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STATUTORY INSTRUMENTS

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**2004 No. 645**

**The Police (Conduct) Regulations 2004**

**Citation and commencement**

1. These Regulations may be cited as the Police (Conduct) Regulations 2004 and shall come into force on 1st April 2004.

**Revocations and transitional provisions**

2.—(1) The provisions set out in paragraph (2) are hereby revoked.

(2) Those provisions are—

- (a) regulation 2 of the Special Constables Regulations 1965(1) (suspension).
- (b) the Police (Conduct) Regulations 1999(2);
- (c) the Police (Conduct) (Senior Officers) Regulations 1999(3);
- (d) articles 11 and 12 of the Greater London Authority Act 1999 (Consequential Amendments) (Police) Order 2000(4);
- (e) regulations 5 and 6 of the Criminal Justice and Police Act 2001 (Consequential Amendments) (Police Ranks) Regulations 2001(5);
- (f) the Police (Conduct) (Amendment) Regulations 2003(6);
- (g) the Police (Conduct) (Senior Officers) (Amendment) Regulations 2003(7).

(3) Where a report, complaint or allegation—

- (a) was received before 1st April 2004 in respect of conduct by a member of a police force or a special constable; or
- (b) has been or is received on or after 1st April 2004 in respect of conduct by a special constable which occurred or commenced before 1st April 2004,

nothing in these Regulations shall apply, and the provisions mentioned in paragraph (2) shall, as far as applicable, continue to have effect.

**Interpretation**

3.—(1) In these Regulations—

“appropriate authority” means—

- (a) where the officer concerned is a senior officer of any police force, the police authority for the force’s area;

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(1) S.I.1965/536; by virtue of section 17 of the Interpretation Act 1978 (c. 30) these Regulations have effect as if made under section 51 of the Police Act 1996.

(2) S.I. 1999/730; as amended by S.I. 2000/1549, 2001/3888 and 2003/2599.

(3) S.I. 1999/731; as amended by S.I. 2000/1549, 2001/3888 and 2003/2596.

(4) S.I. 2000/1549.

(5) S.I. 2001/3888.

(6) S.I. 2003/2599.

(7) S.I. 2003/3596.

(b) where the officer concerned is a senior officer of the National Crime Squad, the Service Authority for that Squad;

(c) in any other case, the chief officer of the police officer's force;

"appropriate officer" means—

(a) where the officer concerned is a member of the metropolitan police force or the City of London police force or a special constable appointed for the area of one of those forces, a police officer of at least the rank of commander in that police force;

(b) in any other case, a police officer of at least the rank of assistant chief constable;

"appropriate standard" means the standard set out in the Code of Conduct;

"conduct matter" means any matter which is not and has not been the subject of a complaint but in the case of which there is an indication (whether from the circumstances or otherwise) that a person serving with the police may have—

(a) committed a criminal offence; or

(b) behaved in a manner which would justify the bringing of disciplinary proceedings.

"Code of Conduct" means the code of conduct contained in Schedule 1;

"the Commission" means the Independent Police Complaints Commission;

"the officer concerned" means the police officer in relation to whose conduct there has been a report, complaint or allegation;

"officer other than a senior officer" means a police officer below the rank of senior officer;

"police officer" means a member of a police force or a special constable;

"senior officer" means a chief constable, a deputy chief constable or an assistant chief constable or, in the case of the City of London and metropolitan police forces, a member of the force in question of or above the rank of commander;

"supervising officer" means a police officer appointed under regulation 7 to supervise the investigation of a case;

"the 1996 Act" means the Police Act 1996; and

"the 2002 Act" means the Police Reform Act 2002(8).

(2) In these Regulations—

(a) a reference to a police force shall include a reference to the National Crime Squad;

(b) a reference to a police authority shall include a reference to the Service Authority for that Squad; and

(c) a reference to a chief officer shall include a reference to the Director General of that Squad.

(3) In the following regulations—

(a) a reference to an officer other than a senior officer shall include a reference to a special constable, regardless of the rank or grade he holds;

(b) any special constable of a rank or grade equivalent to or above the rank of chief superintendent shall be treated as if he were a chief superintendent.

## **Suspension**

**4.—(1)** Where it appears to the appropriate authority, on receiving a report, complaint or allegation which indicates that the conduct of a police officer does not meet the appropriate standard, that the officer concerned ought to be suspended from his office as constable and (in the case of

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(8) 2002 c. 30.

a member of a force) from membership of the force, the appropriate authority may, subject to the following provisions of this regulation, so suspend him.

(2) The appropriate authority shall not so suspend a police 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 officer concerned is so suspended;
- (b) that the public interest, having regard to the nature of the report, complaint or allegation, and any other relevant considerations, requires that he should be so suspended.

(3) If the appropriate authority determines that a senior officer ought to be suspended under this regulation, it shall forthwith notify the Commission of its decision and of the suspension condition appearing to it to justify its decision.

(4) If, upon being so notified of the decision of the appropriate authority, the Commission is satisfied that the suspension condition in question is fulfilled, it shall as soon as practicable notify its approval of the suspension of the senior officer concerned to the appropriate authority; and the suspension of the officer shall not have effect unless the approval of the Commission is so given.

