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STATUTORY INSTRUMENTS

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**1990 No. 1017 (S.124)**

**POLICE**

**The Police (Discipline) (Senior Officers) (Scotland) Regulations 1990**

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| <i>Made</i>                   | - - - - | <i>1st May 1990</i>  |
| <i>Laid before Parliament</i> |         | <i>16th May 1990</i> |
| <i>Coming into force</i>      | - -     | <i>6th June 1990</i> |

The Secretary of State, in exercise of the powers conferred on him by section 26 of the Police (Scotland) Act 1967(1), and of all other powers enabling him in that behalf, after taking into consideration any recommendations of the Police Negotiating Board for the United Kingdom having furnished the Board with a draft of these Regulations in accordance with section 2(1) of the Police Negotiating Board Act 1980(2) and after taking into consideration any representations made by the Joint Central Committee of the Police Federation for Scotland and such bodies and associations as appear to him to be representative of police authorities, chief constables and superintendents (including chief superintendents) respectively, following the submission of a draft of the Regulations in accordance with section 26(9) of the said Act of 1967, hereby makes the following Regulations:

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Police (Discipline) (Senior Officers) (Scotland) Regulations 1990 and shall come into force on 6th June 1990.

(2) These Regulations shall extend to Scotland only.

**Interpretation and application**

2.—(1) In these Regulations, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, namely—

“the 1967 Act” means the Police (Scotland) Act 1967;

“the 1967 Regulations” means the Police (Discipline) (Scotland) Regulations 1967(3);

“complainer” means the member of the public referred to in regulation 14;

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(1) 1967 c. 77; section 26(1A) and (10) were inserted by section 111(1) of the Police and Criminal Evidence Act 1984 (c. 60) (“the 1984 Act”); section 26(7) was amended by the 1984 Act, Schedule 6, paragraph 32; section 26(9) was amended by section 2(4) of the Police Negotiating Board Act 1980 (c. 10).

(2) 1980 c. 10.

(3) S.I. 1967/1021; relevant amending instruments are S.I. 1975/1544 and 1976/1073.

- “discipline form” means such a form as is mentioned in regulation 6(6);
- “independent solicitor” means a solicitor who is appointed as the independent solicitor in terms of regulation 6(2);
- “investigating officer” means a chief constable who is appointed as an investigating officer in terms of regulation 4;
- “investigation form” means such a form as is mentioned in regulation 4(4);
- “disciplinary offence” means any offence set out in the Discipline Code specified in Schedule 1 to the 1967 Regulations;
- “senior officer” means a constable who is a chief constable, a deputy chief constable, or an assistant chief constable.

(2) In these Regulations, unless the context otherwise requires, any reference to a regulation shall be construed as a reference to a regulation contained in these Regulations and any reference in a regulation to a paragraph shall be construed as a reference to a paragraph of that regulation.

(3) These Regulations shall not apply except in relation to an offence committed, or alleged to have been committed, by a senior officer, that is to say, by a chief constable, deputy chief constable or an assistant chief constable.

### **Reference of reports etc. to the procurator fiscal**

3. Where a report, allegation or complaint is made from which it may reasonably be inferred that a senior officer has committed a criminal offence, such report, allegation or complaint shall as soon as possible be referred to the procurator fiscal of the sheriff court, and the police authority shall be informed accordingly both of the fact of referral and also as to the matter referred.

### **Investigation of report, allegation or complaint**

4.—(1) Subject to the provisions of paragraph (2), where a report, allegation or complaint is received from which it may reasonably be inferred that a disciplinary offence may have been committed by a senior officer (hereinafter referred to as “the officer subject to investigation”), the police authority for the force of which that officer is a member shall appoint an investigating officer to investigate the matter.

(2) In the case of any report, allegation or complaint referred to in paragraph (1) from which it may reasonably be inferred that only a minor disciplinary offence may have been committed, the police authority may decide that no action shall be taken under these Regulations in relation to the matter and in particular that an investigating officer shall not be appointed, and in that case the police authority shall forthwith notify the officer subject to investigation in writing.

(3) The investigating officer shall be a chief constable of a police force other than that to which the officer subject to investigation belongs or has belonged:

Provided that the police authority shall not appoint as an investigating officer any chief constable who is a material witness or who is interested in the matter otherwise than as a member of a police force and accordingly they shall ask any chief constable considered for appointment, and that chief constable shall declare, whether he is such a witness or is so interested, before an appointment is made.

(4) As soon as practicable after his appointment, the investigating officer shall cause to be prepared an investigation form, which shall be in the form set out in Schedule 1 or in a form to the like effect and which shall—

- (a) contain a statement of the report, allegation or complaint;
- (b) inform the officer subject to investigation that, although he is not obliged to do so at this stage, he may make a written or oral statement concerning the matter to the investigating

officer and provide the names and addresses of any persons whom he may wish to give evidence on his behalf; and

- (c) warn him that if he does make such a statement it may be used in evidence in any subsequent disciplinary proceedings;

and the investigating officer shall serve a copy of the investigation form upon the officer subject to investigation.

### **Report of investigation**

5.—(1) The investigating officer shall, after due investigation in which he shall take all reasonable steps to obtain statements from witnesses, submit to the police authority a report of his investigation together with—

- (a) the investigation form;
- (b) any written statement, or a record of any oral statement, which the officer subject to investigation has made under regulation 4(4)(b); and
- (c) any statement obtained from any witness.

