

**2012 No. 2632**

**POLICE, ENGLAND AND WALES**

# The Police (Conduct) Regulations 2012

<i>Made</i> - - - -	<i>18th October 2012</i>
<i>Laid before Parliament</i>	<i>23rd October 2012</i>
<i>Coming into force</i> - -	<i>22nd November 2012</i>



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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)(a) of that Act(b), she 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.

PART 1  
Preliminary

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Police (Conduct) Regulations 2012 and shall come into force on 22nd November 2012.

(2) These Regulations extend to England and Wales.

**Revocation and transitional provisions**

2.—(1) Subject to paragraph (2), the Police (Conduct) Regulations 2008(c) (“the 2008 Regulations”) are revoked.

(2) Where an allegation in respect of conduct by a police officer came to the attention of an appropriate authority before 22nd November 2012, the 2008 Regulations shall continue to have effect with the modifications set out in Part 1 of Schedule 1.

(3) Where, as a result of paragraph 3(b) of Schedule 1, a chief officer of police replaces a police authority as the appropriate authority in relation to an allegation, the 2008 Regulations have effect as if anything done, or treated as done, by or in relation to the police authority in its capacity as appropriate authority had been done by or in relation to the chief officer.

(4) Any decision taken under regulation 34(13) or 54(13) of the 2008 Regulations in relation to a senior officer of a police force maintained under section 2 of the Police Act 1996 or the City of London Police Force before 22nd November 2012 shall be treated as if it had been taken by a

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(a) 1996 c.16. Section 50 is amended by paragraph 3 of Schedule 22 to the Criminal Justice and Immigration Act 2008 (c.4), section 3 of the Policing and Crime Act 2009 (c. 26) and section 82 of the Police Reform and Social Responsibility Act 2011 (c.13). 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 paragraph 4 of Schedule 22 to the Criminal Justice and Immigration Act 2008.

(b) Section 63(3) was substituted by paragraph 78 of Schedule 4 to the Serious Organised Crime and Police Act 2005 (c. 15) and further amended by paragraph 68 of Schedule 1 to the Police and Justice Act 2006 (c. 48), paragraph 6 of Schedule 22 to the Criminal Justice and Immigration Act 2008 and section 10 of the Policing and Crime Act 2009.

(c) S.I. 2008/2864, as amended by S.I. 2011/3027.

panel of persons constituted in accordance with regulation 26A or 47A of the 2008 Regulations (as the case may be), as modified by paragraphs 6, 7 and 8 of Schedule 1 to these Regulations.

(5) Any decision taken under regulation 35(1) or 55(1) or (5) of the 2008 Regulations in relation to a senior officer of a police force maintained under section 2 of the Police Act 1996 or the City of London Police Force before 22nd November 2012 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 Regulations (as the case may be).

(6) In so far as they continue to apply by virtue of paragraph (2) above and regulation 2(2) of the 2008 Regulations, the Police (Conduct) Regulations 2004(a) have effect with the modifications set out in Part 2 of Schedule 1.

(7) Where, as a result of paragraph 11(b) of Schedule 1, a chief officer of police replaces a police authority as the appropriate authority in relation to any allegation, the Police (Conduct) Regulations 2004 shall have effect as if anything done or treated as done by or in relation to the police authority in its capacity as appropriate authority had been done by or in relation to the chief officer.

### **Interpretation and delegation**

3.—(1) In these Regulations—

“the 1996 Act” means the Police Act 1996;

“the 2002 Act” means the Police Reform Act 2002;

“the Performance Regulations” means the Police (Performance) Regulations 2012(b);

“the Police Regulations” means the Police Regulations 2003(c);

“acting chief officer” means—

(a) a person exercising or performing functions of a chief constable in accordance with section 41 of the Police Reform and Social Responsibility Act 2011(d);

(b) a person exercising powers or duties of the Commissioner of Police of the Metropolis in accordance with section 44 or 45(4) of that Act; or

(c) a person exercising duties of the Commissioner of Police for the City of London in accordance with section 25 of the City of London Police Act 1839(e);

“allegation” means an allegation relating to a complaint or conduct matter;

“appropriate authority” means—

(a) where the officer concerned is the chief officer or acting chief officer of any police force, the local policing body for the force’s area;

(b) in any other case, the chief officer of police of the police force concerned;

“appeal hearing” means an appeal to a police appeals tribunal in accordance with the Police Appeals Tribunals Rules 2012(f);

“appeal meeting” means a meeting held in accordance with regulation 39 following a misconduct meeting;

“bank holiday” means a day which is a bank holiday under the Banking and Financial Dealings Act 1971(g) in England and Wales;

“the Commission” means the Independent Police Complaints Commission established under section 9 of the 2002 Act;

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(a) S.I. 2004/645.

(b) S.I. 2012/2631.

(c) S.I. 2003/527.

(d) 2011 c. 13.

(e) 2 & 3 Vict. c. xciv.

(f) S.I. 2012/2630.

(g) 1971 c. 80.

“complainant” means the person referred to at section 12(1)(a) to (c) (as the case may be) of the 2002 Act;

“complaint” has the meaning given to it by section 12(1) of the 2002 Act;

“conduct” includes acts, omissions, statements and decisions (whether actual, alleged or inferred);

“conduct matter” has the meaning given to it by section 12(2) of the 2002 Act;

“criminal proceedings” means—

- (a) any prospective criminal proceedings; or
- (b) all criminal proceedings brought which have not been brought to a conclusion (apart from the bringing and determination of any appeal other than an appeal against conviction to the Crown Court);

“disciplinary action” means, in order of seriousness starting with the least serious action—

- (a) management advice;
- (b) a written warning;
- (c) a final written warning;
- (d) an extension to a final written warning as described in regulation 35(7)(b);
- (e) dismissal with notice; or
- (f) dismissal without notice.

“disciplinary proceedings” means, other than in paragraph (7) or (8) of this regulation, any proceedings under these Regulations and any appeal from misconduct proceedings or a special case hearing dealt with under the Police Appeals Tribunals Rules 2012;

“document” means anything in which information of any description is recorded and includes any recording of a visual image or images;

“gross misconduct” means a breach of the Standards of Professional Behaviour so serious that dismissal would be justified;

“harm test” has the meaning given to it in regulation 4;

“HMCIC” means Her Majesty’s Chief Inspector of Constabulary appointed under section 54(1) of the 1996 Act;

“human resources professional” means a police officer or police staff member who has specific responsibility for personnel matters relating to members of a police force;

“informant” means a person who provides information to an investigation on the basis that his identity is not disclosed during the course of the disciplinary proceedings;

“interested party” means a person whose appointment could reasonably give rise to a concern as to whether he could act impartially under these Regulations;

“interested person” has the meaning given to it by section 21 of the 2002 Act;

“investigator” means a person—

- (a) appointed under regulation 13; or
- (b) appointed or designated under paragraph 16, 17, 18 or 19 of Schedule 3 to the 2002 Act, as the case may be;

“management action” means action or advice intended to improve the conduct of the officer concerned;

“management advice” means management action imposed following misconduct proceedings or an appeal meeting;

“misconduct” means a breach of the Standards of Professional Behaviour;

“misconduct hearing” means a hearing to which the officer concerned is referred under regulation 19 and at which he may be dealt with by disciplinary action up to and including dismissal;

“misconduct meeting” means a meeting to which the officer concerned is referred under regulation 19 and at which he may be dealt with by disciplinary action up to and including a final written warning;

“misconduct proceedings” means a misconduct meeting or misconduct hearing;

“the officer concerned” means the police officer in relation to whose conduct there has been an allegation;

“personal record” means a personal record kept under regulation 15 of the Police Regulations;

“police force concerned” means—

- (a) where the officer concerned is a member of a police force, the police force of which he is a member; and
- (b) where the officer concerned is a special constable, the police force maintained for the police area for which he is appointed;

“police friend” means a person chosen by the officer concerned in accordance with regulation 6;

“police officer” means a member of a police force or special constable;

“police staff member” means—

- (a) a member of the civilian staff of a police force, within the meaning of section 102(4) and (6) of the Police Reform and Social Responsibility Act 2011; or
- (b) an employee of the Common Council of the City of London who is under the direction and control of the Commissioner of the City of London Police;

“proposed witness” means a witness whose attendance at the misconduct proceedings the officer concerned or the appropriate authority (as the case may be) wishes to request of the person conducting or chairing those proceedings;

“relevant lawyer” has the same meaning as in section 84(4) of the 1996 Act, subject to the provisions of paragraph 35 of Schedule 27 to the Criminal Justice and Immigration Act 2008;

“senior officer” means a member of a police force holding a rank above that of chief superintendent;

“special case hearing” means a hearing to which the officer concerned is referred under regulation 41 after the case has been certified as a special case;

“special case proceedings” means the referral of a case to a special case hearing and any proceedings at or in connection with such a hearing;

“staff association” means—

- (a) in relation to a member of a police force of the rank of chief inspector or below, the Police Federation of England and Wales;
- (b) in relation to a member of a police force of the rank of superintendent or chief superintendent, the Police Superintendents’ Association of England and Wales; and
- (c) in relation to a member of a police force who is a senior officer, the Chief Police Officers’ Staff Association;

“Standards of Professional Behaviour” means the standards of professional behaviour contained in Schedule 2; and

“working day” means any day other than a Saturday or Sunday or a day which is a bank holiday or a public holiday in England and Wales.

(2) In these Regulations—

- (a) a reference to an officer other than a senior officer shall include a reference to a special constable, regardless of his level of seniority;
- (b) a 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 of that statement;
- (c) the “special conditions” are that—

- (i) there is sufficient evidence, in the form of written statements or other documents, without the need for further evidence, whether written or oral, to establish on the balance of probabilities that the conduct of the officer concerned constitutes gross misconduct; and
- (ii) it is in the public interest for the officer concerned to cease to be a police officer without delay.

(3) For the purposes of these Regulations—

- (a) a written warning shall remain in force for a period of 12 months from the date on which it takes effect; and
- (b) subject to regulations 35(7)(b) and 55(3)(b), a final written warning shall remain in force for a period of 18 months from the date on which it takes effect.

(4) The reference to the period of—

- (a) 12 months in paragraph (3)(a); and
- (b) 18 months in paragraph (3)(b) and regulations 35(8) and 55(4),

shall not include any time when the officer concerned is taking a career break (under regulation 33(12) of the Police Regulations (leave) and the determination of the Secretary of State made under that regulation).

(5) Where the appropriate authority is a chief officer of police, he may, subject to paragraph (6), delegate any of his functions under these Regulations to a—

- (a) member of a police force of at least the rank of chief inspector; or
- (b) police staff member who, in the opinion of the chief officer is of at least a similar level of seniority to a chief inspector.

(6) Where the appropriate authority delegates its functions under regulation 10 or 41, the decisions shall be authorised by a senior officer.

(7) Any proceedings under these Regulations are disciplinary proceedings for the purposes of section 87(5) of the 1996 Act.