(5) The appropriate authority concerned may exercise the power to suspend the officer concerned under this regulation at any time, subject to paragraphs (3) and (4), from the time of the receipt of the report, complaint or allegation until—

- (a) it is decided that the conduct of the officer concerned shall not be the subject of proceedings under regulation 11;
- (b) the notification of a finding that the conduct of the officer concerned did not fail to meet the appropriate standard;
- (c) a sanction has been imposed under regulation 35 and, in the case of an officer other than a senior officer, either the officer concerned has not requested a review within the period specified in regulation 40 or any such review has been completed;
- (d) in the case of a senior officer, the Commission decide otherwise;
- (e) in the case of a senior officer, a notification that, in spite of a finding that the conduct of the officer failed to meet the appropriate standard, no sanction should be imposed.

(6) Where the officer concerned is suspended under this regulation, he shall remain suspended until there occurs any of the events mentioned in paragraph (5)(a) to (e), or until the appropriate authority decides he shall cease to be suspended, whichever first occurs.

(7) Where the officer concerned who is suspended is required to resign under regulation 35, he shall remain suspended until the requirement to resign takes effect.

(8) Where the appropriate authority is a chief officer, he may delegate his powers under this regulation—

- (a) where the officer concerned is a member of the City of London or metropolitan police force or is a special constable appointed for the area of one of those forces, to an officer of at least the rank of commander,
- (b) in any other case, to an officer of at least the rank of assistant chief constable.

### **Suspension—urgent cases**

5.—(1) Subject to paragraph (2), in cases of urgency, the like power of suspension as under regulation 4(1) and (2) may be exercised with immediate effect—

- (a) in relation to a chief officer, by the police authority; and
- (b) in relation to any other senior officer, by the chief officer concerned.

(2) Where a senior officer has been suspended under paragraph (1), the police authority or, as the case may be, the chief officer shall notify the Commission forthwith.

(3) The suspension of a senior officer under this regulation shall cease to have effect—

- (a) at the expiry of 24 hours from its imposition unless within that period the Commission has notified the appropriate authority of its approval of it, or
- (b) if earlier, when any of the events mentioned in regulation 4(5)(a) to (e) occurs.

### **Conduct of investigations where there are outstanding criminal proceedings**

6. Where there are criminal proceedings outstanding against the officer concerned, proceedings under these Regulations, other than the exercise of the power to suspend under regulation 4 or 5, shall not take place unless the appropriate authority believes that in the exceptional circumstances of the case it would be appropriate for them to do so.

### **Appointment of supervising officer**

7.—(1) Subject to paragraph (2), where a report, complaint or allegation is received by the chief officer which indicates that the conduct of a police officer (other than a senior officer) did not meet the appropriate standard, the case may be referred by him to a police officer, who satisfies the conditions in paragraph (3), to supervise the investigation of the case.

(2) Paragraph (1) shall not apply where the case arises from a complaint or conduct matter to which paragraph 17, 18 or 19 of Schedule 3 to the 2002 Act applies.

(3) The supervising officer shall be—

- (a) of at least the rank of chief inspector and at least one rank above that of the officer concerned;
- (b) a member of, or a special constable appointed for the area of, the same force as the officer concerned; and
- (c) not an interested party.

### **Appointment of investigating officer**

8.—(1) A supervising officer may appoint an investigating officer to investigate the case.

(2) Where an appropriate authority receives a report, complaint or allegation which indicates that the conduct of a senior officer did not meet the appropriate standard, it shall take the steps set out in paragraph (4).

(3) Paragraphs (1) and (2) shall not apply where the case arises from a complaint or conduct matter to which paragraph 16, 17, 18 or 19 of Schedule 3 to the 2002 Act applies.

(4) In the case of a senior officer, unless the appropriate authority decides, in the light of such preliminary enquiries as it may make, that no proceedings under regulation 14 need be taken, it shall refer the matter to an investigating officer who shall cause it to be investigated.

(5) If the matter concerns the conduct of the Commissioner of Police of the Metropolis or the Deputy Commissioner of Police of the Metropolis—

- (a) the appropriate authority shall notify the Secretary of State; and
- (b) the Secretary of State shall appoint a person (whether a police officer or not) as the investigating officer.

(6) In any other case which concerns the conduct of a senior officer, the investigating officer shall be appointed by the appropriate authority.

(7) In a case which concerns the conduct of an officer other than a senior officer, the investigating officer shall be—

- (a) a member of the same police force as the officer concerned or, if the chief officer of some other force is requested and agrees to provide an investigating officer, a member of that other force;
- (b) of at least the rank of sergeant;
- (c) if the officer concerned is a superintendent or chief superintendent and—
  - (i) if the investigating officer is a member of the City of London or metropolitan police force, of at least the rank of commander;
  - (ii) if the investigating officer is a member of any other force, of at least the rank of assistant chief constable.

(8) In a case which concerns the conduct of a senior officer, neither—

- (a) the chief officer concerned; nor
- (b) in a case where the person who is the subject of the investigation is a senior officer in a force other than the metropolitan police force, a member of the same force as that person; nor
- (c) in case where the person who is the subject of the investigation is a senior officer in the metropolitan police force, a person serving in the same division as that person;

shall be appointed as the investigating officer for the purposes of paragraph (5) or (6).

(9) An investigating officer shall be—

- (a) other than in a case falling within paragraph (5), of at least the same rank as the officer concerned; and
- (b) not an interested party.

