

**2011 No. 3027**

**POLICE, ENGLAND AND WALES**

**The Police (Performance and Conduct) (Amendment:  
Metropolitan Police) Regulations 2011**

<i>Made</i>	- - - -	<i>15th December 2011</i>
<i>Laid before Parliament</i>		<i>19th December 2011</i>
<i>Coming into force</i>	- -	<i>16th January 2012</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 50, 51 and 84 of the Police Act 1996(a).

In accordance with section 63(3) of that Act, the Secretary of State has supplied the Police Advisory Board for England and Wales with a draft of these Regulations and has taken into consideration the representations of that Board.

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Police (Performance and Conduct) (Amendment: Metropolitan Police) Regulations 2011 and shall come into force on 16th January 2012.

(2) These Regulations extend to England and Wales.

**Interpretation**

2. In these Regulations—

“the 2004 Conduct Regulations” means the Police (Conduct) Regulations 2004(b);

“the 2008 Conduct Regulations” means the Police (Conduct) Regulations 2008(c);

“the Efficiency Regulations” means the Police (Efficiency) Regulations 1999(d);

“the Performance Regulations” means the Police (Performance) Regulations 2008(e).

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- (a) 1996 c.16. Section 50 is amended by paragraphs 1 and 3 of Schedule 22 to the Criminal Justice and Immigration Act 2008 (c. 4) and section 3 of the Policing and Crime Act 2009 (c. 26). Section 51 is amended by section 128 of the Police Act 1997 (c. 50), section 35 of the Police Reform Act 2002 (c.30) and paragraphs 1 and 4 of Schedule 22 to the Criminal Justice and Immigration Act 2008. Section 84 is amended by paragraphs 1 and 7 of Schedule 22 to the Criminal Justice and Immigration Act 2008.
- (b) S.I. 2004/645. The 2004 Conduct Regulations were revoked by the 2008 Conduct Regulations except in relation to certain cases; see regulation 2 of the 2008 Regulations.
- (c) S.I. 2008/2864.
- (d) S.I. 1999/732, as amended by S.I. 2003/528 and S.I. 2003/2600. The Efficiency Regulations were revoked by the Performance Regulations, except in relation to certain cases; see regulation 3 of the Performance Regulations.
- (e) S.I. 2008/2862.

### **Amendments to the Efficiency Regulations**

3.—(1) The Efficiency Regulations are amended as follows.

(2) In regulation 3(1) (interpretation)—

(a) in the definition of “countersigning officer”, after “the 1997 Act” insert “or a member of the metropolitan police force’s civilian staff”;

(b) after the definition of “member concerned” insert—

““the metropolitan police force’s civilian staff” has the same meaning as in section 102(6) of the Police Reform and Social Responsibility Act 2011;”;

(c) for the definition of “reporting officer” substitute—

““reporting officer” means—

(a) the member of the police force,

(b) the person employed under section 15 of the 1996 Act or section 55(1)(c) of the 1997 Act, or

(c) the member of the metropolitan police force’s civilian staff

who has the immediate supervisory responsibility for the member concerned;”.

(3) In regulation 4(2) and (3) (circumstances in which a first interview is required) after “the 1997 Act” in each place insert “or a member of the metropolitan police force’s civilian staff”.

(4) In regulation 8(3) (circumstances in which a second interview may be required) after “the 1996 Act” insert “or a member of the metropolitan police force’s civilian staff”.

### **Amendments to the Performance Regulations**

4.—(1) The Performance Regulations are amended as follows.

(2) In regulation 4(1) (interpretation), for the definition of “police staff member” substitute—

““police staff member” means—

(a) an employee of a police authority who is under the direction and control of a chief officer of police; or

(b) a member of the metropolitan police force’s civilian staff (within the meaning of section 102(6) of the Police Reform and Social Responsibility Act 2011);”.

### **Amendments to the 2004 Conduct Regulations**

5.—(1) The 2004 Conduct Regulations are amended as follows.

