
STATUTORY INSTRUMENTS

1999 No. 1074 (S. 85)

POLICE

The Police (Conduct) (Senior Officers) (Scotland) Regulations 1999

<i>Made</i>	- - - -	<i>24th March 1999</i>
<i>Laid before Parliament</i>		<i>6th April 1999</i>
<i>Coming into force</i>	- -	<i>1st May 1999</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 representations made by the Police Advisory Board for Scotland 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 and commencement

1. These Regulations may be cited as the Police (Conduct) (Senior Officers) (Scotland) Regulations 1999 and shall come into force on 1st May 1999.

Application

2. These Regulations shall apply only—

- (a) in relation to misconduct on the part of a senior officer;
- (b) to any report, allegation or complaint from which the police authority considers that it may reasonably be inferred that any act or omission which was committed or made, or is alleged to have been committed or made, by a senior officer on or after 1st May 1999 may amount to misconduct; and
- (c) to any case where there is in respect of such an officer a finding of guilt as mentioned in paragraph 9 of the Schedule to these Regulations on or after that date, even although

(1) 1967 c. 77; section 26(9) was amended by the Police Negotiating Board Act 1980 (c. 10), section 2(4) and by the Police Act 1996 (c. 16) (“the 1996 Act”), Schedule 7, paragraph 14(3); section 26(1A) and (10) were inserted by the Police and Criminal Evidence Act 1984 (c. 60), section 111; section 26(1) was amended by the Police and Magistrates’ Courts Act 1994 (c. 29) (“the 1994 Act”), section 53(1); section 26(2) was amended by the 1994 Act, sections 47(5) and 52(2) and Schedule 9 and by the 1996 Act, Schedule 7, paragraph 14(2); section 26(2A) to (2C) was inserted by the 1994 Act, section 52(3) which came into force for certain purposes only on 8th August 1994 (see S.I. 1994/2025) and 1st January 1995 (see S.I. 1994/3075) and for all other purposes on 1st August 1996 (see S.I. 1996/1646); section 26(5A) was inserted by the 1994 Act, section 53(1); section 26(7) was repealed by the 1994 Act, section 52(4) and Schedule 9.

the act or omission which constituted the criminal offence of which the officer was found guilty was committed or made before that date.

Interpretation

3.—(1) Unless the context otherwise requires, in these Regulations—

“the 1996 Regulations” means the Police (Conduct) (Senior Officers) (Scotland) Regulations 1996(2);

“audio recording” means a recording made on any disc, tape, soundtrack or other device in which sounds or other data are recorded so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom;

“complainer” means the person who, aggrieved by the act or omission of a senior officer, originates a complaint which may give rise to a misconduct hearing, notwithstanding that the complaint is made through some other person or body;

“constable of a police force” includes, in the definition of “representative” in this regulation and in regulations 12(1)(c), 15(3), 16(2)(b) and (3) and 23(5)(b), a constable of a police force who is engaged on relevant service within the meaning given by section 38A(1) of the Police (Scotland) Act 1967(3);

“investigating officer” means a constable who is appointed under regulation 5(1);

“misconduct” shall be construed in accordance with regulation 4;

“misconduct form” means such a form as is mentioned in regulation 7(5)(a);

“misconduct hearing” means a hearing arranged in terms of regulation 15;

“representative” means a constable of a police force, an advocate or a solicitor who may represent the senior officer at a misconduct hearing;

“a senior officer” means a constable of a police force who is a chief constable or an assistant chief constable;

“the senior officer” means a senior officer in respect of whom a report, allegation or complaint is received from which it may reasonably be inferred that an act or omission of that officer may amount to misconduct on his part and who is the subject of any proceedings taken in relation to the allegation of misconduct in terms of these Regulations.

(2) In these Regulations, unless the context otherwise requires, any reference to a numbered regulation is a reference to the regulation in these Regulations which bears that number and any reference in a regulation to a numbered paragraph is a reference to a paragraph bearing that number in that regulation.

Misconduct by senior officers

4. For the purposes of these Regulations, an act or omission of a senior officer shall amount to misconduct on the part of that officer if it falls within any of the kinds of conduct described in the Schedule to these Regulations.

Preliminary investigation procedure

5.—(1) Subject to paragraphs (2) to (4), where a report, allegation or complaint is received from which the police authority considers that it may reasonably be inferred that an act or omission of a senior officer amounts, or may amount, to misconduct, the police authority for the force of which that officer is a constable shall appoint an investigating officer to investigate the matter.