(8) Any proceedings under these Regulations are disciplinary proceedings for the purposes of section 29(1) of the 2002 Act.

### **The harm test**

4. Information in documents which are stated to be subject to the harm test under these Regulations shall not be supplied to the officer concerned in so far as the appropriate authority considers that preventing disclosure to him is—

- (a) necessary for the purpose of preventing the premature or inappropriate disclosure of information that is relevant to, or may be used in, any criminal proceedings;
- (b) necessary in the interests of national security;
- (c) necessary for the purpose of the prevention or detection of crime, or the apprehension or prosecution of offenders;
- (d) necessary for the purpose of the prevention or detection of misconduct by other police officers or police staff members or their apprehension for such matters;
- (e) justified on the grounds that providing the information would involve disproportionate effort in comparison to the seriousness of the allegations against the officer concerned;
- (f) necessary and proportionate for the protection of the welfare and safety of any informant or witness; or
- (g) otherwise in the public interest.



## PART 2

### General

#### Application

5.—(1) These Regulations apply where an allegation comes to the attention of an appropriate authority which indicates that the conduct of a police officer may amount to misconduct or gross misconduct.

(2) Where an appropriate authority is considering more than one allegation in relation to the same police officer, the allegations may be taken together and treated as a single allegation for the purposes of any provision of these Regulations which requires a person to make an assessment, finding, determination or decision in connection with conduct which is the subject matter of an allegation.

#### Police Friend

6.—(1) The officer concerned may choose—

- (a) a police officer;
- (b) a police staff member; or
- (c) where the officer concerned is a member of a police force, a person nominated by his staff association,

who is not otherwise involved in the matter, to act as his police friend.

(2) A police friend may—

- (a) advise the officer concerned throughout the proceedings under these Regulations;
- (b) unless the officer concerned has the right to be legally represented and chooses to be so represented, represent the officer concerned at the misconduct proceedings or special case hearing or appeal meeting;
- (c) make representations to the appropriate authority concerning any aspect of the proceedings under these Regulations; and
- (d) accompany the officer concerned to any interview, meeting or hearing which forms part of any proceedings under these Regulations.

(3) Where a police friend is a police officer or a police staff member, the chief officer of police of the force of which the police friend is a member shall permit him to use a reasonable amount of duty time for the purposes referred to in paragraph (2).

(4) The reference in paragraph (3) to the force of which the police friend is a member shall include a reference to the force maintained for the police area for which a special constable is appointed and the force in which a police staff member is serving.

#### Legal and other representation

7.—(1) The officer concerned has the right to be legally represented, by a relevant lawyer of his choice, at a misconduct hearing or a special case hearing.

(2) If the officer concerned chooses not to be legally represented at such a hearing he may be dismissed or receive any other outcome under regulation 35 or 55 without his being so represented.

(3) Except in a case where the officer concerned has the right to be legally represented and chooses to be so represented, he may be represented at misconduct proceedings or a special case hearing or an appeal meeting only by a police friend.

(4) The appropriate authority may be represented at misconduct proceedings or a special case hearing or an appeal meeting by—

- (a) a police officer or police staff member of the police force concerned; or

(b) at a misconduct hearing or a special case hearing only, a relevant lawyer (whether or not the officer concerned chooses to be legally represented).

(5) Subject to paragraph (6), the appropriate authority may appoint a person to advise the person or persons conducting the misconduct proceedings or special case hearing or appeal meeting.

(6) At a misconduct meeting or an appeal meeting, the person appointed under paragraph (5) shall not be a relevant lawyer.

#### **Provision of notices or documents**

8. Where any written notice or document is to be given or supplied to the officer concerned under these Regulations, it shall be—

- (a) given to him in person;
- (b) left with some person at, or sent by recorded delivery to, his last known address; or
- (c) in respect of a written notice under regulation 15(1), given to him in person by his police friend where the police friend has agreed with the appropriate authority to deliver the notice.

#### **Outstanding or possible criminal proceedings**

9.—(1) Subject to the provisions of this regulation, proceedings under these Regulations shall proceed without delay.

(2) Before referring a case to misconduct proceedings or a special case hearing, the appropriate authority shall decide whether misconduct proceedings or special case proceedings would prejudice any criminal proceedings.

(3) For any period during which the appropriate authority considers any misconduct proceedings or special case proceedings would prejudice any criminal proceedings, no such misconduct or special case proceedings shall take place.

(4) Where a witness who is or may be a witness in any criminal proceedings is to be or may be asked to attend misconduct proceedings, the appropriate authority shall consult the relevant prosecutor (and when doing so must inform him of the names and addresses of all such witnesses) before making its decision under paragraph (2).

(5) For the purposes of this regulation “relevant prosecutor” means the Director of Public Prosecutions or any other person who has or is likely to have responsibility for the criminal proceedings.

#### **Suspension**

10.—(1) The appropriate authority may, subject to the provisions of this regulation, suspend the officer concerned from his office as constable and (in the case of a member of a police force) from membership of the force.

(2) An officer concerned who is suspended under this regulation remains a police officer for the purposes of these Regulations.

(3) A suspension under this regulation shall be with pay.

(4) The appropriate authority shall not suspend a police officer under this regulation unless the following conditions (“the suspension conditions”) are satisfied—

- (a) having considered temporary redeployment to alternative duties or an alternative location as an alternative to suspension, the appropriate authority has determined that such redeployment is not appropriate in all the circumstances of the case; and
- (b) it appears to the appropriate authority that either—
  - (i) the effective investigation of the case may be prejudiced unless the officer concerned is so suspended; or

- (ii) having regard to the nature of the allegation and any other relevant considerations, the public interest requires that he should be so suspended.

(5) The appropriate authority may exercise the power to suspend the officer concerned under this regulation at any time from the date on which these Regulations first apply to the officer concerned in accordance with regulation 5 until—

- (a) it is decided that the conduct of the officer concerned shall not be referred to misconduct proceedings or a special case hearing; or
- (b) such proceedings have concluded.

(6) The appropriate authority may suspend the officer concerned with effect from the date and time of notification which shall be given either—

- (a) in writing with a summary of the reasons; or
- (b) orally, in which case the appropriate authority shall confirm the suspension in writing with a summary of the reasons before the end of 3 working days beginning with the first working day after the suspension.

(7) The officer concerned (or his police friend) may make representations against his suspension to the appropriate authority—

- (a) before the end of 7 working days beginning with the first working day after his being suspended;
- (b) at any time during the suspension if he reasonably believes that circumstances relevant to the suspension conditions have changed.

(8) The appropriate authority shall review the suspension conditions—

- (a) on receipt of any representations under paragraph (7)(a);
- (b) if there has been no previous review, before the end of 4 weeks beginning with the first working day after the suspension;
- (c) in any other case—
  - (i) on being notified that circumstances relevant to the suspension conditions may have changed (whether by means of representations made under paragraph (7)(b) or otherwise); or
  - (ii) before the end of 4 weeks beginning with the day after the previous review.

(9) Where, following a review under paragraph (8), the suspension conditions remain satisfied and the appropriate authority decides the suspension should continue, it shall, before the end of 3 working days beginning with the day after the review, so notify the officer concerned in writing with a summary of the reasons.

(10) Subject to paragraph (12), where the officer concerned is suspended under this regulation, he shall remain so suspended until whichever of the following occurs first—

- (a) the suspension conditions are no longer satisfied;
- (b) either of the events mentioned in paragraph (5)(a) and, subject to paragraph (11), (5)(b).

(11) Where an officer concerned who is suspended is dismissed with notice under regulation 35 he shall remain suspended until the end of the notice period.

(12) In a case to which paragraph 17, 18 or 19 of Schedule 3 to the 2002 Act (investigations) applies, the appropriate authority must consult with the Commission—

- (a) in deciding whether or not to suspend the officer concerned under this regulation; and
- (b) before a suspension under this regulation is brought to an end by virtue of paragraph (10)(a).

## PART 3

### Investigations

#### **Application of this Part**

11. This Part shall not apply to a case to which paragraph 16, 17, 18 or 19 of Schedule 3 to the 2002 Act (investigations) applies.

#### **Assessment of conduct**

12.—(1) Subject to paragraph (6) the appropriate authority shall assess whether the conduct which is the subject matter of the allegation, if proved, would amount to misconduct or gross misconduct or neither.

(2) Where the appropriate authority assesses that the conduct, if proved, would amount to neither misconduct nor gross misconduct, it may—

- (a) take no action;
- (b) take management action against the officer concerned; or
- (c) refer the matter to be dealt with under the Performance Regulations.

(3) Where the appropriate authority assesses that the conduct, if proved, would amount to misconduct, it shall determine whether or not it is necessary for the matter to be investigated and—

- (a) if so, the matter shall be investigated and the appropriate authority shall further determine whether, if the matter were to be referred to misconduct proceedings, those would be likely to be a misconduct meeting or a misconduct hearing;
- (b) if not, the appropriate authority may—
  - (i) take no action; or
  - (ii) take management action against the officer concerned.

(4) Where the appropriate authority determines that the conduct, if proved, would amount to gross misconduct, the matter shall be investigated.

(5) At any time before the start of misconduct proceedings, the appropriate authority may revise its assessment of the conduct under paragraph (1) if it considers it appropriate to do so.

(6) Where the appropriate authority decides under this regulation to take no action, take management action or to refer the matter to be dealt with under the Performance Regulations, it shall so notify the officer concerned in writing as soon as practicable.

#### **Appointment of investigator**

13.—(1) This regulation applies where the matter is to be investigated in accordance with regulation 12.

(2) The appropriate authority shall, subject to paragraph (3), appoint a person to investigate the matter.

(3) If the officer concerned is 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 to investigate the matter.

(4) No person shall be appointed to investigate the matter under this regulation—

- (a) unless he has an appropriate level of knowledge, skills and experience to plan and manage the investigation;
- (b) if he is an interested party;
- (c) if he works, directly or indirectly, under the management of the officer concerned; or

- (d) in a case where the officer concerned is a senior officer, if he is—
  - (i) the chief officer of police of the police force concerned; or
  - (ii) a member of the same police force as the officer concerned, or where the officer concerned is a member of the metropolitan police force, serving in the same division as the officer concerned.

(5) The reference in paragraph (4)(d)(ii) to a member of the police force shall include a reference to a special constable appointed for the area of that force and a police staff member serving in that force.

### **Investigation**

14. The purpose of the investigation is to—

- (a) gather evidence to establish the facts and circumstances of the alleged misconduct or gross misconduct; and
- (b) assist the appropriate authority to establish whether there is a case to answer in respect of misconduct or gross misconduct or whether there is no case to answer.

