

1982 No. 902 (S. 119)
POLICE
**The Police (Discipline) (Scotland) Amendment
Regulations 1982**

<i>Made</i> - - - -	28th June 1982
<i>Laid before Parliament</i>	15th July 1982
<i>Coming into Operation</i>	16th August 1982

In exercise of the powers conferred on me by section 26 of the Police (Scotland) Act 1967(a), and of all other powers enabling me in that behalf, and after consulting the Police Negotiating Board for the United Kingdom in accordance with section 2(1) of the Police Negotiating Board Act 1980(b) and the Joint Central Committee of the Police Federation for Scotland and such bodies and associations as appear to me to be representative of police authorities, chief constables and superintendents (including chief superintendents) respectively in accordance with section 26(9) of the said Act of 1967(c), I hereby make the following regulations:—

Citation, commencement etc.

1.—(1) These regulations may be cited as the Police (Discipline) (Scotland) Amendment Regulations 1982 and shall come into operation on 16th August 1982.

(2) In these regulations, the expression “the principal regulations” means the Police (Discipline) (Scotland) Regulations 1967(d).

Amendment of principal regulations

2. In regulation 1(2) of the principal regulations,

(a) there shall be inserted before the definition of “beat” the following definition:—

“ “the Act of 1967” means the Police (Scotland) Act 1967”;

(b) the word “and” at the end of the definition of “complainer” shall be omitted; and

(c) there shall be inserted after the definition of “constable” the following definitions:—

“ “disciplinary offence” means an offence set out in the Discipline Code;

(a) 1967 c. 77.

(b) 1980 c. 10.

(c) Section 26(9) of the 1967 Act was amended by section 2(4) of the Police Negotiating Board Act 1980 (c. 10).

(d) S.I. 1967/1021; the relevant amending instruments are S.I. 1971/843, 1975/1544 and 1976/1073.

“Discipline Code” means the code of offences contained in Schedule 1;

“discipline form” means such a form as is mentioned in regulation 6(2)(a) or 24(2), as the case may be.”

3. After regulation 1(4) of the principal regulations, there shall be inserted the following paragraph:—

“(5) In these regulations, unless the context otherwise requires, any reference to a numbered regulation or schedule is a reference to the regulation in or, as the case may be, to the schedule to, these regulations which bears that number and any reference in a regulation to a numbered paragraph is a reference to a paragraph bearing that number in that regulation.”

4. In regulations 2, 23(1), 23(2), 38(1), 38(3) and 39 of the principal regulations, for the words “or allegation”, wherever they occur, there shall be substituted the words “allegation or complaint”.

5. For Part III of the principal regulations, there shall be substituted the Part set out in the schedule to these regulations.

6. At the end of regulation 24(2) of the principal regulations, there shall be inserted the following sentence:—

“The discipline form shall be in the form set out in Schedule 3 or in a form to the like effect”.

Revocations

7. Regulation 40 of the principal regulations is hereby revoked.

8. Sub-paragraphs (b) to (e) of regulation 72(3) of the Police (Scotland) Regulations 1976(a) are hereby revoked.

Transitional

9. These regulations shall not apply in relation to any report, allegation or complaint made against a constable before the date of coming into operation of these regulations and, accordingly, any action may be taken in connection with any such report, allegation or complaint as if these regulations had not been made.

George Younger,
One of Her Majesty's Principal
Secretaries of State.

New St. Andrew's House,
Edinburgh.
28th June 1982.

Regulation 5

SCHEDULE

PART III

PROCEDURE RELATING TO CONSTABLES

(Other than to chief constables, deputy chief constables or assistant chief constables)

Interpretation

3. In this Part of the Regulations, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, namely

“appropriate disciplinary authority”, in relation to a constable, shall be construed in accordance with section 26(7) of the Act of 1967 and, for the purposes of the proviso to that section, shall be determined in accordance with Regulation 11;

“chief constable” shall have the same meaning as in the Act of 1967 and, in relation to any disciplinary case, shall mean the chief constable who is the appropriate disciplinary authority in relation to the constable in question;

“deputy chief constable” shall include, except for the purposes of Regulation 4, a reference to a constable acting in place of a deputy chief constable;

“investigating officer” means a constable who is appointed as an investigating officer in terms of Regulation 5(1) and (2);

“investigation form” means such a form as is mentioned in Regulation 5(3);

“presenting officer” has the meaning assigned thereto in Regulation 12(4).

