

The British Transport Police (Conduct) Regulations 2020

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CONTENTS

Preamble

Part 1

Preliminary

1. Citation, commencement and extent
2. Interpretation and delegation
3. Revocation and transitional provisions
4. Application

Part 2

General

5. Standards of Professional Behaviour
6. The harm test
7. Police friend
8. Legal and other representation
9. Provision of notices or documents
10. Outstanding or possible criminal proceedings
11. Suspension
12. Record of disciplinary proceedings

Part 3

Investigations

13. Application of this Part
14. Severity assessment
15. Appointment of investigator

- 16. Investigation
- 17. Written notices
- 18. Representations to the investigator
- 19. Timeliness of investigation
- 20. Interviews during investigation
- 21. Report of investigation

Part 4

Misconduct proceedings

- 22. General
- 23. Referral of case to misconduct proceedings
- 24. Presenting of case by the Director General
- 25. Joint misconduct proceedings
- 26. Delegation of functions
- 27. Withdrawal of misconduct proceedings
- 28. Persons conducting misconduct proceedings
- 29. Role of chair of misconduct hearing
- 30. Notice of referral to misconduct proceedings and panel membership
- 31. Procedure on receipt of notice
- 32. Witnesses and documents to be supplied
- 33. Misconduct pre-hearing
- 34. Timing of misconduct meetings
- 35. Notice of misconduct proceedings and panel
- 36. Public notification of misconduct hearings
- 37. Attendance of officer concerned at misconduct proceedings
- 38. Participation of Director General and investigator at misconduct proceedings
- 39. Reporting restrictions, participation and exclusion from proceedings
- 40. Attendance of complainant, interested parties and others at misconduct proceedings
- 41. Procedure at misconduct proceedings
- 42. Outcome of misconduct proceedings
- 43. Notification of outcome

- 44. Record of misconduct proceedings
- 45. Appeal from misconduct meeting: officers other than senior officers
- 46. Appeal meeting
- 47. Finding of the appeal

Part 5

Accelerated misconduct hearings

- 48. General
- 49. Referral of case to accelerated misconduct hearing
- 50. Remission of case
- 51. Notice of referral of accelerated misconduct hearing
- 52. Notice of accelerated misconduct hearing
- 53. Public notification of accelerated misconduct hearing
- 54. Procedure on receipt of notice
- 55. Persons conducting accelerated misconduct hearing
- 56. Documents to be supplied
- 57. Attendance of officer concerned at accelerated misconduct hearing
- 58. Participation of Director General and investigator at accelerated misconduct hearing
- 59. Reporting restrictions and participation at accelerated misconduct hearing
- 60. Notice to complainant and interested persons of accelerated misconduct hearing
- 61. Procedure at accelerated misconduct hearing
- 62. Outcome of accelerated misconduct hearing
- 63. Notification of outcome
- 64. Record of accelerated misconduct hearing

Part 6

Reflective practice review process

- 65. Interpretation and application
- 66. General
- 67. Referral to reflective practice review process
- 68. Fact-finding stage
- 69. Discussion stage

70. Reflective review development report

71. Failure to engage with the reflective practice review process

Schedule 1: Modification to these Regulations in their application to former officers

Schedule 2: Standards of Professional Behaviour

Preamble

The British Transport Police Authority makes the following Regulations in exercise of the powers conferred upon it by sections 36 and 37 of the Railways and Transport Safety Act 2003 (the 2003 Act)¹.

In accordance with section 46 of the 2003 Act, the British Transport Police Authority invited the British Transport Police Federation to nominate individuals to meet with an equal number of individuals nominated by the British Transport Police Authority to discuss these Regulations and had regard to the recommendations made by the group. The Superintendents Association was also consulted, and regard was had to their recommendations.

Nothing in these Regulations is designed to prejudice the agreement made between the Police Investigations and Review Commissioner (“the Commissioner”) and the British Transport Police Authority in furtherance of Article 3(1) of the Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013 (“the 2014 Agreement”).²

Part 1

Preliminary

Citation, commencement and extent

1.- (1) These Regulations may be cited as the British Transport Police (Conduct) Regulations 2020 and shall come into force on 4 January 2021.

(2) These Regulations extend to England and Wales and to Scotland.

Interpretation and delegation

2.- (1) In these Regulations-

“the 1996 Act” means the Police Act 1996³;

¹ Railways and Transport Safety Act 2003 c. 20. Section 36 is amended by paragraph 18 of Schedule 22 to the Criminal Justice and Immigration Act 2008 (c.4) and by paragraph 7 of Schedule 7 to the Policing and Crime Act 2017 (c.3). Section 37 is amended by paragraph 19 of Schedule 22 to the Criminal Justice and Immigration Act 2008 and by paragraph 8 of Schedule 7 to the Policing and Crime Act 2017 (c.3).

² SI 2013/602.

³ 1996 c 16; subsection (3) of section 50 was substituted by paragraphs 1 and 3 of Schedule 22 to the Criminal Justice and Immigration Act 2009 (c.4); subsections (3A) to (3G) of section 50 and subsections (2B) to (2H) of section 51 were inserted by section 29(1) to (3) of the Policing and Crime Act 2017 (c.3); subsection (2)(ba) of section 51 was inserted by section 35 of the Police Reform Act 2002 (c.30) and amended by paragraphs (1) and (2) of Schedule 22 to the 2008 Act; section 84 was substituted by paragraphs 1 and 7 of Schedule 22b to the Criminal Justice and Immigration Act 2008 and amended by paragraphs 1 and 40 of Schedule 16 to the Police Reform and Social Responsibility Act 2011 (c.13) and section 29(1) and (4) of the Policing and Crime Act 2017; section 85 was

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

“the 2003 Act” means the Railways and Transport Safety Act 2003;

“the Complaints and Misconduct Regulations” means the Police (Complaints and Misconduct) Regulations 2020⁴ as they are applied by the police authority pursuant to any regulations that it may make (or any equivalent provisions that it may make in respect of Scotland);

“the Performance Regulations” means the British Transport Police (Performance) Regulations 2020;

“the Police Regulations” means the Police Regulations 2003⁵;

“accelerated misconduct hearing” means a hearing to which the officer concerned is referred under regulation 49 after the case has been certified as one where the special conditions are satisfied;

“acting chief officer” means a person exercising or performing the functions of the chief constable in accordance with section 22(3) of the 2003 Act (power of deputy to perform functions of Chief Constable);

“allegation” means an allegation relating to a complaint or conduct matter, or a practice requiring improvement;

“appeal meeting” means a meeting held in accordance with regulation 46;

“appropriate authority” means –

(a) where the officer concerned is a senior officer of the police force, the police authority;

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

“chief constable” means the person appointed in accordance with section 21 of the 2003 Act;

“Commissioner” means the Police Investigations and Review Commissioner appointed under section 33 of the Police, Public Order and Criminal Justice (Scotland) Act 2006⁶;

“complainant” has the meaning given to it by section 29(2) of the 2002 Act (interpretation of Part 2)⁷;

“complaint” has the meaning given to it by section 12 of the 2002 Act (complaints, matters and persons to which Part 2 applies)⁸;

substituted by paragraphs 1 and 8 of Schedule 22 to the Criminal Justice and Immigration Act 2008 and amended by section 29(1) and (5) of the Policing and Crime Act 2017.

⁴ S.I. 2020/2

⁵ S.I. 2003/527. Amendments are cited elsewhere in these Regulations where relevant..

⁶ 2006 asp 10 (Scottish Act)

⁷ Section 29(2) was amended by paragraph 6 of Schedule 4 to the Policing and Crime Act 2017.

⁸ Section 12(1) to (1B) was substituted for section 12(1) by section 14(2) of the Policing and Crime Act 2017.

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

“conduct matter” has the meaning given to it by section 12 of the 2002 Act (complaints, matters and persons to which Part 2 applies)⁹;

“criminal proceedings” means-

- (a) any prospective criminal proceedings, or
- (b) all criminal proceedings brought which have not been brought to a conclusion apart from the bringing and determination of any appeal other than an appeal against conviction to:
 - i the Crown Court in England and Wales; or
 - ii the High Court of Justiciary in Scotland.

“Director General” means the Director General of the Independent Office for Police Conduct, established under section 9 of the 2002 Act (the Independent Office for Police Conduct);

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

- (a) a written warning;
- (b) a final written warning; or
- (c) dismissal without notice;

“disciplinary proceedings” means-

- (a) misconduct proceedings under Part 4 of these Regulations,
- (b) an accelerated misconduct hearing under Part 5 of these Regulations, or
- (c) an appeal from misconduct proceedings, or from an accelerated misconduct hearing under the British Transport Police Appeals Tribunals Regulations 2020,

but, for the purposes of the following provisions, “disciplinary proceedings” only includes misconduct proceedings mentioned in paragraph (a) and a hearing mentioned in paragraph (b) of this definition-

- (i) paragraph (a) of the definition of “disciplinary proceedings” in section 87(5) of the 1996 Act (guidance concerning disciplinary proceedings etc.)
- (ii) paragraph (a) of the definition of “disciplinary proceedings” in section 29(1) of the 2002 Act (interpretation);
- (iii) section 36(2) of the 2002 Act (conduct of disciplinary proceedings);

⁹ Section 12(2) was amended by sections 2(3)(a) of the Police (Complaints and Conduct) Act 2012 (c.22) and paragraph 8(6)(a) of Schedule 14 to the Police Reform and Social Responsibility Act 2011.

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

“gross misconduct” means a breach of the Standards of Professional Behaviour that is so serious as to justify dismissal;

“harm test” has the meaning given to it in regulation 6;

“HMIC” means Her Majesty’s Chief Inspector of Constabulary appointed under section 54(1) of the 1996 Act (appointment and functions of inspectors of constabulary);

“HMICS” means Her Majesty’s Inspectorate of Constabulary for Scotland appointed under section 33(1) of the Police (Scotland) Act 1967¹⁰;

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

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

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

“interested person” means a person who has an interest in being kept properly informed about the handling of a complaint or conduct matter in accordance with section 21 of the 2002 Act (duty to provide information for other persons)¹¹;

“investigator” means a person-

(a) appointed under regulation 15;

(b) appointed or designated under paragraph 16, 18 or 19 of Schedule 3 to the 2002 Act (investigations)¹², as the case may be;

“line manager” means the police officer or the police staff member who, in either case, has immediate supervisory responsibility for the officer concerned;

“member of the police force” means a constable of the police force of any rank, appointed in accordance with section 24 of the 2003 Act;

¹⁰ Police (Scotland) Act 1967 c.77, as amended by S.I. 1999/1820.

¹¹ Section 21 was amended by paragraph 7 of Schedule 12 to the Serious Organised Crime and Police Act 2005 (c.15), section 15 of the Policing and Crime Act 2017 and paragraphs 1 and 4 of Schedule 4 to, paragraph 47(d) of Schedule 5 to, and paragraphs 15 and 27 of Schedule 9 to that Act.

¹² Paragraph 16 was amended by paragraphs 11 and 14 of Schedule 12 to the Serious Organised Crime and Police Act 2005, paragraphs 1, 11 and 16 of Schedule 5 to the Policing and Crime Act 2017; paragraph 18 was amended by paragraphs 1, 11 and 16 of Schedule 12 to the Serious Organised Crime and Police Act 2005 and by paragraphs 9, 15, 18 and 19 of Schedule 5 to the Policing and Crime Act 2017; paragraph 19 was amended by paragraphs 1, 11 and 17 of Schedule 12 to the Serious Organised Crime and Police Act 2005 and paragraphs 9, 15, 20 and 56 of Schedule 9 to the Policing and Crime Act 2017. There are further amendments to paragraphs 16, 18 and 19, but none are relevant.

“misconduct”, other than in regulation 23(2)(a) and the first reference to “misconduct” in regulation 23(2)(b), means a breach of the Standards of Professional Behaviour that is so serious as to justify disciplinary action;

“misconduct hearing” means a hearing to which the officer concerned has been referred under regulation 23 to determine whether the conduct of the officer concerned amounts to misconduct or gross misconduct or neither and whether disciplinary action should be imposed;

“misconduct meeting” means a meeting to which the officer concerned has been referred under regulation 23 to determine whether the conduct of the officer concerned amounts to misconduct or not and whether disciplinary action should be imposed;

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

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

“originating authority”, has the meaning given to it in regulation 26(3);

“personal record” means a personal record kept by the police authority and which contains the information specified in regulation 15 of the Police Regulations, where any reference in that regulation to any other Regulations is to be taken to be a reference to those Regulations as applied by the police authority (including any equivalent provision that may be made by the police authority in respect of Scotland) or, as the case may be, to any other equivalent Regulations that have been made by the police authority;:

“police authority” means the body corporate known as the British Transport Police Authority, established in accordance with section 18 of the 2003 Act;

“police force” means the British Transport Police Force as established and maintained in accordance with section 20 of the 2003 Act;

“police friend” means a person chosen by the officer concerned in accordance with regulation 7;

“police officer” means a member of the police force or a special constable of the police force (unless the context otherwise indicates that the expression extends to persons appointed by another police force);

“police staff member” means a person employed in the service of the police force in accordance with section 27 of the 2003 Act (unless the context otherwise indicates that this expression extends to persons appointed by another police force);

“practice requiring improvement” means underperformance or conduct not amounting to misconduct or gross misconduct, which falls short of the expectations of the public and the

police service as set out in the “Code of Ethics issued by the College of Policing under section 39A of the Police Act 1996 (codes of practice for chief officers)¹³, ;

“pre-commencement allegation” means an allegation against a police officer which came to the attention of the police authority or the chief constable before the date of coming into force of these regulations;

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

“reflective practice review process” means the process set out in part 6;

“relevant lawyer”-

(a) in England and Wales has the meaning given to it by section 84(4) of the 1996 Act (representation etc. at disciplinary and other proceedings)¹⁴ and

(b) in Scotland, means an advocate or solicitor;

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

“severity assessment” has the meaning given to it in regulation 14;

“special conditions” has the meaning given to it in regulation 49;

“special constable” means a special constable of the police force appointed in accordance with section 25 of the 2003 Act;

“staff association” means –

(a) in relation to a member of the police force of the rank of chief inspector or below, the British Transport Police Federation;

(b) in relation to a member of the police force of the rank of superintendent or chief superintendent, the Police Superintendents Association of England and Wales; and

(c) in relation to a member of the police force who is a senior officer, the Chief Police Officers’ Staff Association;

“working day” means any day other than a Saturday or Sunday or a day which is a bank holiday or a public holiday in England and Wales under the Banking and Financial Dealings Act 1971 or, as the case may be, in Scotland.