(2) S.I. 1996/1645.

(3) Section 38A was inserted by the Police and Magistrates' Courts Act 1994 (c. 29), section 60.

(2) Where in the opinion of the police authority a report, allegation or complaint is received which—

- (a) appears to relate, or may relate, to an act or omission of a senior officer; but
- (b) does not contain sufficient particulars to enable the police authority to determine whether there is a reasonable inference that an act or omission of a senior officer amounts, or may amount, to misconduct,

the police authority may take such steps as it considers reasonable to obtain further particulars.

(3) Where in the opinion of the police authority a report, allegation or complaint is received which—

- (a) appears to relate, or may relate, to an act or omission of a senior officer and which alleges, or appears to allege, that the act or omission amounts to misconduct; but
- (b) does not contain any allegation of an act or omission of a senior officer which would, if proven, amount to misconduct on his part,

the police authority may make a finding to that effect and decide that no action shall be taken under these Regulations against the senior officer concerned in relation to the matter, and in that case the police authority shall forthwith notify the senior officer and the complainer in writing.

(4) Where in the case of any report, allegation or complaint referred to in paragraph (1) the police authority considers that it—

- (a) is unfounded or frivolous in nature; or
- (b) contains allegations of acts or omissions of a senior officer which would, if proven, amount to misconduct of a minor or trivial nature only,

the police authority may make a finding to that effect and 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 senior officer in writing.

(5) Where an investigating officer requires to be appointed, he shall be a chief constable of a police force in Scotland other than the force of which the senior officer is a member.

(6) The police authority shall not appoint as an investigating officer any chief constable who it appears to it may be a material witness or is interested in the matter otherwise than as a member of a police force and, accordingly, it shall require any chief constable whom it considers for appointment, and that chief constable shall declare, whether he is such a witness or is so interested before the appointment is made.

(7) Subject to regulation 9, as soon as practicable after being appointed, the investigating officer shall—

- (a) cause to be prepared an investigation form—
 - (i) containing a statement of the report, allegation or complaint;
 - (ii) informing the senior officer that although he is not obliged to do so following receipt of the form, 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; and
 - (iii) warning him that such a statement may be used in evidence in any subsequent misconduct proceedings; and
- (b) send a copy of the investigating form to the senior officer.

(8) Paragraph (7)(a)(ii) is without prejudice to any obligation on the senior officer to make a written or oral statement in the ordinary course of duty.

Report of investigation

6.—(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 senior officer has made under regulation 5(7)(a)(ii); and
- (c) any statement obtained from any witness.

(2) Following receipt of the investigating officer's report, the police authority shall decide whether there is sufficient evidence of misconduct on the part of the senior officer which would justify requiring him to appear before a misconduct hearing.

(3) If the police authority decides that further proceedings would not be justified they shall so inform the senior officer in writing forthwith.

Appointment of independent solicitor

7.—(1) This regulation applies in relation to any case in which the police authority has decided in terms of regulation 6(2) that there is sufficient evidence of misconduct on the part of the senior officer which would justify requiring the senior officer to appear before a misconduct hearing.

(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 senior officer should be required to attend a misconduct hearing.

(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 board; or
- (b) a former constable of the police force of which the senior officer is a constable.

(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 6(1) as may have been submitted to it.

(5) Where the independent solicitor considers that the senior officer should be required to appear before a misconduct hearing, he shall—

- (a) prepare a form (hereinafter referred to in these Regulations as "the misconduct form") containing—
 - (i) particulars of the alleged act or omission which he considers amounts to misconduct on the part of the senior officer; and
 - (ii) a statement of the reasons why he considers that the alleged act or omission amounts to misconduct; and
- (b) thereafter submit the misconduct form to the police authority.

(6) Where the independent solicitor considers that there is insufficient evidence that any act or omission, or alleged act or omission, of the senior officer amounted to misconduct on his part, he shall direct that no further proceedings shall be taken against the senior officer under these Regulations in relation to the matter as referred to him, and where he so directs he shall forthwith notify the police authority and the senior officer in writing.

(7) Where the independent solicitor makes a direction under paragraph (6) of this regulation then no further proceedings under these Regulations may be taken against the senior officer subject to investigation in relation to the matter referred to the independent solicitor.

Requirement to appear before a misconduct hearing

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

(2) The police authority shall, having considered the terms of the misconduct form, decide whether the senior officer should be required to appear before a misconduct hearing and, if it decides that he should, it shall direct the independent solicitor accordingly.