### **Written notices**

15.—(1) The investigator shall as soon as is reasonably practicable after being appointed, and subject to paragraph (3), cause the officer concerned to be given written notice—

- (a) describing the conduct that is the subject matter of the allegation and how that conduct is alleged to fall below the Standards of Professional Behaviour;
- (b) of the appropriate authority's assessment of whether that conduct, if proved, would amount to misconduct or gross misconduct;
- (c) that there is to be an investigation into the matter and the identity of the investigator;
- (d) of whether, if the matter were to be referred to misconduct proceedings, those would be likely to be a misconduct meeting or a misconduct hearing and the reason for this;
- (e) that if the likely form of any misconduct proceedings to be held changes, further notice (with reasons) will be given;
- (f) informing him that he has the right to seek advice from his staff association or any other body and of the effect of regulation 6(1) and (2);
- (g) of the effect of regulations 7(1) to (3) and 16; and
- (h) informing him that whilst he does not have to say anything it may harm his case if he does not mention when interviewed or when providing any information under regulations 16(1) or 22(2) or (3) something which he later relies on in any misconduct proceedings or special case hearing or at an appeal meeting or appeal hearing.

(2) If following service of the notice under paragraph (1), the appropriate authority revises its assessment of the conduct in accordance with regulation 12(5) or its determination of the likely form of any misconduct proceedings to be taken, the appropriate authority shall, as soon as practicable, give the officer concerned further written notice of—

- (a) the assessment of whether the conduct, if proved, would amount to misconduct or gross misconduct as the case may be and the reason for that assessment; and
- (b) whether, if the case were to be referred to misconduct proceedings, those would be likely to be a misconduct meeting or a misconduct hearing and the reason for this.

(3) The requirement to give a written notice to the officer concerned under paragraph (1) does not apply for so long as the investigator considers that giving such a notice might prejudice the investigation or any other investigation (including, in particular, a criminal investigation).

(4) Once a written notice has been given in accordance with paragraph (1), the investigator shall notify the officer concerned of the progress of the investigation—

- (a) if there has been no previous notification following the supply of the written notice under paragraph (1), before the end of 4 weeks beginning with the first working day after the start of the investigation; and
- (b) in any other case, before the end of 4 weeks beginning with the first working day after the previous notification.

### **Representations to the investigator**

**16.**—(1) Before the end of 10 working days starting with the first working day after which the notice is given under regulation 15(1) (unless this period is extended by the investigator)—

- (a) the officer concerned may provide a written or oral statement relating to any matter under investigation to the investigator; and
- (b) the officer concerned or his police friend may provide any relevant documents to the investigator.

(2) The investigator shall, as part of his investigation, consider any such statement or document and shall make a record of having received it.

(3) In this regulation “relevant document”—

- (a) means a document relating to any matter under investigation, and
- (b) includes such a document containing suggestions as to lines of inquiry to be pursued or witnesses to be interviewed.

### **Interviews during investigation**

**17.**—(1) Where an investigator wishes to interview the officer concerned as part of his investigation, he shall, if reasonably practicable, agree a date and time for the interview with the officer concerned.

(2) Where no date and time is agreed under paragraph (1), the investigator shall specify a date and time for the interview.

(3) Where a date and time is specified under paragraph (2) and—

- (a) the officer concerned or his police friend will not be available at that time; and
- (b) the officer concerned proposes an alternative time which satisfies paragraph (4),

the interview shall be postponed to the time proposed by the officer concerned.

(4) An alternative time must—

- (a) be reasonable; and
- (b) fall before the end of the period of 5 working days beginning with the first working day after the day specified by the investigator.

(5) The officer concerned shall be given written notice of the date, time and place of the interview.

(6) The investigator shall, in advance of the interview, provide the officer concerned with such information as the investigator considers appropriate in the circumstances of the case to enable the officer concerned to prepare for the interview.

(7) The officer concerned shall attend the interview.

(8) A police friend may not answer any questions asked of the officer concerned during the interview.

### **Report of investigation**

**18.**—(1) On completion of his investigation the investigator shall as soon as practicable submit a written report on his investigation to the appropriate authority.

(2) The written report shall—

- (a) provide an accurate summary of the evidence;
- (b) attach or refer to any relevant documents; and
- (c) indicate the investigator's opinion as to whether there is a case to answer in respect of misconduct or gross misconduct or whether there is no case to answer.

(3) If at any time during his investigation the investigator believes that the appropriate authority would, on consideration of the matter, be likely to determine that the special conditions are satisfied, he shall, whether or not the investigation is complete, submit to the appropriate authority—

- (a) a statement of his belief and the grounds for it; and
- (b) a written report on his investigation to that point.

## PART 4

### Misconduct Proceedings

#### **Referral of case to misconduct proceedings**

**19.—**(1) Subject to regulation 41 and paragraph (6)—

- (a) on receipt of the investigator's written report; and
- (b) in the case of such a report submitted under paragraph 22 of Schedule 3 to the 2002 Act (final reports on investigations), in making a determination under paragraph 23(7) or 24(6) of Schedule 3 to the 2002 Act (action in response to an investigation report) as to what action to take in respect of matters dealt with in that report,

the appropriate authority shall, as soon as practicable, determine whether the officer concerned has a case to answer in respect of misconduct or gross misconduct or whether there is no case to answer.

(2) Subject to paragraph (6), in a case where the disciplinary proceedings have been delayed by virtue of regulation 9(3), as soon as practicable after the appropriate authority considers that such proceedings would no longer prejudice any criminal proceedings, it shall, subject to regulation 41(3), make a further determination as to whether the officer concerned has a case to answer in respect of misconduct or gross misconduct or whether there is no case to answer.

(3) Where the appropriate authority determines there is no case to answer, it may—

- (a) take no further disciplinary action against the officer concerned;
- (b) take management action against the officer concerned; or
- (c) refer the matter to be dealt with under the Performance Regulations.

(4) Where the appropriate authority determines that there is a case to answer in respect of gross misconduct, it shall, subject to regulation 9(3) and paragraph (2), refer the case to a misconduct hearing.

(5) Where the appropriate authority determines that there is a case to answer in respect of misconduct, it may—

- (a) subject to regulation 9(3) and paragraph (2), refer the case to misconduct proceedings; or
- (b) take management action against the officer concerned.

(6) Where the appropriate authority—

- (a) accepts a recommendation under paragraph 27(3) of Schedule 3 to the 2002 Act (duties with respect to disciplinary proceedings) that proceedings are brought at a misconduct meeting or a misconduct hearing; or
- (b) has a duty under paragraph 27(4) (duties with respect to disciplinary proceedings) of that Schedule to comply with a direction to give effect to such a recommendation,

it shall, subject to regulation 9(3), refer the case to such a meeting or hearing.

(7) Where the appropriate authority fails to—

- (a) make the determination referred to in paragraph (1); and
- (b) where appropriate, decide what action to take under paragraph (5),

before the end of 15 working days beginning with the first working day after receipt of the investigator's written report, it shall notify the officer concerned of the reason for this.

(8) Where under paragraph (5) the appropriate authority determines to take management action, it shall give the officer concerned written notice of this as soon as practicable.

(9) Where the appropriate authority determines under paragraph (5) to refer the case to misconduct proceedings—

- (a) where 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 paragraph 19B(2) or (3) of Schedule 3 to the 2002 Act (as the case may be), those proceedings shall be a misconduct hearing;
- (b) where the officer concerned has been reduced in rank under the Police (Conduct) Regulations 2004 less than 18 months prior to the assessment of conduct under regulation 12(1) of these Regulations or paragraph 19B(2) or (3) of Schedule 3 to the 2002 Act (as the case may be), those proceedings shall be a misconduct hearing; and
- (c) in all other cases those proceedings shall be a misconduct meeting.

#### **Withdrawal of case**

**20.**—(1) Subject to paragraph (3), at any time before the beginning of the misconduct proceedings, the appropriate authority may direct that the case be withdrawn.

(2) Where a direction is given under paragraph (1)—

- (a) the appropriate authority may—
  - (i) take no further action against the officer concerned;
  - (ii) take management action against the officer concerned; or
  - (iii) refer the matter to be dealt with under the Performance Regulations; and
- (b) the appropriate authority shall as soon as practicable give the officer concerned—
  - (i) written notice of the direction, indicating whether any action will be taken under paragraph (2)(a); and
  - (ii) where the investigation has been completed, on request and subject to the harm test, a copy of the investigator's report or such parts of that report as relate to the officer concerned.

(3) This regulation shall not apply to a case to which paragraph 16, 17, 18 or 19 of Schedule 3 to the 2002 Act applies.

#### **Notice of referral to misconduct proceedings and panel membership**

**21.**—(1) Where a case is referred to misconduct proceedings, the appropriate authority shall as soon as practicable give the officer concerned—

- (a) written notice of—
  - (i) the referral;
  - (ii) the conduct that is the subject matter of the case and how that conduct is alleged to amount to misconduct or gross misconduct as the case may be;
  - (iii) the name of the person appointed to (in the case of a misconduct meeting for an officer other than a senior officer) conduct or (in any other case) chair the misconduct proceedings and of the effect of paragraphs (3) to (6) of this regulation; and



- (iv) the effect of regulation 7(1) to (3) in relation to the form of misconduct proceedings to which the case is being referred;
  - (b) a copy of any statement he may have made to the investigator during the course of the investigation; and
  - (c) subject to the harm test, a copy of—
    - (i) the investigator’s report or such parts of that report as relate to him (together with any document attached to or referred to in that report which relates to him); and
    - (ii) any other relevant document gathered during the course of the investigation.
- (2) As soon as practicable after—
- (a) any person has been appointed under regulation 7(5) to advise the person or persons conducting the misconduct proceedings; and
  - (b) where the misconduct proceedings are to be conducted by a panel, the person or persons comprising that panel (other than the chair) have been determined,
- the appropriate authority shall give the officer concerned written notice of the names of such persons and of the effect of paragraphs (3) to (6) of this regulation.
- (3) The officer concerned may object to any person whom he is notified under the preceding provisions of this regulation is to—
- (a) conduct (including chair) his misconduct proceedings; or
  - (b) advise the person or persons conducting those proceedings.
- (4) Any such objection must be made in writing to the appropriate authority before the end of 3 working days beginning with the first working day after the officer concerned is given notice of the person’s name and must set out the grounds of objection of the officer concerned.
- (5) The appropriate authority shall notify the officer concerned in writing whether it upholds or rejects an objection to any panel member or to any person appointed under regulation 7(5) to advise the person or persons conducting the misconduct proceedings.
- (6) If the appropriate authority upholds the objection, the person to whom the officer concerned objects shall be replaced (in accordance with regulations 7(5) and (6) or 25 and 26 as appropriate).
- (7) As soon as reasonably practicable after any such appointment, the appropriate authority shall notify in writing the officer concerned of the name of the new panel member, or the adviser to the person or persons conducting the misconduct proceedings, as the case may be.
- (8) The officer concerned may object to the appointment of a person appointed under paragraph (6).
- (9) Any such objection must be made in accordance with paragraph (4), provided that it must be made before the end of 3 working days beginning with the first working day after receipt of the notification referred to in paragraph (7); and the appropriate authority shall comply with paragraphs (5) to (7) in relation to that objection, but paragraph (8) shall not apply.
- (10) In this regulation “relevant document” means a document which, in the opinion of the appropriate authority, is relevant to the case the officer concerned has to answer.