(2) In these Regulations-

¹³ Section 39A was inserted by section 2 of the Police Reform Act 2002. There are other amendments to that section, but none are relevant.

¹⁴ Section 84 was substituted by paragraphs 1 and 7 of Schedule 22 to the Criminal Justice and Immigration Act 2008 and amended by paragraphs 1 and 40 of Schedule 16 to the Police Reform and Social Responsibility Act 2011 and section 29(1) and (4) of the Policing and Crime Act 2017.

(a) a reference to an officer other than a senior officer includes a reference to a special constable appointed in accordance with section 25 of the 2003 Act, regardless of the officer's level of seniority;

(b) a reference to a copy of a statement, where it is not made in writing, is to be construed as a reference to a copy of an account of that statement.

(3) Where the appropriate authority is the chief constable, the chief constable may, subject to paragraph (4), delegate any functions under these Regulations to a –

(a) member of the police force of at least the rank of inspector, or

(b) police staff member who, in the opinion of the chief constable is of at least a similar level of seniority to an inspector.

(4) Where the appropriate authority delegates its functions under regulation 11 or 49, the following decisions must be authorised by a senior officer-

(a) a decision under regulation 11 to suspend an officer or to continue or end such a suspension; and

(b) a decision under regulation 49 as to whether to certify a case as one where the special conditions are satisfied.

(5) For the purpose of these Regulations, the making of a protected disclosure by a police officer is not a breach of the Standards of Professional Behaviour.

(6) In paragraph (5), "protected disclosure" as the meaning given by section 43A of the Employment Rights Act 1996 (meaning of protected disclosure)

Revocation and transitional provisions

3- (1) Subject to paragraph (2) of this regulation, the British Transport Police (Conduct) Regulations 2015 are revoked.

(2) Subject to regulation 4(7), the British Transport Police (Conduct) Regulations 2015 continue to have effect in relation to-

(a) a pre-commencement allegation;

(b) an allegation against a police officer which comes to the attention of the appropriate authority on or after 4 January 2021 and relates to a matter in respect of which a pre-commencement allegation against that person was made and is being handled in accordance with the British Transport Police (Conduct) Regulations 2015 or the British Transport Police (Complaints and Misconduct) Regulations 2020.

Application

4. – (1) Subject to paragraph (6), these Regulations apply where an allegation comes to the attention of the appropriate authority which indicates that the conduct of a police officer may amount to misconduct, gross misconduct or practice requiring improvement.

(2) Except as set out in paragraph (8), these Regulations also apply, with the modifications set out in Schedule 1, where –

(a) an allegation comes to the attention of a relevant body which indicates that the conduct of a person who at the time of the alleged conduct was a police officer (“P”) may amount to gross misconduct, and

(b) condition A, B or C is satisfied.

(3) Condition A is that P ceased to be a police officer after the allegation first came to the attention of a relevant body.

(4) Condition B is that –

(a) P ceased to be a police officer before the allegation first came to the attention of a relevant body, and

(b) the period between the date P ceased to be a police officer and the date the allegation first came to the attention of the relevant body did not exceed 12 months.

(5) Condition C is that –

(a) P ceased to be a police officer before the allegation first came to the attention of a relevant body;

(b) the period between the date P ceased to be a police officer and the date the allegation first came to the attention of the relevant body exceeded 12 months, and

(c) the Director General makes a Condition C special determination under Part 1A of these Regulations (as inserted by way of modification of these Regulations by paragraph (2) and Schedule 1) that taking disciplinary proceedings against P in respect of the alleged gross misconduct would be reasonable and proportionate.

(6) Subject to paragraph (7), these Regulations do not apply in relation to-

(a) a pre-commencement allegation; or

(b) an allegation against a police officer that comes to the attention of the police authority or chief constable on or after 4 January 2021 and relates to a matter in respect of which a pre-commencement allegation against that person was made, if at the time the allegation is made the pre-commencement allegation is being handled in accordance with the British Transport Police (Conduct) Regulations 2015 or the British Transport Police (Complaints and Misconduct) Regulations 2020.

(7) Where the Director General –

(a) determines, under section 13B of the 2002 Act (power of the Director General to require a re-investigation)¹⁵ that a complaint or matter is to be re-investigated, or

(b) makes a direction under section 28A(1) or (4) of the 2002 Act (application of Part 2 to old cases)¹⁶ in relation to a matter on or after 4 January 2021

these Regulations apply regardless of when the complaint or matter came to the attention of the appropriate authority.

(8) Paragraph (2) does not apply if –

(a) it relates to a person who ceased to be a police officer before 4 January 2021; or

(b) the disciplinary proceedings would not be the first disciplinary proceedings to be taken against P in respect of the alleged gross misconduct unless they result from a re-investigation of the allegation (whether carried out under these Regulations or under the 2002 Act) that begins not later than 12 months after the date that P ceased to be a police officer.

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

(10) In this regulation, “relevant body” means–

(a) the chief constable of the police force;

(b) the police authority, or

(c) the Director General.

PART 2

General

Standards of Professional Behaviour

5. The Standards of Professional Behaviour established are the standards of professional behaviour described in Schedule 2.

The harm test

¹⁵Section 13B was inserted by section 18(1) of the Policing and Crime Act 2017 and amended by paragraphs 15 and 20 of Schedule 9 to that Act.

¹⁶ Section 28A was inserted by section 2(1) and (2) of the Police (Complaints and Conduct) Act 2012 and amended by paragraphs 16 and 39 of Schedule 9 to the Policing and Crime Act 2017.

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

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

Police friend

7. – (1) The officer concerned may choose –

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

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

(2) Subject to regulation 66(1), the police friend may-

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

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

Legal and other representation

8. – (1) Subject to paragraph (2), the officer concerned has the right to be legally represented by a relevant lawyer of the officer's choice ("the preferred lawyer"), at a misconduct hearing or an accelerated misconduct hearing,

(2) The unavailability of one or more preferred lawyers is not a valid ground for delaying a misconduct hearing or an accelerated misconduct hearing where an alternative relevant lawyer can be found.

(3) If the officer concerned chooses not to be legally represented at such a hearing the officer may be dismissed or receive any other outcome under regulation 42 or 62 without being so represented.

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

(5) The appropriate authority, or, where functions have been delegated under regulation 26(1), the originating authority, may be represented at misconduct proceedings or an accelerated misconduct hearing or an appeal meeting by –

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

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

(6) Subject to paragraph (7), the appropriate authority may appoint a person to advise the person or persons conducting or chairing the misconduct proceedings or accelerated misconduct hearing or appeal meeting.

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

(8) The circumstances in which the Independent Office for Police Conduct is a relevant authority for the purpose of section 84(5) of the 1996 Act (power to prescribe in regulations, in relation to representation at proceedings, circumstances in which the relevant authority includes the Independent Office for Police Conduct) are prescribed as being where the Director General has made a decision under regulation 24(1) to present the case.

(9) Where the circumstances prescribed in paragraph (8) apply, the Director General may be represented by a relevant lawyer.

Provision of notices or documents

9. Where any written notice or document is to be given or supplied to the officer concerned under these Regulations, it must be –

- (a) given to the officer in person;
- (b) left with a person at, or sent by recorded delivery to, the officer's last known address;
- (c) given to the officer in person by the officer's police friend where the police friend has agreed with the appropriate authority to deliver the notice or document, or
- (d) given to the officer in any other manner agreed between the person who is required to give the notice or document and the officer.

Outstanding or possible criminal proceedings

10. – (1) Subject to the provisions of this regulation, proceedings under these Regulations must proceed without delay.

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

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

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

(5) For the purposes of this regulation, "relevant prosecutor" means the Director of Public Prosecutions in England and Wales, the Prosecutor Fiscal in Scotland and any other person who has, or is likely to have, responsibility for the criminal proceedings.

Suspension

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

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

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

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

(a) having considered temporary redeployment to alternative duties or an alternative location as an alternative to suspension, the appropriate authority has determined that such redeployment is not appropriate in all the circumstances of the case, and

(b) it appears to the appropriate authority that either-

(i) the effective investigation of the case may be prejudiced unless the officer concerned is so suspended, or

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

(5) The appropriate authority may exercise the power to suspend the officer concerned under this regulation at any time beginning with the day on which these Regulations first apply in respect of the officer in accordance with regulation 4 and ending with the date on which-

(a) it is decided that the conduct of the officer concerned should not be referred to misconduct proceedings or to an accelerated misconduct hearing, or

(b) such proceedings have concluded.

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

(a) in writing with a summary of the reasons, or

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

(7) The officer concerned (or the officer’s police friend) may make representations against suspension to the appropriate authority-

(a) before the end of 7 working days beginning with the first working day after being suspended;

(b) at any time during the suspension if the officer reasonably believes that circumstances relevant to the suspension conditions have changed.

(8) The appropriate authority must review the suspension conditions-

(a) on receipt of any representations under paragraph (7)(a);

(b) if there has been no previous review, before the end of 4 weeks beginning with the first working day after the suspension;

(c) in any other case –

(i) where it becomes aware that circumstances relevant to the suspension conditions may have changed (whether by means of representations made under paragraph (7)(b) or otherwise);

(ii) before the end of 4 weeks beginning with the first working day after the previous review.

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

(10) Where the officer concerned is suspended under this regulation, the officer must remain so suspended until whichever of the following occurs first –

(a) the appropriate authority decides, following a review, the suspension conditions are no longer satisfied;

(b) either of the events mentioned in paragraph (5)(a) and (b).

(11) In a case to which paragraph 18 or 19 of Schedule 3 to the 2002 Act (directed and independent investigations) applied, the appropriate authority must consult with the Director General-

(a) in deciding whether or not to suspend the officer concerned under this regulation, and

(b) in deciding, following a review, whether or not to end a suspension under this regulation.

Record of disciplinary proceedings

12. The appropriate authority must cause a record to be kept of disciplinary proceedings brought against every officer concerned, together with the finding and decision on disciplinary action and the decision in any appeal by the officer.

PART 3

Investigations

Application of this Part

13. This Part shall not apply to a case to which paragraph 16, 18 or 19 of Schedule 3 to the 2002 Act (investigations) applies¹⁷.

Severity assessment

14. – (1) The appropriate authority must assess whether the conduct which is the subject matter of the allegation, if proved, would amount to misconduct or gross misconduct or neither (“the severity assessment”).

(2) Where the appropriate authority assesses that the conduct, if proved, would amount to neither misconduct nor gross misconduct, it must assess whether-

- (a) the conduct, if proved, would amount to practice requiring improvement;
- (b) the matter should be referred to be dealt with under the Performance Regulations, or
- (c) it should take no further action.

(3) The appropriate authority must consult the line manager of the officer concerned before making an assessment in terms of paragraph (2)(a) or (b).

(4) Where the appropriate authority assesses that the conduct, if proved, would amount to practice requiring improvement, it must refer the matter to be dealt with under the reflective practice review process as set out in Part 6.

(5) Where the appropriate authority assesses that the conduct, if proved, would amount to misconduct-

- (a) the matter must be investigated, and
- (b) the appropriate authority must assess whether, if the matter were to be referred to misconduct proceedings under regulation 23 these would be likely to be a misconduct meeting or a misconduct hearing.

(6) At any time before the start of misconduct proceedings, the appropriate authority may revise its severity assessment under this regulation if it considers it appropriate to do so.

(7) Where the appropriate authority decides under this regulation to take no further action or to refer the matter to be dealt with under the reflective practice review process of the Performance Regulations, it must so notify the officer concerned in writing as soon as practicable.

¹⁷ Part 3 applies to internal conduct allegations of misconduct or gross misconduct which may justify the bringing of disciplinary proceedings and are referred to be dealt with under these Regulations by the appropriate authority. Paragraphs 16, 18 and 19 of Schedule 3 to the 2002 Act make provision for the investigation to be carried out under the Direction of the Director General and by the Director General respectively. Part 3 of these Regulations will not apply to these cases.

Appointment of investigator

15.- (1) This regulation applies where the matter is to be investigated in accordance with regulation 14.

(2) The appropriate authority must appoint a person to investigate the matter.

(3) No person may be appointed to investigate a matter under this regulation-

(a) unless they have an appropriate level of knowledge, skills and experience to plan and manage the investigation;

(b) if they are an interested party;

(c) if they work, directly or indirectly, under the management of the officer concerned, or

(d) in a case where the officer concerned is a senior officer, if they are-

(i) the chief constable of the police force concerned

(ii) a member of the police force serving in the same police area as the officer concerned;

(4) The reference in paragraph (3)(d)(ii) to a member of the police force shall include a reference to a special constable appointed for the area of the police force and a police staff member serving in that area.

Investigation

16. - (1) 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.

(2) The investigator must as soon as practicable after being appointed draw up the terms of reference of the investigation.

Written notices

17. – (1) Subject to the harm test and except where paragraph (6) applies by virtue of sub-paragraph (a) of that paragraph, the investigator must, as soon as reasonably practicable after being appointed, give the officer concerned a written notice stating–

- (a) the conduct that is the subject matter of the allegation and how that conduct is alleged to fall below the Standards of Professional Behaviour;
- (b) that there is to be an investigation into the matter and the identity of the investigator;
- (c) the result of the severity assessment conducted under regulation 14;
- (d) the result of an assessment under regulation 14(5)(b) as to whether any misconduct proceedings would likely be a misconduct meeting or a misconduct hearing;
- (e) that the officer has the right to seek advice from the officer's staff association or any other body and of the effect of regulation 7(1) and (2);
- (f) of the effect of regulations 8(1) to (3) and 18, and
- (f) that whilst the officer does not have to say anything it may harm the officer's case if the officer does not mention when interviewed, or when providing any information under regulation 18(1) or 31(2) or (3) something later relied in in any disciplinary proceedings.

(2) Where a notice is given under paragraph (1), the investigator must-

- (a) subject to the harm test and except where paragraph (5) applies by virtue of sub-paragraph (b) of that paragraph, give the officer concerned the written terms of reference of the investigation, or
- (b) where written terms of reference are not provided under sub-paragraph (a), give the officer concerned written notice stating that the terms of reference are not being provided and explaining why,

(3) Where practicable, the investigator must give the officer concerned the written terms of reference, or as the case may be, the written notice under paragraph (2) at the same time as notice is given under paragraph (1), or otherwise within a period of 5 working days, beginning with the first working day after the day on which notice is given.

(4) Subject to the harm test and except where paragraph (6) applies by virtue of sub-paragraph (c) of that paragraph, where notice is given under paragraph (1) and the appropriate authority revises its severity assessment in accordance with regulation 14(6), the appropriate authority must as soon as practicable give the officer concerned written notice of the revised severity assessment.

