read as if—

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- (a) in paragraph (1)—
  - (i) after sub-paragraph (d), “and” were omitted;
  - (ii) in sub-paragraph (e), for “misconduct or gross misconduct, as the case may be”, there were substituted “gross misconduct”;
  - (iii) after sub-paragraph (e), there were inserted—
    - “, and
    - (f) where the officer concerned is a Condition C person, the Condition C special determination.”;
- (b) in paragraph (3)(d)(ii), for “(e)” there were substituted “(f)”.

**Modification to regulation 37 (attendance of officer concerned at misconduct proceedings)**

27. Regulation 37 is to be read as if—

- (a) in paragraph (2), in both places where the words appear, “conducting or” were omitted;
- (b) in paragraph (3)(a)(ii), “in the case of a misconduct hearing,” were omitted.

**Modification to regulation 38 (participation of the Director General and investigator at misconduct proceedings)**

28. Regulation 38 is to be read as if—

- (a) in paragraph (2)(a), “if it is a misconduct hearing” were omitted;
- (b) in paragraphs (2)(c), (3) and (4), “conducting or” were omitted.

**Modification to regulation 39 (reporting restrictions, participation and exclusions from proceedings)**

29. Regulation 39 is to be read as if—

- (a) paragraphs (2) and (5) were omitted;
- (b) in paragraph (3)—
  - (i) “conducting or” were omitted;
  - (ii) in sub-paragraph (c), the words from the beginning to “28(4),” were omitted;
- (c) in paragraphs (4) and (7), “conducting or” were omitted.

**Modification to regulation 40 (attendance of complainant, interested persons and others at misconduct proceedings)**

30. Regulation 40 is to be read as if—

- (a) paragraphs (3), (4) and (6) were omitted;
- (b) in paragraph (5), “conducting or” were omitted.

**Modification to regulation 41 (procedure at misconduct proceedings)**

31. Regulation 41 is to be read as if—

- (a) in paragraphs (1), (3), (5), (10) and (11) “conducting or” were omitted;
- (b) in paragraph (2), “in relation to the form of misconduct proceedings taking place” were omitted;

- (c) in paragraph (5), for “misconduct or gross misconduct, as the case may be”, there were substituted “gross misconduct”;
- (d) in paragraph (8), “(at a misconduct hearing)” were omitted;
- (e) after paragraph (10), there were inserted—
  - “(10A) Where evidence is given or considered at the misconduct hearing that the officer concerned was given written notice of an interview under regulation 20(6) (interviews during investigation) of these Regulations or under regulation 21(6)(a) of the Complaints and Misconduct Regulations and failed to attend the interview, paragraph (14) applies.”.
- (f) in paragraph (12)(b)—
  - (i) after “18(1)” there were inserted “, 20A(2)”;
  - (ii) for “of the Complaints and Misconduct Regulations” there were substituted “or 21A(2) of the Complaints and Misconduct Regulations, as modified by regulation 42 of, and Schedule 2 to, those Regulations”;
- (g) in paragraphs (14) and (16), “person or” were omitted;
- (h) for paragraph (15) there were substituted—
  - “(15) The persons conducting the misconduct proceedings must review the facts of the case and decide whether the conduct of the officer concerned amounts to misconduct, gross misconduct or neither.”;
- (i) in paragraph (17), “At misconduct proceedings conducted by a panel,” were omitted.

#### **Modification to regulation 42 (outcome of misconduct proceedings)**

**32.** These Regulations are to be read as if for regulation 42 there were substituted—

##### **“Outcome of misconduct hearing**

**42.—(1)** The persons conducting a misconduct hearing may, subject to the provisions of this regulation—

- (a) where they find the conduct amounts to gross misconduct, impose disciplinary action for gross misconduct, or
  - (b) where they find that the conduct amounts to misconduct but not gross misconduct, record a finding of misconduct but take no further action.
- (2) Where the question of disciplinary action for gross misconduct is being considered, the 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 concerned;
    - (ii) if the officer concerned is legally represented, the officer’s relevant lawyer or, if the officer is not legally represented, the officer’s police friend;

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- (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, and
- (d) where representations are received into 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 concerned 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.
- (3) Paragraph (4) applies where disciplinary action for gross misconduct is imposed.
- (4) 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)(l) of the Police Barred List and Police Advisory List Regulations 2017<sup>(3)</sup> in the barred list report relating to the officer concerned (information relating to whether exemptions to requirement to publish the barred list entry apply)."

