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STATUTORY RULES OF NORTHERN IRELAND

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**2016 No. 41**

**POLICE**

**The Police (Conduct) Regulations (Northern Ireland) 2016**

*Made* - - - - - *17th February 2016*

*Coming into operation* *1st June 2016*

The Department of Justice makes the following Regulations in exercise of the powers conferred by sections 25, 26 and 59(8) of the Police (Northern Ireland) Act 1998<sup>(1)</sup>.

In accordance with sections 25(8) and 26(6) of that Act the Department has consulted the Northern Ireland Policing Board and the Police Association.

**PART 1**

**Preliminary**

**Citation and commencement**

1. These Regulations may be cited as the Police (Conduct) Regulations (Northern Ireland) 2016 and shall come into operation on 1<sup>st</sup> June 2016.

**Revocation and transitional provisions**

2.—(1) Subject to paragraph (2), the Royal Ulster Constabulary (Conduct) Regulations 2000<sup>(2)</sup>, regulation 28 of the Royal Ulster Constabulary (Complaints etc.) Regulations 2000<sup>(3)</sup> (and the Schedule of modifications to the Royal Ulster Constabulary (Conduct) Regulations 2000 introduced by that regulation) and the Royal Ulster Constabulary (Conduct) (Senior Officer) Regulations 2000<sup>(4)</sup> are revoked.

(2) Where a complaint or allegation in respect of conduct by a member came to the attention of the appropriate authority before 1<sup>st</sup> June 2016, nothing in these Regulations shall apply and the Regulations referred to in paragraph (1) shall continue to have effect.

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(1) 1998 c.32. Relevant amendments are made by section 78(1) of and paragraph 23 of Schedule 6 to the Police (Northern Ireland) Act 2000.  
(2) S.R. 2000 No. 315 as amended by S.R. 2001 No. 184, S.R. 2003 No. 68, S.R. 2004 No. 315, S.R. 2008 No. 56 and as modified by S.R. 2005 No. 341.  
(3) S.R. 2000 No. 318 as amended by S.R. 2001 No. 184 and S.R. 2005 No. 341.  
(4) S.R. 2000 No. 320 as amended by S.R. 2001 No. 184, S.R. 2003 No. 68, S.R. 2004 No. 315 and S.R. 2008 No. 56.

### Interpretation and delegation

3.—(1) The Interpretation Act (Northern Ireland) 1954<sup>(5)</sup> applies to these Regulations as it applies to an Act of the Assembly.

(2) In these Regulations—

“the 1996 Act” means the Police Act 1996<sup>(6)</sup>;

“the 1998 Act” means the Police (Northern Ireland) Act 1998;

“the 2000 Act” means the Police (Northern Ireland) Act 2000<sup>(7)</sup>;

“the Police Regulations” means the Police Service of Northern Ireland Regulations 2005<sup>(8)</sup>;

“the Performance Regulations” means the Police (Performance and Attendance) Regulations (Northern Ireland) 2016<sup>(9)</sup>;

“appeal hearing” means an appeal to a police appeals tribunal in accordance with the Police Appeals Tribunal Regulations (Northern Ireland) 2016<sup>(10)</sup>;

“appeal meeting” means a meeting held in accordance with regulation 40 following a misconduct meeting;

“appropriate authority” means—

(a) where the member concerned is a senior officer, the Board;

(b) in any other case, the Chief Constable;

“appropriate standard” means the standard set out in the Code of Ethics;

“bank holiday” means a day which is a bank holiday under the Banking and Financial Dealings Act 1971<sup>(11)</sup> in Northern Ireland;

“the Board” means the Northern Ireland Policing Board;

“Code of Ethics” means the Code contained in the Schedule;

“complainant” means the person by, or on behalf of whom, the complaint is made;

“complaint” means a complaint about the conduct of a member of the police service which is made by, or on behalf of, a member of the public and which the Ombudsman has determined is a complaint to which section 52(4) of the 1998 Act applies;

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

“criminal proceedings” means—

(a) any prospective criminal proceedings; or

(b) all criminal proceedings brought which have not been brought to a conclusion including the bringing and determination of any appeal against conviction;

“directed proceedings” means disciplinary proceedings directed by the Ombudsman in accordance with section 59(5) of the 1998 Act;

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

(a) management advice;

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(5) 1954 c. 33(N.I.).

(6) 1996 c.16. Section 54 was amended by section 134 of the Police Act 1997, sections 102 and 137 of the Criminal Justice and Police Act 2001, sections 59 and 174 of the Serious Organised Crime and Police Act 2005, section 29 of the Police and Justice Act 2006, sections 1, 2 and 112 of the Policing and Crime Act 2009, sections 129 and 149 of the Criminal Justice and Immigration Act 2008 and section 83 of the Police Reform and Social Responsibility Act 2011.

(7) 2000 c.32.

(8) S.R. 2005 No. 547 to which there are amendments not relevant to these Regulations.

(9) S.R. 2016 No. 42.

(10) S.R. 2016 No. 43.

(11) 1971 c.80.

- (b) a written warning;
- (c) a final written warning;
- (d) an extension to a final written warning as described in regulations 36(6)(b) and 54(3)(b);
- (e) reduction in rank;
- (f) dismissal with notice; or
- (g) dismissal without notice;

“disciplinary proceedings” means, other than in paragraph (8), any proceedings under these Regulations and any appeal from misconduct proceedings or a special case hearing dealt with under the Police Appeals Tribunals Regulations (Northern Ireland) 2016;

“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 Code of Ethics where the misconduct is 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 (appointment and functions of inspectors of constabulary);

“informant” means a person who provides information to an investigation on the basis that his identity is not disclosed during the course of the criminal or 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” means a person whom the appropriate authority considers has a right to be kept informed about the handling of—

- (a) a complaint; or
- (b) a referred matter; or
- (c) a matter being investigated by the Ombudsman of his own motion under section 55(6) of the 1998 Act; or
- (d) an allegation that a member may have—
  - (i) committed a criminal offence; or
  - (ii) behaved in a manner which would justify the bringing of disciplinary proceedings;

“investigator” means a person who is—

- (a) appointed under regulation 13; or
- (b) an officer of the Ombudsman appointed under regulation 14(1); or
- (c) a police officer appointed under regulation 14(2);

as the case may be;

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

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

“member” means a member of the police service;

“misconduct” means a breach of the Code of Ethics which—

- (a) in the case of an investigation under section 56 of the 1998 Act, the Ombudsman has decided is not more properly dealt with as a performance matter; or

(b) in any other case, the appropriate authority has decided is not more properly dealt with as a performance matter;

“misconduct hearing” means a hearing to which the member concerned is referred under regulation 21 and at which he may be dealt with by disciplinary action up to and including dismissal;

“misconduct meeting” means a meeting to which the member concerned is referred under regulation 21 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 member concerned” means the member in relation to whose conduct there has been an allegation;

“the Ombudsman” means the Police Ombudsman for Northern Ireland established by section 51 of the 1998 Act;

“personal record” means a personal record kept under regulation 15 of the Police Regulations (contents of personal records);

“police force” means the police service, a police force within the meaning of section 101 of the 1996 Act or the Police Service of Scotland, within the meaning of section 6 of the Police and Fire Reform (Scotland) Act 2012(12);

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

“police officer” means a member of a police force;

“the police service” means the Police Service of Northern Ireland or the Police Service of Northern Ireland Reserve;

“police support staff” has the same meaning as in section 4(6) of the 2000 Act;

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

“referred matter” means a matter referred to the Ombudsman under section 55 of the 1998 Act;

“senior officer” means a member above the rank of chief superintendent;

“special case hearing” means a hearing to which the member concerned is referred under regulation 42 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 the rank of chief inspector or below, the Police Federation for Northern Ireland;
- (b) in relation to a member of the rank of superintendent or chief superintendent, the Police Superintendents’ Association for Northern Ireland; and
- (c) in relation to a member who is a senior officer, the Chief Police Officers’ Staff Association;

“transcript” includes a record of proceedings in digital format;

“working day” means any day other than a Saturday or Sunday or a day which is a bank holiday or a public holiday in Northern Ireland.