(5) Subject to the harm test and except where paragraph (6) applies by virtue of sub-paragraph (d) of that paragraph, where the written terms of reference are given under paragraph (2) and those terms are revised by the investigator, the investigator must as soon as practicable give the officer concerned the revised terms of reference.

(6) This paragraph applies for so long as the investigator considers that giving –

- (a) a written notice under paragraph (1);
- (b) terms of reference under paragraph (2);
- (c) written notice under paragraph (3), or
- (d) revised terms of reference under paragraph (5),

might prejudice the investigation or any other investigation (including, in particular, a criminal investigation).

(7) Once a written notice has been given in accordance with paragraph (1), the investigator must notify the officer concerned of the progress of the investigation –

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

Representations to the investigator

18.- (1) Before the end of 10 working days beginning with the first working day after the terms of reference, or, as the case may be, written notice has been given under regulation 17(2)-

- (a) the officer concerned may provide a written or oral statement relating to any matter under investigation, including any mitigating circumstances relevant to any such matter, and
- (b) the officer concerned or the officer's police friend may provide any relevant documents to the investigator.

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

(3) The period of 10 working days referred to in paragraph (1) may be extended by the investigator.

(4) 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.

Timeliness of investigation

19. – (1) Where an investigation is not completed within a relevant period, the appropriate authority must, subject to paragraph (3), provide as soon as practicable the following information in writing to the police authority –

- (a) the date on which the allegation came to the attention of the appropriate authority;
 - (b) the date on which notice was given under regulation 17(1);
 - (c) the progress of the investigation;
 - (d) an estimate of when –
 - (i) the investigation will be concluded, and
 - (ii) a report will be submitted under regulation 21;
 - (e) the reason for the length of time taken by the investigation, and
 - (f) a summary of planned steps to progress the investigation and bring it to a conclusion.
- (2) For the purposes of this regulation, each of the following is a “relevant period” –
- (a) the first relevant period is the period of 12 months beginning with the day on which the allegation first came to the attention of the appropriate authority;
 - (b) each subsequent relevant period is the period of 6 months beginning with the day after the end of the previous relevant period.
- (3) The requirement to provide information under paragraph (1) does not apply in a case where it appears to the appropriate authority that to do so might prejudice the investigation or any other investigation (including a criminal investigation) or in a case where the police authority is the appropriate authority;
- (4) Subject to the harm test, a copy of the information provided under paragraph (1) or (2) must be sent to the officer concerned.

Interviews during investigation

- 20. –** (1) Where an investigator wishes to interview the officer concerned as part of the investigation, the investigator must, if reasonably practicable, agree a date and time for the interview with the officer.
- (2) No interview may take place until the officer concerned has been provided with the terms of reference or, as the case may be, written notice under regulation 17(2).
- (3) Where no date and time is agreed under paragraph (1), the investigator must specify a date and time for the interview.
- (4) Where a date and time is specified under paragraph (3) and –
- (a) the officer concerned or the officer’s police friend will not be available, and
 - (b) the officer proposes an alternative date or time which satisfies paragraph (5),

the interview must be postponed to the date or time proposed by the officer provided that the investigator is able to attend.

(5) An alternative time must –

(a) be reasonable, and

(b) fall before the end of the period of 5 working days beginning with the first working day after the day specified by the investigator.

(6) The investigator must give the officer concerned written notice of the date, time and place of the interview.

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

(8) The officer concerned must attend the interview.

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

Report of investigation

21.- (1) On completion of the investigation the investigator must as soon as practicable submit a written report on the investigation to the appropriate authority.

(2) The written report must-

(a) provide an accurate summary of the evidence;

(b) attach or refer to any relevant documents;

(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, and

(d) where the investigator's opinion under sub-paragraph (c) is that there is no case to answer, indicate the investigator's opinion as to whether the matter should be referred to be dealt with under the Performance Regulations or the reflective practice review process.

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

(a) a statement of the investigator's belief and the grounds for it; and

(b) a written report on the investigation to that point.

(4) If at any time during the investigation the investigator believes that, in the light of the evidence made available to the investigator that was not available to the appropriate authority when it made its severity assessment or any revised severity assessment under regulation 14, the appropriate authority would, on further consideration of the matter, be likely to determine that the conduct which is the subject matter of the allegation, if proved, would amount to neither misconduct nor gross misconduct, the investigator must, whether or not the investigation is complete, submit to the appropriate authority –

- (a) a statement of the investigator's belief and the grounds for it;
- (b) a written report of the investigation to that point; and
- (c) a statement of the investigator's opinion as to whether the matter should be referred to be dealt with under the Performance Regulations or the reflective practice review process.

(5) Where a report is submitted to the appropriate authority under paragraph (4), the appropriate authority must make a further severity assessment under regulation 14.

(6) If the appropriate authority assesses that the conduct if proved would amount to misconduct or gross misconduct, the investigator must continue to proceed with the investigation that has been commenced.

(7) If the appropriate authority makes an assessment other than that the conduct if proved would amount to misconduct or gross misconduct-

- (a) the case must be dealt with in accordance with regulation 14;
- (b) the investigation must be promptly concluded;
- (c) the appropriate authority must as soon as practicable and in addition to any notice required under regulation 14(7), give the officer concerned notice in writing that –
 - (i) the notice given to the officer under regulation 17(1) has been withdrawn and no further action will be taken pursuant to that notice; and
 - (ii) the investigation has been concluded.

PART 4

Misconduct proceedings

General

22. Any period of time specified in this Part in relation to misconduct proceedings may be reduced by agreement between the appropriate authority or, as the case may be, the originating authority, the officer concerned, where the Director General is presenting the case the Director General, and the person conducting or chairing the misconduct proceedings.

Referral of case to misconduct proceedings

23. – (1) Subject to regulation 49, on receipt of the investigator’s report under regulation 21(1), the appropriate authority must, as soon as practicable, determine –

- (a) whether the officer concerned has a case to answer in respect of misconduct or gross misconduct or whether the officer has no case to answer,
- (b) if there is a case to answer, whether or not misconduct proceedings should be brought against the officer, and
- (c) if so, and subject to paragraph (10), what form the misconduct proceedings should take.

(2) Subject to regulation 49, on receipt of a report submitted under paragraph 22 of Schedule 3 to the 2002 Act (final reports on investigations)¹⁸, in making a determination under paragraph 24(6) of that Schedule (action in response to an investigation report)¹⁹ as to what action to take in respect of matters dealt with in that report, the appropriate authority must, as soon as practicable, determine-

- (a) whether the officer concerned has a case to answer in respect of misconduct (within the meaning of paragraph 29 of Schedule 3 to the 2002 Act) or gross misconduct or whether the officer has no case to answer;
- (b) where under paragraph (a) the appropriate authority determines that there is a case to answer in respect of misconduct (within the meaning of paragraph 29 of Schedule 3 to the 2002 Act), whether the case amounts to misconduct²⁰, and
- (c) where there is a case to answer in respect of misconduct or gross misconduct, whether or not misconduct proceedings should be brought against the officer concerned, and
- (d) if so, and subject to paragraph (10), what form the misconduct proceedings should take.

(3) In a case where the misconduct proceedings have been delayed by virtue of regulation 10(3), as soon as practicable after-

¹⁸ Paragraph 22 was substituted by paragraphs 1, 11 and 21 of Schedule 12 to the Serious Organised Crime and Police Act 2005 and was amended by section 19(1) and (3)(b)(i) of and paragraph 47(h)(vi) of Schedule 5 and paragraphs 15 and 56 of Schedule 9 to the Policing and Crime Act 2017; there are other amendments to paragraph 22, but none are relevant.

¹⁹ Paragraph 24(6) was substituted by paragraphs 1, 3 and 14(1) and (60 of Schedule 23 to the Criminal Justice and Immigration Act 2008 and amended by paragraphs 1 and 14(1) and (3) of Schedule 14 to the Police Reform and Social Responsibility Act 2011 and paragraph 47(h)(xiii) of Schedule 5 to the Policing and Crime Act 2017.

²⁰ See regulation 3(1) for the definition of “misconduct” in these Regulations.

(a) the appropriate authority considers that such proceedings would no longer prejudice any criminal proceedings, or

(b) any criminal proceedings have concluded (whatever the outcome of those proceedings),

the appropriate authority must, subject to regulation 49(3) and paragraph (10) and unless the appropriate authority must refer the case to misconduct proceedings in accordance with paragraph (9), make a further determination as to the matters set out in paragraph (1)(a) to (c) or, as the case may be, paragraph (2)(a) to (d).

(4) Where the appropriate authority determines under paragraph (2)(b), or under paragraph (3) insofar as the determination relates to the matter set out in paragraph (2)(b), that the case does not amount to misconduct, the case is to be dealt with under these Regulations as if the appropriate authority had determined that there was no case to answer.

(5) Where the appropriate authority determines that there is no case to answer or that no misconduct proceedings will be brought, it must assess whether –

(a) the case amounts to practice requiring improvement;

(b) the matter should be referred to be dealt with under the Performance Regulations, or

(c) it should take no further action.

(6) The appropriate authority must consult the line manager of the officer concerned before making an assessment in terms of paragraph (5)(a) or (b).

(7) As soon as practicable after it has completed the assessment under paragraph (5), the appropriate authority must –

(a) inform the officer concerned of the outcome of its assessment, and

(b) subject to the harm test, give the officer a copy of the investigator's report or such parts of the report as relate to the officer.

(8) Where the appropriate authority assesses that the case amounts to practice requiring improvement, it must direct that the matter is dealt with under the reflective practice review process set out in Part 6.

(9) Where the appropriate authority –

(a) has a duty under paragraph 23(5B) of Schedule 3 to the 2002 Act (duties with respect to disciplinary proceedings)²¹ to comply with a direction to bring misconduct proceedings of a form specified in a determination of the Director General;

²¹ Paragraph 23(5A) to (5F) was inserted by paragraphs 9 and 26(1) and (2) of Schedule 5 to the Policing and Crime Act 2017.

(b) accepts a recommendation made under paragraph 25(4C)(c) or (4E)(c) of that Schedule (reviews with respect to an investigation)²² that misconduct proceedings of the form specified in the recommendation are brought, or

(c) has a duty under paragraph 27(4)(b) of that Schedule (duties with respect to disciplinary proceedings etc.) to give effect to a recommendation to bring misconduct proceedings of a form specified in a recommendation made under paragraph 25(4C) of that Schedule,

it must, subject to regulation 10(3), refer the case to misconduct proceedings of the form specified.

(10) Where the appropriate authority determines under paragraph (1), (2) or (3) to refer the case to misconduct proceedings-

(a) having determined that the officer concerned has a case to answer in respect of gross misconduct, those proceedings must be a misconduct hearing;

(b) where the officer had a final written warning in force at the date of the severity assessment under regulation 14(1) of these Regulations or, as the case may be, regulation 16 of the Complaints and Misconduct Regulations (special procedure: severity assessment), those proceedings must be a misconduct hearing; and

(c) having determined that the officer has a case to answer in respect of misconduct and that the case does not fall under sub-paragraphs (a) or (b) those proceedings must be a misconduct meeting.

(11) Where the appropriate authority fails to make the determination referred to in paragraph (1) or (2) before the end of 15 working days beginning with the first working day after receipt of the report, it must notify the officer concerned of the reason for this.

(12) In determining whether any criminal proceedings are to be treated as concluded for the purpose of this regulation, any right of appeal is to be disregarded.

Presenting of case by the Director General

24. – (1) The Director General may decide to present the case on behalf of the appropriate authority where-

(a) paragraph (2) applies and the case is referred to a misconduct hearing or an accelerated misconduct hearing, or

(b) paragraph (4) applies and the case is referred to an accelerated misconduct hearing.

²² Paragraph 25(4A) to (4J) was inserted by paragraphs 29 and 34(1) and (5) of Schedule 5 to the Policing and Crime Act 2017.

(2) This paragraph applies to a case where –

(a) it is a case in respect of which the duty referred to in regulation 23(9)(a) or (c) arises, and

(b) one of the conditions set out in paragraph (3) is satisfied.

(3) The conditions are –

(a) the appropriate authority, when its views were sought in respect of the case under paragraph 23(5A)(a)(i) of Schedule 3 to the 2002 Act (action by the Director General in relation to an investigation report under paragraph 22)²³, or subsequently, expressed a view on the matter referred to in that paragraph that differed from the determination of the Director General under paragraph 23(5A)(b)(i) of that Schedule;

(b) the appropriate authority notified the Director General under paragraph 25(4D)(a) of Schedule 3 to the 2002 Act (reviews with respect to an investigation) that it did not accept a recommendation of the Director General under paragraph 25(4C)(c)(i) of Schedule 3 to the 2002 Act (reviews with respect to an investigation)²⁴;

(c) the appropriate authority and the Director General agree that the Director General should present the case; or

(d) the Director General is of the view that in the particular circumstances of the case there is a compelling public interest for the Director General to present the case.

(4) This paragraph applies to a case where the appropriate authority submitted a memorandum to the Director General under regulation 26(5) of the Complaints and Misconduct regulations (determination by the appropriate authority not to certify a case for accelerated procedure) and the Director General directed the appropriate authority to certify the case under regulation 26(8)(b) of those Regulations.

(5) Where the Director General makes a decision under paragraph (1) to present a case, the Director General must as soon as practicable inform the appropriate authority of the decision.

(6) The appropriate authority must give the Director General any assistance the Director General reasonably requires for the purpose of presenting a case.

Joint misconduct proceedings

²³ Paragraph 23(5A) was amended by paragraphs 15 and 56(1) to (3) and (16)(c)(ii) of Schedule 9 to the Policing and Crime Act 2017.

²⁴ Paragraph 25(4C) and (4D) was amended by paragraphs 15 and 56(1) and (2) of Schedule 9 to the Policing and Crime Act 2017.

25.- (1) Subject to paragraphs (6) and (7), where under regulation 23 the appropriate authority refers two or more cases arising from the same matter or incident, which relate to more than one police officer, to a misconduct hearing, the cases may be referred to a joint misconduct hearing.

(2) Subject to paragraph (6), where under regulation 23 the appropriate authority refers two or more cases arising from the same matter or incident, which relate to more than one police officer, to a misconduct meeting, the cases may be referred to a joint misconduct meeting.

(3) Where cases are referred to joint misconduct proceedings, a reference to “the officer concerned” in regulations 26 to 44, if the context so requires, means-

(a) any of the officers concerned, or

(b) each of the officers concerned.

(4) Where cases are referred to joint misconduct proceedings, the officer concerned in any of the cases may object and request separate proceedings.