(2) In regulation 3(1) (interpretation) for the definition of “appropriate authority” substitute—

““appropriate authority” means—

(a) where the officer concerned is a senior officer of a police force maintained under section 2 of the 1996 Act or the City of London police force, the police authority for the force’s area;

(b) where the officer concerned is the Commissioner of Police of the Metropolis or a person exercising powers or duties of the Commissioner in accordance with section 44 or 45(4) of the Police Reform and Social Responsibility Act 2011(a), the Mayor’s Office for Policing and Crime;

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

(d) in any other case, the chief officer of the police officer’s force;”.

(3) In regulation 5 (suspension: urgent cases)—

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(a) 2011 c. 13.

- (a) in paragraph (1)(a) after “police authority” insert “or, in the case of the Commissioner of Police of the Metropolis, the Mayor’s Office for Policing and Crime”;
  - (b) in paragraph (2) after “police authority” insert “, Mayor’s Office for Policing and Crime”.
- (4) In regulation 19(5) (persons conducting the hearing: officers other than senior officers) for “from a list of candidates maintained by that authority” substitute “or by the Mayor’s Office for Policing and Crime from a list of candidates maintained by that authority or Office”.

### **Amendments to the 2008 Conduct Regulations**

6.—(1) The 2008 Conduct Regulations are amended as follows.

(2) In regulation 3(1) (interpretation)—

(a) for the definition of “appropriate authority” substitute—

““appropriate authority” means—

- (a) where the officer concerned is a senior officer of a police force maintained under section 2 of the 1996 Act or the City of London police force, the police authority for the force’s area;
- (b) where the officer concerned is the Commissioner of Police of the Metropolis or a person exercising powers or duties of the Commissioner in accordance with section 44 or 45(4) of the Police Reform and Social Responsibility Act 2011, the Mayor’s Office for Policing and Crime; and
- (c) in any other case, the chief officer of police of the police force concerned”;

(b) for the definition of “police staff member” substitute—

““police staff member” means—

- (a) an employee of a police authority who is under the direction and control of a chief officer of police; or
- (b) a member of the civilian staff of the Metropolitan Police Force (within the meaning of section 102(6) of the Police Reform and Social Responsibility Act 2011);”.

(3) In regulation 25(4)(c) (persons conducting misconduct proceedings: officers other than senior officers) after “police authority” insert “or the Mayor’s Office for Policing and Crime”.

(4) In regulation 26(1) (persons conducting misconduct proceedings: chief constables etc), omit sub-paragraph (b) with the exception of the word “or” at the end.

(5) After regulation 26 insert—

#### **“Persons conducting misconduct proceedings: senior officers of the Metropolitan Police Force**

**26A.**—(1) Where the officer concerned is a senior officer of the Metropolitan Police Force, the misconduct proceedings shall be conducted by a panel of persons specified in paragraph (2), appointed by the appropriate authority.

(2) Those persons are—

- (a) a chair selected by the appropriate authority from a list of persons who satisfy the judicial-appointment eligibility criterion<sup>(a)</sup> on a 7-year basis and have been nominated by the Secretary of State for the purposes of these Regulations;
- (b) HMCIC or an inspector of constabulary nominated by him; and
- (c) a person selected by the appropriate authority from a list of candidates maintained by a police authority or the Mayor’s Office for Policing and Crime for the purposes of these Regulations.”.

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(a) See section 50 of the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(6) In regulation 27 (persons conducting misconduct proceedings: other senior officers)—

- (a) in paragraph (1), after “26(1)” insert “or 26A(1)”;
- (b) omit paragraph (2)(a)(i).

(7) In regulation 34 (procedure at misconduct proceedings), after paragraph (15) insert—

“(16) Where the officer concerned is a senior officer of the Metropolitan Police Force, the persons conducting the misconduct proceedings shall, before the end of 5 working days beginning with the first working day after the conclusion of the proceedings, submit a report to the appropriate authority, together with a copy to the senior officer concerned, setting out—

- (a) the finding of the persons conducting the proceedings under paragraph (13);
- (b) the reasons for that finding;
- (c) if the finding was that the conduct of the officer concerned amounted to misconduct or gross misconduct, a recommendation as to any disciplinary action which in their opinion should be imposed; and
- (d) any other matter arising out of the proceedings which they desire to bring to the notice of the appropriate authority.”.