- (3) In these Regulations—
- (a) 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;
  - (b) 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 member concerned constitutes gross misconduct; and
    - (ii) it is in the public interest for the member concerned to cease to be a member without delay.
- (4) 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 36(6)(b) and 54(3)(b), a final written warning shall remain in force for a period of 24 months from the date on which it takes effect.
- (5) The reference to the period of—
- (a) 12 months in paragraph (4)(a); and
  - (b) 24 months in paragraph (4)(b) and 18 months in regulations 36(7) and 54(4),
- shall not include any time when the member concerned is taking a career break (under regulation 32(13) of the Police Regulations (leave) and the determination of the Department of Justice made under that regulation).
- (6) Where the appropriate authority is the Chief Constable, he may, subject to paragraph (7), delegate any of his functions under these Regulations to a member of at least the rank of chief inspector.
- (7) Where the Chief Constable delegates his functions under regulation 10 or 42, the decisions shall be taken by a senior officer.
- (8) Any proceedings under these Regulations are disciplinary proceedings for the purposes of section 50(1) of the 1998 Act (interpretation).

#### **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 member 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 members or a member of the police support staff 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 member 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 member may amount to misconduct or gross misconduct.

(2) Where an appropriate authority is considering more than one allegation in relation to the same member concerned, 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 or decision in connection with conduct which is the subject matter of an allegation.

#### **Police friend**

6.—(1) The member concerned may choose a police officer who is not otherwise involved in the matter, to act as his police friend.

(2) A police friend may—

- (a) advise the member concerned throughout the proceedings under these Regulations;
- (b) unless the member concerned has the right to be legally represented and chooses to be so represented, represent the member 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 member concerned to any interview, meeting or hearing which forms part of any proceedings under these Regulations.

(3) The Chief Constable shall permit a police friend who is a member of the police service to use a reasonable amount of duty time for the purposes referred to in paragraph (2).

#### **Legal and other representation**

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

(2) If the member concerned chooses not to be legally represented at such a hearing he may be dismissed or receive any other outcome under regulation 36 or 54 without his being so represented.

(3) Except in a case where the member 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
- (b) counsel or a solicitor where the member concerned chooses to be legally represented at a misconduct hearing or a special case hearing.

(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 counsel or a solicitor.

(7) If a member chooses to be legally represented, the case against him may be presented by counsel or a solicitor whether or not he is actually so represented.

### **Service of notices or documents**

8.—(1) Subject to paragraph (2), any written notice or document to be given or supplied to the member concerned under these Regulations shall be given to him in person.

(2) Where it is reasonably believed that the member concerned is avoiding service the written notice or document shall be left with some person at, or sent by recorded delivery to, his last known address.

### **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 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 member concerned from his office as constable.

(2) Where a complaint or matter is being formally investigated by the Ombudsman the appropriate authority may consult the Ombudsman before deciding whether to suspend the member concerned.

(3) A member concerned who is suspended under this regulation remains a member for the purposes of these Regulations.

(4) The appropriate authority shall not suspend a member 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 member concerned is so suspended; or
  - (ii) having regard to the nature of the allegations 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 member concerned under this regulation at any time from the date on which these Regulations first apply to the member concerned in accordance with regulation 5 until—

- (a) it is decided that the conduct of the member 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 member 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) verbally, 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 member concerned (or his police friend) may make representations against his suspension to the appropriate authority—

- (a) before the end of 10 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 20 working days beginning with the first working day after the suspension;
- (c) in any other case 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).

(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 member concerned in writing with a summary of the reasons.

(10) Where the member 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 a member concerned who is suspended is dismissed with notice under regulation 36 he shall remain suspended until the end of the notice period.

(12) If the Board, decides that a senior officer should be suspended under this regulation, it shall notify the Ombudsman of its decision and of the suspension condition which appears to it to be satisfied.

(13) If, upon being so notified of the decision of the Board in accordance with paragraph (12), the Ombudsman is satisfied that the suspension condition in question is fulfilled, he shall as soon as practicable notify his approval of the suspension of the senior officer concerned to the Board; and the suspension of the officer shall not have effect unless the approval of the Ombudsman is so given.

(14) Where the Ombudsman gives his approval to the suspension of a senior officer, the suspension shall take effect from the time the senior officer receives notice of that approval from the Board and he shall remain suspended until—

- (a) either the Ombudsman or the Board decides otherwise; or



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

## PART 3

### Investigations

#### Application of this Part

11. Save for regulations 14, 17 and 18 this Part shall not apply where section 56(1) or (1A) or section 54(3)(b) of the 1998 Act 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 member 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 member 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 member 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 15.

- (2) The appropriate authority shall appoint a person to investigate the matter.
- (3) 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 member concerned; or
- (d) in a case where the member concerned is a senior officer, if he is—
  - (i) the Chief Constable; or
  - (ii) a member of the police service.

#### **Appointment of investigator - Ombudsman**

**14.**—(1) Where section 56(1) or (1A) of the 1998 Act applies the Ombudsman shall appoint an officer of the Ombudsman to investigate the matter.

(2) Where the matter has been referred to the Chief Constable under section 54(3)(b) of the 1998 Act the Chief Constable shall appoint a police officer to investigate it formally on behalf of the Ombudsman in accordance with section 57 of the 1998 Act.

- (3) 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 member concerned; or
  - (d) in a case where the member concerned is a senior officer, if he is—
    - (i) the Chief Constable; or
    - (ii) a member of the police service.

#### **Investigation**

**15.** 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**

**16.**—(1) The investigator shall as soon as is reasonably practicable after being appointed, and subject to paragraph (3), cause the member 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 appropriate standard;
- (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 and of the effect of regulation 6(1);
- (g) of the effect of regulations 7(1) to (3) and 18; 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 18(1) or 24(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 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 member 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 member 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 member 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 20 working days beginning with the first working day after the start of the investigation; and
- (b) in any other case, if he reasonably believes that circumstances relevant to the investigation have changed.

### **Written notices - Ombudsman**

**17.—**(1) Where the investigator was appointed under regulation 14 the investigator shall as soon as is reasonably practicable after being appointed, and subject to paragraph (3), cause the member concerned to be given written notice—

- (a) describing the conduct that is the subject matter of the complaint, referred matter or matter being investigated by the Ombudsman of his own motion under section 55(6) of the 1998 Act;
- (b) that there is to be an investigation into the matter and the identity of the investigator;
- (c) informing him that he has the right to seek advice from his staff association and of the effect of regulation 6(1);
- (d) of the effect of regulations 7(1) to (3) and 18; and
- (e) 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 18(1) or 24(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) The requirement to give a written notice to the member 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).

(3) Once a written notice has been given in accordance with paragraph (1), the investigator shall notify the member 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 20 working days beginning with the first working day after the start of the investigation; and

- (b) in any other case, if he reasonably believes that circumstances relevant to the investigation have changed.

### **Representations to the investigator**

**18.**—(1) Before the end of 10 working days starting with the first working day after which the notice is given under regulation 16(1) or 17(1) (unless this period is extended by the investigator)—

- (a) the member concerned may provide a written or oral statement relating to any matter under investigation to the investigator; and
- (b) the member 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**

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

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

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

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

(5) The member concerned shall attend the interview.

(6) A police friend may not answer any questions asked of the member concerned during the interview, however, at any time during the interview the member may consult with his friend. The interview may be stopped to allow consultation to take place.

### **Report of investigation**

**20.**—(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**

**21.**—(1) Subject to regulation 42, and paragraphs (6) and (7), on receipt of the investigator's written report under regulation 20, the appropriate authority shall, as soon as practicable, determine whether the member concerned has a case to answer in respect of misconduct or gross misconduct or whether there is no case to answer.

(2) 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 42(3), make a further determination as to whether the member 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 misconduct case to answer, it may—

- (a) take no further disciplinary action against the member concerned;
- (b) take management action against the member 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 member concerned.