Scope

4. This Part of these Regulations shall apply in relation to a disciplinary offence committed, or alleged to have been committed, by a constable other than a constable who is a chief constable, a deputy chief constable, or an assistant chief constable.

Investigation of charge

5.—(1) Where a report, allegation or complaint is received from which it may reasonably be inferred that a disciplinary offence may have been committed by a constable of a police force (hereinafter referred to as “the constable subject to investigation”), the deputy chief constable of that force shall appoint an investigating officer to investigate the matter:

Provided that, where the deputy chief constable is satisfied that the alleged disciplinary offence is a minor one, he may, instead of appointing an investigating officer, arrange for the constable concerned to be given an opportunity to comment upon a statement of the report, allegation or complaint and, where appropriate, thereafter to be given a warning by an officer above the rank of that constable.

(2) The investigating officer shall be such constable of or above the rank of inspector (other than a chief constable or a deputy chief constable), and equal in rank to, or above the rank of, the constable subject to investigation, as the deputy chief constable may appoint to investigate the matter:

Provided that the deputy chief constable shall not appoint as an investigating officer any constable who is a material witness or is interested in the matter otherwise than as a constable and accordingly he shall ask any constable considered for appointment, and that constable shall declare, whether he is such a witness or is so interested, before an appointment is made.

(3) As soon as practicable after his appointment, the investigating officer shall cause to be prepared an investigation form, which shall be in the form set out in Schedule 2 or in a form to the like effect and which shall—

(a) contain a statement of the report, allegation or complaint;

(b) inform the constable subject to investigation that, although he is not obliged to do so at this stage, he may make a written or oral statement concerning the matter to the investigating officer and provide the names and addresses of any persons whom he may wish to give evidence on his behalf; and

- (c) warn him that if he does make such a statement it may be used in evidence in any subsequent disciplinary proceedings;

and the investigating officer shall serve a copy of the investigation form upon the constable subject to investigation.

(4) Paragraph (3)(b) is without prejudice to any obligation on a constable to make a statement in the ordinary course of duty but any such statement shall not be admissible in any disciplinary proceedings in respect of that constable, except proceedings for any offence under paragraph 4(a) of the Discipline Code arising from the making of that statement itself.

- (5) The provisions of this Regulation are subject to Regulation 7.

Formulation and withdrawal of charges

6.—(1) The investigating officer shall, after due investigation in which he shall take all reasonable steps to obtain statements from witnesses, submit to the deputy chief constable a report on the alleged disciplinary offence, together with

- (a) the investigation form;
(b) any written statement, or a record of any oral statement, which the constable subject to investigation has made under Regulation 5(3)(b); and
(c) any statement obtained from any witness.

(2) The deputy chief constable, after considering the report of the investigating officer, shall decide whether or not the constable subject to investigation shall be charged with a disciplinary offence and, if he decides that the constable should be so charged, he shall, as soon as possible, cause—

- (a) to be entered on a discipline form the disciplinary offence with which the constable subject to investigation is to be charged and such particulars as will indicate the precise nature of the alleged offence; and
(b) the constable to be charged by being served with a copy of the discipline form.

(3) A discipline form shall be in the form set out in Schedule 3 or in a form to the like effect and shall be signed by the deputy chief constable.

(4) Where the deputy chief constable decides that the constable subject to investigation shall not be charged with a disciplinary offence, this decision shall be intimated in writing to the constable as soon as possible.

(5) Without prejudice to paragraph (4), where, after considering the report of the investigating officer, the deputy chief constable is satisfied that there is sufficient evidence to charge the constable subject to investigation with a disciplinary offence of a minor nature, he may, where he considers it appropriate to do so and instead of charging him with a disciplinary offence, decide to arrange for that constable to be given an opportunity to comment upon that evidence (other than the report of the investigating officer) and, where appropriate, thereafter to be given a warning by an officer above the rank of that constable.