(8) After regulation 34 insert—

**“Further meeting or hearing: senior officers of the Metropolitan Police Force**

**34A.**—(1) On receiving a report under regulation 34(16) the appropriate authority shall—

- (a) in a case where the report was submitted following a misconduct meeting, hold a further meeting; and
- (b) in a case where the report was submitted following a misconduct hearing, hold a further hearing,

for the purpose of considering what disciplinary action (if any) should be imposed.

(2) The provisions of these Regulations specified in paragraph (3) shall apply, with the modifications specified in paragraph (4), to a meeting held under paragraph (1)(a) as if it was a misconduct meeting, and to a hearing under paragraph (1)(b) as if it was a misconduct hearing.

(3) The provisions are—

- (a) regulation 6 (police friend);
- (b) regulation 7 (legal and other representation);
- (c) regulation 8 (provision of notices or documents);
- (d) regulation 9 (outstanding or possible criminal proceedings);
- (e) regulation 22(4) and (5) (procedure on receipt of notice);
- (f) regulation 23 (witnesses);
- (g) regulation 24 (timing and notice of misconduct proceedings);
- (h) regulation 29 (attendance of officer concerned at misconduct proceedings);
- (i) regulation 30 (participation of Commission and investigator at misconduct proceedings);
- (j) regulation 31 (attendance of complainant or interested person at misconduct proceedings), with the exception of paragraph (3);
- (k) regulation 32 (attendance of others at misconduct proceedings);
- (l) regulation 33 (exclusion from misconduct proceedings);
- (m) regulation 34 (procedure at misconduct proceedings); and
- (n) regulation 37 (record of misconduct proceedings).

(4) The modifications are that—

- (a) each reference to the person conducting or chairing the misconduct proceedings has effect as a reference to the appropriate authority;
  - (b) in regulation 22(4), the reference to the date on which the officer concerned has complied with paragraph (2) has effect as a reference to the date on which the report is submitted under regulation 34(16);
  - (c) in regulation 24—
    - (i) the reference in paragraph (1) to the first working day after the documents have been supplied to the officer concerned has effect as a reference to the first working day after the report is submitted under regulation 34(16);
    - (ii) the references in paragraph (3) to the appropriate authority are omitted; and
  - (d) in regulation 34(4) the references to the complainant and any interested person are omitted.”.
- (9) In regulation 35 (outcome of misconduct proceedings)—
- (a) in paragraph (1) after “proceedings” insert “in the case of an officer other than a senior officer of the Metropolitan Police Force”;
  - (b) after paragraph (1) insert—
 

“(1A) Subject to the provisions of this regulation, at a meeting or hearing held under regulation 34A the appropriate authority may—

    - (a) impose any of the disciplinary action in paragraph (2)(a) or (b) or (6)(b) as appropriate; or
    - (b) where the finding set out in the report is that the conduct amounted to misconduct but not gross misconduct, record a finding of misconduct but take no further action.”;
  - (c) in paragraph (2), after “at” (in each place) insert “or after”;
  - (d) in paragraph (3) for “conducting the misconduct hearing” substitute “imposing the disciplinary action”;
  - (e) in paragraph (9) for “conducting the misconduct hearing” substitute “considering the question of disciplinary action”;
  - (f) in paragraph (10)—
    - (i) for “conducting the misconduct proceedings” substitute “considering it”;
    - (ii) at the beginning of sub-paragraph (c)(ii) insert “in the case of an officer other than a senior officer of the Metropolitan Police Force,”.
- (10) In regulation 36 (notification of outcome)—
- (a) in paragraph (1)—
    - (i) in sub-paragraph (b), at the beginning, insert “in a case other than one to which regulation 34A (further meeting or hearing: senior officers of the Metropolitan Police Force) applies,”;
    - (ii) in the words at the end, for “these matters and a summary of” substitute “the relevant matter or matters and”;
  - (b) after paragraph (1) insert—
 