**Procedure on receipt of notice**

- 22.—(1) Before the end of—
- (a) 14 working days beginning with the first working day after the documents have been supplied to the officer concerned under regulation 21(1); or
  - (b) where that period is extended by the person conducting or chairing the misconduct proceedings for exceptional circumstances, such extended period,
- the officer concerned shall comply with paragraphs (2) and (3).
- (2) The officer concerned shall provide to the appropriate authority—
- (a) written notice of whether or not he accepts that his conduct amounts to misconduct or gross misconduct as the case may be;

- (b) where he accepts that his conduct amounts to misconduct or gross misconduct as the case may be, any written submission he wishes to make in mitigation; and
- (c) where he does not accept that his conduct amounts to misconduct or gross misconduct as the case may be, or he disputes part of the case against him, written notice of—
  - (i) the allegations he disputes and his account of the relevant events; and
  - (ii) any arguments on points of law he wishes to be considered by the person or persons conducting the misconduct proceedings.

(3) The officer concerned shall provide the appropriate authority with a copy of any document he intends to rely on at the misconduct proceedings.

(4) Before the end of 3 working days beginning with the first working day after the date on which the officer concerned has complied with paragraph (2), the appropriate authority and the officer concerned shall each supply to the other a list of proposed witnesses or give notice that they do not have any proposed witnesses; and any list of proposed witnesses shall include brief details of the evidence that each witness is able to adduce.

(5) Where there are proposed witnesses, the officer concerned shall, if reasonably practicable, agree a list of proposed witnesses with the appropriate authority.

### **Witnesses**

**23.—**(1) As soon as practicable after any list of proposed witnesses has been—

- (a) agreed under regulation 22(5); or
- (b) where there is no agreement under regulation 22(5), supplied under regulation 22(4),

the appropriate authority shall supply that list to the person conducting or chairing the misconduct proceedings.

(2) The person conducting or chairing the misconduct proceedings shall—

- (a) consider the list or lists of proposed witnesses; and
- (b) subject to paragraph (3), determine which, if any, witnesses should attend the misconduct proceedings.

(3) No witness shall give evidence at misconduct proceedings unless the person conducting or chairing those proceedings reasonably believes that it is necessary for the witness to do so in the interests of justice, in which case he shall—

- (a) where the witness is a police officer, cause that person to be ordered to attend the misconduct proceedings; and
- (b) in any other case, cause the witness to be given notice that his attendance is necessary and of the date, time and place of the proceedings.

### **Timing and notice of misconduct proceedings**

**24.—**(1) Subject to paragraphs (2) and (6), the misconduct proceedings shall take place—

- (a) in the case of a misconduct meeting, before the end of 20 working days; or
- (b) in the case of a misconduct hearing, before the end of 30 working days,

beginning with the first working day after the documents have been supplied to the officer concerned under regulation 21(1).

(2) The person conducting or chairing the misconduct proceedings may extend the period specified in paragraph (1) where he considers that it would be in the interests of justice to do so.

(3) Where the person conducting or chairing the misconduct proceedings decides to extend the period under paragraph (2), or decides not to do so following representations from the officer concerned or the appropriate authority, he shall provide written notification of his reasons for that decision to the appropriate authority and the officer concerned.

(4) The person conducting or chairing the misconduct proceedings shall, if reasonably practicable, agree a date and time for the misconduct proceedings with the officer concerned.

(5) Where no date and time is agreed under paragraph (4), the person conducting or chairing the misconduct proceedings shall specify a date and time for those proceedings.

(6) Where a date and time is specified under paragraph (5) and—

- (a) the officer concerned or his police friend will not be available at that time; and
- (b) the officer concerned proposes an alternative time which satisfies paragraph (7),

the misconduct proceedings shall be postponed to the time proposed by the officer concerned.

(7) An alternative time must—

- (a) be reasonable; and
- (b) fall before the end of 5 working days beginning with the first working day after the day specified by the person conducting or chairing the misconduct proceedings.

(8) The officer concerned shall be given written notice of the date, time and place of the misconduct proceedings.

(9) Where the Commission is entitled to attend the misconduct proceedings to make representations under regulation 29(1), or to nominate a person to attend the proceedings as an observer under regulation 31(2), the Commission shall be given written notice of the date, time and place of the proceedings.

#### **Persons conducting misconduct proceedings: officers other than senior officers**

**25.**—(1) This regulation applies where the officer concerned is an officer other than a senior officer.

(2) The misconduct meeting shall be conducted by a person appointed by the appropriate authority who is not an interested party and who satisfies paragraph (3).

(3) The person shall—

- (a) where—
  - (i) the officer concerned is a member of a police force, be another member of a police force of at least one rank higher than the officer concerned;
  - (ii) the officer concerned is a special constable, be a member of a police force of the rank of sergeant or above or a senior human resources professional; or
- (b) unless the case substantially involves operational policing matters, be a police staff member who, in the opinion of the appropriate authority, is more senior than the officer concerned.

(4) Where the case is referred to a misconduct hearing, that hearing shall be conducted by a panel of three persons appointed by the appropriate authority, comprising—

- (a) a senior officer or a senior human resources professional, who shall be the chair;
- (b) where—
  - (i) the chair is a senior officer, a member of a police force of the rank of superintendent or above or a human resources professional;
  - (ii) the chair is a senior human resources professional, a member of a police force of the rank of superintendent or above; and
- (c) a person selected by the appropriate authority from a list of candidates maintained by a local policing body for the purposes of these Regulations.

(5) For the purposes of this regulation, a “senior human resources professional” means a human resources professional who, in the opinion of the appropriate authority, has sufficient seniority, skills and experience to conduct the misconduct hearing or misconduct meeting as the case may be.

### **Persons conducting misconduct proceedings: senior officers**

26.—(1) Where the officer concerned is a senior officer, 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 local policing body for the purposes of these Regulations.

### **Documents to be supplied**

27.—(1) Prior to the misconduct proceedings the appropriate authority shall supply the person or persons conducting the misconduct proceedings with a copy of—

- (a) the documents given to the officer concerned under regulation 21(1);
- (b) the documents provided by the officer concerned under—
  - (i) regulation 22(2) and (3); and
  - (ii) where paragraph (2) applies, regulation 45; and
- (c) where the officer concerned does not accept that his conduct amounts to misconduct or gross misconduct as the case may be or where he disputes any part of the case against him, any other documents that, in the opinion of the appropriate authority, should be considered at the misconduct proceedings.

(2) This paragraph applies where the appropriate authority has directed, in accordance with regulation 42(1), that the case be dealt with under this Part.

(3) Prior to the misconduct proceedings the officer concerned shall be supplied with a list of the documents supplied under paragraph (1) and a copy of any such document of which he has not already been supplied with a copy.

### **Attendance of officer concerned at misconduct proceedings**

28.—(1) Subject to paragraph (2), the officer concerned shall attend the misconduct proceedings.

(2) Where the officer concerned informs the person conducting or chairing the misconduct proceedings in advance that he is unable to attend on grounds which the person conducting or chairing those proceedings considers reasonable, that person may allow the officer concerned to participate in the proceedings by video link or other means.

(3) Where the officer concerned is allowed to and does so participate in the misconduct proceedings or where the officer concerned does not attend the misconduct proceedings—

- (a) he may nonetheless be represented at those proceedings by his—
  - (i) police friend; or
  - (ii) in the case of a misconduct hearing, his relevant lawyer (in which case the police friend may also attend); and
- (b) the proceedings may be proceeded with and concluded in the absence of the officer concerned whether or not he is so represented.

(4) Where the officer concerned is represented in accordance with paragraph (3), the person representing the officer concerned or his police friend (if different), or both, may participate using the video link or other means where such means are also used by the officer concerned.

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

### **Participation of Commission and investigator at misconduct proceedings**

29.—(1) In any case where—

- (a) paragraph 18 or 19 of Schedule 3 to the 2002 Act (managed and independent investigations) applied; or
- (b) paragraph 16 or 17 of Schedule 3 to the 2002 Act (investigations by the appropriate authority or supervised investigations) applied and the Commission—
  - (i) made a recommendation under paragraph 27(3) of that Schedule (duties with respect to disciplinary proceedings) which the appropriate authority accepted; or
  - (ii) gave a direction under paragraph 27(4)(a) of that Schedule (duties with respect to disciplinary proceedings),

the Commission may attend the misconduct proceedings to make representations.

(2) Where the Commission so attends the misconduct proceedings—

- (a) if it is a misconduct hearing it may instruct a relevant lawyer to represent it;
- (b) it shall notify the complainant or any interested person prior to those proceedings; and
- (c) the person conducting or chairing the misconduct proceedings shall notify the officer concerned prior to the those proceedings.

(3) The investigator or a nominated person shall attend the misconduct proceedings on the request of the person conducting or chairing those proceedings to answer questions.

(4) For the purposes of this regulation, a “nominated person” is a person who, in the opinion of—

- (a) the appropriate authority; or
- (b) in a case to which paragraph 18 or 19 of Schedule 3 to the 2002 Act (managed and independent investigations) applied, the Commission,

has sufficient knowledge of the investigation of the case to be able to assist the person or persons conducting the misconduct proceedings.

(5) Where more than one allegation is considered in the same misconduct proceedings in accordance with regulation 5(2), this regulation applies to the whole of the proceedings and accordingly the Commission may make representations in respect of any allegation.

### **Attendance of complainant or interested person at misconduct proceedings**

30.—(1) This regulation shall apply in the case of misconduct proceedings arising from—

- (a) a conduct matter to which paragraph 16, 17, 18 or 19 of Schedule 3 to the 2002 Act (investigations) applied; or
- (b) the investigation of a complaint which was certified as subject to special requirements under paragraph 19B(1) of that Schedule (assessment of seriousness of conduct).

(2) The appropriate authority shall notify the complainant or any interested person of the date, time and place of the misconduct proceedings.

(3) Subject to the provisions of this regulation, regulation 32 and any conditions imposed under regulation 31(8), the complainant or any interested person may attend the misconduct proceedings as an observer.

(4) Subject to paragraph (5), regulation 32 and any conditions imposed under regulation 31(8), a complainant or interested person may be accompanied by one other person, and if the complainant or interested person has a special need, by one further person to accommodate that need.

(5) Where a complainant or interested person, or any person accompanying him, is to give evidence as a witness at the misconduct proceedings, he and any person allowed to accompany him shall not be allowed to attend the proceedings before he gives his evidence.

(6) Where the officer concerned objects to the complainant or interested person, or any person accompanying him, being present while a submission is made in mitigation on the officer’s behalf,

the person conducting or chairing the misconduct proceedings may require the complainant or interested person, or any person accompanying him, to withdraw while the submission is made.