(6) At any time before the hearing of a charge, the deputy chief constable may direct that the charge be withdrawn and, where he so directs, he shall, as soon as possible, cause—

- (a) his direction to be noted on the discipline form; and
(b) the constable subject to investigation to be served with written notice of his direction.

- (7) The provisions of this Regulation are subject to Regulation 7.

Alleged criminal offence

7.—(1) Notwithstanding anything in Regulations 5 and 6, where a report, allegation or complaint is received from which it may reasonably be inferred that the constable subject to investigation may have committed a criminal offence, the deputy chief constable may decide

- (a) not to appoint an investigating officer to investigate the matter in terms of Regulation 5(1);
- (b) if an investigating officer is appointed, to instruct that officer not to prepare or not to serve an investigation form upon the constable subject to investigation or not to carry out any investigation into any matter arising out of or referred to in that report, allegation or complaint, insofar as it might be the subject of criminal proceedings; or
- (c) to delay arriving at a decision as to whether the constable subject to investigation should be charged with a disciplinary offence in terms of Regulation 6(2),

until

- (i) the Procurator Fiscal has intimated that criminal proceedings are not to be taken in respect of any matter arising out of or referred to in that report, allegation or complaint, or
- (ii) if the Procurator Fiscal has intimated that criminal proceedings are to be taken in respect of any such matter, the completion of those criminal proceedings.

(2) If the deputy chief constable decides to exercise any power conferred upon him by paragraph (1), he shall arrange for the constable subject to investigation to be informed to that effect and to be warned that disciplinary proceedings may subsequently be taken against him, irrespective of whether or not criminal proceedings are brought against him or of the outcome of any such proceedings.

Documents to be supplied to accused

8.—(1) Where a constable is charged with a disciplinary offence by being served with a copy of the discipline form, the deputy chief constable shall arrange for the accused to be supplied, as soon as possible, with a copy of

- (a) any statement he may have made under Regulation 5(3)(b);
- (b) the report, allegation or complaint on which the charge is founded (or so much thereof as relates to the accused) and any reports thereon (other than the report of the investigating officer), notwithstanding that they may be confidential;
- (c) any statement relating to the charge made by any witness who may be called in support of the charge, together with the name and address of each such witness; and
- (d) any statement relating to the charge made by any person, other than a witness to be called in support of the charge, to the investigating officer or to anyone on his behalf, together with the name and address of each such person.

(2) Where the charge is founded on a report, allegation or complaint and a statement arising therefrom made by the same person, the reference in paragraph 1(b) to the report, allegation or complaint shall, without prejudice to paragraph (1)(c) or (d), be construed as including a reference to that statement.

(3) Notwithstanding anything in paragraph (1)(b), the deputy chief constable may withhold from the accused a report upon the report, allegation or complaint on which the charge is founded, if he is satisfied that considerations of national security require that it should not be supplied.

(4) In this Regulation, any reference to a copy of a statement, report, allegation or complaint shall, where it was not made in writing, be construed as a reference to a copy of a record thereof.

Questions in the discipline form to be answered by accused

9.—(1) The accused shall state in writing on the discipline form:—

- (a) whether he admits or denies the charge;
- (b) whether he wishes to offer any explanation;
- (c) whether he wishes to select a constable to assist him in presenting his case at the hearing; and

(d) the names and addresses of any witnesses whom he may desire to give evidence at the hearing.

(2) The investigating officer shall take all reasonable steps to obtain statements from the witnesses referred to under paragraph (1)(d) and shall supply to the accused a copy of any such statements.

Arrangements for the hearing

10.—(1) The deputy chief constable shall make all necessary arrangements for the hearing and, where the accused has requested the assistance in presenting his case of a constable of a police force other than his own, the deputy chief constable shall inform the chief constable of that other force of that request and of the time and place of the hearing.

(2) The deputy chief constable shall take all reasonable steps to secure the attendance of witnesses at the hearing.

(3) Where the hearing arises out of a complaint by a member of the public, the deputy chief constable shall, if the accused has denied the charge, inform the complainer of the time and place of the hearing and shall draw the complainer's attention to the provisions of Regulation 12(9).