(2) Where, following receipt of the investigating officer's report, it appears to the police authority that the officer subject to investigation may have committed a disciplinary offence, the authority shall decide whether disciplinary proceedings need to be taken.

(3) If the police authority decide that no disciplinary proceedings need to be taken, they shall so inform the officer subject to investigation in writing forthwith.

### **Appointment of independent solicitor**

6.—(1) This regulation applies in relation to any case in which the police authority has decided in terms of regulation 5(2) that disciplinary proceedings need to be taken against the officer subject to investigation.

(2) In any case to which this regulation applies, the police authority shall instruct a solicitor (hereinafter referred to as "the independent solicitor") to consider whether the officer subject to investigation should be charged with any disciplinary offence.

(3) The independent solicitor shall be a solicitor not being either—

- (a) a member, officer or servant of the police authority, or where an amalgamation scheme is in force, of the joint police committee; or
- (b) a former member of the police force to which the officer under investigation belongs.

(4) The police authority shall submit to the independent solicitor a copy of the investigating officer's report together with copies of such other documents specified in regulation 5(1) as may have been submitted to it.

(5) Where the independent solicitor considers that the officer subject to investigation may be charged with a disciplinary offence he shall—

- (a) draw up and enter on a discipline form the disciplinary offence with which the accused might be charged and specifying such particulars as will leave the officer subject to investigation in no doubt as to the precise offence alleged; and
- (b) thereafter submit the discipline form to the police authority.

(6) The discipline form shall be in the form set out in Schedule 2 or in a form to the like effect.

(7) Where the independent solicitor considers that there is insufficient evidence to support any charge against the officer subject to investigation he shall direct that no further disciplinary proceedings shall be taken against the officer subject to investigation in relation to the matter as

referred to him, and where he so directs he shall forthwith notify the police authority and the officer subject to investigation in writing.

(8) Where the independent solicitor makes a direction under paragraph (7) of this regulation then no further disciplinary proceedings under these Regulations may be taken against the officer subject to investigation in relation to the matter referred to the independent solicitor.

### **Decision to charge**

7.—(1) This regulation applies to any case in which the independent solicitor has submitted a discipline form to the police authority in terms of regulation 6(5).

(2) The police authority shall, having considered the terms of the discipline form, decide whether the officer subject to investigation should be charged with the disciplinary offence specified on the discipline form and, if it decides that he should be so charged, it shall direct the independent solicitor accordingly.

(3) Where the police authority has decided in terms of paragraph (2) that the officer subject to investigation should not be so charged then it shall forthwith notify the said officer in writing.

(4) The independent solicitor shall, if so directed in terms of paragraph (2), charge the officer subject to investigation (hereinafter referred to as “the accused”) by causing him to be served with a copy of the discipline form.

### **Alleged criminal offence**

8.—(1) Notwithstanding anything in regulations 4 and 5, where a report, allegation or complaint is received from which it may reasonably be inferred that a senior officer may have committed a criminal offence, the police authority may decide—

- (a) not to appoint an investigating officer to investigate the matter in terms of regulation 4(1);
- (b) if an investigating officer is appointed, to instruct that officer not to prepare or not to serve an investigation form upon the senior officer concerned or not to carry out any investigation into any matter arising out of or referred to in that report, allegation or complaint, insofar as it might be the subject of criminal proceedings; or
- (c) to delay arriving at a decision as to whether disciplinary proceedings need to be taken,

until—

- (i) the procurator fiscal has intimated that criminal proceedings are not to be taken in respect of any matter arising out of or referred to in that report, allegation or complaint; or
- (ii) if the procurator fiscal has intimated that criminal proceedings are to be taken in respect of any such matter, the completion of those criminal proceedings.

(2) If the police authority decide to exercise any power conferred upon them by paragraph (1), they shall arrange for the senior officer concerned to be informed to that effect and to be warned that disciplinary proceedings may subsequently be taken against him, irrespective of whether or not criminal proceedings are brought against him or of the outcome of any such proceedings.

### **Withdrawal of charges**

9. At any time before the conclusion of the hearing of a charge the police authority may direct that the charge be withdrawn; and, where they so direct, they shall, as soon as possible,—

- (a) cause that direction to be noted on the discipline form; and
- (b) notify the accused in writing.

### **Documents to be supplied to accused**

**10.**—(1) Where an accused is charged with a disciplinary offence by being served with a copy of the discipline form, the independent solicitor shall arrange for the accused to be supplied, as soon as possible, with a copy of—

- (a) any statement he may have made under regulation 4;
- (b) the report, allegation or complaint on which the charge is founded (or so much thereof as relates to the accused) and any reports thereon (other than the report of the investigating officer), notwithstanding that they may be confidential;
- (c) any statement relating to the charge made by any witness who may be called in support of the charge, together with the name and address of each such witness;
- (d) any statement relating to the charge made by any person, other than a witness to be called in support of the charge, to the investigating officer or to anyone on his behalf, together with the name and address of each such person; and
- (e) an inventory of any relevant documentary evidence and productions.