(7) The person conducting or chairing the misconduct proceedings may, at his discretion, put any questions to the officer concerned that the complainant or interested person may request be put to him.

(8) For the purposes of this regulation, a person has a special need if, in the opinion of the person conducting or chairing the misconduct proceedings, he has a disability or learning difficulty, or does not have sufficient knowledge of English, to fully participate in or understand the misconduct proceedings.

### **Attendance of others at misconduct proceedings**

**31.**—(1) Subject to regulations 29 and 30 and the provisions of this regulation, the misconduct proceedings shall be in private.

(2) A person nominated by the Commission may, as an observer, attend misconduct proceedings which arise from a case to which—

- (a) paragraph 17, 18 or 19 of Schedule 3 to the 2002 Act (supervised, managed and independent investigations) applied; or
- (b) paragraph 16 of Schedule 3 to the 2002 Act (investigations by the appropriate authority) applied and in relation to which the Commission—
  - (i) made a recommendation under paragraph 27(3) of that Schedule (duties with respect to disciplinary proceedings) which the appropriate authority accepted; or
  - (ii) gave a direction under paragraph 27(4)(a) of that Schedule (duties with respect to disciplinary proceedings).

(3) Subject to any contrary decision by the person conducting or chairing the misconduct proceedings, a witness other than a complainant, interested person or the officer concerned, shall only attend the misconduct proceedings for the purpose of giving their evidence.

(4) The person conducting or chairing the misconduct proceedings may, at his discretion, permit a witness in the misconduct proceedings to be accompanied at those proceedings by one other person.

(5) Where a misconduct hearing arises from a case to which paragraph 19 of Schedule 3 to the 2002 Act (investigations by the Commission) applied and the Commission considers that because of the gravity of the case or other exceptional circumstances it would be in the public interest to do so, the Commission may, having consulted with—

- (a) the appropriate authority;
- (b) the officer concerned;
- (c) the complainant or interested person; and
- (d) any witnesses,

direct that the whole or part of the misconduct hearing be held in public.

(6) It shall be the duty of the persons conducting the misconduct hearing to comply with a direction given under paragraph (5).

(7) A direction under paragraph (5), together with the reasons for it, shall be notified as soon as practicable, and in any event before the end of 5 working days beginning with the first working day after the decision was taken, to the persons consulted under that paragraph.

(8) The person conducting or chairing the misconduct proceedings may impose such conditions as he sees fit relating to the attendance under regulation 30 or this regulation of persons at the misconduct proceedings (including circumstances in which they may be excluded) in order to facilitate the proper conduct of the proceedings.

### **Exclusion from misconduct proceedings**

32. Where it appears to the person conducting or chairing the misconduct proceedings that any person may, in giving evidence, disclose information which, under the harm test, ought not to be disclosed to any person attending the proceedings, he shall require such attendees to withdraw while the evidence is given.

### **Procedure at misconduct proceedings**

33.—(1) Subject to these Regulations, the person conducting or chairing the misconduct proceedings shall determine the procedure at those proceedings.

(2) The misconduct proceedings shall not proceed unless the officer concerned has been notified of the effect of regulation 7(1) to (3) in relation to the form of misconduct proceedings taking place.

(3) Subject to paragraph (4), the person conducting or chairing the misconduct proceedings may from time to time adjourn the proceedings if it appears to him to be necessary or expedient to do so.

(4) The misconduct proceedings shall not, except in exceptional circumstances, be adjourned solely to allow the complainant or any witness or interested person to attend.

(5) The person representing the officer concerned may—

(a) address the proceedings in order to do any or all of the following—

- (i) put the case of the officer concerned;
- (ii) sum up that case;
- (iii) respond on behalf of the officer concerned to any view expressed at the proceedings;
- (iv) make representations concerning any aspect of proceedings under these Regulations; and
- (v) subject to paragraph (8), ask questions of any witnesses; and

(b) confer with the officer concerned.

(6) Where (at a misconduct hearing) the person representing the officer concerned is a relevant lawyer, the police friend of the officer concerned may also confer with the officer concerned.

(7) The police friend or relevant lawyer of the officer concerned may not answer any questions asked of the officer concerned during the misconduct proceedings.

(8) Whether any question should or should not be put to a witness shall be determined by the person conducting or chairing the misconduct proceedings.

(9) The person conducting or chairing the misconduct proceedings may allow any document to be considered at those proceedings notwithstanding that a copy of it has not been supplied—

- (a) by the officer concerned to the appropriate authority in accordance with regulation 22(3); or
- (b) to the officer concerned in accordance with regulation 21(1).

(10) Where evidence is given or considered at the misconduct proceedings that the officer concerned—

- (a) on being questioned by an investigator at any time after he was given written notice under regulation 15(1) of these Regulations or paragraph 19B(6) of Schedule 3 to the 2002 Act; or
- (b) in submitting any information or by not submitting any information at all under paragraph 19C of Schedule 3 to the 2002 Act or regulation 16(1) or 22(2) or (3) (or, where paragraph (11) applies, regulation 45),

failed to mention any fact relied on in his case at the misconduct proceedings, 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 providing such information, paragraph (12) applies.

(11) This paragraph applies where the appropriate authority has directed, in accordance with regulation 42(1), that the case be dealt with under this Part.

(12) Where this paragraph applies, the person or persons conducting the misconduct proceedings may draw such inferences from the failure as appear proper.

(13) The person or persons conducting the misconduct proceedings shall review the facts of the case and decide whether the conduct of the officer concerned amounts—

- (a) in the case of a misconduct meeting, to misconduct or not; or
- (b) in the case of a misconduct hearing, to misconduct, gross misconduct or neither.

(14) The person or persons conducting the misconduct proceedings shall not find that the conduct of the officer concerned amounts to misconduct or gross misconduct unless—

- (a) he is or they are satisfied on the balance of probabilities that this is the case; or
- (b) the officer concerned admits it is the case.

(15) At misconduct proceedings conducted by a panel, any decision shall be based on a majority but shall not indicate whether it was taken unanimously or by a majority.

(16) Where the officer concerned is a senior officer, the persons conducting the misconduct proceedings shall, as soon as practicable after the meeting or 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 proceedings under paragraph (13);
- (b) the reasons for that finding;
- (c) if that 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.

(17) In any case in which the Commission was entitled to attend to make representations under regulation 29(1), the persons conducting the misconduct proceedings shall send a copy of any report under paragraph (16) to the Commission.

### **Senior officers: further meeting or hearing**

**34.—**(1) On receiving a report under regulation 33(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;
- (b) regulation 7;
- (c) regulation 8;
- (d) regulation 9;
- (e) regulation 22(4) and (5);
- (f) regulation 23;
- (g) regulation 24;
- (h) regulation 28;



- (i) regulation 29;
  - (j) regulation 30;
  - (k) regulation 31;
  - (l) regulation 32;
  - (m) regulation 33(1) to (12); and
  - (n) regulation 37.
- (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 33(16); and
  - (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 33(16);
    - (ii) the references in paragraph (3) to the appropriate authority are omitted.

### **Outcome of misconduct proceedings**

**35.**—(1) Subject to the provisions of this regulation, the person or persons conducting misconduct proceedings in the case of an officer other than a senior officer may—

- (a) impose any of the disciplinary action in paragraph (3)(a) or (b) or (7)(b) as appropriate; or
- (b) where he or they find the conduct amounts to misconduct but not gross misconduct following a misconduct meeting or hearing, record a finding of misconduct but take no further action.

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

- (a) impose any of the disciplinary action in paragraph (3)(a) or (b) or (7)(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.

(3) The disciplinary action is—

- (a) at a misconduct meeting or a further meeting held under regulation 34(1)(a)—
  - (i) management advice;
  - (ii) written warning; or
  - (iii) final written warning;
- (b) at a misconduct hearing or a further hearing held under regulation 34(1)(b)—
  - (i) management advice;
  - (ii) written warning;
  - (iii) final written warning;
  - (iv) dismissal with notice; or
  - (v) dismissal without notice.

(4) The disciplinary action referred to in paragraph (3) shall have effect from the date on which it is notified to the officer concerned and in the case of dismissal with notice, the person or persons imposing the disciplinary action shall decide the period of notice to be given, subject to a minimum period of 28 days.

(5) Where there is a finding that the conduct of the officer concerned amounts to misconduct but not gross misconduct, the officer may not be dismissed (whether with or without notice) unless a

final written warning was in force on the date of the assessment of the conduct under regulation 12(1) or under paragraph 19B(2) or (3) of Schedule 3 to the 2002 Act.

(6) Where, on the date of the assessment of the conduct under regulation 12(1) or under paragraph 19B(2) or (3) of Schedule 3 to the 2002 Act, the officer concerned had a written warning in force, a written warning shall not be given.

(7) Where, on the date of the assessment of the conduct under regulation 12(1) or under paragraph 19B(2) or (3) of Schedule 3 to the 2002 Act, the officer concerned had a final written warning in force—

- (a) neither a written warning nor a final written warning shall be given; but
- (b) subject to paragraph (9), in exceptional circumstances, the final written warning may be extended.

(8) Where a final written warning is extended under paragraph (7)(b), that warning shall remain in force for a period of 18 months from the date on which it would otherwise expire.

(9) A final written warning may be extended on one occasion only.

(10) Where there is a finding of gross misconduct and the person or persons considering the question of disciplinary action decide that the officer concerned shall be dismissed, the dismissal shall be without notice.

(11) Where the question of disciplinary action is being considered, the person or persons considering it—

- (a) shall have regard to the record of police service of the officer concerned as shown on his personal record;
- (b) may receive evidence from any witness whose evidence would, in his or their opinion, assist him or them in determining the question; and
- (c) shall give—
  - (i) the officer concerned, his police friend or, at a misconduct hearing, his relevant lawyer; and
  - (ii) in the case of an officer other than a senior officer, the appropriate authority or person appointed to represent the appropriate authority in accordance with regulation 7(4);

an opportunity to make oral or written representations before any such question is determined.

### **Notification of outcome**

**36.—**(1) The officer concerned shall be informed of—

- (a) the finding of the person or persons conducting the misconduct proceedings; and
- (b) in a case other than one to which regulation 34 (senior officers: further meeting or hearing) applies, any disciplinary action imposed,

as soon as practicable and in any event shall be provided with written notice of the relevant matter or matters and the reasons before the end of 5 working days beginning with the first working day after the conclusion of the misconduct proceedings.

(2) In a case to which regulation 34 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 34.

(3) Where there was a finding of misconduct or gross misconduct a written notice under this regulation shall include—

- (a) where the officer concerned is an officer other than a senior officer—

- (i) if the case was decided at a misconduct meeting, notice of his right of appeal under regulation 38; or
  - (ii) if the case was decided at a misconduct hearing, notice of his right of appeal to a police appeals tribunal;
  - (b) where the officer concerned is a senior officer, notice of his right of appeal to a police appeals tribunal.
- (4) In all cases referred to in paragraph (3) a written notice under this regulation shall include the name of the person to whom an appeal should be sent.
- (5) The appropriate authority shall send a copy of any written notice under this regulation to—
- (a) the Commission, in any case in which the Commission was entitled to attend to make representations under regulation 29(1); and
  - (b) to the complainant and any interested person, in any case to which regulation 30 applies.