(10) A reference in this regulation to a member of a police force shall include a reference to a special constable appointed for the area of that force.

### **Notice of investigation**

9. The investigating officer shall as soon as is practicable (without prejudicing his own or any other investigation of the matter) cause the officer concerned to be given written notice—

- (a) that there is to be an investigation in to the case;
- (b) of the nature of the report, complaint or allegation;
- (c) informing him that he is not obliged to say anything concerning the matter, but that it may harm his defence if he does not mention when questioned or when providing a written response something which he later relies on in any subsequent proceedings under these Regulations;
- (d) informing him that he may, if he so desires, make a written or oral statement concerning the matter to the investigating officer or to the appropriate authority and that if he makes such a statement it may be used in any subsequent proceedings under these Regulations;
- (e) informing him that he has the right to seek advice from his staff association or any other body; and
- (f) informing him that he has the right to be accompanied by a police officer, who shall not be an interested party, to any meeting, interview or hearing.

### **Investigating officer's report**

**10.**—(1) At the end of his investigation the investigating officer shall as soon as practicable submit a written report on the case—

- (a) if the case concerns a senior officer, to the appropriate authority;
- (b) in any other case, to the supervising officer; and
- (c) if the Commission is managing or supervising the investigation, to the Commission.

(2) If at any time during his investigation it appears to the investigating officer that the case is one in respect of which the conditions specified in Part 1 of Schedule 2 are likely to be satisfied, he shall, whether or not the investigation is at an end, submit to the appropriate authority (in the case of a senior officer) or supervising officer (in any other case)—

- (a) a statement of his belief that the case may be one to which regulation 45 applies and the grounds for that belief; and
- (b) a written report on the case so far as it has then been investigated.

### **Procedure on receipt of investigating officer's report**

**11.**—(1) Subject to paragraphs (2) and (4) to (6), on receipt of the investigating officer's report the appropriate authority (in the case of a senior officer) or supervising officer (in any other case) may refer the case to a hearing.

(2) Where—

- (a) the appropriate authority has a duty to take action, secure that disciplinary proceedings are proceeded with or to comply with a direction under paragraph 27 of Schedule 3 to the 2002 Act; or
- (b) the officer concerned has received two written warnings about his conduct within the previous twelve months and has in a statement made under regulation 9 admitted that his conduct failed to meet the appropriate standard,

the appropriate authority (in the case of a senior officer) or supervising officer (in any other case) shall refer the case to a hearing.

(3) If the appropriate authority or supervising officer decides that no proceedings under regulation 14 need be taken, they shall so inform the officer concerned in writing as soon as possible.

(4) Where the appropriate authority, on receipt of a report submitted by the investigating officer under regulation 10(2), is of the opinion that the case is one in respect of which the conditions specified in Part 1 of Schedule 2 are likely to be satisfied, it shall take the steps set out in paragraph (6).

(5) Where the supervising officer, on receipt of a report submitted by the investigating officer under regulation 10(2), is of the opinion that the case is one in respect of which the conditions specified in Part 1 of Schedule 2 are likely to be satisfied, he shall refer the case to the appropriate officer who take the steps set out in paragraph (6).

(6) Those steps are—

- (a) if the conditions specified in Part 1 of Schedule 2 are not satisfied, return the case to the investigating officer or supervising officer as the case may be to complete the investigation (if necessary);
- (b) if the conditions specified in Part 1 of Schedule 2 are satisfied—
  - (i) certify the case as a special case and refer it to a hearing, and notify the officer concerned accordingly; or

(ii) if the circumstances are such as, in his opinion, make such certification inappropriate, return the case to the investigating officer or supervising officer as the case may be.

(7) Where a case is not referred to a hearing no reference to it shall be made on the officer concerned's personal record.

(8) Proceedings at or in connection with a hearing to which a case is referred under this regulation shall, for the purposes of section 29(1) of the 2002 Act (interpretation of Part 2), be disciplinary proceedings.

### **Withdrawal of case**

**12.**—(1) At any time before the beginning of the hearing the appropriate authority (in the case of a senior officer) or the supervising officer (in any other case) may direct that the case be withdrawn, unless the appropriate authority has a duty to proceed under paragraph 27 of Schedule 3 to the 2002 Act.

(2) Where a direction is given under paragraph (1), the appropriate authority or supervising officer shall, as soon as possible, cause the officer concerned to be served with a written notice of the direction and the case shall be treated as if it had not been referred to a hearing.

### **Sanction without hearing and notice of proceedings: senior officers**

**13.**—(1) If a senior officer accepts that his conduct did not meet the appropriate standard, the appropriate authority may impose a sanction under regulation 35 without the case being dealt with in accordance with regulation 13(3) and (4) and regulations 14 to 34.

(2) Notwithstanding that the senior officer concerned accepts that his conduct did not meet the appropriate standard, the appropriate authority may, after considering the report of the investigation, deal with the matter according to the appropriate authority's discretion if it is satisfied that it does not justify the imposition of any sanction under these Regulations.

(3) If the senior officer concerned—

- (a) accepts that his conduct did not meet the appropriate standard but the appropriate authority does not proceed as mentioned in paragraph (1) or (2); or
- (b) does not accept that his conduct failed to meet the appropriate standard but the appropriate authority, after taking into account any statement he may have made, is not satisfied that his conduct did meet the appropriate standard,

then the appropriate authority shall refer the case to a hearing.