#### **Modification to regulation 43 (notification of outcome)**

**33.** Regulation 43 is to be read as if—

- (a) in paragraph (1)—
  - (i) “conducting or” and “or misconduct meeting” were omitted;
  - (ii) in sub-paragraph (a), “person or” were omitted;
  - (iii) for sub-paragraphs (c) and (d), there were substituted—
    - “(c) whether disciplinary action for gross misconduct was imposed.”;
- (b) in paragraph (2)(b), “misconduct or” were omitted and for “in accordance with paragraph (3)”, there were substituted “to a police appeals tribunal (within the meaning of section 85 of the 1996 Act)”;
- (c) paragraph (3) were omitted;
- (d) in paragraph (4), “In all cases referred to in paragraph (3)” were omitted.

#### **Modification to regulation 44 (record of misconduct proceedings)**

**34.** Regulation 44 is to be read as if, for paragraph (1), there were substituted—

- “(1) A verbatim record of the misconduct proceedings must be taken.”.

#### **Modification: omission of regulations 45 to 47 (appeals)**

**35.** These Regulations are to be read as if regulations 45 to 47 were omitted.

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(3) [S.I. 2017/1135](#).

**Modification to regulation 49 (referral of case to accelerated misconduct hearing)**

36. Regulation 49 is to be read as if in paragraph (2)(b), for the words from “cease” to “constable”, there were substituted “be included in the police barred list”.

**Modification to regulation 55 (persons conducting accelerated misconduct hearing)**

37. Regulation 55 is to be read as if—

- (a) in paragraph (1), for “is an officer other than a senior officer” there were substituted “was an officer other than a senior officer at the relevant time”;
- (b) in paragraph (3), for “is a senior officer” there were substituted “was a senior officer at the relevant time”.

**Modification to regulation 61 (procedure at accelerated misconduct hearing)**

38. Regulation 61 is to be read as if—

- (a) after paragraph (10), there were inserted—

“(10A) Where evidence is given or considered at the misconduct hearing that the officer concerned was given written notice of an interview under regulation 20(6) (interviews during investigation) of these Regulations or under regulation 21(6)(a) of the Complaints and Misconduct Regulations and failed to attend the interview, paragraph (13) applies.”;
- (b) in paragraph (12)(b)—
  - (i) after “regulation 18(1) there were inserted “ , 20A(2)”;
  - (ii) after “regulation 20” there were inserted “or 21A(2)”;
  - (iii) after “Regulations”, there were inserted “(as modified by regulation 42 of and Schedule 2 to those Regulations)”.

**Modification to regulation 62 (outcome of accelerated misconduct hearing)**

39. These Regulations are to be read as if for regulation 62, there were substituted—

**“Outcome of accelerated misconduct hearing**

**62.—**(1) Subject to the provisions of this regulation, the person or persons conducting the accelerated misconduct hearing may—

- (a) where the person or persons find the conduct amounts to gross misconduct, impose disciplinary action for gross misconduct, or
  - (b) where the person or persons find the conduct amounts to misconduct but not gross misconduct, record a finding of misconduct but take no further action.
- (2) Where the question of disciplinary action for gross misconduct 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 consider such documentary evidence as would, in their opinion, assist them in determining the question;
  - (c) must give—
    - (i) the officer concerned;
    - (ii) if the officer concerned is legally represented, the officer’s relevant lawyer or, if the officer is not legally represented, the officer’s police friend;

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- (iii) the appropriate 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, 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 concerned 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.
- (3) Paragraph (4) applies where disciplinary action for gross misconduct is imposed.
- (4) The person chairing a misconduct hearing must provide any information to the appropriate 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 Regulations 2017(4) in the barred list report relating to the officer concerned (information relating to whether exemptions to requirement to publish the barred list entry apply).".

**Modification to regulation 63 (notification of outcome)**

- 40.** In regulation 63(1), for sub-paragraph (c) there were substituted—
- “(c) whether disciplinary action for gross misconduct was imposed.”.

**Modification: omission of Part 6 (reflective practice review process)**

- 41.** These Regulations are to be read as if Part 6 were omitted.