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## EXPLANATORY NOTE

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

These Regulations make provision for the procedures for dealing with cases where an act or omission of a senior officer of the Police Service of Scotland (“the Police Service”) is alleged to amount to misconduct.

Part 1 makes general provision. Regulations 1 to 3 make provision about the commencement, interpretation and application of the Regulations, including, with Schedule 1, setting out the meaning of misconduct and gross misconduct. Regulations 4 and 5 make provision about the representation to which a senior officer is entitled during misconduct proceedings. Regulation 6 provides the Scottish Police Authority (“the Authority”) with a power to suspend senior officers whose conduct is alleged either to amount to misconduct or to constitute a criminal offence. Regulation 7 details the further action to be taken by the Authority in cases where a senior officer is suspected of having committed a criminal offence, including the action it must take in relation to any misconduct proceedings already underway.

Part 2 establishes how misconduct allegations are to be investigated. A preliminary assessment of any such allegation is, by virtue of regulation 8, to be carried out by the Authority. Where the Authority considers that the conduct forming the subject matter of the allegation would, if proved, amount to either misconduct or gross misconduct, it must refer the matter to the Police Investigations and Review Commissioner (“the Commissioner”). Regulation 9 sets out how the Commissioner is to deal with such a referral. The Commissioner must investigate allegations of gross misconduct and may either investigate allegations of misconduct or refer those back to the Authority. Regulation 10 makes provision about the steps to be taken by the Commissioner when the Commissioner is either obliged or decides to carry out a misconduct investigation, including provision about the appointment of an investigator. Regulation 11 makes similar provision in relation to misconduct investigations to be carried out by the Authority. Regulations 12 and 13 deal with some of the formal steps to be taken during a misconduct investigation, including the issue of a notice of the investigation to the senior officer and the arrangement and form of an interview with the senior officer. Regulation 14 requires the investigator, at the conclusion of the misconduct investigation, to submit a report of the investigation to the Authority. On receipt of that report, the Authority must, by virtue of regulation 15, consider whether the officer has a case to answer in relation to the misconduct allegation. Where it decides that the senior officer does have a case to answer, it must refer the matter to a misconduct hearing.

Part 3 establishes the procedure in relation to misconduct hearings. Regulation 16 sets out the general procedure for the arrangement of such hearings, including the requirement on the Authority to prepare and issue a misconduct form to which the senior officer is required to respond. Regulation 17 creates a process for the agreement between the Authority and the senior officer of the witnesses, if any, who should attend a misconduct hearing. By virtue of regulation 18, the Authority must appoint a panel of three people to conduct a misconduct hearing. The chairing member of the panel must be either a member of the Authority or of its staff. The second member may be a member of the Authority or of its staff, a member of a committee of the Authority, or any other person considered appropriate by the Authority based on that person’s skills, knowledge and expertise. The third member must be a person considered appropriate by the Authority based on that person’s skills, knowledge or expertise, but must not be a member of the Authority, its staff or one of its committees. Assessors may be appointed to assist the panel.

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

Regulation 19 sets out the procedure at the misconduct hearing and regulation 20 details how such a hearing is to proceed in the senior officer's absence. Regulation 21 permits the attendance at the hearing of third parties, subject to certain restrictions.

Regulation 22 requires the panel, at the conclusion of the misconduct hearing, to determine whether the conduct forming the subject matter of the misconduct allegation is conduct of the senior officer and whether that conduct constitutes misconduct or, as the case may be, gross misconduct. That determination is to be made on the balance of probabilities. Regulation 23 sets out the disciplinary action which may be taken where the senior officer has either been found guilty of misconduct or gross misconduct or has admitted misconduct or gross misconduct. The disciplinary action which may be imposed is a verbal warning, a written warning, a final written warning and dismissal from the Police Service with or without notice. Dismissal is only available where the senior officer has either been found guilty of gross misconduct or has been found guilty of misconduct and is subject to a final written warning which remains in effect. Regulation 24 requires the Authority to notify the senior officer in writing of the panel's finding and the disciplinary action to be taken.

Part 4 establishes a procedure for appealing against a finding that conduct of the senior officer is either misconduct or gross misconduct and any disciplinary action which is to be taken. Such an appeal is to be made to the Authority and may be made on the grounds that the finding or the action to be taken are unreasonable, that there is new evidence available or that there was a breach of the procedures set out in these Regulations. An appeal is to be made by submitting a notice of appeal to the Authority.

The appeal procedure is set out in regulation 26. This allows the senior officer to request an appeal hearing and the Authority must, if the notice of appeal sets out arguable grounds of appeal, grant such a request. On conclusion of consideration of the appeal and, if applicable, any hearing, the Authority may confirm or reverse a finding as to misconduct, confirm or vary the disciplinary action to be taken, refer the matter to be dealt with under procedures for managing performance or remit the case back to the panel which conducted the misconduct hearing. A notice of the Authority's decision must be given to the senior officer. Regulation 27 sets out the procedure in cases which are, following an appeal, remitted back to the panel which conducted the misconduct hearing.

Part 5 deals with the expenses of misconduct proceedings.

Part 6 and Schedule 2 contain a revocation and savings and transitional provision.