(4) Notwithstanding that a case is one to which this regulation applies by virtue of paragraph (3) (b), if, after considering the report of the investigation, the appropriate authority is satisfied that the conduct in question, even if found to have failed to meet the appropriate standard, would not justify the imposition of any sanction under these Regulations, the case need not be referred to a hearing and the matter may be dealt with according to the appropriate authority's discretion.

### **Notice of decision to refer case to a hearing**

**14.**—(1) Where a case is to be referred to a hearing, as soon as practicable the officer concerned shall be given written notice of the decision to refer the case to a hearing, and at least 21 days before the date of the hearing he shall be supplied with copies of—

- (a) any statement he may have made to the investigating officer; and
- (b) any relevant statement, document or other material in each case obtained during the course of the investigation.

(2) The notice given under paragraph (1) shall specify the conduct of the officer concerned which it is alleged failed to meet the appropriate standard and the paragraph of the Code of Conduct in respect of which the appropriate standard is alleged not to have been met.

(3) In this regulation, any reference to a copy of a statement shall, where it was not made in writing, be construed as a reference to a copy of an account thereof.

(4) In the case of a senior officer, the notice mentioned in paragraph (1) shall be given to that officer by an independent solicitor instructed by the appropriate authority to this effect.

(5) The reference in paragraph (4) to an independent solicitor is a reference to a solicitor who is not a member, officer or servant of the appropriate authority or of any local authority which appoints any member of the appropriate authority.

### **Limitation on sanctions: officers other than senior officers**

**15.** No sanction may be imposed under regulation 35 on a police officer who is not a senior officer unless the case has been referred to a hearing.

### **Notice of hearing**

**16.—**(1) The appropriate authority (in the case of a senior officer) or the supervising officer (in any other case) shall ensure that at least 21 days in advance the officer concerned is notified of the time, date and place of the hearing.

(2) In a case to which this paragraph applies the hearing may, if the appropriate authority or supervising officer considers it appropriate in the circumstances, take place before the expiry of the 21 days referred to in paragraph (1).

(3) Paragraph (2) applies where the officer concerned is given a written notice under regulation 14(1) of a decision to refer the case to a hearing and—

- (a) at the time he receives such a notice he is detained in pursuance of the sentence of a court in a prison or other institution to which the Prison Act 1952(9) applies, or has received a suspended sentence of imprisonment; and
- (b) having been supplied under regulation 14 with the documents therein mentioned he does not elect to be legally represented at the hearing.

### **Legal representation**

**17.—**(1) If a supervising officer is of the opinion that the hearing should have available the sanctions of dismissal, requirement to resign or reduction in rank, he shall cause the officer concerned to be given notice in writing, at the same time as he is given notice of the decision to refer the case to a hearing under regulation 14, of the opportunity to elect to be legally represented at the hearing and of the effect of section 84(1) to (3) of the 1996 Act or of paragraphs (3) to (5) of this regulation, as appropriate.

(2) If an appropriate authority is of the opinion that the sanctions of dismissal or requirement to resign should be available, it shall cause the senior officer concerned to be given notice in writing, at the same time as he is given notice of the decision to refer the case to a hearing under regulation 14, of the opportunity to elect to be legally represented at the hearing.

(3) A special constable or a member of the National Crime Squad of the rank of chief superintendent or below may not be dismissed, required to resign or reduced in rank by a decision taken in proceedings under these regulations unless he has been given an opportunity to elect to be legally represented at any hearing held in the course of those proceedings.

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(9) 1952 c. 52.



(4) Where a special constable or member of the National Crime Squad makes an election to which paragraph (3) refers, he may be represented at the hearing, at his option, either by counsel or by a solicitor.

(5) Except in a case where a special constable or member of the National Crime Squad of the rank of chief superintendent or below has been given an opportunity to elect to be legally represented and has so elected, he may be represented at the hearing only by another police officer.

### **Procedure on receipt of notice**

**18.**—(1) The officer concerned shall be invited to state in writing, within 14 days of the date on which he is notified that the last of the documents required by regulation 14(1) to be supplied to him has been so supplied—

- (a) whether or not he accepts that his conduct did not meet the appropriate standard;
- (b) in a case where regulation 17 applies, whether he wishes to be legally represented at the hearing;
- (c) 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 to be secured.

(2) Any witness whose attendance the officer concerned wishes to be secured who is a member of a police force shall be ordered to attend at the hearing of the case, and the appropriate authority (in the case of a senior officer) or supervising officer (in any other case), where so requested, shall cause any other such witnesses to be given due notice that their attendance is desired and of the time and place of the hearing.

(3) Nothing in this regulation shall require a hearing to be adjourned where a witness is unable or unwilling to attend the hearing.

### **Persons conducting the hearing: officers other than senior officers**

**19.**—(1) Subject to paragraph (5), where a case concerning an officer other than a senior officer is referred to a hearing it shall be heard by three police officers appointed by the chief officer concerned who shall not be interested parties.

(2) Subject to regulation 33, one such officer shall be of at least the rank of assistant chief constable or, where the officer concerned is a member of the City of London or metropolitan police force, of at least the rank of commander, who shall be the presiding officer.