(2) Where the charge is founded on a report, allegation or complaint and a statement arising therefrom made by the same person, the reference in paragraph (1)(b) to the report, allegation or complaint shall, without prejudice to paragraph (1)(c) or (d), be construed as including a reference to that statement.

(3) Notwithstanding anything in paragraph (1)(b), the independent solicitor may withhold from the accused a report upon the report, allegation or complaint on which the charge is founded, if he is satisfied that considerations of national security require that it should not be supplied.

(4) In this regulation, any reference to a copy of a statement, report, allegation or complaint shall, where it was not made in writing, be construed as a reference to a copy of a record thereof.

### **Information to be supplied by the accused in response to the discipline form**

**11.**—(1) Where an accused has been served with a copy of the discipline form, he shall within the time limits specified in paragraph (2) give notice to the independent solicitor of the matters specified hereunder and in the form specified on the discipline form or to the like effect, namely—

- (a) whether he admits or denies the charge;
- (b) whether he wishes to offer any explanation;
- (c) whether he wishes to be represented or assisted by a member of a police force at the hearing;
- (d) whether he wishes to be represented by counsel or a solicitor.

(2) The accused shall give notice in terms of paragraph (1) by returning the copy of the discipline form duly completed and signed by him to the independent solicitor within 14 days from the date on which it was served on him, or within 14 days from the date on which the last of the documents required by regulation 10 to be supplied to the accused is supplied, if later.

(3) The police authority may, on the application in writing of the accused, extend the period of time appointed under paragraph (2), notwithstanding that the time appointed may have expired.

(4) The independent solicitor shall invite the accused to state whether he proposes to call any witnesses to relevant facts at the hearing and the names and addresses of any such witnesses whose attendance he wishes the police authority to take steps to secure.

(5) Where the independent solicitor is informed by the accused that he intends to lead the evidence of any witness and where the accused identifies that witness then the independent solicitor shall inform the investigating officer, and the investigating officer shall so far as is reasonable and

practicable invite that witness to provide a statement and shall supply to the accused a copy of any such statement.

(6) The independent solicitor shall on receiving notice from the accused in terms of paragraph (2) pass that notice to the police authority.

### **Cases in which accused has admitted a charge**

**12.**—(1) This regulation applies in any case in which –

- (a) in terms of regulation 11, the accused has admitted a charge against him; and
- (b) there are no disciplinary charges against him specified on the discipline form which, in terms of regulation 11, he has denied.

(2) In any case to which this regulation applies the police authority may determine to deal with the case without referring it to a tribunal under regulation 13, and where it has so determined it shall record a finding in terms of regulation 25.

(3) In any case in which the police authority has recorded a finding in terms of paragraph (2) and having given the accused an opportunity to be heard in accordance with regulation 26, the police authority may impose a punishment in accordance with regulation 26(1), without the case being dealt with in accordance with regulations 13 to 23.

(4) In any case in which the police authority determine to deal with a case in terms of paragraph (2) it shall so notify the accused and the provisions of regulation 26(2) to (8) shall apply.

(5) The police authority shall give not less than 28 days notice to the accused and to his representative of the time, date and place at which any hearing under regulation 26(6) shall take place.

(6) The accused may waive the requirement for notice or agree to a shorter period of notice than that specified in paragraph (5), and in any such case the accused shall give notice to the police authority in writing to that effect.

### **Hearings**

**13.**—(1) This regulation applies to any case which has not been dealt with under regulation 12.

(2) When a senior officer has been charged with a disciplinary offence under these regulations and the charge is not withdrawn or dealt with under regulation 12 then it shall be heard by a tribunal.

(3) The tribunal referred to in paragraph (2) shall consist of a single person selected and appointed by the police authority from a list of persons nominated by the Lord President of the Court of Session.

(4) To assist the tribunal on matters pertaining to the police the police authority shall with the approval of the tribunal appoint an assessor who shall be a chief constable or a retired chief constable.

(5) The police authority shall not appoint as an assessor under paragraph (4)–

- (a) a person who is one of Her Majesty’s Inspectors of Constabulary;
- (b) the chief constable of the police force of which the accused is a member;
- (c) a member, officer or servant of the police authority or of any local authority which appoints any member of the police authority;
- (d) the investigating officer;
- (e) the independent solicitor; or
- (f) any chief constable referred to in the proviso to regulation 4(3).

(6) The police authority may appoint a clerk to the tribunal and shall if so requested by the tribunal.

### **Arrangements for the hearing before the tribunal**

**14.—**(1) The police authority shall make all necessary arrangements for the hearing before the tribunal including fixing the time, date and place of the hearing.

(2) When the accused has requested the assistance in presenting his case of a member of a police force other than his own, the police authority shall inform the chief constable of that other force of that request and of the time, date and place of the hearing.

(3) The police authority shall give not less than 28 days notice to the accused and to his representative of the time, date and place of the hearing.

(4) The police authority shall take all reasonable steps to secure the attendance at the hearing of witnesses required in connection with the case against the accused, and any witnesses whose attendance the accused has requested the police authority to take steps to secure.

(5) Where the hearing arises out of a complaint by a member of the public, the police authority shall, if the accused has denied the charge or any part thereof, inform the complainer of the time, date and place of the hearing and shall draw the complainer's attention to the provisions of regulation 19(2)(b) and (3).