(5) The person conducting or chairing the misconduct proceedings must consider any objection under paragraph (4) and determine whether the request for separate proceedings should be allowed.

(6) Cases may only be referred to joint misconduct proceedings where all or none of the officers concerned are senior officers.

(7) A case in respect of which the Director General has made a decision under regulation 24(1) may only be referred to a joint misconduct hearing on the direction of the Director General, following consultation with the appropriate authority.

(8) The appropriate authority must comply with a direction given under paragraph (7).

Delegation of functions

26. – (1) Where-

(a) the appropriate authority is the chief constable of the police force; and

(b) under regulation 23 a case is referred to a misconduct hearing,

the appropriate authority may, if it considers it appropriate in a particular case, delegate functions in relation to the administration of the hearing (but not in relation to representing it at the hearing) to a chief officer of police of another police force.

(2) Subject to regulation 25(4) to (8), where functions have been delegated to the same chief officer of police, in respect of more than one case which relates to the same matter or incident, the cases may be dealt with at a joint misconduct hearing.

(3) In these Regulations –

(a) where functions have been delegated under paragraph (1), “appropriate authority”, in relation to the exercise of such functions means the chief officer of police to whom the functions have been delegated;

(b) “originating authority” means the chief officer of police of the force which the officer concerned is a member which has delegated functions under paragraph (1).

(4) Where functions are delegated, any requirement on a person other than the originating authority to supply a document to another person must be read as including a requirement to supply such document also to the originating authority.

Withdrawal of misconduct proceedings

27. – (1) Subject to paragraph (4), at any time before the beginning of the misconduct proceedings, the appropriate authority –

(a) if it is no longer satisfied that there is a case to answer in respect of misconduct or gross misconduct must direct that the case be withdrawn, and

(b) where sub-paragraph (a) does not apply, may direct that the case be withdrawn.

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

(a) the appropriate authority may –

(i) take no further action against the officer concerned;

(ii) refer the matter to the reflective practice review process, or

(iii) refer the matter to be dealt with under the Performance Regulations, and

(b) the appropriate authority must as soon as practicable give the officer concerned –

(i) written notice of the direction, indicating whether any action will be taken under paragraph (2)(a), and

(ii) where the investigation has been completed, on request and subject to the harm test, a copy of the investigator’s report or such parts of that report as relate to the officer.

(3) Before referring a matter to the reflective practice review process or to be dealt with under the Performance Regulations, the appropriate authority must consult the line manager of the officer concerned.

(4) A case to which paragraph 16, 18 or 19 of Schedule 3 to the 2002 Act (investigations) applied may only be withdrawn –

(a) on the direction of the Director General, following consultation with the appropriate authority, in a case where the Director General

- (i) made a recommendation under paragraph 25(4C)(c) of that Schedule (duties with respect to disciplinary proceedings) which the appropriate authority accepted or
 - (ii) gave a direction under paragraph 23(5A)(e) or paragraph 27(4)(a) of that Schedule to bring disciplinary proceedings, or
- (b) following consultation with the Director General in all other cases.

Persons conducting misconduct proceedings

28. – (1) Where the officer concerned is an officer other than a senior officer –

- (a) where the case is referred to a misconduct meeting, that meeting must be conducted by a person appointed by the appropriate authority in accordance with paragraph (3) who is not an interested party;
- (b) where the case is referred to a misconduct hearing, that hearing must be conducted by a panel of three persons appointed in accordance with paragraph (4).

(2) Where the officer concerned is a senior officer and the case is referred to misconduct proceedings, those misconduct proceedings must be conducted by a panel of three persons appointed in accordance with paragraphs (4) and (5).

(3) The person appointed by the appropriate authority under paragraph (1)(a) –

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

(4) Subject to paragraph (5), the panel of persons must comprise-

- (a) a chair, appointed by the police authority, selected on a fair and transparent basis from the list of legally qualified persons maintained by the police authority for the purpose of these Regulations;
- (b) a member of a police force of the rank of superintendent or above (provided the member is of a more senior rank than the officer concerned) appointed by the police authority, and

(c) a person, appointed by the police authority, selected on a fair and transparent basis from a list of candidates maintained by the police authority for the purpose of these Regulations.

(5) Where the officer concerned is a senior officer, for paragraph (4)(b) there is substituted-

“(b) “HMCIC or an inspector of constabulary nominated by HMCIC.”

(6) In this regulation “legally qualified person” means a person who satisfies the judicial-appointment eligibility condition on a 5-year basis²⁵;

(7) For the purpose of section 84(4) of the 1996 Act (power to prescribe “the panel” for the purpose of representation at proceedings), the panel of persons or the person specified by this regulation to conduct proceedings is prescribed as “the panel”.

Role of chair of misconduct hearing

29. – (1) The chair of the panel appointed under regulation 28 must take appropriate action to ensure the efficient and effective bringing of the proceedings and that they are conducted in a timely, fair and transparent manner.

(2) In particular, and subject to paragraph (6)(a), the chair must ensure that the first day of the misconduct hearing is not more than 100 working days beginning with the day after the date notice is given under regulation 30(1).

(3) The chair must decide, before the end of 5 working days beginning with the first working day after the day on which the documents were supplied to the chair under regulation 32(6), whether to conduct a misconduct pre-hearing, in order to agree directions and to fix a date for the hearing in accordance with regulation 33.

(4) Where the chair decides not to conduct a misconduct pre-hearing, the chair must determine the date, time and duration of the misconduct hearing, following consultation with the parties by telephone or by such other electronic means as may be agreed between the parties or, where the parties fail to agree, as decided by the chair.

(5) Subject to paragraph (6)(b) and (7), where paragraph (4) applies, the misconduct hearing must take place before the end of the period of 30 working days beginning with the first working day after the day on which the documents were supplied to the chair under regulation 32(6).

(6) Where the chair considers that it would be in the interest of justice to do so, the chair may extend-

(a) the period of 100 working days specified in paragraph (2),

(b) the period of 30 working days specified in paragraph (5).

²⁵ See section 50 of the Tribunals, Courts and Enforcement Act 2007 (c.15).

(7) Any of the parties may apply to the chair for the misconduct hearing to take place later than is provided for in paragraph (5).

(8) Any such application must set out the reasons for the application.

(9) The chair must determine whether it would be in the interests of justice for the application to be granted, provided that the date fixed for the commencement of the hearing must be within the period specified in paragraph (2), or such period as extended under paragraph (6)(a).

(10) For the purposes of this regulation “parties” means the appropriate authority or, as the case may be the originating authority, the officer concerned, the officer’s representatives and, where the Director General is presenting the case, the Director General.

Notice of referral to misconduct proceedings

30. – (1) Where a case is referred to misconduct proceedings, the appropriate authority must as soon as practicable give the officer concerned –

(a) written notice of-

(i) the referral;

(ii) the conduct that is the subject matter of the case and how that conduct is alleged to amount to misconduct or gross misconduct as the case may be;

(iii) where functions in relation to the administration of the hearing have been delegated under regulation 26(1), the details of the authority to whom they have been delegated;

(iv) the name of the person appointed to conduct (in the case of a misconduct meeting for an officer other than a senior officer) or chair (in any other case) chair the misconduct proceedings and, in the case of a chair, confirmation that the person has been selected on a fair and transparent basis;

(v) the effect of paragraphs (3) to (6) of this regulation;

(vi) the effect of regulation 8(1) to (3) in relation to the form of misconduct proceedings to which the case is being referred;

(vii) where relevant, the fact that the Director General has made a decision under regulation 24(1) to present the case, and

(viii) where relevant, the fact that the case has been referred to joint misconduct proceedings under regulation 25;

(b) a copy of any statement the officer 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 part of that report as relate to the officer (together with any document attached to or referred to in that report which relates to the officer), and

(ii) any other document which might reasonably be considered capable of undermining or assisting the case.

(2) As soon as practicable after any person has been appointed under regulation 8(6) to advise the person conducting or chairing the misconduct proceedings, the appropriate authority must give the officer concerned written notice of the name of that person and of the effect of paragraphs (3) to (6) of this regulation.

(3) The officer concerned may object to any person whom the officer is notified under the preceding provisions of this regulation is to –

(a) conduct or, as the case may be, chair the misconduct proceedings, or

(b) advise the person conducting or, as the case may be, chairing the misconduct proceedings.

(4) Any such objection must be-

(a) made in writing to the appropriate authority, and

(b) in the case of joint misconduct proceedings, copied to each other officer concerned,

before the end of 3 working days beginning with the first working day after the officer concerned is given notice of the person's name and must set out the grounds of objection of the officer.

(5) The appropriate authority must notify the officer concerned in writing whether it upholds or rejects an objection to a person appointed to conduct or, as the case may be, chair the misconduct proceedings or to any person appointed under regulation 8(6) to advise the person conducting or chairing the misconduct proceedings.

(6) If the appropriate authority upholds the objection, the person to whom the officer concerned objects must be replaced (in accordance with regulation 8(6) and (7) or 28 as appropriate).

(7) As soon as reasonably practicable after any such appointment, the appropriate authority must give a written notice to the officer concerned of the name of the new person appointed to conduct or, as the case may be, chair the misconduct proceedings or of the new adviser to the person conducting or chairing the misconduct proceedings, as the case may be, and of the effect of paragraphs (8) and (9) of this regulation.

(8) The officer concerned may object to the appointment of a person appointed under paragraph (6) of this regulation.

(9) In relation to an objection under paragraph (8) of this regulation-

(a) paragraph (4) applies except in as far as it specifies the period of time for making an objection;

(b) the objection must be made before the end of 3 working days beginning with the first working day after the officer concerned has been given the notice referred to in paragraph (7);

(c) paragraphs (5) to (7) apply with the exception of the requirement in paragraph (7) for the appropriate authority to give written notice of the effects of paragraphs (8) and (9).

(10) Where the Director General has made a decision under regulation 24(1) to present a case, the appropriate authority must-

(a) consult with the Director General about-

(i) the contents of the written notice to be given under paragraph (1)(a) to the extent which they relate to 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

(ii) the application of the harm test under paragraph (1)(c);

(iii) the documents that may be provided under paragraph 1(c)(ii);

(b) comply with any direction given by the Director General in relation to the matters specified in sub-paragraph (a), and

(c) provide the Director General with a copy of the written notices given under paragraphs (1) and (2).

Procedure on receipt of notice

31. -(1) Before the end of-

(a) 15 working days beginning with the first working day after the documents have been supplied to the officer concerned under regulation 30(1), or

(b) where that period is extended by the person conducting or chairing the misconduct proceedings for exceptional circumstances, such extended period,

the officer concerned must comply with paragraphs (2) and (3).

(2) The officer concerned must give to the appropriate authority-

(a) written notice of whether or not they accept that their conduct amounts to misconduct or gross misconduct as the case may be;

(b) where they accept that their conduct amounts to misconduct or gross misconduct as the case may be, any written submissions they wish to make in mitigation, and

(c) where they do not accept that their conduct amounts to misconduct or gross misconduct as the case may be, or they dispute part of the case against them, written notice of –

- (i) the allegations they dispute and their account of the relevant events, and
- (ii) any arguments on points of law they wish to be considered by the person or persons conducting the misconduct proceedings.

(3) The officer concerned must provide the appropriate authority with a copy of any document they intend to rely on at the misconduct proceedings.

(4) Before the end of 3 working days beginning with the first working day after the date on which the officer concerned has complied with paragraph (2), the appropriate authority or, as the case may be, the originating authority, and the officer concerned must each-

- (a) supply to the other a list of proposed witnesses and include brief details of the evidence that each witness is able to adduce, or
- (b) give notice to the other that they do not propose any witnesses;

(5) Where the Director General has made a decision under regulation 24(1) to present a case-

- (a) the officer concerned must, within the time specified in paragraph (1), provide the Director General with a copy of the documents specified in paragraphs (2) and (3), and
- (b) the duty specified in paragraph (4) to supply a list of proposed witnesses or give notice that there are no proposed witnesses lies with the Director General, and not with the appropriate authority or the originating authority.

Witnesses and documents to be supplied

32. – (1) The appropriate authority or, as the case may be the originating authority, must supply to the person conducting or chairing the misconduct proceedings any lists of proposed witnesses supplied or notice given under regulation 31(4).

(2) Any such lists or notice must be supplied before the end of 10 working days beginning with the first working day after the parties supplied the lists or notice under regulation 31(4).

(3) The person conducting or chairing the misconduct proceedings must-

- (a) consider any lists of proposed witnesses,
- (b) consider any documents supplied under paragraph (6), and
- (c) subject to paragraph (5), determine as soon as practicable which, if any, witnesses should attend the misconduct proceedings.

(4) Paragraph (3) does not apply where regulation 33(8) applies (matters to be decided at misconduct pre-hearing).

(5) No witness may give evidence at misconduct proceedings unless the person conducting or chairing the proceedings reasonably believes that it is necessary for the witness to do so in the interests of justice, in which case the person conducting or chairing the proceedings must –

(a) where the witness is a police officer, cause that person to be ordered to attend the misconduct proceedings, and

(b) in any other case, cause the witness to be given notice that their attendance is necessary and of the date, time and place of proceedings.

(6) Before the end of 10 working days beginning with the first working day after the date on which the officer concerned has complied with regulation 31(2), the appropriate authority or, as the case may be, the originating authority must supply to the person conducting or chairing the misconduct proceedings a copy of –

(a) the documents given to the officer under regulation 30(1);

(b) the documents provided by the officer under –

(i) regulation 31(2) and (3), and

(ii) where paragraph (7) applies, regulation 54 and

(c) where the officer-

(i) does not accept that the conduct amounts to misconduct or gross misconduct, as the case may be or

(ii) disputes any part of the case,

any other documents that, in the opinion of the appropriate authority or, as the case may be, the originating authority should be considered at the misconduct proceedings.

(7) This paragraph applies where the appropriate authority has directed, in accordance with regulation 50(1), that the case should be dealt with under this Part.

(8) Prior to the misconduct proceedings, the appropriate authority or, as the case may be, the originating authority, must supply the officer concerned with-

(a) a list of the documents supplied under paragraph (6) and

(b) a copy of any such document, where it has not already been supplied.

(9) The appropriate authority, or as the case may be, the originating authority may apply to the person conducting or chairing the misconduct proceedings for an extension of –

(a) the period of 10 working days referred to in paragraph (2), and

(b) the period of 10 working days referred to in paragraph (6).

(10) Any such application must set out the period of the required extension and the reasons for the application.

(11) On receipt of such an application the person conducting or chairing the misconduct proceedings must determine whether the period should be extended and if so by how long.