Appropriate disciplinary authority

11. Where, in relation to any disciplinary case, the chief constable of the police force of which the accused is a constable is interested otherwise than as chief constable or is a material witness—

(a) the chief constable shall inform the accused of that fact by notice in writing as soon as possible before the hearing and such notice shall draw the attention of the accused to the provisions of section 26(7) of the Act of 1967 and of this Regulation;

(b) the appropriate disciplinary authority in relation to the accused shall, if either the accused or the chief constable so elect, be the chief constable of such other police force who shall be the first available chief constable on a rota of chief constables prepared and maintained for the purposes of this Regulation by the President of the Association of Chief Police Officers (Scotland); and

(c) any election made by the accused or the chief constable under this Regulation shall be in writing and shall be notified to the chief constable or, as the case may be, to the accused as soon as possible before the hearing.

Procedure at the hearing

12.—(1) Subject to the provisions of Regulation 20(3), a charge against a constable shall be heard by the chief constable who is the appropriate disciplinary authority in relation to that constable and, subject to the provisions of this Regulation and of Regulations 13 to 15, the procedure at the hearing shall be such as that chief constable may determine.

(2) The accused shall be ordered to appear at the hearing of the case and at any adjournment thereof.

(3) If the accused wishes to make objections to the competency or relevancy of the charge, he shall present them in writing to the chief constable at least 48 hours before the time of the hearing. At the beginning of the hearing, the chief constable shall determine any such objections and, if he upholds those objections, he shall dismiss the charge.

(4) The case against the accused shall be presented by a constable (hereinafter referred to as "the presenting officer") of rank equal to or above that of the accused, other than the chief constable, the deputy chief constable, the investigating officer or a witness.

(5) The accused shall be entitled to have a constable (hereinafter referred to as "his representative") selected by himself to assist him in presenting his case and, without prejudice to the foregoing generality, the accused or his representative may cross

examine the witnesses called in support of the case against the accused and call witnesses and make representations in his defence. The accused may also give evidence on his own behalf.

(6) If the accused admits the charge, the chief constable, after giving the presenting officer and thereafter the accused or his representative an opportunity of making a statement, may dispose of the case forthwith.

(7) After all the evidence has been led, the presenting officer and thereafter the accused or his representative shall be entitled to make oral submissions on the case before the hearing is concluded.

(8) The hearing shall be held in private:

Provided that, where a child is giving evidence, the chief constable may allow a parent or guardian to be present and, when any witness is giving evidence, the chief constable may, subject to consideration of any objections raised by the accused, allow such other persons to be present as may seem reasonable to him because of any special circumstances.

(9) Notwithstanding anything in paragraph (8), where the hearing arises out of a complaint made by a member of the public and the accused denies the charge or any part thereof, the chief constable may allow the complainer to be present at the hearing while witnesses are giving evidence:

Provided that:—

- (a) the complainer shall not be entitled to put questions to the accused or, except where the complainer is giving evidence as a witness, to participate in the proceedings in any way;
- (b) where the complainer is to be called as a witness at the hearing, he shall not be allowed to attend before he gives his evidence; and
- (c) the chief constable may, if he thinks fit, exclude the complainer from the whole or any part of the hearing and, without prejudice to the foregoing generality, shall exclude him during any period when he considers that a witness may, in giving evidence, disclose information which, in the public interest, ought not to be disclosed to a member of the public, or if he conducts himself in a disorderly manner.

(10) A verbatim record of the proceedings at the hearing of the case shall be taken. If the accused so requests within the period during which notice of appeal may be given to the Secretary of State under section 30 of and paragraph 1 of Schedule 3 to the Act of 1967, the verbatim record shall be transcribed and a copy thereof supplied to him as soon as possible. On completion of any such appeal or on a decision not to appeal, the accused shall return the transcription to the chief constable who shall retain it for three years. Where no transcription is made, the verbatim record shall be retained by the chief constable for three years.

Statements in lieu of oral evidence

13.—(1) Subject to the provisions of this Regulation, the chief constable may, in lieu of oral evidence, admit evidence by way of a written statement but evidence shall not be admissible in pursuance of this Regulation if it would not have been admissible had it been given orally.