### **Record of misconduct proceedings**

37.—(1) A record of the misconduct proceedings shall be taken and in the case of a misconduct hearing that record shall be verbatim.

(2) The officer concerned shall, on request, be supplied with a copy of the record of the proceedings at the misconduct proceedings.

### **Appeal from misconduct meeting: officers other than senior officers**

38.—(1) Where the officer concerned is an officer, other than a senior officer, whose case was decided at a misconduct meeting, he may, subject to the provisions of this regulation, appeal—

- (a) if he admitted his conduct amounted to misconduct, against any disciplinary action imposed under regulation 35; or
- (b) if (after he denied misconduct) the person conducting the misconduct meeting found that his conduct amounted to misconduct, against that finding or any disciplinary action imposed under regulation 35.

(2) The only grounds of appeal under this regulation are that—

- (a) the finding or disciplinary action imposed was unreasonable;
- (b) there is evidence that could not reasonably have been considered at the misconduct meeting which could have materially affected the finding or decision on disciplinary action; or
- (c) there was a serious breach of the procedures set out in these Regulations or other unfairness which could have materially affected the finding or decision on disciplinary action.

(3) An appeal under this regulation shall be commenced by the officer concerned giving written notice of appeal to the appropriate authority—

- (a) before the end of 7 working days beginning with the first working day after the written notice and summary of reasons is given under regulation 36 (unless this period is extended by the appropriate authority for exceptional circumstances); and
- (b) stating the grounds of appeal and whether a meeting is requested.

(4) An appeal under this regulation shall be determined—

- (a) where the person who conducted the misconduct meeting was a member of a police force, by—
  - (i) a member of a police force of at least one rank higher than that person; or
  - (ii) unless the case substantially involves operational policing matters, a police staff member who, in the opinion of the appropriate authority, is more senior than that person;

- (b) where the person who conducted the misconduct meeting was a police staff member, by—
  - (i) a member of a police force who, in the opinion of the appropriate authority is more senior than that person; or
  - (ii) a more senior police staff member,

who is not an interested party, appointed by the appropriate authority.

(5) The appropriate authority shall as soon as practicable give the officer concerned written notice of—

- (a) the name of the person appointed to determine the appeal under paragraph (4);
- (b) the name of any person appointed under regulation 7(5) to advise the person determining the appeal; and
- (c) the effect of paragraphs (6) to (9) of this regulation.

(6) The officer concerned may object to any person whom he is notified under this regulation is to—

- (a) determine the appeal; or
- (b) advise the person determining the appeal.

(7) Any such objection must be made in writing to the appropriate authority before the end of 3 working days beginning with the first working day after the officer concerned is given notice of the person's name and must set out the grounds of objection of the officer concerned.

(8) The appropriate authority shall notify the officer concerned in writing whether it upholds or rejects an objection to the person appointed to conduct the appeal meeting or to any person appointed under regulation 7(5) to advise the person conducting the appeal meeting.

(9) If the appropriate authority upholds the objection, the person to whom the officer concerned objects shall be replaced (in accordance with regulation 7(5) or (6) or paragraph (4) as appropriate).

(10) As soon as reasonably practicable after any such appointment, the appropriate authority shall notify in writing the officer concerned of the name of the new person appointed to determine the appeal or the advisor to the person determining the appeal as the case may be.

(11) The officer concerned may object to the appointment of a person appointed under paragraph (9).

(12) Any such objection must be made in accordance with paragraph (7), provided that it must be made before the end of 3 working days beginning with the first working day after the officer concerned is given the notice referred to in paragraph (10); and the appropriate authority shall comply with paragraphs (8) to (10) in relation to that objection, but paragraph (11) shall not apply.

### **Appeal meeting**

**39.—**(1) This regulation applies where the officer concerned requests a meeting in his written notice of appeal under regulation 38(3).

(2) The person determining the appeal shall determine whether the notice of appeal sets out arguable grounds of appeal and—

- (a) if he determines that it does he shall hold an appeal meeting with the officer concerned, subject to paragraphs (3) and (5), before the end of 5 working days beginning with the first working day after that determination; and
- (b) if he determines that it does not, he shall dismiss the appeal.

(3) The person determining the appeal may extend the time period specified in paragraph (2)(a) where he considers that it would be in the interests of justice to do so.

(4) The person determining the appeal shall specify a date and time for the appeal meeting.

(5) Where—

- (a) the officer concerned or his police friend will not be available at that time; and

- (b) the officer concerned proposes an alternative time which satisfies paragraph (6), the appeal meeting shall be postponed to the time proposed by the officer concerned.
- (6) An alternative time must—
  - (a) be reasonable; and
  - (b) fall before the end of 5 working days beginning with the first working day after the day specified by the person determining the appeal.
- (7) Written notice of the date, time and place of the appeal meeting shall be given to—
  - (a) the officer concerned;
  - (b) where the Commission was entitled to attend the misconduct meeting to make representations under regulation 29(1), or to nominate a person to attend the meeting as an observer under regulation 31(2), the Commission;
  - (c) where the misconduct meeting arose from a complaint which was certified as subject to special requirements under paragraph 19B(1) of Schedule 3 to the 2002 Act (assessment of seriousness of conduct), the complainant; and
  - (d) where the misconduct meeting arose from a conduct matter to which paragraph 16, 17, 18 or 19 of Schedule 3 to the 2002 Act (investigations) applied, any interested person.
- (8) Prior to the appeal meeting the appropriate authority shall supply the person determining the appeal with a copy of—
  - (a) the documents given to the person who held the misconduct meeting as specified in regulation 27(1);
  - (b) the notice of appeal given by the officer concerned under regulation 38(3);
  - (c) the record of the misconduct meeting taken under regulation 37(1); and
  - (d) any evidence of a kind referred to in regulation 38(2)(b) that the officer concerned wishes to submit in support of his appeal.

### **Procedure and finding of the appeal**

**40.**—(1) Subject to the provisions of this regulation, the person determining the appeal shall determine the procedure at the appeal meeting.

(2) Subject to the provisions of this regulation, any interested person or complainant entitled to be given notice of the appeal meeting under regulation 39(7) may attend the appeal meeting as an observer.

(3) Where the officer concerned objects to the complainant or interested person being present while a submission is made in mitigation on the officer's behalf, the person determining the appeal may require the complainant or interested person to withdraw while the submission is made.

(4) The person determining the appeal may impose such conditions as he sees fit relating to the attendance of persons under paragraph (2) at the appeal meeting (including circumstances in which they may be excluded) in order to facilitate the proper conduct of the appeal meeting.

(5) The person determining the appeal may—

- (a) confirm or reverse the decision appealed against;
- (b) deal with the officer concerned in any manner in which the person conducting the misconduct meeting could have dealt with him under regulation 35.

(6) Before the end of 3 working days beginning with the first working day after the determination of the appeal, the officer concerned shall be given written notice of that determination with a summary of the reasons.

(7) The decision of the person determining the appeal shall take effect by way of substitution for the decision of the person conducting the misconduct meeting and as from the date of the written notice of the outcome of that meeting.

(8) In a case where—

- (a) paragraph 18 or 19 of Schedule 3 to the 2002 Act applied (managed and independent investigations); or
- (b) paragraph 16 or 17 of Schedule 3 to the 2002 Act (investigation by appropriate authority and supervised investigations) applied and the Commission—
  - (i) made a recommendation under paragraph 27(3) of that Schedule (duties with respect to disciplinary proceedings) which the appropriate authority accepted; or
  - (ii) gave a direction to the appropriate authority under paragraph 27(4) of that Schedule (duties with respect to disciplinary proceedings),

the appropriate authority shall give the Commission written notice of the determination of the appeal with a summary of the reasons.

## PART 5

### Fast Track Procedure for Special Cases

#### **Referral of case to special case hearing**

**41.**—(1) On receipt of a statement submitted by the investigator under regulation 18(3), the appropriate authority shall determine whether the special conditions are satisfied.

(2) In a case where special case proceedings have been delayed by virtue of regulation 9(3), as soon as practicable after the appropriate authority considers that such proceedings would no longer prejudice any criminal proceedings, it shall make a further determination as to whether the special conditions are satisfied.

(3) In a case where disciplinary proceedings have been delayed by virtue of regulation 9(3), the appropriate authority may, as soon as practicable after it considers that such proceedings would no longer prejudice any criminal proceedings, determine whether the special conditions are satisfied.

(4) Where the appropriate authority determines that the special conditions are satisfied, unless it considers that the circumstances are such as to make it inappropriate to do so, it shall certify the case as a special case and, subject to regulation 9(3) and paragraph (2), refer it to a special case hearing.

(5) Where the appropriate authority determines—

- (a) that the special conditions are not satisfied; or
- (b) that, although those conditions are satisfied, the circumstances are such as to make such certification inappropriate,

it shall, if the investigation was incomplete, return the case to the investigator to complete the investigation or, in any other case, proceed in accordance with Part 4.

(6) Where the appropriate authority is to proceed in accordance with Part 4, regulation 19(1) shall be read as if the following are omitted—

- (a) the words “regulation 41 and”; and
- (b) sub-paragraphs (a) and (b).

#### **Remission of case**

**42.**—(1) Subject to paragraph (4), at any time after the case has been referred to a special case hearing but before the beginning of that hearing the appropriate authority may direct that the case be dealt with under Part 4 if it considers that the special conditions are no longer satisfied.

(2) Where a direction is made under paragraph (1) the officer concerned shall be notified before the end of 3 working days beginning with the first working day after that direction is made and the appropriate authority shall proceed in accordance with Part 4.

(3) Where the appropriate authority is to proceed in accordance with Part 4, regulation 19(1) shall be read as if the following are omitted—

- (a) the words “regulation 41 and”; and
- (b) sub-paragraphs (a) and (b).

(4) Paragraph (1) shall not apply to a case where the Commission has given a direction under paragraph 20H(7) of Schedule 3 to the 2002 Act (special cases: recommendation or direction of Commission).

#### **Notice of referral to special case hearing**

**43.**—(1) Where a case is certified as a special case and referred to a special case hearing, the appropriate authority shall as soon as practicable give the officer concerned written notice of these matters and shall supply him with a copy of—

- (a) the certificate issued under regulation 41(4);
- (b) any statement he may have made to the investigator during the course of the investigation; and
- (c) subject to the harm test—
  - (i) the investigator’s report or such parts of that report as relate to him (together with any document attached to or referred to in that report as relates to him); and
  - (ii) any other relevant document gathered during the course of the investigation.