(12) Where a period is extended, paragraph (2), or as the case may be, paragraph (6), has effect as if for the period specified in those provisions there were substituted the extended period.

(13) Where the Director General has made a decision under regulation 24(1) to present a case-

(a) the duty specified in paragraph (1) to supply any lists of witnesses or notice lies with the Director General and not with the appropriate authority;

(b) the duty specified in paragraph (6) to supply the specified documents to the person conducting or chairing the misconduct proceedings lies with the Director General and not with the appropriate authority or the originating authority;

(c) paragraph (6)(c) must be read as if “or the Director General” were inserted after “the appropriate authority”, and

(d) the power specified in paragraph (9) to apply for an extension of the periods of time referred to in paragraphs (2) and (6) lies with the Director General and not with the appropriate authority or the originating authority.

Misconduct pre-hearing

33.- (1) Where the person chairing a misconduct hearing (“the chair”) has decided under regulation 29(3) to conduct a misconduct pre-hearing, the chair must as soon as practicable-

(a) specify a date and time for a misconduct pre-hearing, which must be within a period of 15 working days, or such extended period as the chair may specify under paragraph (10)(a), beginning with the first working day after the day on which the documents were supplied to the chair under regulation 32(6), and

(b) give written notice of the date, time and place of the misconduct pre-hearing to –

(i) the officer concerned;

(ii) the appropriate authority

(iii) the originating authority, where functions have been delegated under regulation 26(1);

(iv) the Director General, where the Director General-

(aa) is presenting the case; or

(bb) would be entitled to attend the misconduct hearing under regulation 38(1).

(2) Subject to paragraph (4), where a date and time is specified under paragraph (1) and-

(a) the officer concerned or their police friend will not be available, and

(b) the officer proposes an alternative date or time which satisfies paragraph (3),

the misconduct pre-hearing must be postponed to the date or time proposed by the officer.

(3) An alternative time must-

(a) be reasonable, and

(b) fall before the end of 5 working days beginning with the first working day after the day specified by the chair.

(4) In the case of joint misconduct proceedings, where a date and time is specified under paragraph (1) and one or more of the officers concerned or their police friend will not be available at that time, the chair must-

(a) consult each of the officers concerned as regards the timing of the misconduct pre-hearing, and

(b) determine the date and time of the misconduct pre-hearing, which must fall within the period specified in paragraph (3(b)).

(5) The following are entitled to attend the misconduct pre-hearing-

(a) those listed in paragraph (1)(b);

(b) the officer's police friend;

(c) the officer's relevant lawyer;

(d) the relevant lawyer representing the appropriate authority or, as the case may be, the originating authority; and

(e) the Director General's relevant lawyer, where the Director General is presenting the case or would be entitled to attend the misconduct hearing under regulation 38(1).

(6) Subject to paragraph (6), a misconduct pre-hearing must be in private.

(7) A misconduct pre-hearing may be conducted by telephone or by such other electronic means as may be agreed between the parties or, where the parties fail to agree, as decided by the chair.

(8) At the misconduct pre-hearing the chair must-

(a) determine the date, time and duration of the misconduct hearing, following consultation with the parties;

(b) consider any lists of proposed witnesses supplied under regulation 32(2) and, in accordance with regulation 32(5), determine which, if any, witnesses should attend the misconduct hearing;

(c) consider any documents supplied under regulation 32(6);

(d) consider any procedural or preliminary legal arguments or points of law raised and whether it is appropriate for those matters to be dealt with at the misconduct pre-hearing or the misconduct hearing;

(e) consider any issues related to disclosure of documents for the purposes of the misconduct hearing, and

(f) seek representations from the parties as to whether to –

(i) exclude any person under regulation 39(3)(a);

(ii) impose conditions under regulation 39(3)(b), or

(iii) prohibit the publication of any matter under regulation 39(3)(c).

(9) Subject to paragraph (10)(b) and (11), the misconduct hearing must take place before the end of 30 working days beginning with the date of the misconduct pre-hearing.

(10) Any of the parties may apply to the chair for the misconduct hearing to take place later than is provided for in paragraph (9).

(11) Where the chair considers that it would be in the interests of justice to do so, the chair may extend-

(a) the period of 15 working days specified in paragraph (1)(a),

(b) the period of 30 working days specified in paragraph (9).

(12) Any such application must set out the reasons for the application.

(13) The chair must determine whether it would be in the interests of justice for the application to be granted, provided that the date fixed for the commencement of the hearing must be within the period specified in regulation 29(2), or such extended period as the chair may specify under regulation 29(6)(a).

(14) At the misconduct pre-hearing the chair may issue directions including, but not limited to, in relation to the matters set out in this regulation, other than paragraph (9)(e).

(15) Within the period of 5 working days beginning with the date of the misconduct pre-hearing, the chair must serve on the parties a summary of the key matters discussed and a record of any directions issued.

(16) The parties must comply with any directions issued under paragraph (15).

(17) For the purposes of this regulation “parties” means the appropriate authority or as the case may be, the originating authority, the officer concerned, the officer’s representatives and where the Director General is presenting the case, the Director General.

Timing of misconduct meeting

34. – (1) Subject to paragraphs (2), (6), (8) and (9), the misconduct meeting must take place before the end of 20 working days beginning with the first working day after –

- (a) the officer complies with regulation 31(2) and (3), or
- (b) the expiry of the 15 working day period referred to in regulation 31(1)(a), if the officer has not complied with regulation 31(2) and (3) within the 15 day period, or
- (c) where the 15 working day period referred to in regulation 31(1)(a) is extended in accordance with regulation 31(1)(b), the expiry of such extended period.

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

(3) Where the person conducting or chairing the misconduct meeting decides to extend the period under paragraph (2), or decides not to do so following representations from the officer concerned or the appropriate authority, or, as the case may be, the originating authority, they must provide written notification of the reasons for that decision to the authority and the officer concerned.

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

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

(6) Subject to paragraph (9), where a date and time is specified under paragraph (5) and –

- (a) the officer concerned or the officer's police friend will not be available, and
- (b) the officer proposes an alternative date or time which satisfies paragraph (7),

the misconduct meeting must be postponed to that date or time proposed by the officer.

(7) An alternative time must –

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

(8) In the case of a joint misconduct meeting, where a date and time is specified under paragraph (5) and one or more of the officers concerned or their police friend will not be available at that time, the person conducting or chairing the misconduct meeting must-

- (a) consult each of the officers concerned as regards the timing of the misconduct meeting, and

(b) determine the date and time of the misconduct meeting, which must fall within the period specified in paragraph (7)(b).

(9) Where a date and time for the misconduct meeting has been agreed under this regulation, the person conducting or chairing the misconduct meeting must inform the appropriate authority of the date, time and place of the misconduct meeting.

Notice of misconduct proceedings and panel

35. – (1) The appropriate authority must give the officer concerned written notice of the date, time and place of the misconduct proceedings.

(2) Where the misconduct proceedings are to be conducted by a panel, as soon as practicable after the persons comprising that panel (other than the chair) have been determined, the appropriate authority must give the officer concerned written notice of the names of such persons and of the effect of paragraphs (3) to (6) of this regulation.

(3) The officer concerned may object to any person whom the officer is notified under the proceeding provisions of this regulation is to conduct (other than as chair) the misconduct proceedings.

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

(5) The chair must notify the officer concerned in writing whether the chair upholds or rejects an objection to any panel member.

(6) If the chair upholds the objection, the person to whom the officer concerned objects must be replaced (in accordance with regulation 28).

(7) As soon as reasonably practicable after any such appointment, the chair must give a written notice to the officer concerned of the name of the new panel member and of the effect of paragraphs (8) and (9) of this regulation.

(8) The officer concerned may object to the appointment of a person appointed under paragraph (6).

(9) In relation to an objection under paragraph (8) of this regulation-

(a) paragraph (4) applies except in so far as it specifies the period of time for making the objection;

(b) the objection must be made before the end of 3 working days beginning with the first working day after the officer concerned has been given the notice referred to in paragraph (7), and

(c) paragraphs (5) to (7) apply, with the exception of the requirement in paragraph (7) for the chair to give written notice of the effects of paragraphs (8) and (9).

(10) Where the Director General is entitled to attend the misconduct proceedings to make representations under regulation 38(1), or to nominate a person to attend the proceedings as an observer under regulation 40(6), the appropriate authority must give the Director General written notice of the date, time and place of the proceedings.

(11) Where the Director General has made a decision under regulation 24(1) to present a case, each of paragraphs (1), (2) and (7) must be read as if “and the Director General” were inserted after “the officer concerned”.

Public notification of misconduct hearings

36. – (1) The person chairing a misconduct hearing (“the chair”) may require the appropriate authority, or, as the case may be, the originating authority, to give notice of the hearing which contains information relating to one or more of -

- (a) the name of the officer concerned;
- (b) the date of the hearing;
- (c) the time of the hearing;
- (d) the place at which the hearing will take place; and
- (e) 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, as set out in the notice given in accordance with regulation 30(1)(a)(ii).

(2) Where the chair requires notice to be given in accordance with paragraph (1), the appropriate authority or, as the case may be, the originating authority, must publish the notice on its website as soon as practicable after notice of the hearing is given under regulation 35(1).

(3) Any person to whom this paragraph applies may make written representations to the chair in relation to –

- (a) whether, and (if so), the extent to which, the chair should exclude any person from the whole or part of the hearing under regulation 39(3)(a);
- (b) whether the chair should impose any conditions under regulation 39(3)(b);
- (c) whether the chair should give directions prohibiting the publication of any matter relating to the proceedings under regulation 39(3)(c);
- (d) in the light of the representations made under sub-paragraphs (a) to (c) –
 - (i) whether the chair should require notice to be given under paragraph (1);
 - (ii) which types of information mentioned in paragraph (1)(a) to (e) should be included in any such notice.

(4) Paragraph (3) applies to –

- (a) the officer concerned;
- (b) the appropriate authority or, as the case may be, the originating authority;
- (c) the complainant;
- (d) any interested person;
- (e) any witness; and
- (f) the Director General;

(5) Written representations in relation to the matters specified in paragraph (3)(a) to (c), may also be made by any representative of the media to the chair.

(6) Any written representations made in accordance with paragraphs (2) or (5), as the case may be, must be provided no later than the date specified by the chair for provision of such representations.

Attendance of officer concerned at misconduct proceedings

37.- (1) Subject to paragraph (2), the officer concerned must attend the misconduct proceedings.

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

(3) Where under paragraph (2) the officer concerned is allowed to and does so participate in the misconduct proceedings, or where the officer otherwise does not attend the misconduct proceedings-

(a) the officer may nonetheless be represented at those proceedings by-

(i) a police friend, or

(ii) in the case of a misconduct hearing, a relevant lawyer (in which case the police friend may also attend), and

(b) the proceedings may be proceeded with and concluded in the absence of the officer concerned whether or not the officer is so represented.

(4) Where the officer concerned is represented in accordance with paragraph (3), the police friend or relevant lawyer of the officer, or both, as the case may be, may participate using the video link or other means where such means are also used by the officer.

Participation of the Director General and investigator at misconduct proceedings

38. – (1) Subject to paragraph (6), in any case where-

- (a) paragraph 18 or 19 of Schedule 3 to the 2002 Act (directed and independent investigations) applied; or
- (b) paragraph 16 of Schedule 3 to the 2002 Act (investigations by the appropriate authority on its own behalf) applied and the Director General-
 - (i) made a recommendation under paragraph 25(4C)(c) of that Schedule (duties with respect to disciplinary proceedings) which the appropriate authority accepted, or
 - (ii) gave a direction under paragraph 27(4)(a) of that Schedule (duties with respect to disciplinary proceedings),

the Director General may attend the misconduct proceedings to make representations.

(2) Where the Director General so attends the misconduct proceedings-

- (a) if it is a misconduct hearing the Director General may be represented by a relevant lawyer,
- (b) the Director General must notify the complainant or any interested person prior to those proceedings, and
- (c) the person conducting or chairing the misconduct proceedings must notify the officer concerned prior to those proceedings.

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

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

- (a) the appropriate authority or, as the case may be, the originating authority, or
- (b) in a case to which paragraphs 18 or 19 of Schedule 3 to the 2002 Act (directed and independent investigations) applied, the Director General,

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

(5) Where more than one allegation is considered in the same misconduct proceedings in accordance with regulation 4(9), this regulation applies to the whole of the proceedings and accordingly the Director General may make representations in respect of any allegation.

(6) Paragraph (1) does not apply in a case where the Director General has made a decision under regulation 24(1) to present a case.

Reporting restrictions, participation and exclusions from proceedings

- 39.** – (1) Subject to paragraph (3), a misconduct hearing must be in public.
- (2) Subject to regulations 38 and 40, a misconduct meeting must be in private.
- (3) Having considered any representations received under regulations 33(8)(f), 36(2) and 36(5), the person conducting or chairing the misconduct proceedings may-
- (a) in relation to the attendance at the proceedings of a person under regulation 40 or this regulation, exclude any person as they see fit from the whole or part of those proceedings;
 - (b) impose such conditions as they see fit relating to the attendance under regulation 40 or this regulation of any person at the proceedings in order to facilitate the proper conduct of those proceedings, and
 - (c) in the case of a chair appointed under regulation 28(4), give such directions as they think appropriate prohibiting the publication of any matter relating to the proceedings.
- (4) Where it appears to the person conducting or chairing the misconduct proceedings that any person may, in giving evidence, disclose information which ought not to be disclosed to any person, other than a party to the proceedings, attending the proceedings because it is information to which paragraph (7) applies, they must require such attendees to withdraw while the evidence is given.
- (5) Subject to any contrary decision by the person conducting or chairing the misconduct proceedings, a witness other than a complainant, interested person or the officer concerned, may only attend the misconduct meeting for the purpose of giving their evidence.
- (6) Where a person is to give evidence as a witness at misconduct proceedings, the witness (and any person accompanying the witness) must not be allowed to attend the proceedings before giving evidence.
- (7) This paragraph applies to information in so far as the person conducting or chairing the misconduct proceedings considers that preventing disclosure of it to an attendee 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 and detection of crime, or the apprehension or prosecution of offenders;
 - (d) necessary for the purpose of the prevention or detection of misconduct by other police officers or police staff members or their apprehension for such matters;
 - (e) necessary and proportionate for the protection of the welfare and safety of any informant or witness;
 - (f) otherwise in the public interest.

Attendance of complainant, interested persons and others at misconduct proceedings

40. – (1) This regulation applies in the case of misconduct proceedings arising from –

(a) a conduct matter under Schedule 3 to the 2002 Act (handling of complaints and conduct matters etc.), or

(b) the investigation of a complaint to which paragraph 19A of that Schedule (special procedure where investigations relate to police officer or special constable) ²⁶ applied.