(6) Where the appropriate authority receives a recommendation under section 59(2) of the 1998 Act (steps to be taken after investigation - disciplinary proceedings) that disciplinary proceedings should be brought the appropriate authority shall, if it accepts the recommendation, determine whether to refer the case to a misconduct meeting or misconduct hearing.

(7) In the case of directed proceedings, the Chief Constable shall refer the case to a misconduct hearing in accordance with regulation 27(5).

(8) 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 member concerned of the reason for this.

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

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

- (a) where the member concerned had a final written warning in force at the date of the assessment of conduct under regulation 12(1) or at the date of the recommendation under

section 59(2) of the 1998 Act that disciplinary proceedings should be brought, those proceedings shall be a misconduct hearing; and

- (b) in all other cases those proceedings shall be a misconduct meeting.

### **Withdrawal of case**

**22.**—(1) Subject to section 59(6)(b) of the 1998 Act, 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 member concerned;
- (ii) take management action against the member 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 member concerned—

- (i) written notice of the direction, indicating whether any action will be taken under sub-paragraph (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 member concerned.

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

**23.**—(1) Where a case is referred to misconduct proceedings, the appropriate authority shall as soon as practicable give the member 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 a member other than a senior officer) conduct or (in any other case) chair the misconduct proceedings and of the effect of paragraphs (3) to (6); 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 as 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 member concerned written notice of the names of such persons and of the effect of paragraphs (3) to (6).

(3) The member concerned may object to any person whom he is notified under 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 member concerned is given notice of the person's name and must set out the grounds of objection of the member concerned.

(5) The appropriate authority shall notify the member concerned in writing whether it upholds or rejects an objection to any chair or 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 member concerned objects shall be replaced (in accordance with regulations 7(5) and (6) or 27 and 28 as appropriate).

(7) As soon as reasonably practicable after any such appointment, the appropriate authority shall notify in writing the member 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 member 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 member concerned has to answer.

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

**24.**—(1) Before the end of—

- (a) 20 working days beginning with the first working day after the documents have been supplied to the member concerned under regulation 23(1); or
- (b) where that period is extended by the person conducting or chairing the misconduct proceedings for exceptional circumstances, such extended period,

the member concerned shall comply with paragraphs (2) and (3).

(2) The member 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;
  - (ii) any arguments on points of law he wishes to be considered by the person or persons conducting the misconduct proceedings; and
  - (iii) any documents supplied under regulation 23(1) which he disputes and his reasons for doing so.

(3) The member 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 member concerned has complied with paragraph (2), the appropriate authority and the member 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 member concerned shall, if reasonably practicable, agree a list of proposed witnesses with the appropriate authority.

### **Witnesses**

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

- (a) agreed under regulation 24(5); or
- (b) where there is no agreement under regulation 24(5), supplied under regulation 24(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 member, 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.

(4) Any question as to whether any evidence is admissible, or whether any question should or should not be put to a witness, shall be determined by the person conducting or chairing the proceedings.

(5) Nothing in this regulation shall require a hearing to be adjourned where a witness is unable to attend the hearing.

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

**26.**—(1) Subject to paragraph (2), the misconduct proceedings shall take place—

- (a) in the case of a misconduct meeting, before the end of 25 working days; or
- (b) in the case of a misconduct hearing, before the end of 35 working days,

beginning with the first working day after the documents have been supplied to the member concerned under regulation 23(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 member concerned or the appropriate authority, he shall provide written notification of his reasons for that decision to the appropriate authority and the member 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 member 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) The member concerned shall be given written notice of the date, time and place of the misconduct proceedings.

(7) Where the Ombudsman is entitled to attend the misconduct hearing by virtue of regulation 31, he shall be given written notice of the date, time and place of the hearing.

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

**27.**—(1) This regulation applies where the member concerned is not a senior officer.

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

(3) The person shall be another member of at least one rank higher than the member concerned and of at least the rank of inspector.

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

- (a) a senior officer who shall be the chair;
- (b) a police officer of the rank of superintendent or above; and
- (c) a person selected by the appropriate authority from a list of candidates maintained by the Chief Constable for the purposes of these Regulations.

(5) In the case of directed proceedings, the misconduct hearing shall be conducted by a panel of three persons appointed by the Chief Constable, none of whom is an interested party and comprising—

- (a) a barrister or solicitor of not less than seven years' standing, who shall be the chair and who has been nominated by the Lord Chief Justice for the purpose of this regulation;
- (b) a police officer of the rank of superintendent or above; and
- (c) another panel member who is not a serving police officer, selected from a list of candidates maintained by the Chief Constable for the purposes of these Regulations.

(6) In the case of directed proceedings the Ombudsman shall present the case.

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

**28.**—(1) Where the member concerned is a senior officer the misconduct proceedings shall be conducted by a panel of persons as specified in paragraph (2) or (3) as appropriate, appointed by the appropriate authority.

(2) For a misconduct meeting, those persons are—

- (a) the chair of the Board, or another member of the Board nominated by him, who shall chair the meeting; and
- (b) HMCIC or an inspector of constabulary nominated by him.

(3) For a misconduct hearing, those persons are—

- (a) a barrister or solicitor of not less than seven years' standing, who shall be the chair and who has been nominated by the Lord Chief Justice for the purpose of this regulation;
- (b) the chair of the Board, or another member of the Board nominated by him; and
- (c) HMCIC or an inspector of constabulary nominated by him.

### **Documents to be supplied**

**29.**—(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 member concerned under regulation 23(1);
- (b) the documents provided by the member concerned under—
  - (i) regulation 24(2) and (3); and
  - (ii) where paragraph (2) applies, regulation 46; and
- (c) where the member 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 43(1), that the case be dealt with under this Part.

(3) Prior to the misconduct proceedings the member 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 member concerned at misconduct proceedings**

**30.**—(1) Subject to paragraph (2), the member concerned shall attend the misconduct proceedings.

(2) Where the member 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 member concerned to participate in the proceedings by video link or other means.

(3) Where the member concerned is allowed to and does so participate in the misconduct proceedings or where the member 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, counsel or solicitor (in which case the police friend may also attend); and
- (b) the proceedings may be proceeded with and concluded in the absence of the member concerned whether or not he is so represented.

(4) Where the member concerned is represented in accordance with paragraph (3), the person representing the member 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 member concerned.

### **Attendance of Ombudsman and investigator at misconduct hearing**

**31.**—(1) Where a misconduct hearing is being conducted in accordance with a recommendation under section 59(2) of the 1998 Act that disciplinary proceedings should be brought, the Ombudsman may attend the hearing as an observer.

(2) In the case of directed proceedings the Ombudsman shall present the case.

(3) Where paragraph (1) applies, the person chairing the misconduct hearing may require the Ombudsman to withdraw while any submission is made in mitigation on the member's behalf.

(4) The investigator or a nominated person shall attend the misconduct hearing on the request of the person chairing that hearing to answer questions.

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

- (a) the appropriate authority; or
- (b) where the matter was formally investigated by him, the Ombudsman,

has sufficient knowledge of the investigation of the case to be able to assist the person chairing the misconduct hearing.

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

- 32.**—(1) This regulation shall apply in the case of a misconduct hearing.
- (2) The appropriate authority shall cause notice to be given to the complainant or any interested person of the date, time and place of the misconduct hearing.
- (3) Subject to the provisions of this regulation, regulation 34 and any conditions imposed under regulation 33(4), the complainant or any interested person may attend the misconduct hearing as an observer up to but not including the point at which the person chairing the hearing considers the question of disciplinary action.
- (4) Subject to paragraph (5), regulation 34 and any conditions imposed under regulation 33(4), 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 hearing, he and any person allowed to accompany him shall not be allowed to attend the hearing before he gives his evidence.
- (6) Where the member concerned objects to the complainant or interested person, or any person accompanying him, being present while a submission is made in mitigation on the member’s behalf, the person chairing the misconduct hearing may require the complainant or interested person, or any person accompanying him, to withdraw while the submission is made.
- (7) The person chairing the misconduct hearing may, at his discretion, put any questions to the member 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 chairing the misconduct hearing, he has a disability or learning difficulty, or does not have sufficient knowledge of English, to fully participate in or understand the misconduct hearing.