(2) The notice given under paragraph (1) shall describe the conduct that is the subject matter of the case and how that conduct is alleged to amount to gross misconduct.

(3) For the purposes of this regulation “relevant document” means a document which, in the opinion of the appropriate authority, is relevant to the case of the officer concerned.

#### **Notice of special case hearing**

**44.**—(1) The appropriate authority shall specify a date for the special case hearing which shall be not less than 10 and not more than 15 working days after the date on which notice is given under regulation 43(1) and shall immediately notify the officer concerned of—

- (a) the date, time and place of that hearing; and
- (b) the effect of regulation 7(1) to (3) in relation to a special case hearing.

(2) Where the Commission is entitled to attend the special case hearing to make representations under regulation 50(1), or to nominate a person to attend the hearing as an observer under regulation 52(2), the appropriate authority shall notify the Commission of the date, time and place of the hearing.

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

**45.**—(1) Before the end of 7 working days beginning with the first working day after the written notice given to the officer concerned under regulation 43(1), the officer concerned shall provide to the appropriate authority—

- (a) written notice of whether or not he accepts that his conduct amounts to gross misconduct;
- (b) where he accepts that his conduct amounts to gross misconduct, any written submission he wishes to make in mitigation;
- (c) where he does not accept that his conduct amounts to gross misconduct, written notice of—
  - (i) the allegations he disputes and his account of the relevant events; and
  - (ii) any arguments on points of law he wishes to be considered by the person or persons conducting the special case hearing.

(2) Within the same time period, the officer concerned shall provide the appropriate authority with a copy of any document he intends to rely on at the hearing.

### **Person conducting special case hearing: officers other than senior officers**

46.—(1) This regulation applies where the officer concerned is an officer other than a senior officer.

(2) The special case hearing shall be conducted by—

- (a) where the police force concerned is the metropolitan police force, an assistant commissioner; or
- (b) in any other case, subject to paragraph (3), the chief officer of police of the police force concerned.

(3) Where the chief officer of police of the police force concerned is an interested party or is unavailable, the special case hearing shall be conducted by the chief officer of police of another police force or an assistant commissioner of the metropolitan police force.

### **Persons conducting special case hearing: senior officers**

47.—(1) Where the officer concerned is a senior officer, 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 local policing body for the purposes of these Regulations.

### **Documents to be supplied**

48.—(1) Prior to the hearing the appropriate authority shall supply the person or persons conducting the special case hearing with a copy of—

- (a) the notice given to the officer concerned under regulation 43(1);
- (b) the other documents given to the officer concerned under regulation 43(1);
- (c) the documents provided by the officer concerned under—
  - (i) regulation 45; and
  - (ii) where paragraph (2) applies, regulation 22(2) and (3);
- (d) where the officer concerned does not accept that his conduct amounts to gross misconduct, any other documents that, in the opinion of the appropriate authority, should be considered at the hearing.

(2) This paragraph applies where the case was certified as a special case following a determination made under regulation 41(3).

(3) Prior to the hearing the officer concerned shall be supplied with a list of the documents supplied under paragraph (1) and a copy of any of such document of which he has not already been supplied with a copy.

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

49.—(1) Subject to paragraph (2), the officer concerned shall attend the special case hearing.

(2) Where the officer concerned informs the person conducting or chairing the special case hearing in advance that he is unable to attend on grounds which the person conducting or chairing the hearing considers reasonable, that person may allow the officer concerned to participate in the hearing by video link or other means.

(3) Where the officer concerned is allowed to and does so participate in the special case hearing, or where the officer concerned does not attend the special case hearing—



- (a) he may nonetheless be represented at that hearing by his—
  - (i) police friend; or
  - (ii) relevant lawyer (in which case the police friend may also attend); and
- (b) the hearing may be proceeded with and concluded in the absence of the officer concerned whether or not he is so represented.

(4) Where the officer concerned is represented in accordance with paragraph (3), the person representing the officer concerned or his police friend (if different), or both, may participate using the video link or other means where such means are also used by the officer concerned.

**Participation of Commission and investigator at special case hearing**

**50.**—(1) In any case where—

- (a) paragraph 18 or 19 of Schedule 3 to the 2002 Act (managed and independent investigations) applied; or
- (b) paragraph 16 or 17 of Schedule 3 to the 2002 Act (investigations by the appropriate authority and supervised investigations) applied and the Commission—
  - (i) made a recommendation under paragraph 20H(1) of that Schedule (special cases: recommendation or direction of Commission) which the appropriate authority accepted; or
  - (ii) gave a direction under paragraph 20H(7) of that Schedule (special cases: recommendation or direction of Commission),

the Commission may attend the special case hearing to make representations.

(2) Where the Commission intends to attend the special case hearing—

- (a) it may instruct a relevant lawyer to represent it;
- (b) it shall notify the complainant or any interested person prior to the hearing; and
- (c) the person conducting or chairing the special case hearing shall notify the officer concerned prior to the hearing.

(3) The investigator or a nominated person shall attend the special case hearing on the request of the person conducting or chairing the hearing to answer questions.

(4) For the purposes of this regulation, a “nominated person” is a person who, in the opinion of—

- (a) the appropriate authority; or
- (b) in a case to which paragraph 18 or 19 of Schedule 3 to the 2002 Act (managed and independent investigations) applied, the Commission,

has sufficient knowledge of the investigation of the case to be able to assist the person or persons conducting the special case hearing.

**Attendance of complainant and interested persons at special case hearing**

**51.**—(1) This regulation shall apply in the case of a special case hearing arising from a—

- (a) conduct matter to which paragraph 16, 17, 18 or 19 of Schedule 3 to the 2002 Act (investigations) applied; or
- (b) complaint which was certified as subject to special requirements under paragraph 19B(1) of that Schedule (assessment of seriousness of conduct).

(2) The appropriate authority shall notify the complainant or any interested person of the date, time and place of the special case hearing.

(3) Subject to the provisions of this regulation and any conditions imposed under regulation 52(3), the complainant or any interested person may—

- (a) attend the special case hearing as an observer; and

(b) be accompanied by one other person, and if the complainant or interested person has a special need, by one further person to accommodate that need.

(4) Where the officer concerned objects to the complainant or interested person, or any person accompanying him, being present while a submission is made in mitigation on the officer's behalf, the person conducting or chairing the special case hearing may require the complainant or interested person, or any person accompanying him, to withdraw while the submission is made.

(5) For the purposes of this regulation, a person has a special need if, in the opinion of the person conducting or chairing the special case hearing, he has a disability or learning difficulty, or does not have sufficient knowledge of English, to participate in or understand the special case hearing.

#### **Attendance of others at special case hearing**

**52.**—(1) Subject to regulations 50 and 51 and this regulation, the special case hearing shall be in private.

(2) A person nominated by the Commission may attend a special case hearing which arises from a case to which—

- (a) paragraph 17, 18 or 19 of Schedule 3 to the 2002 Act (supervised, managed and independent investigations) applied; or
- (b) paragraph 16 of Schedule 3 to the 2002 Act (investigations by the appropriate authority) applied and in relation to which the Commission—
  - (i) made a recommendation under paragraph 20H(1) of that Schedule (special cases: recommendation or direction of Commission) which the appropriate authority accepted; or
  - (ii) gave a direction under paragraph 20H(7) of that Schedule (special cases: recommendation or direction of Commission).

(3) The person conducting or chairing the special case hearing may impose such conditions as he sees fit relating to the attendance of persons under regulation 51 or this regulation at the special case hearing (including circumstances in which they may be excluded) in order to facilitate the proper conduct of the hearing.

#### **Procedure at special case hearing**

**53.**—(1) Subject to these Regulations, the person conducting or chairing the special case hearing shall determine the procedure.

(2) The special case hearing shall not proceed unless the officer concerned has been notified of the effect of regulation 7(1) to (3) in relation to a special case hearing.

(3) Subject to paragraph (4), the person conducting or chairing the special case hearing may from time to time adjourn the hearing if it appears to him to be necessary or expedient to do so.

(4) The special case hearing shall not, except in exceptional circumstances, be adjourned solely to allow the complainant or any interested person to attend.

(5) No witnesses other than the officer concerned shall give evidence at the special case hearing.

(6) The person representing the officer concerned may—

- (a) address the hearing in order to do any or all of the following—
  - (i) put the case of the officer concerned;
  - (ii) sum up that case;
  - (iii) respond on behalf of the officer concerned to any view expressed at the proceedings; and
  - (iv) make representations concerning any aspect of proceedings under these Regulations; and

(b) if the officer concerned is present at the proceedings or is participating in them by video link or other means in accordance with regulation 49(2), confer with the officer concerned.

(7) Where the person representing the officer concerned is a relevant lawyer, the police friend of the officer concerned may also confer with the officer concerned in the circumstances mentioned at paragraph (6)(b).

(8) The police friend or relevant lawyer of the officer concerned may not answer any questions asked of the officer concerned during the special case hearing.

(9) The person conducting or chairing the special case hearing may allow any document to be considered at the hearing notwithstanding that a copy of it has not been supplied—

(a) by the officer concerned to the appropriate authority in accordance with regulation 45(2); or

(b) to the officer concerned in accordance with regulation 43(1).

(10) Where evidence is given or considered at the special case hearing that the officer concerned—

(a) on being questioned by an investigator, at any time after he was given written notice under regulation 15(1) of these Regulations or paragraph 19B(6) of the 2002 Act; or

(b) in submitting any information or by not submitting any information at all under regulation 45 (or, where paragraph (12) applies, paragraph 19C of Schedule 3 to the 2002 Act or regulation 16(1) or 22(2) or (3)),

failed to mention any fact relied on in his case at the special case 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 providing such information, paragraph (11) applies.

(11) Where this paragraph applies, the person or persons conducting the special case hearing may draw such inferences from the failure as appear proper.

(12) This paragraph applies where the case was certified as a special case following a determination made under regulation 41(3).

(13) The person or persons conducting the special case hearing shall review the facts of the case and decide whether or not the conduct of the officer concerned amounts to gross misconduct.

(14) The person or persons conducting the special case hearing shall not find that the conduct of the officer concerned amounts to gross misconduct unless—

(a) he is or they are satisfied on the balance of probabilities that this is the case; or

(b) the officer concerned admits it is the case.

(15) At a special case hearing conducted by a panel, any decision shall be based on a majority (with the chair having the casting vote if necessary), but shall not indicate whether it was taken unanimously or by a majority.

(16) Where the officer concerned is a senior officer, the persons conducting the special case hearing shall, as soon as practicable 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.

(17) In any case in which the Commission was entitled to attend to make representations under regulation 50(1), the persons conducting the special case hearing shall send a copy of any report under paragraph 16 to the Commission.

### **Senior officers: further hearing**

**54.**—(1) On receiving a report under regulation 53(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;
- (b) regulation 7;
- (c) regulation 8;
- (d) regulation 9;
- (e) regulation 44;
- (f) regulation 49;
- (g) regulation 50;
- (h) regulation 51;
- (i) regulation 52;
- (j) regulation 53(1) to (12); and
- (k) regulation 57.

