
SCOTTISH STATUTORY INSTRUMENTS

2013 No. 60

The Police Service of Scotland (Conduct) Regulations 2013

PART 4

Appeals

Appeal to the chief constable

26.—(1) This regulation applies where—

- (a) the chairing constable has found (in pursuance of regulation 23) that an act or omission of the constable recorded on the misconduct form amounted to misconduct; or
- (b) the constable has admitted (in pursuance of regulation 19(2)) that such an act or omission amounted to misconduct.

(2) Where this regulation applies, the constable may appeal against—

- (a) in a case mentioned in paragraph (1)(a)—
 - (i) any finding of misconduct and any disposal; or
 - (ii) any disposal only; and
- (b) in a case mentioned in paragraph (1)(b), any disposal.

(3) An appeal under this regulation is to be made by the appellant submitting to the chief constable, not later than 28 days from the date on which the copy of the misconduct form was sent to the constable in pursuance of regulation 23(4)(a), a written notice of appeal specifying—

- (a) the name and address of the appellant;
- (b) that the notice is a notice of appeal;
- (c) the date of the chairing constable's determination;
- (d) whether the appeal is against—
 - (i) the finding;
 - (ii) the disposal; or
 - (iii) both;
- (e) the grounds upon which the appeal is made;
- (f) the name and address of the appellant's representative (if any);
- (g) where the appellant has specified a representative, whether any documents relating to the appeal should be sent to that representative rather than the appellant; and
- (h) whether the chief constable is requested to obtain a transcript of all or a specified part of the audio recording made of the proceedings at the misconduct hearing.

(4) The appellant must send with the notice of appeal—

- (a) any documentary evidence upon which the appellant intends to rely; and
- (b) a copy of the misconduct form recording the chairing constable's determination.

- (5) The notice of appeal must be signed by—
 - (a) the appellant; or
 - (b) the appellant’s representative.
- (6) A notice of appeal may be submitted late and such a notice may include—
 - (a) a request for the notice to be accepted late; and
 - (b) a statement of the reasons why it was not submitted on time.
- (7) The chief constable may accept a late notice of appeal if satisfied that there are special circumstances which justified the appeal being submitted late.
- (8) Where it is considered necessary or expedient to do so, the chief constable may send to the chairing constable a copy of the notice of appeal and any document provided with that notice.
- (9) Within 7 days of receipt of a notice sent in pursuance of paragraph (8), the chairing constable may send to the chief constable and the appellant a copy of any document—
 - (a) to which regard was had by the chairing constable in making the determination under regulation 23(1) on any allegation of misconduct; and
 - (b) which was not submitted by the appellant with the notice of appeal.

Transcript of the hearing

- 27.—(1) The chief constable may, if it is considered necessary or expedient, obtain a transcript of all or part of the audio recording made of the proceedings at the misconduct hearing.
- (2) Where a transcript is obtained in pursuance of paragraph (1), the chief constable must, as soon as reasonably practicable, send a copy of that transcript to—
 - (a) the appellant; and
 - (b) the chairing constable.
- (3) Where the appellant has requested the chief constable to obtain a transcript, the chief constable must, as soon as reasonably practicable—
 - (a) determine the request; and
 - (b) notify both the appellant and the chairing constable of that determination.
- (4) Where the chief constable has refused a request to obtain a transcript, the appellant may (at the appellant’s own expense)—
 - (a) obtain a transcript; and
 - (b) not later than 21 days after the date on which the chief constable notified the appellant of the decision not to obtain a transcript, submit that transcript to the chief constable.
- (5) Where the chief constable receives a transcript by virtue of paragraph (4), the chief constable must, as soon as reasonably practicable—
 - (a) send a copy of that transcript to the chairing constable; and
 - (b) invite the chairing constable to make, not later than 14 days from the date on which the transcript was sent to the chairing constable, such written representations as may be required as to the accuracy of the transcript.
- (6) If the chairing constable disputes the accuracy of the transcript submitted by the appellant, the chief constable must—
 - (a) send a copy of the chairing constable’s written representations to the appellant;
 - (b) allow the appellant to make, not later than 7 days from the date on which the chairing constable’s representations are sent to the appellant, written representations in response; and

- (c) after considering the audio recording of the misconduct hearing and the representations made by the chairing constable and (as the case may be) the appellant, determine whether any amendment of the transcript is required.

Determination of appeal

28.—(1) The chief constable must determine the appeal on the basis of—

- (a) the notice of appeal and any documents submitted with that notice (including the misconduct form);
- (b) the chairing constable’s written summary of the misconduct hearing (see regulation 19(11)(a));
- (c) any document sent by the chairing constable in pursuance of regulation 26(9);
- (d) to such extent as is considered necessary, the audio recording made of the misconduct hearing in accordance with regulation 19(11)(b);
- (e) any transcript of such a recording obtained or submitted in pursuance of regulation 27; and
- (f) if applicable, any representations made at an appeal hearing.

(2) Where the chief constable considers it necessary for the purpose of determining the appeal, the chief constable may fix an appeal hearing for the purpose of affording the opportunity of making oral representations to—

- (a) the appellant; and
- (b) the chairing constable.

(3) Where the chief constable fixes an appeal hearing, the chief constable must give reasonable notice of the date, time and place at which that hearing is to take place.

(4) Subject to paragraphs (5) and (6), the procedure at the appeal hearing is for the chief constable to determine.

(5) At an appeal hearing—

- (a) each of the appellant and the chairing constable may be represented by—
 - (i) another constable;
 - (ii) an advocate; or
 - (iii) a solicitor;
- (b) the chief constable may appoint an advocate or solicitor to assist the chief constable as a legal assessor; and
- (c) the chief constable may put questions to the appellant and the chairing constable (or to any person representing them).

(6) The chief constable may from time to time adjourn the appeal hearing to a later time or date where it is necessary or expedient to do so.

(7) Where the appeal hearing is adjourned under paragraph (6) the chief constable must, as soon as is reasonably practicable, provide the appellant and the chairing constable with a written notice of the date, time and place of the adjourned hearing.

(8) As soon as is reasonably practicable after considering the documents and recording mentioned in paragraph (1) and, if applicable, any representations made at the appeal hearing, the chief constable must determine the appeal.

(9) A determination under paragraph (8) may—

- (a) confirm or reverse any finding of misconduct; and

- (b) vary any disposal ordered by the chairing constable (and the power to vary a disposal includes the power to substitute one disposal for another).
- (10) Any variation by the chief constable of a disposal ordered by the chairing constable must not have the effect of ordering a disposal which is more severe than that ordered by the chairing constable.
- (11) The chief constable's determination is to be recorded in a notice—
 - (a) specifying the terms of the chief constable's determination, including any variation of a disposal ordered by the chairing constable;
 - (b) giving reasons for that determination; and
 - (c) signed and dated by the chief constable.
- (12) The chief constable must send a copy of the notice mentioned in paragraph (11) to—
 - (a) the appellant;
 - (b) the appellant's representative (if any); and
 - (c) the chairing constable.
- (13) The determination of the chief constable under paragraph (8) is to have effect from the date of the chairing constable's determination under regulation 23, but where the disposal, as varied, is—
 - (a) a requirement to resign at a specified date as an alternative to dismissal and the constable fails to resign by the date specified, the constable is to be treated as having been dismissed from that date; or
 - (b) a reduction in rank, that disposal may have effect only from or after the date of the chief constable's determination.
- (14) Where the appellant submits a transcript in pursuance of regulation 27(4) and the chief constable allows the appeal, the Authority must reimburse the appellant the reasonable costs incurred in obtaining that transcript.