(2) If either the presenting officer or the accused (in this Regulation referred to as “the parties”) proposes in pursuance of this Regulation to adduce written evidence at a hearing, he shall—

- (a) at least 21 days, or such shorter period as the parties may agree in writing, before the date of the hearing,
 - (i) give the other party a copy of the statement; and
 - (ii) invite that party to join in a minute of agreement to the admission of the statement in evidence without the maker thereof being called as a witness or being available for cross-examination; and

- (b) at least 10 days, or such shorter period as the parties may agree in writing, before the date of the hearing, lodge any such minute of agreement with the deputy chief constable.
- (3) The chief constable shall admit evidence by way of written statement under paragraph (1) only if—
- (a) such statement is accompanied by a minute of agreement signed by the parties; and
- (b) either party requests the chief constable to admit the written statement and the other party does not object.
- (4) Where, notwithstanding that a written statement has been admitted in evidence without the person who made the statement being called and being available as aforesaid, the chief constable is of the opinion that oral evidence should be given, he may request that that person be called as a witness and, in such case, unless that person gives oral evidence, the chief constable shall be entitled to disregard the written evidence.
- (5) Nothing in this Regulation shall prejudice the admission of written evidence which would be admissible apart from the provisions thereof.

Adjournment of hearing

14. The chief constable may from time to time adjourn the hearing to a later time or date, if it appears to him necessary or expedient to do so for the due hearing of the case.

Hearing in absence of accused

15.—(1) If the accused does not attend at the hearing of the case or at any adjournment thereof, the hearing may be proceeded with and concluded in his absence:

Provided that:—

- (a) if the accused is detained in pursuance of the sentence of a court in a prison or other institution to which the Prisons (Scotland) Act 1952(a) applies and expresses a desire to make representations in person at the hearing, the hearing shall not be concluded until the accused has been able to make such representations;
- (b) if good reason is given to the chief constable by, or on behalf of, the accused why the accused is unable to attend the hearing, other than that the accused is detained as aforesaid, the hearing shall be postponed or adjourned, as the case may be.
- (2) Where, owing to the absence of the accused, it is not possible to comply with the whole or any part of the procedure described in this Part of the Regulations, the case may be proceeded with as though that procedure had been complied with.

Finding

16.—(1) The chief constable, at the conclusion of the hearing or, where the case is heard in accordance with the provisions of Regulation 20(3) by another chief constable who is not the appropriate disciplinary authority in relation to the constable in question, on receiving the report of that chief constable, shall reach a decision on the case.

(2) The finding of the chief constable and any punishment imposed shall be recorded on the discipline form and be communicated to the accused.

(3) Where the hearing arises out of a complaint made by a member of the public, the finding of the chief constable, but not the punishment imposed, shall be communicated to the complainer.

Punishment

17.—(1) Subject to Regulation 18, where the accused is found guilty of a disciplinary offence, one of the following punishments shall be imposed, namely:—

- (a) dismissal from the force;
- (b) requirement to resign from the force either forthwith or at such date as shall be specified in the decision as an alternative to dismissal;
- (c) reduction in rank;
- (d) reduction in the accused's rate of pay for such period, not exceeding 12 months, as shall be specified in the decision;
- (e) fine;
- (f) reprimand;
- (g) caution;

and separate punishments may be imposed for separate disciplinary offences in respect of any one case.

(2) In considering which punishment is to be imposed when the accused has been found guilty of a disciplinary offence, the chief constable:—

- (a) shall have regard to the accused's personal record;
- (b) may invite a constable of the force above the rank of the accused to give an oral report on the character of the accused, provided that, where such oral report is made, the accused or his representative shall be given the opportunity to comment thereon:

Provided that the chief constable shall not take into account any warning which may have been given to the accused in terms of the proviso to Regulation 5(1) or of Regulation 6(5).

Limitations on punishments

18.—(1) The punishment of a reduction in the accused's rate of pay or a fine shall not be imposed for the offence set out in paragraph 13 of the Discipline Code.

(2) The punishment of a reduction in the accused's rate of pay in respect of any one case, no matter how many are the charges, shall not be such as to reduce the accused's rate of pay by more than two increments:

Provided always that a reduction in the accused's rate of pay shall not reduce the accused's rate of pay below the minimum of the scale of pay for his rank in the police force.

(3) The amount of a fine in respect of any one case, no matter how many are the charges, shall not in the aggregate exceed one week's pay and shall be recovered by stoppage of pay in amounts not exceeding one-seventh of his weekly pay, except in the event of a constable leaving the force when the whole amount of any fine then unpaid may be deducted from any pay then due.