(3) Subject to paragraph (4), the presiding officer shall be assisted by two police officers of at least the rank of superintendent.

(4) Where the officer concerned is a superintendent or a chief superintendent, the presiding officer shall be assisted by two officers of the rank of assistant chief constable or, if the assisting officers are members of the City of London or metropolitan police force, of at least the rank of commander, who shall, unless the officer concerned is a member of the metropolitan police force, be from a different force or forces from the officer concerned.

(5) In a case where the hearing arises from a complaint or conduct matter which has been the subject of an investigation under paragraph 17, 18 or 19 of Schedule 3 to the 2002 Act, paragraph (3) shall not apply and the presiding officer shall be assisted by two persons of whom one is a police officer of at least the rank of superintendent (or, if the officer concerned is a superintendent or chief superintendent, of at least the rank of an assisting officer under paragraph (4)) and the other is a person selected by the police authority for the force concerned from a list of candidates maintained by that authority.

(6) A reference in this regulation to a member of a police force shall include a reference to a special constable appointed for the area of that force.

### **Person conducting the hearing: senior officers**

**20.**—(1) Where a case concerning a senior officer is referred to a hearing it shall be heard by a tribunal consisting of a single person selected and appointed by the appropriate authority from a list of persons nominated by the Lord Chancellor.

(2) To assist the tribunal on matters pertaining to the police there shall also be appointed by the appropriate authority one or more assessors selected by that authority with the approval of the tribunal one of whom is or has been a chief officer of police, so, however, that there shall not be so appointed—

- (a) a person who is one of Her Majesty’s inspectors of constabulary;
- (b) the chief officer or former chief officer of any force under whom the senior officer concerned has served as a senior officer in the previous five years;
- (c) a member, officer or servant of the appropriate authority or of any local authority which appoints any member of the appropriate authority.

### **Documents to be supplied to the officer concerned**

**21.**—(1) Where the officer concerned—

- (a) is not a senior officer, or
- (b) is a senior officer and the appropriate authority does not proceed as mentioned in regulation 13(1) or (2),

and he accepts, in accordance with regulation 18, that his conduct fell short of the appropriate standard a summary of the facts of the case shall be prepared, a copy of which shall be supplied to the officer concerned at least 14 days before the hearing.

(2) If the officer concerned does not agree with the summary of facts he may submit a response within 7 days of receipt of the summary.

(3) Where the officer concerned does not accept that his conduct fell short of the appropriate standard no summary of facts shall be prepared.

### **Documents to be supplied to tribunal or to persons conducting the hearing**

**22.** There shall be supplied to tribunal or, as the case may be, to the persons conducting the hearing—

- (a) a copy of the notice given under regulation 14; and
- (b) a copy of any summary of facts prepared under regulation 21, and of any response from the officer concerned.

### **Representation: officers other than senior officers**

**23.**—(1) In the case of an officer other than a senior officer, unless the officer concerned has given notice in accordance with regulation 18 that he wishes to be legally represented, the supervising officer shall appoint a police officer to present the case.

(2) If the officer has given such notice, the supervising officer may either appoint a police officer to present the case or may instruct an independent solicitor or counsel to present the case.

(3) The officer concerned may conduct his case either in person or by a police officer selected by him or, if he has given notice in accordance with regulation 18 that he wishes to be legally represented, by counsel or a solicitor.

(4) This regulation has effect subject to the provisions of regulation 25.

### **Representation: senior officers**

- 24.**—(1) In the case of a senior officer, the case shall be presented—
- (a) by the independent solicitor mentioned in regulation 14(4); or
  - (b) by some other independent solicitor or counsel.
- (2) In paragraph (1)(b), “independent solicitor” has the same meaning as in regulation 14.
- (3) The senior officer concerned may conduct his case either in person or by a representative.
- (4) This regulation has effect subject to the provisions of regulation 25.

### **Participation by the Independent Police Complaints Commission**

**25.**—(1) In any case where the Commission has given a direction under paragraph 27(4)(a) of Schedule 3 to the 2002 Act, the Commission may itself present the case.

- (2) If the case concerns—
- (a) a senior officer; or
  - (b) an officer other than a senior officer and that officer has given notice in accordance with regulation 18 that he wishes to be legally represented,

the Commission may instruct an independent solicitor or counsel to present the case.

(3) Where the Commission decides to present the case or to instruct an independent solicitor or counsel under paragraph (1)—

- (a) it shall notify—
  - (i) the appropriate authority or supervising officer as the case may be;
  - (ii) the complainant; and
  - (iii) any interested person under section 21(5) of the 2002 Act,of its decision and the reasons for that decision;
- (b) the appropriate authority or supervising officer shall notify the officer concerned of the Commission’s participation; and
- (c) neither the appropriate authority or supervising officer, nor any solicitor or counsel instructed by either of them, shall present the case.

### **Conduct of hearing**

**26.**—(1) The tribunal or officers conducting the hearing may from time to time adjourn the hearing if it appears to them to be necessary or expedient to do so for the due hearing of the case.

(2) Where the case concerns an officer other than a senior officer, any decision of the officers conducting the hearing shall be based on a simple majority, but shall not indicate whether it was taken unanimously or by a majority.

### **Procedure at hearing**

**27.**—(1) Subject to the provisions of these Regulations, the tribunal or as the case may be the officers conducting the hearing shall determine their own procedure.