### **Representation of parties**

**15.—**(1) The case against the accused shall be presented by the independent solicitor who may for that purpose instruct counsel or a solicitor to appear on his behalf, and in that case the restrictions on the appointment of the independent solicitor specified in regulation 6(3) shall apply to the appointment of counsel or solicitor concerned.

(2) The accused shall be entitled to conduct his own case or he may be represented—

(a) either by counsel or a solicitor; or

(b) by another member of a police force selected by him, and such other member may be a representative of an association representing senior officers.

(3) Both the person presenting the case against the accused and the accused, or as the case may be the representative of the accused, may be assisted at the hearing by a member of a police force.

### **Procedure at the hearing before the tribunal**

**16.—**(1) Subject to the provisions of this regulation and of regulations 17 to 22, the procedure at the hearing shall be such as the tribunal may determine.

(2) The accused shall be instructed to attend at the hearing of the case and at any adjournment thereof.

(3) Notwithstanding the failure of the accused to attend, the tribunal may proceed with the hearing in the absence of the accused if it appears to the tribunal just and proper so to do.

(4) Notwithstanding the terms of paragraph (3)—

(a) if the accused is detained in pursuance of the sentence of a court in a prison or other institution to which the Prisons (Scotland) Act 1952(4) applies and expresses a desire to make representations in person at the hearing, the hearing shall not be concluded until the accused has been able to make such representations;

(b) if good reason is given to the tribunal by, or on behalf of, the accused why the accused is unable to attend the hearing, other than that the accused is detained as aforesaid, the hearing shall be postponed or adjourned, as the case may be.

(5) If the accused does not admit the charge the hearing shall proceed upon the basis that the accused denies the charge.

(6) If the accused admits the charge, the tribunal, after giving the person presenting the case and thereafter the accused or his representative an opportunity of making a statement, may dispose of the case forthwith.

### **Objections to competency or relevancy of charge**

17. If the accused wishes to make objections to the competency or relevancy of the charge, he shall present them in writing to the tribunal at least 48 hours before the time of the hearing. At the beginning of the hearing, the tribunal shall determine any such objections and, if it upholds those objections, it shall dismiss the charge.

### **Adjournment**

18. The tribunal may from time to time adjourn the hearing to a specified later time or date, if it appears to it necessary or expedient to do so for the due hearing of the case.

### **Hearing to be private**

19.—(1) The hearing shall be held in private.

(2) Notwithstanding anything in paragraph (1) above—

- (a) where a child is giving evidence, the tribunal may allow a parent or guardian to be present and, when any witness is giving evidence, the tribunal may, subject to consideration of any objections raised by the accused, allow such other persons to be present as may seem reasonable to it because of any special circumstances; and
- (b) where the hearing of the case arises out of a complaint made by a member of the public and the accused denies the charge or any part thereof, the tribunal may allow the complainer to be present at the hearing while witnesses are giving evidence.

(3) In any case to which paragraph (2)(b) applies—

- (a) the complainer shall not be entitled to put questions to the accused or, except where the complainer is giving evidence as a witness, to participate in the proceedings in any way;
- (b) where the complainer is to be called as a witness at the hearing, he shall not be allowed to attend before he gives his evidence; and
- (c) the tribunal may, if it thinks fit, exclude the complainer from the whole or any part of the hearing and, without prejudice to the foregoing generality, shall exclude him during any period when it considers that a witness may in giving evidence disclose information which, in the public interest, ought not to be disclosed to a member of the public, or if he conducts himself in a disorderly manner.

### **Presentation of evidence**

20.—(1) Any question as to whether any evidence is admissible, or whether any question should or should not be put to a witness, shall be determined by the tribunal.

(2) The accused or his representative may cross-examine the witnesses called in support of the case against the accused and call witnesses and make representations on his behalf. The accused may also give evidence on his own behalf.

(3) After all the evidence has been led, the person presenting the case and thereafter the accused or his representative shall be entitled to make oral submissions on the case before the hearing is concluded.



### **Statements in lieu of oral evidence**

**21.**—(1) Subject to the provisions of this regulation, the tribunal may, in lieu of oral evidence, admit evidence by way of a written statement but evidence shall not be admissible in pursuance of this regulation if it would not have been admissible had it been given orally.

(2) If either the person presenting the case or the accused proposes in pursuance of this regulation to adduce written evidence at a hearing, he shall -

(a) at least 21 days, or such shorter period as the parties may agree in writing, before the date of the hearing—

(i) give the other party a copy of the statement; and

(ii) invite that party to join in a minute of agreement to the admission of the statement in evidence without the maker thereof being called as a witness or being available for cross-examination; and

(b) at least 10 days, or such shorter period as the parties may agree in writing, before the date of the hearing, lodge any such minute of agreement with the tribunal.

(3) The tribunal shall admit evidence by way of written statement under paragraph (1) only if—

(a) such statement is accompanied by a minute of agreement signed by the parties; and

(b) either party requests the tribunal to admit the written statement and the other party does not object.

(4) Where, notwithstanding that a written statement has been admitted in evidence without the person who made the statement being called and being available as aforesaid, the tribunal is of the opinion that oral evidence should be given, it may request that that person be called as a witness and, in such case, unless that person gives oral evidence, the tribunal shall be entitled to disregard the written evidence.