(4) A fine or reduction in the accused's rate of pay shall not result in any increment in pay being retarded or withheld.

Suspension

19.—(1) Where a report, allegation or complaint is received from which it may reasonably be inferred that a constable may have committed a disciplinary or criminal offence, he may be suspended from duty by any constable of the force above him in rank.

(2) The deputy chief constable may terminate a suspension imposed under paragraph (1) with effect from the date of the constable's suspension or from any subsequent date and shall do so when he has decided that the constable shall not be charged with a disciplinary offence, unless the constable has submitted his resignation, or when disciplinary proceedings have been completed but have not resulted in a punishment of dismissal from the force or a requirement to resign from the force as an alternative to dismissal.

(3) Where the deputy chief constable has terminated the suspension of a constable that constable may not be suspended again in respect of the report, allegation or complaint which led to the suspension which has been terminated.

(4) Subject to the provisions of paragraph (6), a constable suspended from duty who—

- (a) has been found guilty of a criminal offence; or
- (b) has absented himself from duty and whose whereabouts are unknown to the deputy chief constable,

shall not in respect of any period of imprisonment or, as the case may be, in respect of the period during which his whereabouts are unknown to the deputy chief constable, be entitled to pay under the Police (Scotland) Regulations 1976.

(5) Subject to the provisions of paragraph (6), a constable suspended from duty shall not in respect of the period of suspension be entitled to any allowances under the Police (Scotland) Regulations 1976, except a rent allowance, a supplementary rent allowance, or compensatory grant.

(6) Where a constable who, having been suspended from duty, returns to duty and

- (a) it has been decided that he shall not be charged with a disciplinary offence or,
- (b) he has been so charged and all the charges have been dismissed, or
- (c) he has been so charged and has been punished by a reduction in his rate of pay for a period of less than 12 months, fine, reprimand or caution,

he shall receive, for the period of his suspension, the pay to which, but for the provisions of paragraph (4), and the allowances to which, but for the provisions of paragraph (5), he would have been entitled by virtue of the Police (Scotland) Regulations 1976.

(7) The Police (Scotland) Regulations 1976 and these Regulations shall apply to a constable suspended from duty.

Offences by constables of different police forces

20.—(1) Where a report, allegation or complaint is received from which it may reasonably be inferred that constables of two or more police forces acting together may have committed a disciplinary offence, the provisions of this Part of these Regulations shall apply, subject to the following modifications.

(2) The deputy chief constables of the forces concerned may appoint one investigating officer to investigate the matter.

(3) Where the deputy chief constables decide, after considering the report of that investigating officer, that the constables subject to investigation should be charged with a disciplinary offence while acting together, they may arrange for the case to be heard by the chief constable who shall be the first available on a rota of all chief constables prepared and maintained for the purposes of Regulation 11 by the President of the Association of Chief Police Officers (Scotland), other than the chief constables of the forces of which the accused are constables.

(4) Where a case has been remitted to a chief constable under paragraph (3), he shall, as soon as possible after the hearing, submit to the chief constable who is the appropriate disciplinary authority in relation to each of the accused:

- (a) the discipline form;
- (b) a statement as to the charge or charges found to be proved;
- (c) if any charges are found to be proved, a recommendation as to the proper punishment which, in his opinion, having regard to the personal record of the accused, should be imposed;
- (d) if the chief constable who is the appropriate disciplinary authority in relation to any of the accused so requests, a transcription of the verbatim record of the proceedings;

and the chief constable who is the appropriate disciplinary authority in relation to any of the accused shall reach a decision on the case in relation to that constable in accordance with Regulations 16, 17 and 18:

Provided that, where the chief constable who hears the case has been the chief constable who is determined under Regulation 11 to be the appropriate disciplinary authority in relation to any of the accused, he shall himself reach a decision on the case in relation to that constable in accordance with Regulations 16, 17 and 18.