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

- 33.**—(1) Subject to regulations 31 and 32 and the provisions of this regulation, the misconduct proceedings shall be in private.
- (2) Subject to any contrary decision by the person conducting or chairing the misconduct proceedings, a witness other than a complainant, interested person or the member concerned, shall only attend the misconduct proceedings for the purpose of giving their evidence.
- (3) 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.
- (4) The person conducting or chairing the misconduct proceedings may impose such conditions as he sees fit relating to the attendance under regulation 32 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**

**34.** 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**

**35.**—(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 member 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 member concerned may—

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

(i) put the case of the member concerned;

(ii) sum up that case;

(iii) respond on behalf of the member 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 member concerned.

(6) Where (at a misconduct hearing) the person representing the member concerned is counsel or a solicitor, the police friend of the member concerned may also confer with the member concerned.

(7) The police friend or the counsel or solicitor of the member concerned may not answer any questions asked of the member 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 member concerned to the appropriate authority in accordance with regulation 24(3); or

(b) to the member concerned in accordance with regulation 23(1).

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

(a) on being questioned by an investigator at any time after he was given written notice under regulation 16(1) or 17(1); or

(b) in submitting any information or by not submitting any information at all under regulation 18(1) or 24(2) or (3) (or, where paragraph (11) applies, regulation 46),

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 member 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 43(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 member 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 member 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 member 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.

### **Outcome of misconduct proceedings**

**36.**—(1) Subject to the provisions of this regulation, the person or persons conducting the misconduct proceedings may—

- (a) impose any of the disciplinary action in paragraph (2)(a) or (b) or (6)(b) as appropriate; or
- (b) where the finding is that 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) The disciplinary action is—

- (a) at a misconduct meeting—
  - (i) management advice;
  - (ii) written warning; or
  - (iii) final written warning;
- (b) at a misconduct hearing—
  - (i) management advice;
  - (ii) written warning;
  - (iii) final written warning;
  - (iv) reduction in rank;
  - (v) dismissal with notice; or
  - (vi) dismissal without notice.

(3) The disciplinary action referred to in paragraph (2) shall, subject to paragraph (6)(b), have effect from the date on which it is notified to the member 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.

(4) Where there is a finding that the conduct of the member concerned amounts to misconduct but not gross misconduct, the member may not be dismissed (whether with or without notice) unless a final written warning was in force on the date of the assessment of conduct under regulation 12(1), or on the date of the recommendation under section 59(2) of the 1998 Act that disciplinary proceedings should be brought, or on the date of the direction under section 59(5) of that Act, as the case may be.

(5) Where the member concerned had a written warning in force on the date of the assessment of the conduct under regulation 12(1), or on the date of the recommendation under section 59(2) of

the 1998 Act that disciplinary proceedings should be brought, or on the date of the direction under section 59(5) of that Act, as the case may be, a written warning shall not be given.

(6) Where the member concerned had a final written warning in force on the date of the assessment of the conduct under regulation 12(1), or on the date of the recommendation under section 59(2) of the 1998 Act that disciplinary proceedings should be brought, or on the date of the direction under section 59(5) of that Act, as the case may be—

- (a) neither a written warning nor a final written warning shall be given; but
- (b) subject to paragraph (7), in exceptional circumstances, the final written warning may be extended.

(7) Where a final written warning is extended under paragraph (6)(b), that warning shall remain in force for a period of 18 months from the date on which it would otherwise expire.

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

(9) Where the member 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 Board, or, in any case where the Ombudsman was entitled to attend as an observer under regulation 31, to the Board with a copy sent to the Ombudsman, together with a copy to the senior officer concerned, setting out—

- (a) the finding of the persons conducting the misconduct proceedings;
- (b) the reasons for that finding;
- (c) if that finding was that the conduct of the member 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 Board.

(10) Where the member concerned is a senior officer, on receipt of the report submitted under paragraph (9), the Board shall either—

- (a) dismiss the case; or
- (b) record a finding that the conduct of the senior officer concerned amounted to misconduct or gross misconduct, but take no further action; or
- (c) record a finding that the conduct of the senior officer concerned amounted to misconduct or gross misconduct and impose disciplinary action under paragraph (2)(a) or (b) or (6)(b) as appropriate.

(11) Where the member concerned is a senior officer and the Ombudsman was entitled to attend as an observer under regulation 31 the Board shall not take the action referred to in paragraph (10) without the agreement of the Ombudsman.

(12) 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 member 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 member concerned, his police friend or, at a misconduct hearing, his counsel or solicitor; and
  - (ii) 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**

**37.**—(1) The member concerned shall be informed of—

- (a) the finding of the person or persons conducting the misconduct proceedings; and
- (b) any disciplinary action imposed,

as soon as practicable and in any event shall be provided with written notice of these matters and a summary of the reasons before the end of 5 working days beginning with the first working day after the conclusion of the misconduct proceedings in accordance with the requirements of regulation 36.

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

- (a) where the member concerned is not a senior officer—
  - (i) if the case was decided at a misconduct meeting, that he has a right of appeal under regulation 39 and he shall be given written notice of that right; or
  - (ii) if the case was decided at a misconduct hearing, that he has a right of appeal to a police appeals tribunal and he shall be given written notice of that right;
- (b) where the member concerned is a senior officer, that he has a right of appeal to a police appeals tribunal and he shall be given written notice of that right.

(3) In all cases referred to in paragraph (2) a written notice under this regulation shall include the name of the person to whom an appeal should be sent.

(4) The appropriate authority shall send a copy of any written notice under this regulation to the Ombudsman, in any case in which the Ombudsman was entitled to attend as an observer under regulation 31.

(5) In the case of directed proceedings—

- (a) the member concerned shall be informed orally of the finding by the chair at the conclusion of the hearing;
- (b) where the panel determine that there was misconduct or gross misconduct the chair shall send a report to the Chief Constable of the panel's finding and may, after consulting with other members of the panel, make recommendations to the Chief Constable as to any disciplinary action it considers appropriate;
- (c) the panel conducting the misconduct proceedings shall send a copy of any report to the Ombudsman;
- (d) the Chief Constable may impose any of the disciplinary action in regulation 36(2)(b) or (6)(b) as appropriate;
- (e) any disciplinary action imposed by the Chief Constable will, if so requested by the member concerned, be given in person by the Chief Constable to that member, and in every case the member concerned will be notified in writing of any sanction imposed together with a copy of the report of the hearing, as provided by the chair; and
- (f) the member concerned shall have a right of appeal to a police appeals tribunal and be given written notice of that right.

(6) A copy of the report of the panel submitted under regulation 36(9), together with the decision of the Board, shall be sent by the Board to the Department of Justice and copied to the Ombudsman and the Chief Constable.

### **Record of misconduct proceedings**

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

(2) Where the member concerned has exercised his right of appeal in accordance with regulation 37(2) or regulation 37(5)(f), he shall, on request, be supplied with a copy of the record of the proceedings at the misconduct proceedings.

(3) Where the member concerned is a senior officer, a verbatim record of the proceedings before the panel shall be taken and the transcript of the record shall be made and sent to the Board.

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

**39.**—(1) Where the member concerned is not 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 36; 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 36.

(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 member concerned giving written notice of appeal to the Chief Constable—

- (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 37 (unless this period is extended by the Chief Constable 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 by a police officer of at least one rank higher than the police officer who conducted the misconduct meeting who is not an interested party, appointed by the Chief Constable.

(5) The Chief Constable shall as soon as practicable give the member 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).

(6) The member 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 Chief Constable before the end of 3 working days beginning with the first working day after the member concerned is given notice of the person's name and must set out the grounds of objection of the member concerned.