(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; and
- (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 53(16).

### **Outcome of special case hearing**

**55.**—(1) Where the person or persons conducting the special case hearing in the case of an officer other than a senior officer find that the conduct of the officer concerned amounts to gross misconduct, he or they shall impose disciplinary action, which may be—

- (a) subject to paragraphs (3) and (4), a final written warning;
- (b) extension of a final written warning in accordance with paragraph (3); or
- (c) dismissal without notice.

(2) On receiving a report under regulation 53(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 (3) and (4), a final written warning; .
- (b) extension of a final written warning in accordance with paragraph (3); or
- (c) dismissal without notice.

(3) Where, on the date of the assessment of the conduct under regulation 12(1) of these Regulations or under paragraph 19B(2) or (3) of Schedule 3 to the 2002 Act, the officer concerned had a final written warning in force—

- (a) a final written warning shall not be given; but
- (b) subject to paragraph (5), in exceptional circumstances, the final written warning may be extended.

(4) Where a final written warning is extended under paragraph (3), that warning shall remain in force for a period of 18 months from the date on which it would otherwise expire.

(5) A final written warning may be extended on one occasion only.

(6) Where the person or persons conducting the special case hearing in the case of an officer other than a senior officer find that the conduct of the officer concerned does not amount to gross misconduct, he or they may—

- (a) dismiss the case; or
- (b) return the case to the appropriate authority to deal with 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) or paragraph 19B(2) or (3) of the 2002 Act, at a misconduct hearing.

(7) On receiving a report under regulation 53(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) or paragraph 19B(2) or (3) of Schedule 3 to the 2002 Act, at a misconduct hearing.

(8) Where the case is returned to the appropriate authority under paragraph (6)(b) or dealt with by the appropriate authority under paragraph (7)(b), the appropriate authority shall proceed in accordance with Part 4, subject to regulation 19(1) being read as if the following are omitted—

- (a) the words “regulation 41 and”; and
- (b) sub-paragraphs (a) and (b).

(9) Except in the case of extending a final written warning, the disciplinary action shall have effect from the date on which it is notified to the officer concerned.

(10) Where the question of disciplinary action is being considered, the person or persons considering it—

- (a) shall have regard to the record of police service of the officer concerned as shown on his personal record;
- (b) may consider such documentary evidence as would, in his or their opinion, assist him or them in determining the question; and
- (c) shall give—
  - (i) the officer concerned; and
  - (ii) his police friend or his relevant lawyer, an opportunity to make oral or written representations.

### **Notification of outcome**

**56.—**(1) The officer concerned shall be informed of—

- (a) the finding of the person or persons conducting the special case hearing; and
- (b) in a case other than one to which regulation 54 (senior officers: further hearing) applies, any disciplinary action imposed under regulation 55(1) or any action taken under regulation 55(6) as the case may be,

as soon as practicable and in any event shall be provided with written notice of the relevant matters and the reasons before the end of 5 working days beginning with the first working day after the conclusion of the special case hearing.

(2) In a case to which regulation 54 applies, the officer concerned shall be informed of any disciplinary action imposed under regulation 55(2) or any action taken under regulation 55(7), 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 54.

(3) A written notice under this regulation shall include notice of the right of the officer concerned to an appeal hearing.

(4) The appropriate authority shall send a copy of any written notice under this regulation to—

- (a) the Commission, in any case in which the Commission was entitled to attend the special case hearing to make representations under regulation 50(1); and
- (b) to the complainant and any interested person, in any case to which regulation 51 applies.

#### **Record of special case hearing**

57.—(1) A verbatim record of the proceedings at the special case hearing shall be taken.

(2) The officer concerned shall, on request, be supplied with a copy of the record of the proceedings at the special case hearing.

## **PART 6**

### **Record Keeping**

#### **Record of disciplinary proceedings**

58.—(1) Subject to paragraph (2), the chief officer of police of the police force concerned shall cause a record to be kept of disciplinary proceedings and special case proceedings brought against every officer concerned, together with the finding and decision on disciplinary action and the decision in any appeal by the officer concerned.

(2) Where the officer concerned is a chief officer of police or an acting chief officer, the local policing body of the police force concerned shall cause such a record to be kept.

Home Office  
18th October 2012

*Damian Green*  
Minister of State

## **SCHEDULE 1**

Regulation 2

### **TRANSITIONAL MODIFICATIONS TO OLD REGULATIONS**

#### **PART 1**

##### **The Police (Conduct) Regulations 2008**

1. Subject to paragraph 2, the modifications to the Police (Conduct) Regulations 2008 (“the 2008 Regulations”) in this Part have effect in every case to which those Regulations continue to apply.

2. The modifications in paragraphs 5 and 6 do not have effect in a case in which any person was appointed before 22nd November 2012 to conduct misconduct proceedings under regulation 26, 26A or 27, or to conduct a special case hearing under regulation 47, 47A or 48, and the proceedings or hearing have not been completed by that date.

3. In regulation 3(1)—

- (a) after the definition of “the Performance Regulations”, insert the definition of “acting chief officer” which appears in regulation 3(1) of these Regulations;

- (b) for the definition of “appropriate authority” and “police staff member” substitute the definitions which appear in regulation 3(1) of these Regulations.
- 4. In regulation 25(4)(c), for “police authority or the Mayor’s Office for Policing and Crime” substitute “local policing body”.
- 5. Omit regulations 26, 27, 47 and 48.
- 6. In regulations 26A, 34, 34A, 35, 36, 47A, 54, 54A, 55 and 56 omit the words “of the Metropolitan Police Force” wherever they appear.
- 7. In regulation 26A(2)(c), for “police authority or the Mayor’s Office for Policing and Crime” substitute “local policing body”.
- 8. In regulation 47A(2)(c), for “police authority or the Mayor’s Office for Policing and Crime” substitute “local policing body”.
- 9. In regulation 58(2), for “the police authority of the police force concerned or, in the case of the Commissioner of Police of the Metropolis, the Mayor’s Office for Policing and Crime” substitute “the local policing body for the police force concerned”.

## PART 2

### The Police (Conduct) Regulations 2004

- 10.—(1) The following modifications to the Police (Conduct) Regulations 2004 have effect in every case where those Regulations continue to apply.
  - 11. In regulation 3(1)—
    - (a) before the definition of “appropriate authority” insert the definition of “acting chief officer” which appears in regulation 3(1) of these Regulations;
    - (b) for the definition of “appropriate authority” substitute the definition which appears in regulation 3(1) of these Regulations.
  - 12. In regulation 5—
    - (a) in paragraph (1)(a), for “police authority or, in the case of the Commissioner of Police of the Metropolis, the Mayor’s Office for Policing and Crime” substitute “local policing body”;
    - (b) in paragraph (2), for “police authority, Mayor’s Office for Policing and Crime” substitute “local policing body”.
  - 13. In regulation 19(5), for “by the police authority for the force concerned or by the Mayor’s Office for Policing and Crime from a list of candidates maintained by that authority or Office” substitute “by the local policing body for the force concerned from a list of candidates maintained by that body”.

## SCHEDULE 2

Regulation 3

### STANDARDS OF PROFESSIONAL BEHAVIOUR

#### **Honesty and Integrity**

Police officers are honest, act with integrity and do not compromise or abuse their position.

### **Authority, Respect and Courtesy**

Police officers act with self-control and tolerance, treating members of the public and colleagues with respect and courtesy.

Police officers do not abuse their powers or authority and respect the rights of all individuals.

### **Equality and Diversity**

Police officers act with fairness and impartiality. They do not discriminate unlawfully or unfairly.

### **Use of Force**

Police officers only use force to the extent that it is necessary, proportionate and reasonable in all the circumstances.

### **Orders and Instructions**

Police officers only give and carry out lawful orders and instructions.

Police officers abide by police regulations, force policies and lawful orders.

### **Duties and Responsibilities**

Police officers are diligent in the exercise of their duties and responsibilities.

### **Confidentiality**

Police officers treat information with respect and access or disclose it only in the proper course of police duties.

### **Fitness for Duty**

Police officers when on duty or presenting themselves for duty are fit to carry out their responsibilities.

### **Discreditable Conduct**

Police officers behave in a manner which does not discredit the police service or undermine public confidence in it, whether on or off duty.

Police officers report any action taken against them for a criminal offence, any conditions imposed on them by a court or the receipt of any penalty notice.

### **Challenging and Reporting Improper Conduct**

Police officers report, challenge or take action against the conduct of colleagues which has fallen below the Standards of Professional Behaviour.

## **EXPLANATORY NOTE**

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

These Regulations revoke and re-enact the Police (Conduct) Regulations 2008 (S.I. 2008/2864 – “the 2008 Regulations”), with modifications to reflect changes to policing governance made by the Police Reform and Social Responsibility Act 2011 (“the 2011 Act”).



Relevant provisions of the 2011 Act affecting the metropolitan police district came into force on 16th January 2012, and the Police (Performance and Conduct) (Amendment: Metropolitan Police) Regulations 2011 (S.I. 2011/3027 – “the 2011 Regulations”) amended the 2008 Regulations to reflect this. These Regulations replicate the changes that made to the 2008 Regulations by the 2011 Regulations, and make further changes to achieve the same results in relation to all police areas in England and Wales. The 2011 Regulations are revoked by the Police (Performance) Regulations 2012, which come into force on the same date as these Regulations.

Section 1 of the 2011 Act abolishes police authorities outside London and replaces them with police and crime commissioners. These commissioners, together with the Mayor’s Office for Policing and Crime (which has replaced the Metropolitan Police Authority as the body responsible for maintaining the Metropolitan Police) and the Common Council (which retains its functions as the police authority for the City of London police area), are known collectively as local policing bodies (see section 97(2) of the 2011 Act, which amends Schedule 1 to the Interpretation Act 1978). Paragraph 4 of Schedule 2 to the 2011 Act allows chief constables to employ staff, referred to in the 2011 Act as the police force’s civilian staff.

These Regulations, and in particular regulation 3, reflect these changes.

Regulation 5(2) of these Regulations allows multiple allegations of misconduct to be considered together when deciding how the case should be handled and what disciplinary action should be imposed.

Regulations 26 and 47 of these Regulations have the effect that misconduct proceedings or special case hearings concerning senior officers of all police forces 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. A special case hearing may also be held on the recommendation or at the direction of the Independent Police Complaints Commission.

Regulations 33(16) and 53(16) of these Regulations provide for the panel conducting the misconduct proceedings or special case hearing, in a case where the officer concerned is a senior officer of any police force, 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.

Regulations 30 and 51 of these Regulations have the effect that a complainant or interested person may remain in attendance during the part of the misconduct proceedings or special case hearing when consideration is being given as to what disciplinary action should be imposed, but they may be excluded when a plea in mitigation is being made on behalf of the officer concerned.

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