(2) The appropriate authority must notify the complainant or any interested person of the date, time and place of the misconduct proceedings and, if applicable, of their right to make representations under regulation 36(3).

(3) Subject to regulation 39(3) and (5), the complainant or any interested person may attend the misconduct meeting as an observer.

(4) Subject to regulation 39 (3) and (5), the complainant or any interested person may be accompanied at a misconduct meeting by one other person, and if the complainant or interested person has a special need, by one further person to accommodate that need.

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

(6) A person nominated by the Director General may, as an observer, attend a misconduct meeting which arises from a case to which-

(a) paragraph 18 or 19 of Schedule 3 to the 2002 Act (directed and independent investigations) applied;

(b) paragraph 16 of Schedule 3 to the 2002 Act (investigations by the appropriate authority on its own behalf) applied and in relation to which the Director General-

(i) made a recommendation under paragraph 25(4C)(c) of that Schedule (duties with respect to disciplinary proceedings) which the appropriate authority accepted, or

(ii) gave a direction under paragraph 27(4)(a) of that Schedule (duties with respect to disciplinary proceedings).

Procedure at misconduct proceedings

²⁶ Paragraph 19A was substituted for paragraphs 19A to 19E by paragraphs 9 and 21 of Schedule 5 to the Policing and Crime Act 2017.

41. - (1) The person conducting or chairing the misconduct proceedings must determine the procedure at those proceedings and, in so far as it is set out in these Regulations, must determine it in accordance with these Regulations.

(2) The misconduct proceedings must not proceed unless the officer concerned has been notified of the effect of regulation 8(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 the person to be necessary or expedient to do so.

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

(5) At the beginning of the misconduct proceedings, the person conducting or chairing the misconduct proceedings must give the officer concerned the opportunity to say whether or not the officer accepts that the officer's conduct amounts to misconduct or gross misconduct, as the case may be.

(6) The person representing the appropriate authority or, as the case may be, the originating authority, may-

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

- (i) put the case of the authority;
- (ii) sum up that case;
- (iii) respond on behalf of the authority to any view expressed at the proceedings;
- (iv) make representations concerning any aspect of proceedings under these Regulations, and
- (v) subject to paragraph (10), ask questions of any witness, and

(b) confer with the authority.

(7) The person representing the officer concerned may –

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

- (i) put the case of the officer;
- (ii) sum up that case;
- (iii) respond on behalf of the officer to any view expressed at the proceedings;
- (iv) make representations concerning any aspect of proceedings under these Regulations, and
- (v) subject to paragraph (10), ask questions of any witnesses, and

(b) confer with the officer.

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

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

(10) The person conducting or chairing the misconduct proceedings must determine whether any question should be put to a witness.

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

(a) by the officer concerned to the appropriate authority or, as the case may be, the originating authority, in accordance with regulation 31(3), or

(b) to the officer concerned in accordance with regulation 30(1).

(12) Where evidence is given or considered at the misconduct proceedings that the officer concerned-

(a) on being questioned by an investigator at any time after the officer was given written notice under regulation 17(1) of these Regulations or a notification under regulation 17(1) of the Complaints and Misconduct Regulations (or any equivalent provision that may be made in respect of Scotland), or

(b) in submitting any information or by not submitting any piece of information under regulation 18(1) or 31(2) or (3) (or, where paragraph (13) applies, regulation 54) of these Regulations or under regulation 20 of the Complaints and Misconduct Regulations,

failed to mention any fact relied on in the officer's case at the misconduct proceedings, being a fact which, in the circumstances existing at the time, the officer could reasonably be expected to mention when so questioned or when providing such information, paragraph (14) applies.

(13) This paragraph applies where the appropriate authority has directed, in accordance with regulation 50(1), that the case be dealt with under this Part.

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

(15) The person or persons conducting the misconduct proceedings must review the facts of the case and decide whether the conduct of the officer concerned amounts-

(a) in the case of a misconduct meeting, to misconduct or not, or

(b) in the case of a misconduct hearing, to misconduct, gross misconduct or neither.

(16) The person or persons conducting the misconduct proceedings must not find that the conduct of the officer concerned amounts to misconduct or gross misconduct unless-

- (a) they are satisfied on the balance of probabilities that this is the case, or
- (b) the office admits it is the case.

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

(18) Where the Director General has made a decision under regulation 24(1) to present a case, paragraph (6) must be read as if for “The person representing the appropriate authority or, as the case may be, the originating authority” there were submitted “The Director General”.

Outcome of misconduct proceedings

42.- (1) The person conducting or chairing misconduct proceedings may, subject to the provisions of this regulation –

- (a) impose any of the disciplinary action mentioned in paragraph (2) or (3) as appropriate;
- (b) where they find the conduct amounts to neither gross misconduct nor misconduct, direct that the matter is referred to be dealt with under the reflective practice review process.

(2) The disciplinary action available at a misconduct meeting is-

- (a) a written warning;
- (b) a final written warning.

(3) The disciplinary action available at a misconduct hearing is –

(a) where the person or persons conducting the misconduct proceedings decide the conduct of the officer concerned amounts to misconduct, in accordance with regulation 41(15)-

- (i) a written warning;
- (ii) a final written warning;
- (iii) dismissal without notice, where paragraph (5) or (6) applies;

(b) where the person conducting or chairing the misconduct proceedings decides the conduct of the officer concerned amounts to gross misconduct, in accordance with regulation 41(15) –

- (i) a final written warning;
- (ii) dismissal without notice.

(4) The disciplinary action referred to in paragraph (3) has effect from the date on which it is notified to the officer concerned.

(5) This paragraph applies where a final written warning was in force on the date of the severity assessment under regulation 14(1) of these Regulations or under regulation 16 of the Complaints and Misconduct Regulations.

(6) This paragraph applies where it is decided at misconduct proceedings that the officer's conduct amounts to misconduct and the decision is based on the officer's conduct arising from more than one incident and those incidents are not closely factually connected.

(7) Where, on the date of the severity assessment under regulation 14(1) of these Regulations or under regulation 16 of the Complaints and Misconduct Regulations, (or any equivalent provision that may be made in respect of Scotland) (as the case may be) the officer concerned had a written warning in force, a written warning must not be given.

(8) Where, on the date of the severity assessment under regulation 14(1) of these Regulations or under regulation 16 of the Complaints and Misconduct Regulations (or any equivalent provision that may be made in respect of Scotland) (as the case may be), the officer concerned had a final written warning in force, neither a written warning nor a final written warning may be given.

(9) Where a written warning or final written warning is given, that warning remains in force for-

(a) a period of 18 months beginning with the day on which it was notified to the officer concerned in the case of a written warning, or

(b) a period of two years beginning with the day on which it was notified to the officer concerned, in the case of a final written warning.

(10) Where a final written warning is given under paragraph (3), the period in paragraph (9)(b) may be extended, by the persons considering the questions of disciplinary action, to a maximum period of five years.

(11) The references to a period in paragraph (9)(a) and (b), including any such period as extended, if relevant, in accordance with paragraph (10), does not include any time when the officer is taking a career break.

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

(a) must have regard to the record of police service of the officer concerned as shown in the officer's personal record;

(b) may receive evidence from any witness whose evidence would, in their opinion, assist them in determining the question, including evidence of mitigating circumstances disclosed prior to the hearing to-

(i) a police force;

- (ii) a registered medical practitioner, or
 - (iii) a staff association;
 - (c) must give-
 - (i) the officer,
 - (ii) if the officer is legally represented, the officer's relevant lawyer or, if the officer is not legally represented, the officer's police friend;
 - (iii) the appropriate authority or, as the case may be the originating authority or the person appointed to represent such authority in accordance with regulation 8(5); and
 - (iv) the Director General or the Director General's relevant lawyer, where the Director General made a decision under regulation 24(1) to present the case,
- an opportunity to make oral or written representations before any such question is determined, including on the appropriate level of disciplinary action, and
- (d) where representations are received in relation to mitigating circumstances –
 - (i) must consider whether those circumstances have been mentioned at an earlier stage in the proceedings and, if they have not been so mentioned, whether the officer could have been reasonably be expected to so mention them, and
 - (ii) in the light of their conclusions under paragraph (i), may determine that it is appropriate to place less weight on those circumstances.

Notification of outcome

43. – (1) The person conducting or chairing the misconduct proceedings must, before the end of a period of 5 working days beginning with the first working day after the completion of the misconduct hearing or misconduct meeting, submit a report to the appropriate authority or, where functions have been delegated under regulation 26(1) to the originating authority setting out –

- (a) the finding of the person or persons conducting the misconduct proceedings;
 - (b) the reasons for that finding;
 - (c) any disciplinary action imposed;
 - (d) any direction that the matter be dealt with under the reflective practice review process.
- (2) The appropriate authority or, as the case may be the originating authority, must, as soon as practicable after receiving the report under paragraph (1), notify the officer concerned of the outcome by sending the officer a copy of –

- (a) the report submitted under paragraph (1), and
 - (b) where there was a finding of misconduct or gross misconduct, a notice of the right of appeal in accordance with paragraph (3).
- (3) A notice of the right of appeal under paragraph (2) is a notice-
- (a) where the officer concerned is an officer other than a senior officer-
 - (i) if the case was decided at a misconduct meeting, of the right of appeal under regulation 45, or
 - (ii) if the case was decided at a misconduct hearing, of the right of appeal to a police appeals tribunal²⁷.
- (4) In all cases referred to in paragraph (3) the notice of the right to appeal must be in writing and include the name of the person to whom an appeal should be sent.
- (5) The appropriate authority or, as the case may be the originating authority, must send a copy of any report under this regulation to –
- (a) the Director General, in any case where the Director General-
 - (i) presented the case, or
 - (ii) was entitled to attend to make representations under regulation 38(1); and
 - (b) the complainant and any interested person, in any case to which regulation 40 applies.
- (6) Subject to the harm test and to paragraph (10), the person chairing a misconduct hearing must require the appropriate authority, or as the case may be, the originating authority, to publish the report submitted under paragraph (1).
- (7) Where the appropriate authority or, as the case may be, the originating authority, is required to publish the report in accordance with paragraph (6), it must do so as soon as practicable after the officer has been notified of the outcome of proceedings under paragraph (2).
- (8) Where the appropriate authority or the originating authority publishes a report in accordance with paragraph (6), it must publish the report on its website for a period of not less than 28 days.
- (9) Prior to publication of a report under paragraph (6) the appropriate authority or originating authority, as the case may be, may, subject to paragraph (12), redact the document-
- (a) in so far as the authority considers redaction is –

²⁷ “Police appeals tribunal” has the same meaning as in section 85 to the 1996 Act.

- (i) 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;
- (ii) necessary in the interests of national security;
- (iii) necessary for the purpose of the prevention or detection of crime, or the apprehension or prosecution of offenders;
- (iv) necessary for the purpose of the prevention or detection of misconduct by other police officers or police staff members or their apprehension for such matters;
- (v) necessary or proportionate for the protection of the welfare and safety of any informant or witness;
- (vi) otherwise in the public interest, and

(b) in line with any restrictions imposed on the disclosure of information during the course of the proceedings.

(10) The person chairing the misconduct hearing may dispense with the requirement under paragraph (6) to publish the report if in the circumstances of the case the person considers it appropriate to do so on any of the grounds set out in paragraph (9)(a) or (b).

(11) In making a decision under paragraph (10), the person chairing the misconduct hearing may have regard to any representations –

- (a) provided under regulation 36(2) or (5), or
- (b) made at the misconduct hearing.

(12) Information that has already been published during the course of the proceedings may not be redacted under paragraph (9).

Record of misconduct proceedings

44. – (1) A record of the misconduct proceedings must be taken and in the case of a misconduct hearing that record must be verbatim.

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

Appeal from misconduct meeting: officers other than senior officers

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

- (a) if the officer admitted the officer's conduct amounted to misconduct, against any disciplinary action imposed under regulation 42, or
- (b) if (after the officer denied misconduct) the person conducting or chairing the misconduct meeting found that the officer's conduct amounted to misconduct, against that finding or any disciplinary action imposed under regulation 42.

(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 must be commenced by the officer concerned giving written notice of appeal to the appropriate authority –

- (a) before the end of 7 working days beginning with the first working day after the report is given to the officer under regulation 43 (unless the period is extended by the appropriate authority for exceptional circumstances), and
- (b) stating the grounds of appeal and whether a meeting is requested.

(4) An appeal under this regulation must be determined –

(a) where the person who conducted the misconduct meeting was a member of the police force, by-

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

(b) where the person who conducted the misconduct meeting was a police staff member, by-

- (i) a member of the police force who, in the opinion of the appropriate authority is more senior than that person, or
- (ii) a more senior police staff member,

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

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

- (a) the name of the person appointed to determine the appeal under paragraph (4);
 - (b) the name of any person appointed under regulation 8(6) to advise the person determining the appeal;
 - (c) the effects of paragraphs (6) to (9) of this regulation.
- (6) The officer concerned may object to any person whom the officer is notified under this regulation is to –
- (a) determine the appeal, or
 - (b) advise the person determining the appeal.
- (7) Any such objection must be made in writing to the appropriate authority before the end of 3 working days beginning with the first working day after the officer concerned is given notice of the person's name and must set out the grounds of objection of the officer.
- (8) The appropriate authority must notify the officer concerned in writing whether it upholds or rejects an objection to the person appointed to determine the appeal or to any person appointed under regulation 8(6) to advise the person determining the appeal.
- (9) If the appropriate authority upholds the objection, the person to whom the officer concerned objects must be replaced (in accordance with regulation 8(6) or (7) or paragraph (4) as appropriate).
- (10) As soon as reasonably practicable after any such appointment, the appropriate authority must give a written notice to the officer concerned of the name of the new person appointed to determine the appeal or the advisor to the person determining the appeal as the case may be and of the effect of paragraphs (11) and (12) of this regulation.
- (11). The officer concerned may object to the appointment of a person appointed under paragraph (9).
- (12) In relation to an objection under paragraph (11) of this regulation-
- (a) paragraph (7) applies except in so far as it specifies the period of time for making an objection;
 - (b) the objection must be made before the end of 3 working days beginning with the first working day after the officer concerned is given the notice referred to in paragraph (10);
 - (c) paragraphs (8) to (10) apply, with the exception of the requirement in paragraph (10) for the appropriate authority to give written notice of the effects of paragraphs (11) and (12).
- (13) The appropriate authority must 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 32(6);
- (b) the notice of appeal given by the officer concerned under regulation 45(3)
- (c) the record of the misconduct meeting taken under regulation 44(1); and
- (d) any evidence of a kind referred to in regulation 45(2)(b) that the officer wishes to submit in support of the appeal.