(2) The tribunal or officers conducting the hearing shall review the facts of the case and decide whether or not the conduct of the officer concerned met the appropriate standard.

(3) The tribunal or officers conducting the hearing shall not find that the conduct of the officer concerned failed to meet the appropriate standard unless the conduct is—

- (a) admitted by the officer concerned; or

(b) proved by the person presenting the case on the balance of probabilities, to have failed to meet that standard.

(4) Where evidence is given at a hearing that the officer concerned, at any time after he was given written notice under regulation 9, on being questioned by an investigating officer failed to mention orally or in writing any fact relied on in his defence at that hearing, being a fact which in the circumstances existing at the time the officer concerned could reasonably have been expected to mention when so questioned or when making a statement under regulation 9(d), paragraph (5) applies.

(5) Where this paragraph applies, the tribunal or officers conducting the hearing may draw such inferences from the failure as appear proper.

(6) Paragraph (5) does not apply in relation to a failure to mention a fact if the failure occurred before this regulation was brought into force.

(7) Where the case concerns an officer other than a senior officer, if the officers conducting the hearing decide that the conduct of the officer concerned did not meet the appropriate standard, they shall decide whether it would be reasonable to impose any, and if so which, sanction.

(8) Where the case concerns a senior officer, the tribunal shall, as soon as possible after the hearing, submit a report to the appropriate authority, together with a copy to the senior officer concerned, setting out—

- (a) the finding of the tribunal under paragraph (2);
- (b) if that finding was that the conduct of the senior officer concerned failed to meet the appropriate standard, a recommendation as to any sanction which, subject to regulation 35(3), in its opinion should be imposed; and
- (c) any other matter arising out of the hearing which it desires to bring to the notice of the appropriate authority.

#### **Attendance of officer concerned at hearing**

**28.**—(1) The officer concerned shall attend the hearing.

(2) If the officer concerned fails to attend the hearing it may be proceeded with and concluded in his absence.

(3) Where the officer concerned informs the tribunal or presiding officer in advance that he is unable to attend due to ill-health or some other unavoidable reason, the hearing may be adjourned.

(4) Where, because of the absence of the officer concerned, it is impossible to comply with any procedure set out in these Regulations, that procedure shall be dispensed with.

#### **Attendance of complainant and interested persons at hearing**

**29.**—(1) This regulation shall apply in the case of a complaint or a conduct matter which falls under Part 2 of the 2002 Act.

(2) Notwithstanding anything in regulation 30(1), but subject to the following provisions of these Regulations, a complainant or interested person shall be entitled to attend the hearing up to and including the point at which the hearing decides whether the conduct of the officer concerned met the appropriate standard.

(3) A complainant and interested person may each nominate and be accompanied by up to three other persons (or such higher number as the tribunal or presiding officer shall permit).

(4) Where a complainant or interested person, or any person allowed to accompany him, is to be called as a witness at the hearing, he and any person allowed to accompany him shall not be allowed to attend before he gives his evidence.

(5) Where the officer concerned gives evidence, then, after the presenting officer has had an opportunity of cross-examining him, the tribunal or presiding officer shall put to him any questions which the complainant or interested person requests should be so put and might have been properly so put by the presenting officer or, at the tribunal or presiding officer's discretion, may allow the complainant or interested person to put such questions to the officer concerned.

(6) In this regulation a reference to the complainant is a reference to the originator of the complaint notwithstanding that it was transmitted to the chief officer concerned or appropriate authority by some other person or by the Commission or some other body.

(7) In this regulation a reference to an interested person has meaning given by section 21(5) of the 2002 Act.

### **Attendance of others at hearing**

**30.**—(1) Subject to regulation 29 and the following provisions of this regulation, the hearing shall be in private.

(2) Any member of the Commission shall be entitled to attend the hearing in a case to which regulation 29 applies or which arises from a complaint or conduct matter to which paragraph 17, 18 or 19 of Schedule 3 to the 2002 Act applies.

(3) The officer concerned may be accompanied at the hearing by another police officer and, at the discretion of the tribunal or presiding officer as the case may be, by any other person (or, in a case where the complainant or an interested person is accompanied by a greater number of persons, by that number of persons).

(4) The tribunal or presiding officer may allow witnesses to be accompanied at the hearing by a relative or friend.

(5) Where a case arises from a complaint or conduct matter which has been investigated under paragraph 19 of Schedule 3 to the 2002 Act and the Commission considers that because of its gravity or other exceptional circumstances it would be in the public interest to do so, the Commission may, having consulted the appropriate authority, the officer concerned, the complainant and any witnesses, direct that the whole or part of the hearing will be held in public.

(6) A direction under paragraph (5), together with the reasons for that direction, shall be notified within five days to the persons consulted under that paragraph.

(7) Subject as aforesaid, no person allowed to attend shall either intervene in, or interrupt, the hearing; and if he behaves in a disorderly or abusive manner, or otherwise misconducts himself, the tribunal or presiding officer may exclude him from the remainder of the hearing.

(8) The tribunal or presiding officer may impose such conditions as he sees fit relating to the attendance of persons at the hearing under regulation 29 and this regulation.