Records

21. The deputy chief constable shall keep at the headquarters office of the police force, and, where the police force is divided into divisions, may also cause to be kept at the divisional headquarters

- (a) a complaints book in which there shall be entered every complaint made by a member of the public against any constable of the force or, as the case may be, of the division concerned, together with an account of the action taken in connection therewith; and
- (b) a discipline book in which there shall be entered details of every report, allegation or complaint suggesting the commission of a disciplinary offence by any constable of the force or, as the case may be, of the division concerned, together with an account of the action taken in connection therewith. Where any such report, allegation or complaint results in a constable being charged with a disciplinary offence which proceeds to a hearing, there shall also be entered in the discipline book details of the charge, together with the finding of the chief constable, any punishment imposed and the result of any appeal against any finding or punishment.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations amend the Police (Discipline) (Scotland) Regulations 1967 (“the principal regulations”).

The main amendment is made by Regulation 5 of, and the Schedule to, these Regulations, which re-enact, with amendments, Part III of the principal regulations. The other amendments are consequential upon the provisions of the new Part III.

Part III of the principal regulations makes provision as to the procedure to be followed where a report, allegation or complaint is received from which it may reasonably be inferred that a disciplinary offence may have been committed by a constable (other than a chief constable, a deputy chief constable or assistant chief constable). It makes provision as to the investigation of charges by an investigating officer, the charging of the constable by the deputy chief constable, the hearing of any charge before the appropriate chief constable and the punishments which may be imposed. It also makes provision for cases of suspension of a constable from duty and for the keeping of records relating to complaints and the action taken thereon.

The principal changes between Part III of the principal regulations and Part III as set out in the Schedule to these Regulations are as follows:—

- (a) the provisions of Regulation 4(6) of the principal regulations provide for the deputy chief constable to arrange for a constable to be dealt with by a warning if he is satisfied that the alleged offence is a trivial one. The corresponding provisions in the new Part III are the proviso to Regulation 5(1) and Regulation 6(5). The proviso to Regulation 5(1) provides for the deputy chief constable, where he is satisfied that the alleged

disciplinary offence is a minor one and instead of appointing an investigating officer, to arrange for the constable to be given an opportunity of commenting upon a statement of the report, allegation or complaint and, where appropriate, to be given a warning. The new Regulation 6(5) provides for the deputy chief constable, where he is satisfied, after considering the report of the investigating officer, that there is sufficient evidence to charge the constable with a disciplinary offence of a minor nature and instead of charging him with that offence, to give the constable an opportunity of commenting upon that evidence (other than the report of the investigating officer) and to be given a warning. The proviso to the new Regulation 17(2) makes it clear that any warning which is given to a constable is not to be taken into account by the chief constable in considering what punishment should be imposed upon him for any subsequent disciplinary offence of which he is found guilty;

- (b) the principal regulations do not contain any provision with regard to the withdrawal of a charge but the new Regulation 6(6) enables the deputy chief constable to withdraw a charge at any time before the hearing;
- (c) Regulation 5(1)(b) of the principal regulations requires the accused constable to be supplied with a copy of any reports upon the report, allegation or complaint on which the charge is founded and, in the re-enacted provision in Regulation 8(1)(b), it is made clear that this does not include the report of the investigating officer;
- (d) the new Regulation 13 makes provision for permitting the chief constable at a hearing to admit evidence by way of a written statement without the person who made the statement being called as a witness, if the evidence in the statement would have been admissible if given orally. Such evidence may be admitted only if it is accompanied by a minute of agreement signed by both the accused constable and the officer presenting the case against him, and if it is requested by one of the parties and the other party does not object;
- (e) the new Regulation 17 makes it clear that separate punishments may be imposed for separate disciplinary offences; and
- (f) the new Regulation 21 requires a deputy chief constable to keep at the headquarters office of the police force a complaints book and a discipline book recording every complaint and the action taken thereon and empowers him also to arrange for the keeping of such books at any divisional headquarters. Under Regulations 15, 16 and 17 of the principal regulations these books were required to be kept either at the headquarters office or at the divisional headquarters, although the discipline book was also required to be kept in the office of the chief constable.

In consequence of their provisions, these Regulations revoke Regulation 40 of the principal regulations (which made provision as to an investigation and discipline form) and Regulations 72(3)(b) to (e) of the Police (Scotland) Regulations 1976 (which made amendments to the principal regulations relating to constables who are suspended).

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