(5) Nothing in this regulation shall prejudice the admission of written evidence which would be admissible apart from the provisions thereof.

### **Transcript**

**22.** A verbatim record of the proceedings at the hearing of the case, including any hearing before the police authority, shall be taken. If the accused so requests within the period during which notice of appeal may be given to the Secretary of State under section 30 of and paragraph 1 of Schedule 3 to, the 1967 Act, the verbatim record shall be transcribed and a copy thereof supplied to him as soon as possible. On completion of any such appeal or on a decision not to appeal, the accused shall return the transcript to the police authority who shall retain it for three years. Where no transcript is made, the verbatim record shall be retained by the police authority for three years.

### **Tribunal report**

**23.**—(1) Except in any case to which paragraph (2) applies, the tribunal shall as soon as possible after the conclusion of the hearing submit a report to the police authority setting out—

(a) a statement of the facts admitted or found to be proved so far as they are material to the case;

(b) a statement as to the charge or charges found to be proved;

(c) if any charge is found to be proved, a recommendation as to the proper punishment which in the opinion of the tribunal, having regard to the accused's record of service, should be imposed;

(d) any other matter arising out of the hearing which it desires to bring to the notice of the police authority.

(2) In any case in which after the commencement of a hearing the police authority has directed that the charge shall be withdrawn the police authority shall notify the tribunal in writing as to that direction, and the tribunal shall thereafter terminate the proceedings and report to the police authority accordingly.

(3) The tribunal shall send a copy of the report to the accused.

### **Expenses**

**24.**—(1) All the expenses of a hearing before a tribunal or the police authority under these Regulations, including reasonable expenses incurred by the accused in preparation and conduct of the defence, shall be defrayed by the police authority.

(2) Any expenses payable under paragraph (1) shall be subject to taxation in such manner as the Secretary of State may direct.

(3) The police authority may reimburse in whole or in part any expenses reasonably incurred by an officer subject to investigation in connection with proceedings under these Regulations after the date of service of any investigation form and until either the service of a discipline form or notification that no proceedings are to be taken.

### **Decision of police authority**

**25.**—(1) When the police authority has received the report of the tribunal in terms of regulation 23(1), or where it has determined to deal with the case in terms of regulation 12(2), the police authority shall decide either to dismiss the case or—

- (a) to record a finding of guilt but to take no further action thereon; or
- (b) to record a finding of guilt and impose a punishment.

(2) As soon as possible after the police authority has taken its decision in the case that decision shall be recorded on the discipline form and notified in writing to the accused, and when the accused is not a chief constable the decision shall be notified in writing to the chief constable of the police force concerned.

(3) When the hearing arises out of a complaint made by a member of the public, the finding of the police authority but not the punishment imposed, shall be communicated to the complainant.

### **Punishment**

**26.**—(1) The punishments which may be recommended by the tribunal or imposed by the police authority shall be—

- (a) dismissal from the force;
- (b) requirement to resign from the force as an alternative to dismissal, either forthwith or on such date as may be specified in the recommendation or decision;
- (c) reprimand; or
- (d) caution.

(2) Where the police authority has decided to impose a punishment it shall notify the accused accordingly in writing, and the accused shall within 14 days of such notification give notice to the police authority whether he wishes to make oral or written representations in relation to the matter of punishment.

(3) Where the accused gives notice that he wishes to make written representations he shall submit those representations within 28 days of having received the notification referred to in paragraph (2).

(4) The accused may waive requirements for notice or agree to shorter periods of notice than those specified in paragraphs (2) and (3), and in any such case the accused shall give notice to the police authority in writing to that effect.

(5) The police authority may on the application in writing of the accused extend the periods of time appointed under paragraphs (2) and (3) notwithstanding that the time appointed may have expired.

(6) Where the police authority has complied with paragraph (2) above it shall conduct a hearing and the provisions of regulations 14 to 22 shall apply to any such hearing and any references to the tribunal in those regulations shall be construed as references to the police authority.

(7) At any hearing referred to in paragraph (6) above the accused, or his representative, shall be entitled to make oral representations or to adduce evidence relevant to the matter of punishment.

(8) Before deciding on punishment the police authority shall have regard to the accused's record of police service and may have regard to evidence from any witness whose evidence would, in the opinion of the authority, assist them in determining the question.

(9) Where the punishment under regulation 26(1)(b) has been imposed and where the accused has not resigned from the force in accordance with the requirement specified in the decision, then the effect of the decision shall be to dismiss the accused from the force either forthwith or on the date specified in the decision.

### **Suspension -ordinary procedure**

27.—(1) Where it appears to the police authority, on receiving a report, allegation or complaint from which it appears that a senior officer may have committed a disciplinary or criminal offence, that the senior officer concerned ought to be suspended from duty and from his office as constable, the police authority may, subject to the following provisions of this regulation, so suspend him.

(2) The police authority shall not so suspend a senior officer unless it appears to it that either of the following conditions ("the suspension conditions") is satisfied:—

- (a) that the effective investigation of the matter may be prejudiced unless the senior officer concerned is so suspended;
- (b) that the public interest, having regard to the nature of the report, allegation or complaint, and any other relevant considerations, requires that he should be so suspended.

(3) If the police authority determine that a senior officer ought to be suspended under this regulation, it shall forthwith notify the Secretary of State in writing of its decision and of the relevant reasons.