(8) The Chief Constable shall notify the member concerned in writing whether he 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 Chief Constable upholds the objection, the person to whom the member 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 Chief Constable shall notify in writing the member 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 member 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 member concerned is given the notice referred to in paragraph (10); and the Chief Constable shall comply with paragraphs (8) to (10) in relation to that objection but paragraph (11) shall not apply.

### **Appeal meeting**

**40.**—(1) This regulation applies where the member concerned requests a meeting in his written notice of appeal under regulation 39(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 member 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, if reasonably practicable, agree a date and time for the appeal meeting.

(5) Where no date and time is agreed under paragraph (4), the person determining the appeal shall specify a date and time for the appeal meeting.

(6) Written notice of the date, time and place of the appeal meeting shall be given to the member concerned.

(7) Prior to the appeal meeting the Chief Constable 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 29(1);
- (b) the notice of appeal given by the member concerned under regulation 39(3);
- (c) the record of the misconduct meeting taken under regulation 38(1); and
- (d) any evidence of a kind referred to in regulation 39(2)(b) that the member concerned wishes to submit in support of his appeal.

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

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

(2) The person determining the appeal may—

(a) confirm or reverse the decision appealed against;

(b) deal with the member concerned in any manner in which the person conducting the misconduct meeting could have dealt with him under regulation 36.

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

(4) 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.

## **PART 5**

### **Fast Track Procedure for Special Cases**

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

**42.**—(1) On receipt of a statement submitted by the investigator under regulation 20(3), or a recommendation by the Ombudsman under section 59(2) of the 1998 Act, 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 21(1) shall be read as if the words “regulation 42 and paragraphs (6) and (7), on receipt of the investigator’s written report” were omitted and replaced with “paragraphs (6) and (7), on receipt of a determination under regulation 42(5)”.

(7) At any time before the beginning of the hearing, the appropriate authority may direct that the case be returned to the investigator.

### **Remission of case**

**43.**—(1) 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 member 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 21(1) shall be read as if the words “regulation 42 and paragraphs (6) and (7), on receipt of the investigator’s written report” were omitted and replaced with “paragraphs (6) and (7), on receipt of a direction under regulation 43(1)”.

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

**44.**—(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 member concerned written notice of these matters and shall supply him with a copy of—

- (a) the certificate issued under regulation 42(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 member concerned.

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

**45.**—(1) The appropriate authority shall specify a date for the special case hearing which shall be not less than 15 and not more than 25 working days after the date on which notice is given under regulation 44(1) and shall immediately notify the member 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 Ombudsman is entitled to attend the special case hearing as an observer or to nominate a person to attend the hearing as an observer under regulation 51, the Board shall notify the Ombudsman of the date, time and place of the hearing.

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

**46.**—(1) Before the end of 10 working days beginning with the first working day after the written notice given to the member concerned under regulation 44(1), the member 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 member 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: members other than senior officers**

- 47.**—(1) This regulation applies where the member concerned is not a senior officer.
- (2) The special case hearing shall be conducted by the Chief Constable.
- (3) Where the Chief Constable 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**

- 48.**—(1) This regulation applies where the member concerned is a senior officer.
- (2) The special case hearing shall be conducted by a panel of three persons appointed by the appropriate authority, comprising—
- (a) a barrister or solicitor of not less than seven years' standing, who shall be the chair and who has been nominated by the Lord Chief Justice for the purpose of this regulation;
  - (b) the chair of the Board or another member of the Board nominated by him; and
  - (c) HMCIC or an inspector of constabulary nominated by him.

**Documents to be supplied**

- 49.**—(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 member concerned under regulation 44(1);
  - (b) the other documents given to the member concerned under regulation 44(1);
  - (c) the documents provided by the member concerned under—
    - (i) regulation 46; and
    - (ii) where paragraph (2) applies, regulation 24(2) and (3);
  - (d) where the member 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 42(3).
- (3) Prior to the hearing the member 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 member concerned at special case hearing**

- 50.**—(1) Subject to paragraph (2), the member concerned shall attend the special case hearing.

(2) Where the member 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 member concerned to participate in the hearing by video link or other means.

(3) Where the member concerned is allowed to and does so participate in the special case hearing by video link or other means, or where the member concerned does not attend the special case hearing—

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

(4) Where the member concerned is represented in accordance with paragraph (3), the person representing the member 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 member concerned.

#### **Attendance of Ombudsman and investigator at special case hearing**

**51.**—(1) Where, in the case of a special case hearing, which is being conducted in accordance with—

- (a) a recommendation under section 59(2) of the 1998 Act that disciplinary proceedings should be brought, the Ombudsman may attend the special case hearing as an observer; or
- (b) a direction under section 59(5) of that Act, the Ombudsman shall present the case.

(2) Where paragraph (1)(a) applies, the person chairing the special case hearing may require the Ombudsman to withdraw while any submission is made in mitigation on the member's behalf.

(3) The investigator or a nominated person shall attend the special case hearing on the request of the person chairing that 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) where the matter was formally investigated by him, the Ombudsman,

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**

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

(2) Subject to any conditions imposed under paragraph (3), the complainant or any interested person may—

- (a) attend the special case hearing as an observer up to but not including the point at which the person conducting or chairing the hearing considers the question of disciplinary action; 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.

(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 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.

(4) Where the member concerned objects to the complainant or interested person, or any person accompanying him, being present while a submission is made in mitigation on the member'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.

### **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) Subject to regulation 52, the special case hearing shall be in private.

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

(4) Subject to paragraph (5), 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.

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

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

(7) The person representing the member concerned may—

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

(i) put the case of the member concerned;

(ii) sum up that case;

(iii) respond on behalf of the member concerned to any view expressed at the proceedings; and

(iv) make representations concerning any aspect of proceedings under these Regulations; and

(b) if the member concerned is present at the proceedings or is participating in them by video link or other means in accordance with regulation 50(2), confer with the member concerned.

(8) Where the person representing the member concerned is counsel or a solicitor, the police friend of the member concerned may also confer with the member concerned in the circumstances mentioned at paragraph (7)(b).

(9) The police friend or counsel or solicitor of the member concerned may not answer any questions asked of the member concerned during the special case hearing.

(10) 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 member concerned to the appropriate authority in accordance with regulation 46(2); or

(b) to the member concerned in accordance with regulation 44(1).

(11) Where evidence is given or considered at the special case hearing that the member concerned

(a) on being questioned by an investigator, at any time after he was given written notice under regulation 16(1) or 17(1); or

(b) in submitting any information or by not submitting any information at all under regulation 46 (or, where paragraph (13) applies, regulation 18(1) or 24(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 member concerned could reasonably have been expected to mention when so questioned or when providing such information, paragraph (12) applies.

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

(13) This paragraph applies where the case was certified as a special case following a determination made under regulation 42(3).

(14) 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 member concerned amounts to gross misconduct.

(15) The person or persons conducting the special case hearing shall not find that the conduct of the member 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 member concerned admits it is the case.

(16) At a special case hearing 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.

(17) Where the member 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 Board, together with a copy to the senior officer concerned, setting out—

(a) the finding of the persons conducting the hearing under paragraph (14);

(b) the reasons for that finding;

(c) if the finding was that the conduct of the senior 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 Board.

(18) In any case in which the Ombudsman was entitled to attend as an observer or to present the case under regulation 51(1), the person or persons conducting the special case hearing shall send a copy of any report submitted under paragraph (17) to the Ombudsman.

(19) The Board shall send a copy of the report submitted under paragraph (17) to the Department of Justice and the Chief Constable.

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

**54.—**(1) Where the person or persons conducting the special case hearing in the case of a member other than a senior officer find that the conduct of the member 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 (2); or

(c) reduction in rank; or

(d) dismissal with notice; or

(e) dismissal without notice.

(2) Where the member concerned is a senior officer and the Board has received a report under regulation 53(17)(c) it shall, in agreement with the Ombudsman where the Ombudsman was entitled to attend as an observer under regulation 51, impose disciplinary action under paragraph (1).