“(1A) In a case to which regulation 34A applies, the officer concerned shall be informed of any disciplinary action imposed as soon as practicable, and in any event shall be provided with written notice of the action (if any) and the appropriate authority’s reasons before the end of 5 working days beginning with the first working day after the conclusion of the meeting or hearing held under regulation 34A.”.
- (11) In regulation 47(1) (persons conducting special case hearing: chief constables etc), omit sub-paragraph (b) with the exception of the word “or” at the end.
- (12) After regulation 47 insert—

**“Persons conducting special case hearing: senior officers of the Metropolitan Police Force**

**47A.**—(1) Where the officer concerned is a senior officer of the Metropolitan Police Force, the special case hearing shall be conducted by a panel of persons specified in paragraph (2), appointed by the appropriate authority.

(2) Those persons are—

- (a) a chair selected by the appropriate authority from a list of persons who satisfy the judicial-appointment eligibility criterion on a 7-year basis and have been nominated by the Secretary of State for the purposes of these Regulations;
- (b) HMCIC or an inspector of constabulary nominated by him; and
- (c) a person selected by the appropriate authority from a list of candidates maintained by a police authority or the Mayor’s Office for Policing and Crime for the purposes of these Regulations.”.

(13) In regulation 48 (persons conducting special case hearing: other senior officers), after “47(1)” insert “or 47A(1)”.

(14) In regulation 54 (procedure at special case hearing) after paragraph (15) insert—

“(16) Where the officer concerned is a senior officer of the Metropolitan Police Force, the persons conducting the special case hearing 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 persons conducting the hearing under paragraph (13);
- (b) the reasons for that finding;
- (c) if the finding was that the conduct of the officer concerned amounted to gross misconduct, a recommendation as to any disciplinary action which in their opinion should be imposed; and
- (d) any other matter arising out of the hearing which they desire to bring to the notice of the appropriate authority.”.

(15) After regulation 54 insert—

**“Further hearing: senior officers of the Metropolitan Police Force**

**54A.**—(1) On receiving a report under regulation 54(16) the appropriate authority shall hold a further hearing for the purpose of considering what disciplinary action (if any) should be imposed.

(2) The provisions of these regulations specified in paragraph (3) shall apply, with the modifications specified in paragraph (4), to a hearing held under paragraph (1) as if it was a special case hearing.

(3) The provisions are—

- (a) regulation 6 (police friend);
- (b) regulation 7 (legal and other representation);
- (c) regulation 8 (provision of notices or documents);
- (d) regulation 9 (outstanding or possible criminal proceedings);
- (e) regulation 44 (notice of special case hearing);
- (f) regulation 50 (attendance of officer concerned at special case hearing);
- (g) regulation 51 (participation of Commission and investigator at special case hearing);
- (h) Regulation 52(1) and (2) (attendance of complainant and interested persons at special case hearing);
- (i) regulation 53 (attendance of others at special case hearing);

