

POLICY NOTE

THE POLICE SERVICE OF SCOTLAND (SENIOR OFFICERS) (CONDUCT) REGULATIONS 2013

SSI 2013/62

1. The above instrument was made in exercise of the powers conferred by sections 15(3), 48 and 125(1) of the Police and Fire Reform (Scotland) Act 2012 (“the 2012 Act”). The instrument is subject to the negative procedure.

Policy Objectives

2. The 2012 Act, which received Royal Assent on 7 August 2012, changes the policing landscape in Scotland. It brings together the current eight forces, the Scottish Police Services Authority and the Scottish Crime and Drug Enforcement Agency into a single Police Service of Scotland from 1 April 2013.

3. The main policy objective of these Regulations is to set out procedures for the handling of conduct matters for senior officers in the Police Service. Senior officers are those of the rank of chief constable, deputy chief constable and assistant chief constable. These officers are appointed by the Scottish Police Authority and section 52(3) of the 2012 Act requires regulations made under section 48 to of that Act to provide for the Authority to determine cases involving the standard of behaviour of senior officers.

4. The provisions in the regulations reflect the new conduct regime for senior officers which will take effect from 1 April. This regime divides behavioural matters into two categories: misconduct and gross misconduct. Standards of professional behaviour (set out in Schedule 1) have been developed by a working group of relevant stakeholders including the police staff associations, ACPOS and the Police Complaints Commissioner for Scotland. Under the new conduct regime a breach of these standards may be treated as misconduct whilst a breach so serious that it may justify dismissal may be treated as gross misconduct.

5. The disciplinary action in proven cases ranges from action to improve the senior officer’s conduct to dismissal.

6. Throughout the misconduct procedures, including at appeal, the senior officer may be represented. The representative may be a police friend (that is a constable, a member of police staff, an individual nominated by the senior officer’s staff association), an advocate or a solicitor. Both the senior officer and the representative will be provided with relevant information and documents relating to the misconduct or gross misconduct and will be advised in writing if there will be a misconduct hearing. It will therefore be clear from early in the process whether the breach of the professional standards is misconduct or gross misconduct.

7. At each stage in the misconduct process prior to the misconduct hearing there is an option for the SPA to determine that no further action is required. For example, at the preliminary assessment the SPA may decide that the conduct amounts to neither

misconduct nor gross misconduct and that no action is required. Equally the SPA may make the same determination following an investigation.

8. Where the SPA assesses that an allegation of misconduct should be investigated it must be referred to the Police Investigations and Review Commissioner (PIRC). Gross misconduct must be investigated by the PIRC whilst misconduct cases may be investigated by PIRC or may be referred back to the SPA for action. The clear policy intention is that PIRC will investigate high tariff cases.

9. Misconduct and gross misconduct may be referred by the SPA following investigation to a misconduct hearing. The misconduct hearing will be conducted by a three person panel. The chair will be from the SPA and one of the members of the panel must be independent. The panel will determine the case and may consider written or oral evidence or both. Where a misconduct case has been referred the panel cannot determine that gross misconduct has occurred. The panel will also determine the disciplinary action which is to be taken. In cases of misconduct the most serious sanction is a written warning, unless the senior officer is already subject to an existing final written warning. For cases where the senior officer is subject to a final written warning and cases of gross misconduct, the most serious sanction is dismissal.

10. Part 4 sets out how appeals against the misconduct hearing panel's decision will be handled. Senior officers may appeal against the findings, the disposal or both. The SPA is to be allowed to determine how the appeal may be determined subject to the provisions in the regulations. The SPA may confirm or reverse the finding of misconduct, confirm or vary any disciplinary action, require improvement action instead of disciplinary action or remit the case back to the misconduct hearing panel where it has been established that there is evidence which was not considered at the hearing.

Transitionals and Savings

11. Schedule 2 makes provisions to allow any misconduct cases which are pending on 1 April 2013 to continue to be dealt with by the SPA under the current regulations, the Police (Conduct) (Senior Officers) (Scotland) Regulations 1999 where the senior officers transfer to the Police Service on that date. The provisions also ensure that allegations made after 1 April 2013 where the misconduct of the transferred senior officer occurred before that date can be dealt with by the SPA using the procedures in the 1999 regulations.

Consultation

12. To comply with the requirements of section 54(2) of the 2012 Act, the Scottish Ministers have consulted and shared a draft of the Regulations with the persons mentioned in section 54(2)(a)(i) to (vi) of that Act and have considered any representations made.

13. A public consultation took place from 14 December 2012 to 11 January 2013 following which there was further direct engagement with key stakeholders including SPA, SCPOSA, ACPOS and the chief constable of the Police Service on the provisions in the regulations.

14. A full list of those consulted and who agreed to the release of this information is attached to the consultation report published on the Scottish Government website, it includes:

- Association of Chief Police Officers in Scotland (ACPOS)
- Association of Scottish Police Superintendents (ASPS)
- British Transport Police
- Her Majesty's Inspector of Constabulary for Scotland (HMICS)
- Police Complaints Commissioner for Scotland (PCCS)
- Police Negotiating Board
- Police Service of Scotland
- Scottish Chief Police Officers' Staff Association (SCPOSA)
- Scottish Police Authorities Conveners Forum (SPACF)
- Scottish Police Authority (SPA)
- Scottish Police Federation
- Scottish Women's Development Forum

Impact Assessment

A Business Regulatory Impact Assessment (BRIA) was carried out for the Police and Fire Reform (Scotland) Bill, which became the Act. No BRIA is therefore required for these regulations. An Equality Impact Assessment was carried out for the suite of workforce regulations.

Scottish Government
Safer Communities Directorate
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