(3) Where the police authority has decided in terms of paragraph (2) that the senior officer should not be required to appear before a misconduct hearing, then it shall forthwith notify the senior officer in writing.

(4) If so directed in terms of paragraph (2), the independent solicitor shall cause—

(a) the misconduct form to be completed containing a notice that the senior officer is required to attend—

(i) a misconduct hearing at a time, date and place to be notified;

(ii) if the chairman of the misconduct hearing adjourns the hearing in accordance with regulation 19, at the adjourned hearing at the time, date and place specified by the chairman; and

(b) a copy of the misconduct form containing that notice to be sent to the senior officer.

(5) For the purposes of section 40A(2) of the Police (Scotland) Act 1967(4), proceedings by virtue of section 26(2A)(a) of that Act, insofar as relating to a senior officer, shall be taken to have commenced on the date on which a copy of the misconduct form is sent to him in terms of paragraph (4).

Alleged criminal offence

9.—(1) Notwithstanding anything in regulations 5 and 6, where a report, allegation or complaint is received from which the police authority considers that it may reasonably be inferred that a senior officer may have committed a criminal offence, a member of the same force who is required by the police authority to do so shall, as soon as possible, refer the matter to the procurator fiscal appearing to be concerned.

(2) In such a case, the police authority may decide—

(a) not to appoint an investigating officer in terms of regulation 5(1) for the purpose of investigating the matter;

(b) where an investigating officer was appointed in terms of regulation 5(1), to instruct that officer not to prepare or not to send an investigation form to the senior officer 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 considering in terms of regulation 6(2) whether there is sufficient evidence of misconduct which would justify requiring the senior officer to appear before a misconduct hearing,

until 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, if he has intimated that criminal proceedings are to be brought, those proceedings are completed.

(3) If the police authority decides to exercise any power conferred upon it by paragraph (2), it shall arrange for the senior officer to be informed to that effect and to be warned that misconduct proceedings may subsequently be taken against him under these Regulations, irrespective of whether or not criminal proceedings are brought against him or of the disposal of any such proceedings.

(4) Section 40A was inserted by the Police and Magistrates' Courts Act 1994 (c. 29), section 61.

(4) Where the criminal offence referred to in paragraph (2) may have been committed in any part of the United Kingdom (other than in Scotland) or in any of the Channel Islands or the Isle of Man, the reference to “the procurator fiscal” shall be construed as a reference to the person who either has responsibility for considering whether to institute criminal proceedings in relation to the matter or has instituted such proceedings.

Termination of proceedings

10.—(1) If, at any time after a copy of the misconduct form has been sent to the senior officer in accordance with regulation 8(4) but before the conclusion of the misconduct hearing, it appears to the police authority that, in the light of any new information or event, it is no longer appropriate that the allegation against the senior officer should be heard, it may direct that the allegation shall no longer be considered at the misconduct hearing.

(2) Where the police authority makes a direction in terms of paragraph (1), it shall, as soon as possible—

- (a) cause that direction to be noted on the misconduct form; and
- (b) notify the senior officer and the complainer in writing.

Documents to be supplied to the senior officer

11.—(1) Where the senior officer has been sent a copy of the misconduct form in terms of regulation 8(4), the independent solicitor shall arrange for the senior officer to be supplied, as soon as possible, with a copy of—

- (a) any statement which the senior officer may have made by virtue of regulation 5(7)(a)(ii);
- (b) the report, allegation or complaint on which the decision to arrange a misconduct hearing is founded (or so much thereof as relates to the senior officer) and any reports thereon (other than the report of the investigating officer), notwithstanding that they may be confidential;
- (c) any statement relating to the alleged misconduct made by any witness who may be called by the independent solicitor, together with the name and address of each such witness;
- (d) any statement relating to the alleged misconduct made by any person, other than a witness who may be called by the independent solicitor, to the investigating officer or to anyone on his behalf, together with the name and address of each such person; and
- (e) a list of any relevant documents or other articles being produced as evidence.

(2) Where the decision to arrange a misconduct hearing 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) 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 senior officer in response to the misconduct form

12.—(1) Where the senior officer has been sent a copy of the misconduct form in terms of regulation 8(4), he shall within the time limits specified in paragraph (2) give notice to the independent solicitor—

- (a) whether he admits or denies the allegation of misconduct on his part;
- (b) whether he wishes to offer any explanation;
- (c) whether he intends to be represented or assisted by a constable of a police force at the misconduct hearing;

- (d) whether he wishes witnesses to be called to give evidence to relevant facts at the misconduct hearing and, if he does, notice of the names and addresses of any such witnesses; and
- (e) whether he intends to be represented by an advocate or a solicitor.