(3) Where the member concerned had a final written warning in force on the date of the assessment of the conduct under regulation 12(1) or on the date of the recommendation under section 59(2) of the 1998 Act that disciplinary proceedings should be brought—

- (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 conducting the special case hearing in the case of a member other than a senior officer finds that the conduct of the member concerned does not amount to gross misconduct, he may—

- (a) dismiss the case; or
- (b) return the case to the Chief Constable to deal with it in accordance with Part 4 at a misconduct meeting or, if the member concerned had a final written warning in force at the date of the assessment of conduct under regulation 12(1) or at the date of the recommendation under section 59(2) of the 1998 Act that disciplinary proceedings should be brought or at the date of the direction under section 59(5), as the case may be, at a misconduct hearing.

(7) Where the member concerned is a senior officer and the Board has received a report under regulation 53(17) to the effect that the conduct of the senior officer concerned does not amount to gross misconduct the Board may, in agreement with the Ombudsman where the Ombudsman was entitled to attend as an observer under regulation 51,—

- (a) dismiss the case; or
- (b) deal with it in accordance with Part 4 at a misconduct meeting or, if the member concerned had a final written warning in force at the date of the assessment of conduct under regulation 12(1) or on the date of the recommendation under section 59(2) of the 1998 Act that disciplinary proceedings should be brought, at a misconduct hearing.

(8) Where the case is returned to the Chief Constable under paragraph (6)(b) or dealt with by the Board under paragraph (7)(b), the appropriate authority shall proceed in accordance with Part 4, subject to regulation 21(1) being read as if the words “regulation 42 and paragraphs (6) and (7), on receipt of the investigator’s written report” were omitted and replaced with “paragraphs (6) and (7), on receipt of a determination under regulation 54(6)(b) or (7)(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 member concerned.

(10) Where the question of disciplinary action is being considered, the person or persons conducting the special case hearing—

- (a) shall have regard to the record of police service of the member 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 member concerned; and
  - (ii) his police friend or his counsel or solicitor,

an opportunity to make oral or written representations.



### **Notification of outcome**

**55.**—(1) The member concerned shall be informed of—

- (a) the finding; and
- (b) any disciplinary action imposed under regulation 54(1) or any action taken under regulation 54(6) as the case may be,

as soon as practicable and in any event shall be provided with written notice of these matters and a summary of the reasons before the end of 5 working days beginning with the first working day after the conclusion of the special case hearing in accordance with regulation 54.

(2) Where the member concerned is a senior officer he shall be informed of any disciplinary action imposed under regulation 54(2) or any action taken under regulation 54(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 Board's reasons before the end of 5 working days beginning with the first working day after the conclusion of the special case hearing.

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

(4) The appropriate authority shall send a copy of any written notice under this regulation to the Ombudsman, in any case in which the Ombudsman was entitled to attend the special case hearing as an observer under regulation 51(1).

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

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

(2) Where the member concerned has exercised his right of appeal in accordance with regulation 55(3) he shall, on request, be supplied with a copy of the record of the proceedings at the special case hearing.

(3) Where the member concerned is a senior officer, a verbatim record of the special case hearing shall be taken and the transcript of the record shall be made and sent to the Board.

## **PART 6**

### **Record Keeping**

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

**57.**—(1) Subject to paragraph (2), the Chief Constable shall cause a record to be kept of disciplinary proceedings and special case proceedings brought against every member concerned, together with the finding and decision on disciplinary action and the decision in any appeal by the member concerned.

(2) Where the member concerned is the Chief Constable, the Board shall cause such a record to be kept.

PART 7  
Supplemental

**Amendment to the Royal Ulster Constabulary (Complaints etc.) Regulations 2000**

58. In regulation 19(7) of the Royal Ulster Constabulary (Complaints etc.) Regulations 2000(13) for “Royal Ulster Constabulary (Conduct) Regulations 2000” substitute “Police (Conduct) Regulations (Northern Ireland) 2016”.

Sealed with the Official Seal of the Department of Justice on 17th February 2016



*David Ford*  
Minister of Justice

SCHEDULE

Regulation 3(2)

CODE OF ETHICS FOR THE POLICE  
SERVICE OF NORTHERN IRELAND

PREAMBLE

- (a) Policing is an honourable profession that plays an important part in the maintenance of a just and fair society. The people of Northern Ireland have the right to expect the Police Service to protect their human rights by safeguarding the rule of law and providing a professional Police Service.
- (b) Police officers are required to respect and obey the law at all times and will be held personally responsible and accountable for their own acts or omissions.
- (c) Effective policing requires the co-operation of the public. Police officers, when carrying out their duties in accordance with the provisions of this Code, have the right to expect the respect and support of the public and elected representatives.
- (d) Public confidence in the Police Service is closely related to the attitude and behaviour of officers towards members of the public, in particular their respect for the human rights and fundamental freedoms of individuals as enshrined in the European Convention on Human Rights.
- (e) Police officers have the same right to respect for their human rights and fundamental freedoms and to work in an environment free of harassment or discrimination in any form.
- (f) This Code of Ethics is intended:
  - (i) to lay down standards of conduct and practice for police officers, and
  - (ii) to make police officers aware of their rights and obligations under the Human Rights Act 1998 and the European Convention on Human Rights.
- (g) The standards in this Code are to be applied to:
  - (i) relationships between police officers and the general public, sections of the public and particular individuals;
  - (ii) relationships between police officers and other professionals in the criminal justice system;
  - (iii) relationships between individual police officers and their colleagues; and
  - (iv) relationships between individual police officers and the Police Service.
- (h) The statutory authority for the Code of Ethics can be found in section 52 of the Police (Northern Ireland) Act 2000(14). The contents of the Code are drawn from a number of sources, including:
  - (i) the Police Service attestation set out in section 38(1) of the Police (Northern Ireland) Act 2000;
  - (ii) the European Convention on Human Rights;
  - (iii) other relevant human rights instruments, including:
    - (aa) the United Nations Code of Conduct for Law Enforcement Officials;
    - (bb) the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; and
    - (cc) the European Police Code of Ethics.

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(14) 2000 c.32.

- (i) Police officers are required, at all times, to carry out their duties in accordance with the provisions of the Code of Ethics. In the event that a Police Service instruction, policy or procedure conflicts with the provisions of the Code of Ethics, officers are required to comply with provisions of this Code.
- (j) Any conduct, whether on or off duty, which brings or is likely to bring discredit on the Police Service may be investigated in order to establish whether or not a breach of the Code has occurred. A breach of the Code may result, in appropriate circumstances, in a criminal or disciplinary investigation, either by the Office of the Police Ombudsman or the Police Service.
- (k) Where police officers are investigated for a breach of this Code, whether by the Office of the Police Ombudsman or the Police Service, they have the right to expect that the investigation will be conducted in a prompt, thorough, impartial and careful manner.
- (l) This Code shall be applied in any investigation, hearing or decision relating to misconduct in a reasonable and objective manner. Due regard shall be given to the degree of negligence or deliberate fault of an officer and to the nature and circumstances of the officer's misconduct.

## POLICE SERVICE OF NORTHERN IRELAND CODE OF ETHICS

### ETHICAL STANDARDS REQUIRED OF POLICE OFFICERS

#### **Article 1 Professional Duty**

1.1. Police officers have a duty under section 32 of the Police (Northern Ireland) Act 2000:—

- (a) to protect life and property;
- (b) to preserve order;
- (c) to prevent the commission of offences; and
- (d) where an offence has been committed, to take measures to bring the offender to justice.

When carrying out these duties, police officers shall obey and uphold the law, protect human dignity and uphold the human rights and fundamental freedoms of all persons as enshrined in the Human Rights Act 1998, the European Convention on Human Rights and other relevant international human rights instruments.

*(Sourced from: Section 32(1) Police (Northern Ireland) Act 2000; Article 2 United Nations Code of Conduct for Law Enforcement Officials; Article 1 European Code of Police Ethics.)*

1.2. Police officers shall, as far as practicable, carry out their functions in cooperation with, and with the aim of securing the support of, the local community.