(14) The person determining the appeal must determine whether the notice of appeal sets out arguable grounds of appeal and if they decide that it does not, they must dismiss the appeal.

Appeal meeting

46.- (1) This regulation applies where the officer concerned requests a meeting in the written notice of appeal under regulation 45(3).

(2) If the person determining the appeal determines under regulation 45(14) that the notice of appeal sets out arguable grounds of appeal, they must hold an appeal meeting with the officer concerned, subject to paragraphs (3), (5) and (7), before the end of 5 working days beginning with the first working day after that determination.

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

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

(5) Where-

- (a) the officer concerned or the officer's police friend will not be available, and
- (b) the officer concerned proposes an alternative date or time which satisfies paragraph (6),

the appeal meeting must be postponed to the date or time proposed by the officer.

(6) An alternative time must –

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

(7) The appropriate authority must give written notice of the date, time and place of the appeal meeting to –

- (a) the officer concerned;

(b) where the Director General was entitled to attend the misconduct meeting to make representations under regulation 38(1) or to nominate a person to attend the meeting as an observer under regulation 40(6), the Director General;

(c) where the misconduct meeting arose from a complaint to which paragraph 19A of Schedule 3 to the 2002 Act (special procedure where investigation relates to a police officer or a special constable) applied, the complainant, and

(d) where the misconduct meeting arose from the investigation of a conduct matter under Schedule 3 to the 2002 Act (handling of complaints and conduct matters etc.), any interested person.

(9) The appeal meeting must not be held until the person determining the appeal has received a copy of the documents under regulation 45(13).

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

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

(12) The person determining the appeal may impose such conditions as they see fit relating to the attendance of persons under paragraph (11) at the appeal meeting (including circumstances in which they may be excluded) in order to facilitate the proper conduct of the appeal meeting.

Finding of the appeal

47.- (1) The person determining the appeal may-

(a) confirm or reverse the decision appealed against;

(b) deal with the officer concerned in any manner in which the person conducting or chairing the misconduct meeting could have dealt with the officer under regulation 42.

(2) Before the end of 3 working days beginning with the first working day after the determination of the appeal, the appropriate authority must give the officer concerned written notice of that determination with a summary of the reasons.

(3) The decision of the person determining the appeal takes effect by way of substitution for the decision of the person conducting or chairing the misconduct meeting and as from the date of the written notice of the outcome of the meeting.

(4) In a case where-

- (a) paragraph 18 or 19 of Schedule 3 to the 2002 Act (investigations by the appropriate authority on its own behalf) applied, or
- (b) paragraph 16 of Schedule 3 to the 2002 Act (investigation by appropriate authority on its own behalf) applied and the Director General-
 - (i) made a recommendation under paragraph 25(4C)(c) of that Schedule (reviews with respect to an investigation) which the appropriate authority accepted, or
 - (ii) gave a direction to the appropriate authority under paragraph 27(4)(a) of that Schedule (duties with respect to disciplinary proceedings),

the appropriate authority must give the Director General written notice of the determination of the appeal with a summary of the reasons.

PART 5

Accelerated Misconduct Hearing

General

48. Any period of time specified in this Part in relation to an accelerated misconduct hearing may be reduced by agreement between the appropriate authority, the officer concerned, where the Director General is presenting the case, the Director General, and the person conducting or chairing the accelerated misconduct hearing.

Referral of case to accelerated misconduct hearing

49- (1) On receipt of a statement submitted by the investigator under regulation 21(3), the appropriate authority must determine whether the special conditions are satisfied.

(2) The special conditions are that-

- (a) there is sufficient evidence in the form of written statements or other documents, to establish on the balance of probabilities that the conduct of the officer concerned constitutes gross misconduct, and
- (b) it is in the public interest for the officer concerned to cease to be a member of a police force or a special constable without delay.

(3) In a case where misconduct proceedings or an accelerated misconduct hearing have been delayed by virtue of regulation 10(3), as soon as practicable after –

(a) the appropriate authority considers that such proceedings or hearing would no longer prejudice any criminal proceedings, or

(b) any criminal proceedings have concluded (whatever the outcome),

the appropriate authority may make a determination, or in the case of an accelerated misconduct hearing must make a further determination as to 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 must certify the case as one where the special conditions are satisfied and, subject to regulation 10(3), refer it to an accelerated misconduct 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 must, 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 23(1) must be read as if the words “Subject to regulation 49, on receipt of the investigator’s report under regulation 21(1)” were omitted.

(7) Where the appropriate authority certifies a case as one where the special conditions are satisfied under regulation 25 (3) or 26(3) of the Complaints and Misconduct Regulations (including pursuant to regulation 26(8)(b) of those Regulations), it must, subject to regulation 10(3), refer it to an accelerated misconduct hearing.

Remission of case

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

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

(3) Where the appropriate authority is to proceed in accordance with Part 4, regulation 23(1) must be read as if the words “subject to regulation 49, on receipt of the investigator’s report under regulation 21(1)” were omitted.

(4) Paragraph (1) does not apply to a case where the Director General has given a direction under regulation 26(8)(6) of the Complaints and Misconduct Regulations.

Notice of referral of accelerated misconduct hearing

51. – (1) Where the case is certified, whether under regulation 49 or under the provisions mentioned in regulation 49(7), as one where the special conditions are satisfied and referred to an accelerated misconduct hearing, the appropriate authority must as soon as practicable give the officer concerned written notice of these matters and must supply the officer with a copy of-

- (a) the certificate issued under regulation 49(4) or under one of the provisions mentioned in regulation 49(7),
- (b) any statement the officer 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 the officer (together with any document attached to or referred to in that report as relates to the officer) and
 - (ii) any other document which might reasonably be considered capable of undermining or assisting the case.

(2) The notice given under paragraph (1) must-

- (a) describe the conduct that is the subject matter of the case and how the conduct is alleged to amount to gross misconduct, and
- (b) where relevant, specify that the Director General has made a decision under regulation 24(1) to present the case.

(3) Where the Director General has made a decision under regulation 24(1) to present a case, the appropriate authority must –

- (a) consult the Director General about the contents of the written notice to be given under paragraph (1) and on the application of the harm test under paragraph (1)(c);
- (b) comply with any direction given by the Director General in relation to the matters specified in paragraph (a), and
- (c) provide the Director General with a copy of the written notice given under paragraph (1).

(4) For the purposes of this regulation “relevant document” means a document which is relevant to the case of the officer concerned, in the opinion of-

- (a) the appropriate authority, or

(b) the Director General, where the Director General has made a decision under regulation 24(1) to present the case.

Notice of accelerated misconduct hearing

52. – (1) The appropriate authority must specify a date for the accelerated misconduct hearing which must be not less than 10 and not more than 15 working days after the date on which notice is given under regulation 51(1) and must as soon as practicable –

(a) notify the officer concerned and the person conducting or chairing the accelerated misconduct hearing of the date, time and place of that hearing, and

(b) notify the officer concerned of the effect of regulation 8(1) to (3) in relation to an accelerated misconduct hearing.

(2) Where the Director General has made a decision under regulation 24(1) to present a case or is entitled to attend the accelerated misconduct hearing to make representations under regulation 58(1), the appropriate authority must notify the Director General of the date, time and place of the hearing.

Public notification of accelerated misconduct hearing

53. – (1) The person conducting or chairing an accelerated misconduct hearing may require the appropriate authority to give notice of the hearing which contains information relating to one or more of –

(a) the name of the officer concerned;

(b) the date of the hearing;

(c) the time of the hearing;

(d) the place at which the hearing will take place, and

(e) the conduct that is the subject matter of the case and how that conduct is alleged to amount to gross misconduct, as set out in the notice given in accordance with regulation 51(2).

(2) Where the person conducting or chairing the accelerated misconduct hearing requires notice to be given in accordance with paragraph (1), the appropriate authority must publish the notice on its website as soon as practicable after notice of the hearing is given under regulation 52(1).

(3) Any person to whom this paragraph applies may make written representations to the person conducting or chairing the accelerated misconduct hearing in relation to-

(a) whether, and (if so) the extent to which, the person conducting or chairing the accelerated misconduct hearing should exclude any person from the whole or part of the hearing under regulation 59(2)(a);

(b) whether the person conducting or chairing the accelerated misconduct hearing should impose any conditions under regulation 59(2)(b);

(c) whether the person conducting or chairing the accelerated misconduct hearing should give directions prohibiting the publication of any matter relating to the proceedings under regulation 59(2)(c);

(d) in the light of the representations made under sub-paragraph (a) to (c) –

(i) whether the person conducting or chairing the accelerated misconduct hearing should require notice to be given under paragraph (1);

(ii) which types of information mentioned in paragraph (1)(a) to (e) should be included in any such notice.

(4) Paragraph (2) applies to –

(a) the officer concerned;

(b) the appropriate authority;

(c) the complainant;

(d) any interested person; and

(e) the Director General;

(5) Written representations, in relation to the matters specified in paragraph (3)(a) to (c), may also be made by any representative of the media to the person conducting or chairing the accelerated misconduct hearing.

(6) Any written representation made in accordance with paragraph (3) or (5), as the case may be, must be provided no later than the date specified by the person conducting or chairing the accelerated misconduct hearing for provision of such representations.

Procedure on receipt of notice

54. – (1) Before the end of 7 working days beginning with the first working day after the written notice is given to the officer concerned under regulation 51(1), the officer concerned must give to the appropriate authority-

(a) written notice of whether or not they accept their conduct amounts to gross misconduct;

(b) where they accept that their conduct amounts to gross misconduct, any written submission they wish to make in mitigation;

(c) where they do not accept that their conduct amounts to gross misconduct, written notice of-

(i) the allegations they dispute and their account of the relevant events, and

(ii) any arguments on points of law they wish to be considered by the person or persons conducting the accelerated misconduct hearing;

(d) a copy of any document they intend to rely on at the accelerated misconduct hearing.

(2) Where the Director General has made a decision under regulation 24(1) to present a case, the officer concerned must provide the Director General with a copy of the documents they have provided in accordance with paragraph (1).

Persons conducting accelerated misconduct hearing

55. – (1) Where the officer concerned is an officer other than a senior officer, the accelerated misconduct hearing must be conducted by the chief constable.

(2) Where the chief constable is an interested party or is unavailable, the accelerated misconduct hearing must be conducted by the chief officer of police of another police force or an assistant commissioner of the metropolitan police force.

(3) Where the officer concerned is a senior officer, the accelerated misconduct hearing must be conducted by a panel of persons specified in paragraph (4) appointed by the police authority.

(4) Those persons are-

(a) a chair selected in accordance with regulation 28(4)(a);

(b) HMCIC or HMICS or an inspector of constabulary appointed by HMCIC or HMICS;

(c) a person selected in accordance with regulation 28(4)(c)..

(5) For the purpose of section 84(4) of the 1996 Act (power to prescribe “the panel” for the purpose of representation at proceedings), the panel of persons specified by this regulation to conduct an accelerated misconduct hearing is prescribed as “the panel”.

Documents to be supplied

56. – (1) Prior to the accelerated misconduct hearing the appropriate authority must supply the person conducting or chairing the accelerated misconduct hearing with a copy of –

- (a) the notice given to the officer concerned under regulation 51(1);
 - (b) the other documents given to the officer concerned under regulation 51(1);
 - (c) the documents provided by the officer concerned under
 - (i) regulation 54, and
 - (ii) where paragraph (2) applies, regulation 31(2) and (3);
 - (d) where the officer concerned does not accept that the officer's 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 in a case where misconduct proceedings have been delayed by virtue of regulation 10(3) and the appropriate authority has certified the case as one where the special conditions are satisfied following a determination under regulation 49(3).
- (3) Prior to the accelerated misconduct hearing, the appropriate authority must provide the officer concerned with-
- (a) a list of documents supplied under paragraph (1), and
 - (b) a copy of any such document, where it has not already been supplied.
- (4) Where the Director General has made a decision under regulation 24(1) to present a case, the duty specified in paragraph (1) to supply the specified documents to the person or persons conducting or chairing the accelerated misconduct hearing lies with the Director General and not with the appropriate authority.

Attendance of officer concerned at accelerated misconduct hearing

57. – (1) Subject to paragraph (2), the officer concerned must attend the accelerated misconduct hearing.

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

(3) Where under paragraph (2) the officer concerned is allowed to and does so participate in the accelerated misconduct hearing, or where the officer concerned otherwise does not attend the accelerated misconduct hearing-

- (a) the officer may nonetheless be represented at that hearing by-
 - (i) a police friend, or
 - (ii) a relevant lawyer (in which case the police friend may also attend), and

(b) the hearing may be proceeded with and concluded in the absence of the officer whether or not the officer is so represented.

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

Participation of Director General and investigator at accelerated misconduct hearing

58. – (1) Subject to paragraph (5), in any case where –

(a) paragraph 18 or 19 of Schedule 3 to the 2002 Act (directed and independent investigations) applied, or

(b) paragraph 16 of Schedule 3 to the 2002 Act (investigations by the appropriate authority on its own behalf) applied and the Director General –

(i) made a recommendation under paragraph 25(4C)(c) of that Schedule (duties with respect to disciplinary proceedings) which the appropriate authority accepted, or

(ii) gave a direction under paragraph 27(4)(a) of that Schedule (duties with respect to disciplinary proceedings),

the Director General may attend the accelerated misconduct hearing to make representations.

(2) Where the Director General so attends the accelerated misconduct hearing –

(a) the Director General may be represented by a relevant lawyer;

(b) the Director General must notify the complainant or any interested person prior to the hearing, and

(c) the person concerned conducting or chairing the accelerated misconduct hearing must notify the officer concerned prior to the hearing.

(3) The investigator or a nominated person must attend the accelerated misconduct hearing on the request of the person conducting or chairing the hearing to answer questions.

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

(a) the appropriate authority, or

(b) in a case to which paragraph 18 or 19 of Schedule 3 to the 2002 Act (directed and independent investigations) applied, the Director General,

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

(5) Paragraph (1) does not apply in a case where the Director General has made a decision under regulation 24(1) to present a case.

Reporting restrictions and participation at accelerated misconduct hearing

59. – (1) Subject to paragraph (2), an accelerated misconduct hearing must be in public.

(2) Having considered any representations received under regulation 53(2) and (5), the person conducting or chairing the accelerated misconduct hearing may-

- (a) in relation to the attendance at the hearing of a person under this regulation, exclude any person as they see fit from the whole or a part of it;
- (b) impose such conditions as they see fit relating to the attendance under this regulation of any person at the hearing in order to facilitate the proper conduct of it, and
- (c) give such directions as they think appropriate prohibiting the publication of any matter relating to the hearing.