(2) Subject to paragraph (3), the senior officer shall give notice of the information required by paragraph (1) by entering on the copy of the misconduct form the relevant information, signing the form and returning it to the independent solicitor within the period of 14 days after the date on which

- (a) the form was sent to the senior officer; or
- (b) the last of the documents required by regulation 11 to be supplied is supplied to the senior officer,

whichever is the later date.

(3) The police authority may, on the application in writing of the senior officer, extend the period of time mentioned in paragraph (2), notwithstanding that that time limit may have expired.

(4) Notwithstanding paragraph (1)(d), the police authority may, on the written application of the senior officer at any time before the misconduct hearing is commenced, permit him to nominate further witnesses whom he wishes to call to give evidence to relevant facts at the hearing.

(5) Where the independent solicitor is informed by the senior officer that he intends to lead the evidence of any witness and where the senior officer 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 senior officer a copy of any such statement.

(6) Paragraph (5) is without prejudice to the right of the senior officer to invite the witness to provide a statement to him or his representative.

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

Cases in which the senior officer admits misconduct

13.—(1) This regulation applies in any case in which—

- (a) in terms of regulation 12, the senior officer has admitted an allegation of misconduct on his part; and
- (b) there are no allegations of misconduct on his part specified on the misconduct form which, in terms of regulation 12, 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 misconduct hearing under regulation 15, and where it has so determined it shall proceed to deal with the case in accordance with regulation 22.

Appointment of the chairman of a misconduct hearing

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

(2) An allegation that an act or omission of a senior officer amounts to misconduct shall be heard by a single person who shall act as the chairman of the misconduct hearing being a person selected and appointed by the police authority from a list of persons nominated by the Lord President of the Court of Session.

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

- (4) The police authority shall not appoint as an assessor under paragraph (3)–
- (a) a person who is one of Her Majesty’s Inspectors of Constabulary;
 - (b) the chief constable of the police force of which the senior officer is a constable;
 - (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 who appears to the authority may be a material witness or is interested in the matter otherwise than as a constable of a police force.
- (5) The police authority may appoint a clerk to the chairman and shall do so if so requested by the chairman.

Arrangement of misconduct hearing

15.—(1) Where an allegation of misconduct is to be heard at a misconduct hearing, the police authority shall make all necessary arrangements for the hearing before the chairman and shall determine the time, date and place of the hearing.

(2) The police authority shall by notice in writing require the senior officer to appear at the hearing at the time, date and place specified in the notice.

(3) Where the senior officer has intimated that he wishes to be accompanied at the hearing by a representative who is a constable of a police force other than his own, the police authority shall inform the chief constable of that other force of that intimation and shall give notice of the time, date and place of the hearing.

(4) Where the hearing arises out of a complaint by a member of the public, the police authority shall, if the senior officer has denied the allegation or any part thereof, give notice to the complainer specifying the time, date and place of the hearing and shall draw the complainer’s attention to the provisions of regulation 17(4)(b) and (5).

(5) The police authority shall take all reasonable steps to secure the attendance at the hearing of any witnesses required to give evidence to relevant facts at the hearing.

(6) In any case in which in terms of this regulation the police authority is required to give notice to any person, such notice shall be sent not less than 21 days prior to the commencement of the hearing, provided that the senior officer may, in writing, waive his entitlement to receive 21 days’ notice of the hearing.

(7) At any time before the date fixed for hearing in accordance with paragraph (2), the police authority may, if it is of the opinion that it is expedient or necessary to do so, discharge the hearing and shall make all necessary arrangements in accordance with paragraphs (1) to (6) for the misconduct hearing to be held at a later date.

Representation at misconduct hearing

16.—(1) The case against the senior officer shall be presented by the independent solicitor who may for that purpose instruct an advocate or a solicitor to appear on his behalf, and in that case the restrictions on the appointment of the independent solicitor specified in regulation 7(3) shall apply to the appointment of counsel or solicitor concerned.

- (2) The senior officer shall be entitled to conduct his own case or he may be represented–
- (a) either by an advocate or a solicitor; or
 - (b) by another constable of a police force selected by him, and such other constable may be a representative of an association representing senior officers.

(3) Both the person presenting the case against the senior officer and the senior officer, or as the case may be his representative, may be assisted at the hearing by a constable (or former constable) of a police force.