*(Sourced from: Section 32(5) Police (Northern Ireland) Act 2000.)*

1.3. Police officers shall carry out their duties in accordance with the Police Service attestation set out in section 38(1) of the Police (Northern Ireland) Act 2000, which states: "I hereby do solemnly and sincerely and truly declare and affirm that I will faithfully discharge the duties of the office of constable, with fairness, integrity, diligence and impartiality, upholding fundamental human rights and according equal respect to all individuals and their traditions and beliefs; and that while I continue to hold the said office I will to the best of my skill and knowledge discharge all of the duties thereof according to law."

1.4. Police officers shall not subject any person to torture or to cruel, inhuman or degrading treatment or punishment. No circumstances whatsoever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.

*(Sourced from: Article 5 United Nations Universal Declaration of Human Rights; Article 3 European Convention of Human Rights; Principle 6 United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.)*

1.5. The Police Service is a disciplined body. Unless there is good and sufficient cause to do otherwise, police officers shall obey all lawful orders and abide by the provisions of Police Service policy and procedure. They shall refrain from carrying out any orders they know, or ought to know, are unlawful. No disciplinary action shall be taken against any police officer who refuses to carry out an unlawful order.

*(Sourced from: Paragraph A(4) and A(7) Council of Europe Declaration on the Police.)*

1.6. Police officers shall not take active part in politics.

*(Sourced from: Schedule 1, regulation 6 Police Service of Northern Ireland Regulations 2005.)*

1.7. Police officers shall notify the Chief Constable of their membership of any organisation which might reasonably be regarded as affecting their ability to discharge their duties effectively and impartially in accordance with Police Service policy on registration of notifiable memberships.

*(Sourced from: Section 51 of the Police (Northern Ireland) Act 2000.)*

1.8. Police officers shall not suffer administrative or other penalties because they have reported that a violation of this Code has occurred or is about to occur unless such a report is shown to be malicious or manifestly ill founded.

*(Sourced from: Article 8 United Nations Code of Conduct for Law Enforcement Officials.)*

1.9. Police officers shall ensure that accurate records are kept of their duties as required by relevant Codes of Practice and Police Service policy and procedure. Police officers shall not through neglect make any false, misleading or inaccurate oral or written statement or entry in any record or document made, kept or required for police purposes. Nor shall they omit to make any oral or written statement or entry in any such record or document. They shall not, through lack of care, alter, deface, erase, conceal or destroy any record or document, kept or made in connection with any police activity.

1.10. Whether on or off duty, police officers shall not behave in a way that is likely to bring discredit upon the Police Service.

## **Article 2 Police Investigations**

2.1. Police investigations shall, as a minimum, be based upon reasonable suspicion of an actual or possible offence or crime. They shall be conducted in a prompt, thorough, impartial and careful manner so as to ensure accountability and responsibility in accordance with the law.

2.2. Police officers shall follow the principle that everyone who is the subject of a criminal investigation shall be presumed innocent until found guilty by a court.

2.3. Police officers shall treat all victims of crime and disorder with sensitivity and respect their dignity. Police officers shall consider any special needs, vulnerabilities and concerns which victims may have. Subject to the rules governing confidentiality, victims shall be updated on the progress of any relevant investigations in accordance with Police Service policy and procedure.

*(Note: The term 'victims' includes the relatives of a deceased person where the circumstances of the death are being investigated by the police.)*

2.4. Police officers shall take account of the particular needs of witnesses and shall be guided by Police Service policy and procedure for their protection and support, in particular, where the intimidation of witnesses is a risk.

*(Sourced from: Article 4 United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power; Article 1 United Nations Code of Conduct for Law Enforcement Officials; Paragraphs 47, 48 and 51 of the European Code of Police Ethics.)*

### **Article 3 Privacy and Confidentiality**

3.1. Police officers shall gather, retain, use and disclose information or data in accordance with the right to respect for private and family life contained in Article 8 of the European Convention on Human Rights and shall comply with all relevant legislation and Police Service policy and procedure governing the gathering, retention, use and disclosure of information or data.

*(Note: Relevant legislation includes the Data Protection Act 1998, the Regulation of Investigatory Powers Act 2000 and the Freedom of Information Act 2000 and associated regulations.)*

3.2. Police officers shall exercise powers of search and surveillance only when it is lawful, necessary and proportionate to do so.

3.3. Information or data of a personal or confidential nature in the possession or control of police officers shall be kept confidential, unless the performance of duty, compliance with legislation or the needs of justice require otherwise.

*(Sourced from: Article 4 United Nations Code of Conduct for Law Enforcement Officials.)*

3.4. Police officers shall not gather, retain, use or disclose information or data of a personal or confidential nature for personal benefit. They shall comply with Police Service policy governing contact with the media.

### **Article 4 Use of Force**

4.1. Police officers, in carrying out their duties, shall as far as possible apply non-violent methods before resorting to any use of force. Any use of force shall be the minimum appropriate in the circumstances and shall reflect a graduated and flexible response to the threat. Police officers may use force only if other means remain ineffective or have no realistic chance of achieving the intended result.

*(Sourced from: Article 4 United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.)*

4.2. Police officers responsible for the planning and control of operations where the use of force is a possibility shall so far as possible plan and control them to minimise recourse to the use of force, in particular, potentially lethal force. Consideration shall be given during the planning of an operation to the need for medical assistance to be available.

*(Sourced from: European Court of Human Rights: McCann-v-UK (1995) 21 EHRR paragraph 194.)*

4.3. Wherever it is necessary for police officers to resort to the lawful use of force or firearms, they shall:

- (a) exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate object to be achieved;
- (b) minimise damage and injury, and respect and preserve human life;
- (c) ensure that assistance and medical aid are secured to any injured person at the earliest possible opportunity;
- (d) ensure that relatives or close friends of the injured or affected person are notified at the earliest possible opportunity;
- (e) report the incident promptly to their supervisors;
- (f) comply with Police Service policy, procedure and guidance.

*(Sourced from: Article 5(A)-(C), Article 6 United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.)*

4.4. A police officer shall discharge a firearm only where the officer honestly believes it is absolutely necessary to do so in order to save life or prevent serious injury, unless the discharge is for training purposes or the destruction of animals.

*(Sourced from: European Court of Human Rights: Andronicou and Constantinou –v- Cyprus (1997) 25 EHRR; Article 9 United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.)*

4.5. Before police officers resort to the use of firearms, they shall identify themselves and give a clear warning of their intent to use firearms, with sufficient time for the warnings to be observed, unless to do so:

- (a) would unduly place any person at a risk of death or serious injury; or
- (b) would be clearly inappropriate or pointless in the circumstances of the incident.

*(Sourced from: Article 10 United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.)*

4.6. Police supervisors shall ensure that stress counselling is offered to police officers who have been involved in violent situations or who have discharged a firearm.

*(Sourced from: Article 21 United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.)*

## **Article 5 Detained Persons**

5.1. Police officers shall ensure that all detained persons for whom they have responsibility are treated in a humane and dignified manner. Arrest and detention shall only be carried out in accordance with the provisions of the European Convention on Human Rights, relevant legislation and associated Codes of Practice.

*(Sourced from: Principles 1 and 2 United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; Articles 5, 6 and 8 European Convention on Human Rights; Police and Criminal Evidence (Northern Ireland) Order 1989 and its Codes of Practice C-E; Section 99 and Schedule 8 Terrorism Act 2000.)*

5.2. In their dealings with detained persons, police officers shall, as far as possible, apply non-violent methods before resorting to any use of force. Where force is required, such use of force shall be the minimum required in the circumstances and shall be lawful, proportionate and necessary for the maintenance of security and order, to prevent escape, injury, damage to property or the destruction of evidence, or where the detained person resists the taking of items or samples for criminal justice purposes as authorised by law.