(4) If, upon being so notified of the decision of the police authority the Secretary of State is satisfied both as to the suspension condition and reasons, he shall as soon as practicable notify his approval of the suspension of the senior officer to the police authority; and the suspension of the senior officer shall not have effect unless the approval of the Secretary of State is given.

(5) Where the Secretary of State gives his approval to the suspension of a senior officer his suspension shall take effect from the time he receives notice of the Secretary of State's approval thereof from the police authority, and he shall be suspended until—

- (a) the Secretary of State decides otherwise; or
- (b) the police authority decide otherwise; or
- (c) a decision is taken to the effect that the senior officer shall not be charged with a disciplinary offence; or
- (d) where he has been so charged and—
  - (i) all the charges have been withdrawn or dismissed; or

- (ii) a finding of guilt has been recorded but no further action has been taken thereon; or
- (iii) a punishment has been imposed,

whichever first occurs.

(6) The suspension of a senior officer under this regulation shall cease to have effect at the expiry of 3 months from the date of imposition or reimposition unless the police authority shall before such expiration have—

- (a) determined that the suspension should be reimposed,
- (b) notified the Secretary of State to that effect; and
- (c) notified the senior officer accordingly.

(7) In any case to which paragraph (6) applies the provisions of paragraphs (3) to (5) shall have effect.

(8) Without prejudice to the generality of paragraph 5(c), the following matters shall be decisions for the purposes of that provision, namely —

- (a) a decision by the police authority under regulations 4(2), 5(3) or 7(3);
- (b) a direction by the independent solicitor under regulation 6(7).

### **Suspension -urgent cases**

**28.**—(1) Subject to paragraph (2), in cases of urgency, the like power of suspension as under regulation 27 may be exercised with immediate effect by the police authority.

(2) Where a senior officer has been suspended under paragraph (1), the police authority shall notify the Secretary of State forthwith, and shall specify the reason for suspension under this regulation.

(3) Without prejudice to regulation 27, the suspension of a senior officer under this regulation shall cease to have effect at the expiry of 72 hours from the imposition thereof unless within that period the Secretary of State has notified the police authority of his approval thereof.

### **Suspension – termination and financial provisions**

**29.**—(1) This regulation applies in any case in which a senior officer has been suspended from duty in terms of regulation 27 or regulation 28.

(2) Where the suspension of a senior officer ceases to have effect upon the occurrence of any of the events specified in regulation 27(5), and where suspension has not been reimposed in accordance with regulation 27(6) that officer shall not be liable to be suspended again in respect of the report, allegation or complaint which led to the suspension which has ceased to have effect.

(3) Subject to the provisions of paragraph (5), a senior officer suspended from duty who—

- (a) has been convicted by a court of law of a criminal offence; or
- (b) has absented himself from duty and whose whereabouts are unknown to the police authority,

shall not in respect of any period of imprisonment or, as the case may be, in respect of the period during which his whereabouts are unknown to the police authority, be entitled to pay under the Police (Scotland) Regulations 1976(5).

(4) Subject to the provisions of paragraph (5), a senior officer suspended from duty shall not in respect of the period of suspension be entitled to any allowances under the Police

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(5) S.I. 1976/1073; the relevant amending instruments are S.I. 1977/1016, 2008, 1978/1170, 1980/1050, 1981/67, 1982/1628, 1983/317, 1985/111, 1325, 1733, 1986/576, 1987/1914, 1988/1501, 2287, 1989/2222 and 1990/469.

(Scotland) Regulations 1976(5), except housing allowance, supplementary housing allowance, transitional rent allowance, transitional supplementary rent allowance, compensatory grant or provided accommodation allowance.

(5) A senior officer to whom paragraphs (3) or (4) applies shall be entitled to receive pay or allowances withheld in terms of those paragraphs where the suspension of that officer ceases to have effect—

- (a) in terms of regulation 27(5)(a) to (c) and (d)(i) or (ii); or
- (b) in terms of regulation 27(5)(d)(iii) where the punishment imposed is a reprimand or a caution.

(6) The Police (Scotland) Regulations 1976 and these Regulations shall apply to a senior officer suspended from duty subject to the provisions of this regulation.

### **Police authority to notify decision to secretary of state**

**30.** The police authority shall give notice to the Secretary of State of any decision made under regulation 25 and any punishment imposed under regulation 26 and, in any case in which it has received the report of the tribunal in terms of regulation 23(1), it shall forward a copy of that report to the Secretary of State.

### **Revocations and transitional provisions**

**31.—**(1) Subject to the following provisions of this regulation, Parts IV and V of the 1967 Regulations are hereby revoked.

- (2) In relation to a charge preferred before 6th June 1990 against a senior officer—
  - (a) nothing in these Regulations shall apply; and
  - (b) the former discipline provisions shall, so far as applicable, continue to have effect.
- (3) In the case of a senior officer—
  - (a) in whose case anything has been done before 6th June 1990 for the purpose of any provisions of the 1967 Regulations; but
  - (b) who has not been charged with an offence, before that date, under those Regulations,

anything done, before that date, for the purpose of any provision of the 1967 Regulations shall have effect, on and after that date, as if it had been done for the purpose of the corresponding provision of these Regulations and, in particular, where an officer is immediately before 6th June 1990 suspended under the 1967 Regulations, he shall be treated on and after the date as if he had been suspended under these Regulations.