Procedure at misconduct hearing

17.—(1) Subject to the provisions of this regulation and of regulations 18 to 20, the procedure at the misconduct hearing shall be such as the chairman may determine.

(2) If the senior officer admits the allegation of misconduct, the chairman, after giving the person presenting the case and thereafter the senior officer or his representative an opportunity of making a statement, may dispose of the case forthwith.

(3) Subject to paragraph (4), the misconduct hearing shall be held in private.

(4) Notwithstanding paragraph (3)—

- (a) where a child is giving evidence, the chairman may allow a parent or guardian to be present and, when any witness is giving evidence, the chairman may, subject to consideration of any objections raised by the senior officer, allow such other persons to be present as may seem reasonable to him because of any special circumstances;
- (b) where the hearing of the case arises out of a complaint made by a member of the public and the senior officer denies the allegation of misconduct or any part thereof, the chairman may allow the complainer to be present at the hearing while witnesses are giving evidence; and
- (c) the chairman may allow any other person to be present if the independent solicitor and the senior officer agree.

(5) In any case to which paragraph (4)(b) applies—

- (a) the complainer shall not be entitled to put questions to the senior officer 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 chairman may, if he thinks fit, exclude the complainer from the whole or any part of the hearing and, without prejudice to the foregoing generality, shall exclude him—
 - (i) 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
 - (ii) if he behaves in a disorderly manner.

(6) If the senior officer wishes to make an objection to the effect that the facts alleged in the misconduct form in relation to any allegation are not such as to amount to misconduct on his part, he shall give written notice of the objection to the chairman at least 7 days before the misconduct hearing is due to commence.

(7) Where the senior officer has given notice of an objection in terms of paragraph (6), the chairman shall determine any such objection at the beginning of the misconduct hearing and, if he upholds the objection, he shall make a finding that there has been no misconduct on the part of the senior officer in relation to the allegation in question.

(8) The senior officer or his representative, or both of them, may put questions to any witness called by the person presenting the case.

(9) The senior officer may give evidence on his own behalf and he or his representative may call witnesses in support of his denial of the allegation of misconduct and, where any such evidence is given, the person presenting the case against the senior officer may put questions to the senior officer or, as the case may be, the other witness.

(10) 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 chairman.

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

(12) The chairman shall—

- (a) prepare a written note summarising the proceedings at the misconduct hearing; and
- (b) arrange for an audio recording to be made of those proceedings.

Statements in lieu of oral evidence

18.—(1) Subject to the provisions of this regulation, the chairman 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 independent solicitor or the senior officer (in this regulation referred to as “the parties”) 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; 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 chairman.

(3) The chairman 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; or
- (b) either party requests the chairman 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 chairman is of the opinion that oral evidence should be given, he may request that that person be called as a witness and, in such case, unless that person gives oral evidence, the chairman 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.

Adjournment of misconduct hearing

19.—(1) The chairman may from time to time adjourn the hearing to a later time or date if it appears to him necessary or expedient to do so for the due hearing of the case.

(2) Where the chairman adjourns the hearing to a later date he shall forthwith provide the senior officer with a written notice of the time, date and place of the adjourned hearing.

Hearing in absence of the senior officer

20.—(1) If the senior officer does not attend at the misconduct hearing or at any adjournment thereof, the hearing may be proceeded with and concluded in his absence if it appears to the chairman just and proper to do so.

(2) Notwithstanding the terms of paragraph (1)—

- (a) if the senior officer is detained while serving the sentence of a court in a prison or other institution in any part of the British Islands and expresses a desire to make representations in person at the hearing, the hearing shall not be concluded until the senior officer has been able to make such representations; and
 - (b) if any other good reason is given to the chairman by, or on behalf of, the senior officer why he is unable to attend the hearing, the hearing shall be postponed or adjourned, as the case may be.
- (3) Subject to paragraph (2), where, owing to the absence of the senior officer, it is not possible to comply with the whole or any part of the procedure described in these Regulations, the case may be proceeded with as if that procedure had been complied with.

Report of the chairman of the misconduct hearing

21.—(1) Except in any case to which paragraph (2) applies, the chairman of the misconduct hearing 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 whether in relation to the allegation any act or omission of the senior officer amounted to misconduct;
- (c) if any act or omission of the senior officer amounted to misconduct, a recommendation as to the proper disposal which in the opinion of the chairman, having regard to the senior officer's record of service, should be imposed;
- (d) any other matter arising out of the misconduct hearing which he desires to bring to the notice of the police authority.