- (j) regulation 54 (procedure at special case hearing), with the exception of paragraphs (4) and (12) to (15); and
  - (k) regulation 57 (record of special case hearing).
- (4) The modifications are that—
- (a) each reference to the person conducting or chairing the special case hearing has effect as a reference to the appropriate authority;
  - (b) in regulation 44 the reference to the date on which notice is given under regulation 43(1) has effect as a reference to the date on which the report is submitted under regulation 54(16); and
  - (c) in regulation 53(1) and (3) the references to regulation 52 are omitted.”.
- (16) In regulation 55 (outcome of special case hearing)—
- (a) in paragraph (1) after “hearing” insert “in the case of an officer other than a senior officer of the Metropolitan Police Force”;
  - (b) after paragraph (1) insert—
    - “(1A) On receiving a report under regulation 54(16) containing a finding that the conduct of the officer concerned amounts to gross misconduct, the appropriate authority shall impose disciplinary action, which may be—
    - (a) subject to paragraphs (2) and (3), a final written warning;
    - (b) extension of a final written warning in accordance with paragraph (2); or
    - (c) dismissal without notice.”;
  - (c) in paragraph (5) after “hearing” insert “in the case of an officer other than a senior officer of the Metropolitan Police Force”;
  - (d) after paragraph (5) insert—
    - “(5A) On receiving a report under regulation 54(16) containing a finding that the conduct of the officer concerned does not amount to gross misconduct, the appropriate authority may—
    - (a) dismiss the case; or
    - (b) deal with the case in accordance with Part 4 at a misconduct meeting or, if the officer concerned had a final written warning in force at the date of the assessment of conduct under regulation 12(1) of these Regulations or regulation 14A of the Complaints Regulations (as the case may be) at a misconduct hearing.”;
  - (e) in paragraph (6), after “paragraph (5)(b)” insert “or dealt with by the appropriate authority under paragraph (5A)(b)”;
  - (f) in paragraph (8), for “conducting the special case hearing” substitute “considering it”.
- (17) In regulation 56 (notification of outcome)—
- (a) in paragraph (1)—
    - (i) in sub-paragraph (b), at the beginning, insert “in a case other than one to which regulation 54A (further hearing: senior officers of the Metropolitan Police Force) applies,”;
    - (ii) in the words at the end, for “these matters and a summary of” substitute “the relevant matter or matters and”;
  - (b) after paragraph (1) insert—
    - “(1A) In a case to which regulation 54A applies, the officer concerned shall be informed of any disciplinary action imposed under regulation 55(1A) or any action taken under regulation 55(5A), as the case may be, as soon as practicable, and in any event shall be provided with written notice of the action (if any) and the appropriate authority’s reasons before the end of 5 working days beginning with the first working day after the conclusion of the hearing held under regulation 54A.”.

(18) In regulation 58(2) (record of disciplinary proceedings), after “concerned” insert “or, in the case of the Commissioner of Police of the Metropolis, the Mayor’s Office for Policing and Crime”.

#### **Cases already being dealt with under the 2004 Conduct Regulations**

7. Where, as a result of the coming into force of regulation 5(2) of these Regulations, the Commissioner of Police of the Metropolis replaces the Metropolitan Police Authority as the appropriate authority in relation to any allegation, the 2004 Conduct Regulations (as amended by these Regulations) shall have effect as if anything done or treated as done by or in relation to the Metropolitan Police Authority in its capacity as appropriate authority had been done by or in relation to the Commissioner of Police of the Metropolis.

#### **Cases already being dealt with under the 2008 Conduct Regulations**

8. Where, as a result of the coming into force of regulation 6(2)(a) of these Regulations, the Commissioner of Police of the Metropolis replaces the Metropolitan Police Authority as the appropriate authority in relation to any allegation, the 2008 Conduct Regulations (as amended by these Regulations) shall have effect as if anything done or treated as done by or in relation to the Metropolitan Police Authority in its capacity as appropriate authority had been done by or in relation to the Commissioner of Police of the Metropolis.

(1) Any decision taken under regulation 34(13) (procedure at misconduct proceedings) or 54(13) (procedure at special case hearing) of the 2008 Conduct Regulations in relation to a senior officer of the Metropolitan Police Force before the coming into force of these Regulations shall be treated as if it had been taken by a panel of persons constituted in accordance with regulations 26A or 47A of the 2008 Conduct Regulations (as inserted by regulation 6(5) and (12) of these Regulations), as the case may be.