### **Exclusion of public from hearing**

**31.** Where it appears to the tribunal or presiding officer that any person may, in giving evidence, disclose information which, in the public interest, ought not to be disclosed to a member of the public he shall require any member of the public including the complainant and any person allowed to accompany the complainant or any witness to withdraw while the evidence is given.

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

**32.**—(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 or presiding officer.

(2) With the consent of the officer concerned the tribunal or presiding officer may allow any document to be adduced in evidence during the hearing notwithstanding that a copy thereof has not been supplied to the officer concerned in accordance with regulation 14(1).

### **Remission of cases: officers other than senior officers**

**33.**—(1) The hearing of the case—

- (a) shall, in the circumstances mentioned in paragraph (2); or
- (b) may, in the circumstances mentioned in paragraph (5),

be remitted by the presiding officer concerned to a police officer of equivalent rank in the force concerned or to a police officer of equivalent rank in another force who, at the presiding officer's request, has agreed to act as the presiding officer in the matter.

(2) A case shall be so remitted if—

- (a) the presiding officer is an interested party otherwise than in his capacity as such; or
- (b) there would not, because the officer concerned was not given notice under regulation 17 of the opportunity to elect to be legally represented at the hearing, be available on a finding against him any of the sanctions referred to in that regulation, and it appears to the presiding officer concerned that those sanctions ought to be so available and that accordingly it would be desirable for there to be another hearing at which the officer concerned could, if he so wished, be so represented.

(3) Where a case is remitted to another police officer under paragraph (2)(b) notice in writing shall be served on the officer concerned inviting him to elect, within 14 days of the receipt thereof, to be legally represented at the hearing before that officer.

(4) An officer remitting a case under paragraph (2)(b) shall not give to the officer to whom the case has been remitted any indication of his assessment of the case or of the sanction which might be imposed.

(5) A case not falling within paragraph (2) may be remitted by the presiding officer in accordance with paragraph (1) if, either before or during the hearing, the presiding officer concerned considers remission appropriate.

### **Record of hearing**

**34.**—(1) A verbatim record of the proceedings at the hearing shall be taken and, if the officer concerned so requests within the time limit for any appeal and after he has lodged notice of appeal in accordance with rules made under section 85 of the 1996 Act or section 82 of the Police Act 1997, a transcript of the record or a copy thereof shall be supplied to him by the tribunal or presiding officer.

(2) In a case which relates to a senior officer, a transcript of the record shall be made and sent to the appropriate authority.

### **Sanctions**

**35.**—(1) Subject to section 84(1) of the 1996 Act, the persons conducting the hearing in the case of an officer other than a senior officer may—

- (a) record a finding that the conduct of the officer concerned failed to meet the appropriate standard but take no further action; or
- (b) impose any of the sanctions in paragraph (2).

(2) Those sanctions are—

- (a) dismissal from the force;

- (b) requirement to resign from the force as an alternative to dismissal taking effect either forthwith or on such date as may be specified in the decision;
  - (c) reduction in rank;
  - (d) fine;
  - (e) in the case of a special constable only, suspension from all or from operational duties only for a period of up to three months;
  - (f) reprimand;
  - (g) caution.
- (3) On receipt of the report of a tribunal under regulation 27(8), the appropriate authority shall decide whether to dismiss the case or—
- (a) to record a finding that the conduct of the senior officer concerned failed to meet the appropriate standard but to take no further action; or
  - (b) to record such a finding and impose a sanction.
- (4) The sanctions which may be imposed on a senior officer under paragraph (3) are—
- (a) dismissal from the force;
  - (b) requirement to resign from the force as an alternative to dismissal taking effect either forthwith or on such date as may be specified in the recommendation or decision;
  - (c) fine;
  - (d) reprimand.
- (5) Any sanction imposed under paragraph (1) or (3), except a requirement to resign, shall have immediate effect.
- (6) A fine imposed under paragraph (1) or (3) shall be such that, if it were recovered by way of deductions from the pay of the officer concerned during the period of thirteen weeks following the imposition of the sanction, the aggregate sum which might be so deducted in respect of any one week (whether on account of one or more fines) would not exceed one seventh of his weekly pay.

### **Personal record to be considered before sanction imposed**

**36.**—(1) Where the question of the sanction to be imposed is being considered, the tribunal or persons conducting the hearing—

- (a) shall have regard to the record of police service of the officer concerned as shown on his personal record and may receive evidence from any witness whose evidence would, in their opinion, assist them in determining the question; and
- (b) the officer concerned, or his representative, shall be afforded an opportunity to make oral or, if appropriate, written representations as respects the question or to adduce evidence relevant thereto.

(2) Regulation 32(1) shall apply to proceedings at which such evidence as is referred to in paragraph (1)(a) or (b) of this regulation or such oral representations as are referred to in paragraph (1)(b) of this regulation is given or are made as it applies to the proceedings before the persons conducting the hearing or the tribunal.

### **Notification of finding**

**37.**—(1) In the case of an officer other than a senior officer, the officer concerned shall be informed orally of the finding and of any sanction imposed at the conclusion of the hearing, and shall be provided with a written notification and summary of the reasons within three days.

(2) In the case of a senior officer, the officer concerned shall, as soon as possible after the appropriate authority has taken its decision under regulation 35(3), be provided with a written notification of the finding and of any sanction imposed.