(2) In any case in which after the commencement of a misconduct hearing the police authority has directed that the allegation of misconduct shall no longer be heard, the police authority shall notify the chairman of the misconduct hearing in writing as to that direction, and the chairman shall thereafter terminate the proceedings and report to the police authority accordingly.

(3) The chairman of the misconduct hearing shall send a copy of the report to the senior officer.

Decision of police authority

22.—(1) When the police authority has received the report of the chairman of the misconduct hearing in terms of regulation 21(1), or where it has determined to deal with the case in terms of regulation 13(2), the police authority shall decide either to dismiss the case or—

- (a) to make a finding that any act or omission of the senior officer amounted to misconduct but to take no further action thereon; or
- (b) to make such a finding and to consider whether to make a disposal.

(2) As soon as possible after the police authority has reached a decision in accordance with paragraph (1), it shall arrange for—

- (a) the decision to be recorded on the misconduct form;
- (b) the decision to be notified to the senior officer and a copy of misconduct form containing the decision to be sent to him;
- (c) where it has made a finding that any act or omission of the senior officer amounted to misconduct and decided to consider whether to make a disposal, a copy of each of the written note and the audio recording made in accordance with regulation 17(12) to be sent to the senior officer; and

(d) when the senior officer is not the chief constable, the decision to be notified in writing to the chief constable of the police force concerned.

(3) Where the misconduct hearing arises out of a complaint made by a member of the public, the police authority shall notify the complainer in writing of the finding made.

Disposal

23.—(1) The disposals which may be recommended by the chairman of the misconduct hearing or made by the police authority shall be one of the following:—

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

and separate disposals may be made in relation to separate findings of misconduct in relation to each allegation of misconduct specified in the misconduct form.

(2) Where the police authority has notified the senior officer that it has decided to consider making a disposal, the senior officer, shall within 14 days of the date on which such notification is made, give notice to the police authority whether he wishes to make oral or written representations in relation to the matter of the disposal.

(3) Where the senior officer 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) Where the senior officer gives notice that he wishes to make oral representations to the police authority, the authority shall give reasonable notice of the time, date and the place at which those representations may be made.

(5) At any hearing referred to in paragraph (4), the senior officer may be represented—

- (a) either by an advocate or a solicitor; or
- (b) by another constable of a police force selected by him, and such other constable may be a representative of an association representing senior officers.

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

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

(8) Before deciding on a disposal the police authority shall have regard to the senior officer's record of police service.

(9) After the period within which the senior officer may make representations in relation to the disposal has elapsed and after considering any representations which are being made by or on behalf of him, the police authority may decide either to make no disposal or to make a disposal as mentioned in paragraph (1).

(10) As soon as possible after reaching a decision in accordance with paragraph (9), the police authority shall arrange for—

- (a) the decision to be recorded on the misconduct form; and

- (b) the decision to be notified in writing to—
 - (i) the senior officer; and
 - (ii) when the senior officer is not the chief constable, the chief constable of the police force concerned.

(11) Where a disposal as mentioned in paragraph (1)(b) has been made and the senior officer 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 senior officer from the force either forthwith or on the date specified in the decision.

- (12) If the police authority decides to make a disposal in terms of paragraph (1)(c)—
 - (a) it shall not specify a fine in relation to the subject matter specified in the misconduct form (irrespective of the number of separate findings of misconduct) which exceeds in the aggregate one week's pay; and
 - (b) the fine shall be recovered by stoppage of pay in amounts not exceeding one-seventh of the senior officer's weekly pay, except in the event that he leaves the force when the whole amount of any fine then unpaid may be deducted from any pay then due.

Expenses

24.—(1) All the expenses of a hearing before the chairman of a misconduct hearing or the police authority under these Regulations, including reasonable expenses incurred by the senior officer 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 the senior officer in connection with proceedings under these Regulations after the date of service of any investigation form and until either the service of a misconduct form or notification that no proceedings are to be taken.

Suspension – ordinary procedure

25.—(1) Where it appears to the police authority, on receiving a report, allegation or complaint from which it appears that any act or omission, or an alleged act or omission, of a senior officer may amount to misconduct or a criminal offence and that the senior officer ought to be suspended from duty and from his office as a constable of a police force, 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 determines 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;
- (b) the police authority decides otherwise;
- (c) a decision is taken, or a direction made, under regulation 5(3) or (4), 6(2), 7(6) or 8(2) to the effect that no action or further proceedings shall be taken against the senior officer under these Regulations; or
- (d) he has been required to appear before a misconduct hearing and—
 - (i) all the allegations of misconduct have been withdrawn or dismissed;
 - (ii) a finding that any act or omission of the senior officer amounted to misconduct has been recorded but it has been decided to take no further action thereon; or
 - (iii) a disposal has been made in respect of the finding or the police authority has decided pursuant to regulation 23(9) to make no disposal,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) Where a suspension is to be reimposed under paragraph (6), the provisions of paragraphs (3) to (5) shall apply to the reimposition.