(2) Any decision taken under regulation 35(1) (outcome of misconduct proceedings) or 55(1) or (5) (outcome of special case hearing) of the 2008 Conduct Regulations in relation to a senior officer of the Metropolitan Police Force before the coming into force of these Regulations shall be treated as if it had been taken by the appropriate authority under regulation 35(1A) or 55(1A) or (5A) of the 2008 Conduct Regulations (as inserted by regulation 6(9)(b) and (16)(b) and (d) of these Regulations), as the case may be.

Home Office  
15th December 2011

*Nick Herbert*  
Minister of State

#### **EXPLANATORY NOTE**

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

These Regulations amend the Police (Efficiency) Regulations 1999 (referred to in these Regulations as “the Efficiency Regulations”), the Police (Performance) Regulations 2008 (referred to as “the Performance Regulations”), the Police (Conduct) Regulations 2004 (referred to as “the 2004 Conduct Regulations”) and the Police (Conduct) Regulations 2008 (referred to as “the 2008 Conduct Regulations”) to reflect changes made by the Police Reform and Social Responsibility Act 2011 (“the 2011 Act”) in relation to policing arrangements in the Metropolitan Police district.

Section 3 of the 2011 Act replaces the Metropolitan Police Authority with a new body known as the Mayor’s Office for Policing and Crime.

Paragraph 1(2) of Schedule 4 to the 2011 Act allows the Commissioner of Police of the Metropolis (“the Commissioner”) to employ staff, referred to in the 2011 Act as the Metropolitan Police Force’s civilian staff. Regulations 3, 4 and 6(2)(b) of these Regulations amend the



Efficiency Regulations, the Performance Regulations and the 2008 Conduct Regulations to reflect this position.

Regulation 5(2) of these Regulations amends the 2004 Conduct Regulations with the effect that the Mayor's Office for Policing and Crime is the appropriate authority responsible for dealing with allegations of misconduct against the Commissioner and certain senior officers of the Metropolitan Police exercising the functions of the Commissioner. The Commissioner is responsible for dealing with allegations against other officers, including senior officers (currently the Metropolitan Police Authority is responsible for dealing with allegations against all senior officers).

Regulation 6(2)(a) of these Regulations makes a similar amendment to the 2008 Regulations.

Regulation 6(5) and (12) of these Regulations amend the 2008 Conduct Regulations with the effect that misconduct proceedings or special case hearings concerning senior officers of the Metropolitan Police are conducted by a panel consisting of a legally-qualified chair, Her Majesty's Chief Inspector of Constabulary or one of his Inspectors, and a person selected from a list maintained for these purposes. A special case hearing is a disciplinary hearing held in a case where the appropriate authority determines that there is sufficient written evidence to establish on the balance of probabilities, without the need for further written or oral evidence, that the conduct of the officer concerned constitutes gross misconduct, and that it is in the public interest for the officer to cease to be a police officer without delay.

Regulation 6(7), (8), (9), (14), (15) and (16) of these Regulations amends the 2008 Conduct Regulations so as to provide for the panel conducting the misconduct proceedings or special case hearing, in a case where the officer concerned is a senior officer of the Metropolitan Police, to make the finding of fact as to whether or not the officer is guilty of misconduct or gross misconduct, but then to remit the matter to the appropriate authority for a decision as to the action to be taken against the officer. The 2008 Conduct Regulations currently provide for the person or persons conducting the misconduct proceedings or special case hearing to make the finding as to conduct and decide on the action to be taken.

The remainder of regulation 5 and 6 of these Regulations make consequential amendments to the 2004 and 2008 Conduct Regulations.

Regulations 7 and 8 make transitional provision to ensure the continuing validity of anything done in an ongoing appeal under the 2004 and 2008 Conduct Regulations prior to the changes made by these Regulations in relation to the identity of the appropriate authority, the composition of the panel conducting misconduct proceedings or special case hearings and the process for taking the final decision as to disciplinary action.

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STATUTORY INSTRUMENTS

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**2011 No. 3027**

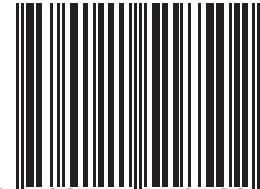
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