(3) A written notification under this regulation shall include—

- (a) in a case where the officer concerned is a member of a police force, notification of the right to appeal to a Police Appeals Tribunal; and
- (b) in the case of an officer other than a senior officer, notification of the right to request a review.

### **Copy of report and decision to be sent to the Secretary of State**

**38.** In the case of a senior officer, a copy of the report of the tribunal together with the decision of the appropriate authority shall be sent by the appropriate authority to the Secretary of State.

### **Expenses of hearing**

**39.**—(1) In the case of a senior officer, all the expenses of a hearing under these Regulations, including the costs of the senior officer concerned, shall be defrayed out of the police fund or, as the case may be, the NCS service fund kept under section 61 of the Police Act 1997.

(2) Any costs payable under this regulation shall be subject to taxation in such manner as the Secretary of State may direct.

### **Request for a review: officers other than senior officers**

**40.**—(1) Where—

- (a) a sanction is imposed on an officer other than a senior officer under regulation 35(1), or
- (b) the persons conducting a hearing decide that the conduct of an officer other than a senior officer failed to meet the appropriate standard but decide not to impose a sanction,

the officer concerned shall be entitled to request the chief officer of the force concerned or, where the officer concerned is a member of the metropolitan police force or is a special constable appointed for the metropolitan police district, the Assistant Commissioner (“the reviewing officer”), to review the finding or the sanction (if any) imposed or both the finding and the sanction.

(2) A request for a review must be made to the reviewing officer in writing within 14 days of receipt of the written summary of reasons given in accordance with regulation 37(1) unless this period is extended by the reviewing officer.

(3) The request for a review shall state the grounds on which the review is requested and whether a meeting is requested.

### **Conduct of the review**

**41.**—(1) The reviewing officer shall hold a meeting with the officer concerned if requested to do so.

(2) Where a meeting is held the officer concerned may be accompanied by another police officer and, in a case where regulation 17 applies, by counsel or a solicitor.

### **Finding of the review**

**42.**—(1) The officer concerned shall be informed of the finding of the reviewing officer in writing within three days of completion of the review.



(2) The reviewing officer may confirm or overturn the decision of the hearing or he may impose a different sanction which is specified in regulation 35(2) but he may not impose a sanction greater than that imposed at the hearing.

(3) The decision of the reviewing officer shall take effect by way of substitution for the decision of the hearing and as from the date of that hearing.

(4) Where as a result of the decision of the reviewing officer an officer who is a member of a police force is dismissed, required to resign or reduced in rank he shall be notified in writing of his right of appeal to a Police Appeals Tribunal.

(5) In a case where the Commission has made a direction to an appropriate authority under paragraph 27(4) of Schedule 3 to the 2002 Act, the reviewing officer shall notify the Commission of the outcome of the review and provide the Commission with a written record of the reasons for his determination.

### **Hearing of review in absence of chief officer**

**43.**—(1) Subject to paragraphs (2) to (4), where the chief officer is an interested party or the circumstances in section 12A(1) or (2) of the 1996 Act<sup>(10)</sup> or section 54(1) of the Police Act 1997 apply, the review shall be conducted by the deputy chief constable or assistant chief constable designated under section 12A(2) of the 1996 Act or, in the case of members of the National Crime Squad, by the Deputy Director General of that Squad.

(2) Where the deputy chief constable or designated assistant chief constable is absent or an interested party, the review shall be conducted by the chief officer of another force who has agreed to act in that capacity.

(3) Where the officer concerned is a member of the metropolitan police force, or is a special constable appointed for the metropolitan police district, the review shall be conducted by an Assistant Commissioner who is not an interested party.

(4) Where the officer concerned is a member of the City of London police force, or is a special constable appointed for the area of that force, the review shall be conducted by the Commissioner or, if he is absent or an interested party, by the chief officer of another force who has agreed to act in that capacity or an Assistant Commissioner of the metropolitan police force who has agreed to act in that capacity.

### **Record of conduct proceedings**

**44.**—(1) Subject to paragraph (2), the chief officer concerned shall cause a record to be kept in which shall be entered the case brought against every officer concerned, together with the finding thereon and a record of the decision in any further proceedings in connection therewith.

(2) Where the officer concerned is a chief officer, the appropriate authority shall cause for such a record to be kept.

### **Special cases**

**45.**—(1) This regulation applies to any case in which a report, complaint or allegation is made which indicates that the conduct of a police officer did not meet the appropriate standard and in respect of which the conditions specified in Part 1 of Schedule 2 are satisfied and the appropriate authority or appropriate officer has issued a certificate under regulation 11(6)(b)(i).

(2) In the application of these Regulations to a case to which this regulation applies, regulations 12 to 43 shall, subject to paragraph (3), have effect subject to the modifications specified in Part 2 of Schedule 2.

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<sup>(10)</sup> Section 12A was inserted by section 124(2) of the Criminal Justice and Police Act 2001 (c. 16).

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*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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(3) Where the case is one to which this regulation applies but has been returned to the supervising officer or appropriate authority in pursuance of any provision of these Regulations as modified by Part 2 of Schedule 2, the provisions referred to in paragraph (2) shall thereafter have effect in relation to the case without modification.

(4) In Part 2 of Schedule 2, any reference to a provision in these Regulations shall, unless the contrary intention appears, be construed as a reference to that provision as modified by that Part.

Home Office  
8th March 2004

*Hazel Blears*  
Minister of State