*(Sourced from: Articles 5 and 8 European Convention on Human Rights; Police and Criminal Evidence (Northern Ireland) Order 1989 and its Codes of Practice C-E.)*

5.3. Police officers shall take every reasonable step to protect the health and safety of detained persons and shall take immediate action to secure medical assistance for such persons where required.

*(Sourced from: Article 6 United Nations Code of Conduct for Law Enforcement Officials.)*

## **Article 6 Equality**

6.1. Police officers shall act with fairness, self-control, tolerance and impartiality when carrying out their duties. They shall use appropriate language and behaviour in their dealings with members

of the public, groups from within the public and their colleagues. They shall give equal respect to all individuals and their traditions, beliefs and lifestyles provided that such are compatible with the rule of law.

*(Sourced from: Section 38 Police (Northern Ireland) Act 2000.)*

6.2. In carrying out their duties police officers shall treat all persons or classes of persons equally regardless of race, colour, sex, language, religion, political or other opinion, national or social origin, association with a national minority, disability, age, sexual orientation, marital or family status, property, birth or any other status. Any difference in treatment shall be required to be justified and proportionate.

*(Sourced from: Article 14 European Convention on Human Rights, Sections 75 and 76 Northern Ireland Act 1998.)*

### **Article 7 Integrity**

7.1. Police officers shall act with integrity towards members of the public and their colleagues so that confidence in the Police Service is secured and maintained. They shall avoid all forms of behaviour that may reasonably be perceived to be abuse, harassment, bullying or victimisation.

7.2. Police officers shall at all time respect and obey the law and maintain the standards stated in this Code. They shall to the best of their ability respect and support their colleagues in the execution of their lawful duties.

7.3. Police officers shall at all times prevent and oppose any violation of this Code. They shall report all violations or potential violations of the Code, as well as any violations which they reasonably believe are about to occur.

*(Sourced from: Article 8 United Nations Code of Conduct for Law Enforcement Officials.)*

7.4. Police officers shall report to the Chief Constable any legal proceedings initiated against them, whether in relation to a criminal or motoring offence or a civil action.

7.5. Police officers shall not commit any act of corruption or dishonesty. They shall oppose and report any such acts coming to their attention and shall be supported by their colleagues and senior officers in doing so.

*(Sourced from: Article 7 United Nations Code of Conduct for Law Enforcement Officials.)*

### **Article 8 Property**

8.1. Police officers shall ensure that property, monies or equipment entrusted to them in their role as police officers are handled and maintained as required by law and Police Service policy.

8.2. Police officers shall ensure that any gift or gratuity that they personally accept complies with, and has been authorised according to, Police Service policy.

### **Article 9 Fitness for Duty**

9.1. Police officers shall be fit to carry out their responsibilities when on call, commencing duty or on duty. Police officers shall not be unfit or impaired when reporting for or while on duty as a result of drinking alcohol, using a drug for non-medical purposes, intentionally misusing a prescription drug or solvent or substance abuse.

9.2. Police officers on duty shall not, without proper authority, consume alcohol.

9.3. Police officers shall attend work promptly when rostered for duty. Unless on duties that dictate otherwise, officers shall be clean and tidy when on duty whether in uniform or in plain clothes.



## **Article 10 Duty of Supervisors**

10.1. Supervisors shall be the primary promoters and positive agents of good conduct in relation to accepting and working within the spirit of the Code of Ethics. They shall be role models for delivering a truly professional, impartial and effective Police Service. They shall ensure that the individuals for whom they are responsible are supported, guided on professional performance of their duties and encouraged to further their professional development.

10.2. Supervisors shall ensure that their staff carry out their professional duties correctly. They shall challenge and address any behaviour that is in violation of this Code, reporting violations where appropriate.

10.3. Supervisors have a particular responsibility to secure, promote and maintain professional standards and integrity through the provision of advice and guidance, or other remedial or appropriate action.

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## **EXPLANATORY NOTE**

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

These Regulations apply where an allegation comes to the attention of an appropriate authority (as defined in regulation 3) which indicates that the conduct of a member may amount to misconduct or gross misconduct (as defined in regulation 3). This includes an allegation contained within a complaint by a member of the public or a matter referred to the Police Ombudsman for Northern Ireland (“the Ombudsman”), by the Northern Ireland Policing Board, the Department of Justice or the Secretary of State or investigated by the Ombudsman of his own motion.

Part 1 deals with preliminary matters. Regulation 2 revokes the Royal Ulster Constabulary (Conduct) Regulations 2000, regulation 28 of the Royal Ulster Constabulary (Complaints etc.) Regulations 2000 (and the Schedule of modifications to the Royal Ulster Constabulary (Conduct) Regulations 2000 introduced by that regulation) and the Royal Ulster Constabulary (Conduct) (Senior Officer) Regulations 2000. However, those Regulations shall continue to have effect where the complaint or allegation came to the attention of the appropriate authority before the coming into operation of these Regulations.

Regulation 3 provides definitions of terms used in these Regulations, including the ‘special conditions’ which trigger the fast track procedure set out in Part 5 and makes provision in relation to the delegation of the functions of the Chief Constable under these Regulations. Regulation 4 sets out the harm test placing restrictions on the disclosure of information to the member concerned in the public interest.

Part 2 deals with general matters. Regulations 6 and 7 make provision about the role of a police friend under these Regulations and the right to legal representation. Regulation 9 provides that disciplinary or special case proceedings should proceed notwithstanding any criminal proceedings unless the appropriate authority considers they would prejudice such criminal proceedings. Regulation 10 makes provision in relation to the suspension of a police officer.

Part 3 deals with the investigation of conduct allegations. Regulation 12 provides that the appropriate authority must make a preliminary assessment as to whether the conduct, if proved, would amount to misconduct, gross misconduct or neither, and sets out what action must or may be taken as a consequence of that assessment. Regulation 13 deals with the appointment of an investigator

by the appropriate authority. Regulation 14 deals with the appointment of an investigator by the Ombudsman. Regulation 15 sets out the purpose of the investigation. Regulations 16 and 17 provide for notice to be given to the member concerned that there is to be an investigation and describe what must be set out in that notice. Regulation 18 provides that the investigator shall consider any suggestions as to lines of inquiry made by the member concerned within the given time limit. Regulation 19 deals with interviews and regulation 20 with the investigation report.

Part 4 relates to misconduct proceedings. Regulation 21 provides that on receipt of the investigator's report the appropriate authority must determine whether or not there is a case to answer in respect of misconduct or gross misconduct, and makes provision about the referral of a case to a misconduct meeting or misconduct hearing. Regulation 23 provides that notice must be given to the member concerned of the referral of his case to misconduct proceedings and provides that he may object to the persons appointed to deal with his case. Regulation 24 sets out the information the member concerned must and may provide on receipt of such notice. Regulation 25 provides that the person conducting or chairing the misconduct proceedings will decide whether any witnesses will attend the proceedings, and that a witness may only attend where he reasonably believes this to be necessary. Regulations 27 and 28 set out the person(s) who will conduct the misconduct proceedings. Regulations 30 to 34 deal with who shall and may attend those proceedings. Regulation 35 covers the procedure at the proceedings and regulation 36 deals with outcomes. At a misconduct meeting the disciplinary action that may be imposed is management advice, a written warning or a final written warning. Such action is also available at a misconduct hearing, along with reduction in rank, dismissal with or without notice or, in exceptional circumstances, the extension of a final written warning.

Part 5 deals with the procedures for special case hearings for those cases where there is written or documentary evidence to establish gross misconduct on the balance of probabilities and it is in the public interest for the member concerned to cease to be a member without delay. Procedures for these cases are fast tracked and there are no witnesses at the hearing other than the member concerned. Regulation 57 requires a record to be kept of all proceedings under these Regulations and the decision in appeals. Regulation 58 makes a technical amendment to the Royal Ulster Constabulary (Complaints etc.) Regulations 2000 by substituting a reference to these Regulations.

The Schedule sets out the standards of professional behaviour expected of members, breach of which may constitute a performance, misconduct or gross misconduct matter.