Suspension – urgent cases

26.—(1) Subject to paragraph (2), in cases of urgency, the like power of suspension as under regulation 25 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 25, 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

27.—(1) This regulation applies in any case in which a senior officer has been suspended from duty and from his office as a constable of a police force in terms of regulation 25 or 26.

(2) Where the suspension of a senior officer ceases to have effect upon the occurrence of any of the events specified in regulation 25(5) and the suspension has not been reimposed in accordance with regulation 25(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.

Transcripts

28.—(1) Where the police authority make a disposal specified in either sub-paragraph (a) or (b) of regulation 23(1), the senior officer may, not later than 28 days after the date on which the

authority's decision is notified in terms of regulation 22(2), by notice in writing addressed to the authority request the authority to provide him with a transcript of all or a specified part of the audio recording of the proceedings at the misconduct hearing made in accordance with regulation 17(12).

(2) In giving notice under paragraph (1), the senior officer shall state whether a transcript of all or part of audio recording is requested and, if only part is requested, specify the relevant part.

(3) If, after considering a notice submitted under paragraph (1), the police authority is of the opinion that the transcript requested is or might be necessary for an appeal in terms of section 30 of the 1967 Act(5) by the senior officer against the authority's decision under regulation 22, it shall arrange for the transcript to be prepared and for a copy to be sent to the appellants.

Police authority to notify decision to Secretary of State

29. The police authority shall give notice to the Secretary of State of any decision made under regulation 22 and any disposal made under regulation 23 and, in any case in which it has received the report of the chairman of the misconduct hearing in terms of regulation 21(1), it shall forward a copy of that report to the Secretary of State.

Records

30.—(1) The police authority shall keep—

- (a) a record of every complaint made by a member of the public against any senior officer together with an account of the action taken in connection therewith;
- (b) a record of every report, allegation or complaint from which it was inferred that an act or omission of a senior officer may have amounted to misconduct, together with an account of the action taken in connection therewith; and
- (c) where any such report, allegation or complaint results in a senior officer being required to appear before a misconduct hearing, on the misconduct record, details of the allegation, together with the finding of the hearing and any disposal made.

(2) The police authority shall retain—

- (a) any audio recording made in accordance with regulation 17(12) for a period of not less than 3 years from the date on which the recording was sent pursuant to regulation 22(2); and
- (b) any transcript of all or part of such an audio recording where it has been prepared in terms of regulation 28(3) for a period of not less than 3 years from the date on which the audio recording was sent pursuant to regulation 28(3).

Revocations, savings and transitional provisions

31.—(1) Subject to the following provisions of this regulation, the 1996 Regulations are hereby revoked.

(2) Notwithstanding paragraph (1), the 1996 Regulations shall continue to apply (but subject to regulation 31(2) of the 1996 Regulations) to any case where an act or omission was committed or made by a senior officer before 1st May 1999 which amounts or may amount to a disciplinary offence, as defined in regulation 2(1) of the 1996 Regulations, at the time when the act or omission was committed or made, including, without prejudice to that generality, any such case irrespective of whether it is before, on or after that date that—

- (a) a report, allegation or complaint is received in relation thereto;
- (b) the senior officer is charged or found guilty of that disciplinary offence; or

(5) Section 30 was substituted by the Police and Magistrates' Courts Act 1994 (c. 29), section 55(1).

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- (c) an appeal is made in relation to such a finding and any punishment imposed or only in relation to a punishment,
- but for the avoidance of doubt, the 1996 Regulations do not apply to a case where—
- (i) the disciplinary offence consists of the conviction of the senior constable of a criminal offence as mentioned in paragraph 13 of Schedule 1 to the 1996 Regulations; and
 - (ii) such a conviction occurs on or after 1st May 1999, even although the act or omission which constituted the criminal offence of which the senior officer was convicted was committed or made by the senior officer before that date.