St. Andrew's House,  
Edinburgh  
1st May 1990

*James Douglas-Hamilton*  
Parliamentary Under Secretary of State, Scottish  
Office

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(5) S.I. 1976/1073; the relevant amending instruments are S.I. 1977/1016, 2008, 1978/1170, 1980/1050, 1981/67, 1982/1628, 1983/317, 1985/111, 1325, 1733, 1986/576, 1987/1914, 1988/1501, 2287, 1989/2222 and 1990/469.

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SCHEDULE 1

Regulation 4

THE POLICE (DISCIPLINE) (SENIOR OFFICERS) (SCOTLAND) REGULATIONS 1990 INVESTIGATION FORM

Rank and Name: .....

1. You are hereby informed that the following report, allegation or complaint has been made against you.

(Signed) ..... Investigating Officer
(Date) .....

2. Although you are not obliged to give any explanation at this stage, you may make an oral or written statement which may be used in evidence if disciplinary proceedings are taken. You will be given a copy of any statement you may make. Although you are not obliged to do so at this stage, you may provide the names and addresses of any persons whom you may wish to give evidence on your behalf. The investigating officer will take all reasonable steps to obtain statements from these witnesses.

a. Do you wish to make an oral statement? YES/NO\*

b. Do you wish to make a written statement? YES/NO\*

(If yes, the statement should be written on a separate sheet.)

c. Do you wish to provide the names and addresses of witnesses to give statements on your behalf? YES/NO\*

(If so, please detail below)

.....
.....
.....

(Signature of Officer
subject to investigation) .....

(Date) .....

\*Delete whichever is inappropriate.

SCHEDULE 2

Regulation 6

POLICE (DISCIPLINE) (SENIOR OFFICERS) (SCOTLAND) REGULATIONS 1990 DISCIPLINE FORM

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**PART I**

**(TO BE COMPLETED BY OR ON BEHALF OF THE INDEPENDENT SOLICITOR)**

To ..... (Name of Accused)

This form sets out allegations against you of a disciplinary offence. You are entitled and, in some cases, may be required to provide information. You should therefore read this form carefully.

**DETAILS OF CHARGE**

- 1. Charge Against – Rank and Name .....  
 Rank and Name of Investigating Officer .....  
 Offence(s) Against Discipline of which Officer is Accused  
 .....  
 .....

- 2. Particulars of Alleged Offence(s), including, time, date and place  
 .....  
 .....

**WITNESSES**

- 3. Names and Addresses of Witnesses to be called in Support of the Charge(s)  
 .....  
 .....

**DOCUMENTS**

- 4. There are attached, where applicable, copies of-
  - a. any statement made by you under regulation 4(4)(b);
  - b. the report, allegation or complaint on which the charge is founded;
  - c. the related reports by
    - i. ....
    - ii. ....
    - iii. ....
  - d. statements made by witnesses listed in paragraph 3 above;
  - e. statements relating to the charge made by any person other than those listed in paragraph 3 above, being statements by  
 .....

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f. an inventory of any relevant documentary evidence and productions.

RETURN TO INDEPENDENT SOLICITOR

5 You must complete Part III of the copy of this form and return it to the independent solicitor by

..... (Date)

Signature of Independent Solicitor .....

Date .....

PART II

(TO BE COMPLETED BY THE PERSON SERVING THE DISCIPLINE FORM UNDER REGULATION 7(4))

SERVICE

6. The discipline form of which this is a full copy was today served upon

(Details of Accused Officer) .....

by me

(Enter name and designation of person serving form).

.....  
"on behalf of ..... (name of independent solicitor)

Signature ..... Date .....

"Delete if inappropriate

PART III

(TO BE COMPLETED BY OR ON BEHALF OF THE ACCUSED)

QUESTIONS TO BE ANSWERED BY THE ACCUSED

7.--(1) Do you admit or deny the charge(s)? (Please give a separate answer in respect of each charge.)

.....  
.....  
.....  
.....

(2) Do you wish to offer any explanation? Yes/No (If Yes, the explanation should be written on a separate sheet and attached here to.)

(3) Do you intend to select a member of a police force to represent you or to assist you in presenting your case? If so, please give his name, rank and police force or indicate that this information will be given later. If not, please write "No". [See also Question 4 below.]

(Particulars of member) .....

(4) Do you intend to be represented by counsel or a solicitor? If so, please give name and address.

(Particulars of representative) .....

(5) If you intend to call witnesses, whose attendance at the hearing you wish the police authority to take steps to secure, you should give their names and addresses on this form or indicate that this information may be given later". If not, write "No".

.....  
.....  
.....



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.....  
Signature of Accused .....Date .....

\*The investigating officer will, so far as is reasonable and practicable, invite these witnesses to provide a statement and will supply you with a copy and the police authority will take all reasonable steps to secure their attendance at the hearing.

(6) Do you intend to make your own arrangements for any witnesses to attend? Yes/No. It would assist in the preparation of the hearing if you would indicate the number of witnesses you intend to call.

(Indicate number) .....  
Signature of Accused .....Date .....

**PART IV  
HEARING BEFORE TRIBUNAL**

8. [Applies only to cases where accused pleads Not Guilty]

You will be notified as soon as possible by the police authority of the date of the hearing and told where it is to be held. This notification, which will be in writing, will be given to you at least 28 days before the date set for the hearing.

Signature .....Date .....  
(On behalf of the Police Authority)

**PART V**

(TO BE COMPLETED BY OR ON BEHALF OF THE POLICE AUTHORITY) EITHER ON RECEIPT OF TRIBUNAL REPORT OR IF ACCUSED ADMITTED ALL THE CHARGES AGAINST HIM)

**POLICE AUTHORITY'S DECISION**

9. The police authority [having considered the report of the Tribunal dated .....]\* [having noted that you have in Part III admitted the charges against you]\* has

- (a) directed that the charges specified in Part I be withdrawn\*;
- (b) directed that the charges specified in Part I be dismissed\*<sup>3</sup>; or
- (c) found you guilty of the following disciplinary offence(s) with which you have been charged\*:

(Offences) .....  
.....  
.....

and

- (i) \*has decided to take no further action
- (ii) \*has decided to consider imposing a punishment

Signed .....Date .....

(On behalf of the Police Authority)

\*Delete if inapplicable

**PART VI**

(TO BE COMPLETED BY THE POLICE AUTHORITY)

**HEARING IN CONNECTION WITH DETERMINATION OF PUNISHMENT**

10. [Applies where accused has pled Guilty to all charges specified in Part I.]

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The police authority having noted that you admitted the charges specified in Part I has recorded a finding of guilt as set out in Part V above, and has decided to deal with this case without referring it to a Tribunal.

11. [Applies where hearing before Tribunal has taken place] The police authority having recorded a finding of guilt as set out in Part V above gives notice that it is considering imposing a punishment.

12. [Applies to cases covered by paragraphs 10 and 11.] You are entitled to make oral and/or written representations to the authority in relation to the matter of punishment.

Please indicate below whether or not you wish to have an opportunity to make such representations.

If you indicate that you wish an opportunity to make oral representations you will be notified by the authority of the date of the hearing and told where it is to be held. This notification, which will be in writing, will be given to you at least 28 days before the date set for the hearing.

If you indicate that you wish to submit written representations the authority will notify you in writing of the date by which such representations should be submitted.

You should return this form having completed paragraphs 13 and 14 by not later than

.....

.....  
(On behalf of the police authority)

.....  
(Date)

PART VII

(TO BE COMPLETED BY THE ACCUSED ONLY AFTER COMPLETION OF PART VI BY POLICE AUTHORITY)

ACKNOWLEDGEMENT OF DECISION

13. I have been notified of the police authority's decision set out in Part V above.

14. I have been notified that I may make representations in connection with the determination of punishment

I wish/do not wish to make oral representations.

I wish/do not wish to submit written representations.

15. I wish/do not wish to be represented at any hearing by counsel/a solicitor/a member of a police force.

My representative will be:

.....  
.....  
.....

(State name & address of representative and if a member of a police force, state also rank and force concerned)

16. I wish to call the following witnesses and I wish the police authority to take steps to secure their attendance:

.....  
.....

17. In addition to the witnesses listed above I shall also be calling ..... witnesses.

[If possible specify number of witnesses]

Signature of accused ..... Date .....

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**PART VIII**

**(TO BE COMPLETED BY THE POLICE AUTHORITY)**

18. The police authority having had regard to the accused's record of service and to representations in connection with determination of punishment to be imposed, has imposed the following punishment.

| <i>Disciplinary Offence</i>         | <i>Punishment</i> |
|-------------------------------------|-------------------|
| .....                               | .....             |
| .....                               | .....             |
| .....                               | .....             |
| .....                               | .....             |
| .....                               | .....             |
| (On behalf of the Police Authority) | (Date)            |

**PART IX**

**(TO BE COMPLETED BY THE ACCUSED)**

19. I have been notified of the police authority's decision set out in Part VIII above.  
Signature of accused ..... Date .....

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**EXPLANATORY NOTE**

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

These Regulations replace Parts IV and V of the Police (Discipline) (Scotland) Regulations 1967 ("the 1967 Regulations") with effect from 6th June 1990. Parts IV and V of the 1967 Regulations made provision as to the disciplinary procedures applying to chief constables, deputy and assistant chief constables.

Changes of substance are as follows:-

Regulations 4 and 5 provide for the appointment of an investigating officer where it appears that an offence may have been committed. Regulation 6 makes provision for the police authority, where it is considered that disciplinary proceedings should be taken, to appoint an independent solicitor for the purposes of preparation of the discipline charge. In terms of regulation 7, where the police authority decides to take disciplinary proceedings and directs the independent solicitor accordingly, thereafter the conduct of the proceedings against the senior officer are, subject to the right of the police authority to withdraw the proceedings at any time (regulation 9) the responsibility of the independent solicitor. In terms of regulation 26, where the police authority has considered the report of the Tribunal adjudicating on the disciplinary charge in terms of regulation 13, it requires to give the senior officer concerned an opportunity to be heard in relation to the matter of punishment.

The Regulations also make new provision in relation to the suspension of a senior officer pending disciplinary proceedings. Regulation 28 makes provision for suspension in urgent cases.

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