St Andrew's House,
Edinburgh
24th March 1999

Henry B McLeish
Minister of State, The Scottish Office

SCHEDULE

Regulation 4

CONDUCT CONSTITUTING MISCONDUCT

1. Conduct likely to bring discredit on the police force or service, including—
 - (a) insubordination or incivility;
 - (b) corrupt practice;
 - (c) breach of confidence;
 - (d) drinking any intoxicating liquor while on duty or being unfit for duty through such liquor;
 - (e) suppression of complaints;
 - (f) wilful or careless damage to, or loss of, property belonging to the police authority or within the care of the police;
 - (g) disorderly conduct; or
 - (h) acting towards, or treating, any person in an oppressive or improper manner.
2. Failure to comply, without good and sufficient cause, with a lawful order.
3. Failure to report any matter which it is the senior officer's duty to report or to account for any act or omission in the ordinary course of duty which he has a duty to account for.
4. Neglect of duty.
5. Wilful or careless falsehood.
6. Malingering.
7. Being absent from duty, or being late for duty, without leave.
8. Contravention of regulation 5 of, or Schedule 1 to, the Police (Scotland) Regulations 1976(6).
9. Having been found guilty by a criminal court of a criminal offence in any part of the United Kingdom or in any of the Channel Islands or the Isle of Man.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations replace the Police (Conduct) (Senior Officers) (Scotland) Regulations 1996 (“the 1996 Regulations”).

The Regulations make revised provision for the procedures for cases in which a constable of the rank of chief constable or assistant chief constable (a “senior officer”) who is the subject of an allegation of misconduct may be dealt with by dismissal, requirement to resign, reduction in rank, reduction in rate of pay, fine, reprimand or caution.

Regulations 1 to 3 make provision with respect to citation, commencement, application and interpretation.

(6) S.I. 1976/1073; relevant amending instruments are S.I. 1985/111, 1990/469, 1993/3081 and 1995/596.

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Regulation 4 of, and the Schedule to, the Regulations define what is meant by misconduct on the part of a constable to whom the Regulations apply.

Regulation 5 prescribes the preliminary procedure to be followed where an allegation of complaint of misconduct is made against a senior officer. Except where an allegation or complaint appears to be unfounded or frivolous or, if proven, would only involve a minor or trivial matter, the allegation or complaint will be referred to an investigating officer. The investigating officer is required to prepare and provide to the senior officer who is the subject of the complaint an investigation form containing relevant information.

Regulation 6 makes provision for considering whether there is sufficient evidence following receipt of the report of the investigating officer to justify requiring a misconduct hearing to be held.

Regulation 7 provides for appointment by the police authority of an independent solicitor if they think there is sufficient evidence of misconduct which justifies requiring the senior officer to appear before a misconduct hearing. That solicitor must consider this and prepare a misconduct form containing particulars of the alleged misconduct if he thinks there is evidence of misconduct justifying a requirement that the senior officer appear before a misconduct hearing. In terms of regulation 8, the police authority may decide if the senior officer should be so required in which case a copy of the misconduct form must be sent to the senior officer requiring him to attend a hearing.

Regulation 9 enables the police authority to delay investigations where the matter is also the subject of criminal investigations.

Regulation 10 enables misconduct proceedings to be terminated before the conclusion of a misconduct hearing where the police authority consider this is appropriate.

Regulations 11 and 12 specify the documents and other information to be supplied where a misconduct hearing is required. Regulation 13 provides for the procedure where the allegation of misconduct is admitted.

Regulation 14 provides for appointment of a chairman of the misconduct hearing and regulation 15 provides for the arrangement of the hearing. Regulation 16 provides for representation at the hearing.

Regulations 17 to 20 make provision with respect to the holding of and procedure at a misconduct hearing at which evidence may be heard and a full opportunity given to the senior officer to defend the allegations made against him.

In terms of regulation 21 the chairman of the misconduct hearing must report to the police authority his decision and reasons, a copy of which must also be sent to the senior officer.

Regulation 22 provides that the police authority must decide, on the basis of the report by the chairman of the misconduct hearing, whether there was misconduct and, if so, whether to consider making a disposal.

Regulation 23 specifies the disposals which may be recommended by the chairman in disposing of the case if he finds that there has been misconduct and which may be made by the police authority.

Regulation 25 to 27 regulate suspension of a senior officer who is subject to an allegation of misconduct.

Regulations 28 to 30 deal with supplementary matters.

Regulation 31(1) revokes the 1996 Regulations.

By virtue of regulation 31(2), the 1996 Regulations continue to apply where an act or omission of a senior officer which may amount to a disciplinary offence under the 1996 Regulations occurs before the date on which these Regulations come into force.