(3) Where the person conducting or chairing the misconduct hearing excludes a person under paragraph (2)(a) which has the effect of excluding a representative of the media, or gives directions under paragraph (2)(c), any representative of the media may make representations to the person conducting or chairing the misconduct hearing about the exclusion or, as the case may be, direction.

Notice to complainant and interested persons of accelerated misconduct hearing

60. – (1) This regulation applies in the case of an accelerated misconduct hearing arising from the investigation of a –

- (a) conduct matter under Schedule 3 to the 2002 Act (handling of complaints and conduct matters etc.), or
- (b) complaint to which paragraph 19A(1) of that Schedule (special procedure where investigation relates to police officer or special constable) applies.

(2) The appropriate authority must notify the complainant and any interested person of the date, time and place of the accelerated misconduct hearing and of their right to make representations under regulation 53(2).

Procedure at accelerated misconduct hearing

61. – (1) The person conducting or chairing the accelerated misconduct hearing must determine the procedure at the hearing and, in so far as it is set out in these Regulations, must determine it in accordance with these Regulations.

(2) The accelerated misconduct hearing must not proceed unless the officer concerned has been notified of the effect of regulation 8(1) to (3) in relation to an accelerated misconduct hearing.

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

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

(5) At the beginning of the accelerated misconduct hearing, the person conducting or chairing the accelerated misconduct hearing must give the officer the opportunity to say whether or not the officer accepts that the officer's conduct amounts to gross misconduct.

(6) No witnesses other than the officer concerned may give evidence at the accelerated misconduct hearing and the person conducting or chairing the accelerated misconduct hearing must determine whether and by whom the officer concerned can be questioned..

(7) The person representing the appropriate authority may-

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

- (i) put the case of the authority;
- (ii) sum up that case;
- (iii) respond on behalf of the authority to any view expressed at the accelerated misconduct hearing;
- (iv) make representations concerning any aspect of proceedings under these Regulations, and

(b) confer with the authority.

(8) The person representing the officer concerned may –

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

- (i) put the case of the officer;
- (ii) sum up that case;
- (iii) respond on behalf of the officer to any view expressed at the accelerated misconduct hearing, and
- (iv) make representations concerning any aspect of proceedings under these Regulations, and

(b) if the officer concerned is present at the accelerated misconduct hearing or is participating in them by video link or other means in accordance with regulation 57(2), confer with the officer.

(9) Where the person representing the officer concerned is a relevant lawyer, the police friend of the officer may also confer with the officer in the circumstances mentioned in paragraph (8)(b).

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

(11) The person conducting or chairing the accelerated misconduct hearing may allow any document to be considered at the hearing notwithstanding that a copy of it has not been supplied-

(a) by the officer concerned to the appropriate authority in accordance with regulation 54, or

(b) to the officer in accordance with regulation 51(1).

(12) Where evidence is given or considered at the accelerated misconduct hearing that the officer concerned-

(a) on being questioned by an investigator, at any time after the officer was given written notice under regulation 17(1) of these Regulations or regulation 17(1) of the Complaints and Misconduct Regulations (or any equivalent provision that may be made in respect of Scotland), or

(b) in submitting any information or by not submitting any information at all under regulation 54 (or, where paragraph 14 applies, regulation 18(1) or 31(2) or (3)) of these Regulations or under regulation 20 of the Complaints and Misconduct Regulations (or any equivalent provision made in Scotland),

failed to mention any fact relied on in the officer's case at the accelerated misconduct hearing, being a fact which in the circumstances existing at the time, the officer concerned could reasonably have expected to mention when so questioned or when providing such information, paragraph (13) applies.

(13) Where this paragraph applies, the person conducting or chairing the accelerated misconduct hearing may draw such inferences from the failure as appear proper.

(14) This paragraph applies where the case was certified as one where the special conditions are satisfied following a determination made under regulation 49(3), being a case where misconduct proceedings have been delayed by virtue of regulation 10(3).

(15) The person conducting or chairing the accelerated misconduct hearing must review the facts of the case and decide whether or not the conduct of the officer concerned amounts to gross misconduct.

(16) The person conducting or chairing the accelerated misconduct hearing must not find that the conduct of the officer concerned amounts to gross misconduct unless-

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

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

(17) At an accelerated misconduct hearing conducted by a panel, any decision must be based on a majority, but must not indicate whether it was taken unanimously or by a majority.

(18) Where the Director General has made a decision under regulation 24(1) to present a case, paragraph (7) must be read as if for “The person representing the appropriate authority” there were substituted “The Director General”.

Outcome of accelerated misconduct hearing

62. – (1) Where the person conducting or chairing the accelerated misconduct hearing finds that the conduct of the officer concerned amounts to gross misconduct, that person must impose disciplinary action which, subject to the provisions of this regulation, may be-

(a) a final written warning; or

(b) dismissal without notice.

(2) The disciplinary action has effect from the date on which it is notified to the officer concerned.

(3) Where, at the date of the severity assessment under regulation 14(1) of these Regulations or under regulation 16 of the Complaints and Misconduct Regulations, the officer concerned had a final written warning in force a final written warning must not be given.

(4) Where a final written warning is given, that warning remains in force for –

(a) a period of 2 years beginning with the date on which it is notified to the officer concerned, or

(b) such longer period as the person or persons considering the question of disciplinary action may determine, up to a maximum of five years from the day on which it was notified to the officer.

(5) The reference to a period in paragraph (4)(a) and (b) does not include any time when the officer concerned is taking a career break.

(6) Where the person conducting or chairing the accelerated misconduct hearing finds that the conduct of the officer concerned does not amount to gross misconduct, the person may-

(a) dismiss the case, or

(b) return the case to the appropriate authority to deal with in accordance with Part 4

(7) Where the case is returned to the appropriate authority under paragraph (6)(b), the appropriate authority must proceed in accordance with Part 4, subject to regulation 23(1)

being read as if the words “subject to regulation 49, on receipt of the investigator’s report under regulation 21(1)” were omitted.

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

- (a) must have regard to the record of police service of the officer concerned as shown on the officer’s personal record;
- (b) may consider such documentary evidence as would, in their opinion, assist them in determining the question;
- (c) must give-
 - (i) the officer;
 - (ii) if the officer is legally represented, the officer’s relevant lawyer or, where the officer is not legally represented, the officer’s police friend;
 - (iii) the appropriate authority or the person appointed to represent such authority in accordance with regulation 8(5), and
 - (iv) the Director General or the Director General’s relevant lawyer, where the Director General presented the case on behalf of the appropriate authority, an opportunity to make oral or written representations before any such question is determined, including on the appropriate level of disciplinary action; and
- (d) where representations are received in relation to mitigating circumstances –
 - (i) must consider whether those circumstances have been mentioned at an earlier stage in the proceedings and, if they have not been so mentioned, whether the officer concerned could reasonably have been expected to mention them, and
 - (ii) in the light of their conclusions under paragraph (i), may determine that it is appropriate to place less weight on those circumstances.

Notification of outcome

63.- (1) The person conducting or chairing the accelerated misconduct hearing must, before the end of a period of 5 working days beginning with the first working day after the completion of the accelerated misconduct hearing, submit a report to the appropriate authority setting out-

- (a) the finding of the person or persons conducting the accelerated misconduct hearing;
- (b) the reasons for that finding;

- (c) any disciplinary action imposed.
- (2) A report under this regulation must include notice of the right of appeal to a police appeals tribunal.
- (3) The appropriate authority must, as soon as practicable after receiving the report under paragraph (1), notify the officer concerned of the outcome by sending the officer a copy of that report.
- (4) The appropriate authority must send a copy of any report under this regulation to –
 - (a) the Director General, in any case where the Director General –
 - (i) presented the case, or
 - (ii) was entitled to attend to make representations under regulation 58(1), and
 - (b) the complainant and any interested person, in any case to which regulation 60 applies.
- (5) Subject to the harm test and paragraph (9), the person conducting or chairing the accelerated misconduct hearing must require the appropriate authority to publish the report submitted under paragraph (1).
- (6) Where the appropriate authority is required to publish the report in accordance with paragraph (5), it must do so as soon as practicable after the officer concerned is notified of the outcome of the accelerated misconduct hearing under paragraph (3).
- (7) Where the appropriate authority publishes a report in accordance with paragraph (5), it must publish the notice on its website for a period of not less than 28 days.
- (8) Prior to publication of a report under paragraph (5), the appropriate authority may, subject to paragraph (11) redact the document-
 - (a) in so far as the authority considers redaction is-
 - (i) 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;
 - (ii) necessary in the interests of national security;
 - (iii) necessary for the purpose of the prevention or detection of crime, or the apprehension or prosecution of offenders;
 - (iv) necessary for the purpose of the prevention or detection of misconduct by other police officers or police staff members or their apprehension for such matters;
 - (v) necessary and proportionate for the protection of the welfare and safety of any informant or witness;
 - (vi) otherwise in the public interest, and

(b) in line with any restrictions imposed on the disclosure of information during the course of the proceedings.

(9) The person conducting or chairing the accelerated misconduct hearing may dispense with the requirement under paragraph (5) to publish the report if in the particular circumstances of the case the person considers it appropriate to do so on any of the grounds set out in paragraph (8)(a) or (b)

(10) In making a decision under paragraph (9), the person conducting or chairing the accelerated misconduct hearing may have regard to any representations –

(a) provided under regulation 53(2) or (5) or,

(b) made at the accelerated misconduct hearing.

(11) Information that has already been published during the course of the proceedings may not be redacted under paragraph (8).

Record of accelerated misconduct hearing

64. – (1) A verbatim record of the proceedings at the accelerated misconduct hearing must be taken.

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

PART 6

Reflective practice review process

Interpretation and application

65. – (1) In this Part –

“participating officer” means the police officer whose actions or behaviour are subject to the reflective practice review process, and

“reviewer” means the person who is conducting the reflective practice review process.

(2) The reviewer must be–

(a) the line manager of the participating officer,

(b) another officer who is senior to the participating officer, or

(c) a police staff member who, in the opinion of the appropriate authority, is more senior than the participating officer

(3) This Part applies where a matter has been referred to be dealt with under the reflective practice review process-

(a) under these Regulations, or

(b) following-

(i) a determination under paragraph 6(2A) of Schedule 3 to the 2002 Act (handling of complaints by the appropriate authority)²⁸;

(ii) a determination under paragraph 23(5A)(c) of Schedule 3 to the 2002 Act (action by the Director General in response to an investigation report under paragraph 22)²⁹;

(iii) a determination under paragraph 24(6) of Schedule 3 to the 2002 Act (action by the appropriate authority in response to an investigation report under paragraph 22)³⁰;

(iv) a recommendation under paragraph 28ZA of Schedule 3 to the 2002 Act (recommendations by the Director General or a local policing body)³¹.

General

66.- (1) Where a matter is dealt with under this Part, regulation 7(2)(b) to (d) does not apply.

(2) Where more than one officer is involved in a matter that has been referred to be dealt with under the reflective practice review process, a joint reflective practice review discussion may take place, provided that individual reflective review development reports are produced.

(3) A participating officer must not be prevented from applying for or obtaining a promotion by reason of the officer's participation in the reflective practice review process.

(4) Any account given by the participating officer under regulation 67(1)(b) or during the reflective practice review discussion held under regulation 69 is not admissible in any subsequent disciplinary proceedings brought against the participating officer, except to the extent that it consists of an admission relating to a matter that has not been referred to be dealt with under the reflective practice review process.

²⁸ Paragraph 6(2A) to (2E) of Schedule 3 to the 2002 Act was inserted by paragraphs 5 and 6(1) and (3) of Schedule 5 to the Policing and Crime Act 2017.

²⁹ Paragraph 23(5A) of Schedule 3 to the 2002 Act was inserted by paragraphs 9 and 26(1) and (2) of Schedule 5 to the Policing and Crime Act 2017 and was amended by paragraphs 15 and 56(1) to (3) and (16)(c)(ii) of Schedule 9 to that Act.

³⁰ Paragraph 24(6) of Schedule 3 to the 2002 Act was substituted by section 127 of, and paragraphs 1, 3 and 14(1) and (6) of Schedule 3 to, the Criminal Justice and Immigration Act 2008 and was amended by section 95 of, and paragraphs 1 and 14(1) and (3) of Schedule 14 to, the Police Reform and Social Responsibility Act 2011 and section 16 of, and paragraphs 9, 27(1) and (2) and 47(h)(xiii) of Schedule 5 to, the Policing and Crime Act 2017.

³¹ Paragraph 28ZA of Schedule 3 to the 2002 Act was inserted by section 16 of, and paragraph 45 of Schedule 5 to, the Policing and Crime Act 2017 and was amended by paragraphs 15 and 56(1), (2) and (20) of Schedule 9 to that Act.

Referral to reflective practice review process

67.- (1) Where a matter is referred to the reflective practice review process, the reviewer must as soon as practicable provide the following to the participating officer-

(a) details of the matter that has been referred and the circumstances that are being considered, and

(b) an invitation to provide an account of the matter that has been referred for review.

(2) The participating officer must provide any account under paragraph (1)(b) within 5 working days beginning with the first working day after the day on which the invitation to do so is received, unless a longer period is agreed with the reviewer.

(3) The reflective practice review process consists of a fact-finding stage and a discussion stage, followed by the production of a reflective development report.

Fact-finding stage

68.- (1) Enquiries made by the reviewer during the fact-finding stage must be reasonable, proportionate and relevant to the purpose, which is to establish the facts of the matter subject to the review process.

(2) Paragraphs (3) and (4) apply to a matter that has been referred under these Regulations to be dealt with under the reflective practice review process.

(3) If at any time during the fact-finding stage substantial evidence becomes available to the reviewer, which was not available to the appropriate authority when the matter was referred to be dealt with under the reflective practice review process, the reviewer must refer the matter to the appropriate authority for a further assessment under regulation 14.

(4) Where a matter is so referred for a further assessment, unless such further assessment is that the conduct, if proved, would amount to practice requiring improvement, the reflective practice review process must not be continued.

Discussion stage

69. – (1) The reviewer must, following completion of the fact-finding stage, invite the participating officer to attend a reflective practice review discussion.

(2) Such discussion should take place as soon as reasonably practicable.

(3) The discussion must include, in particular-

(a) a discussion of the practice requiring improvement and related circumstances that have been identified, and

(b) the identification of key lessons to be learnt by the participating officer, line management or the police force, to address the matter and prevent a reoccurrence or the matter.

Reflective review development report

70.- (1) The reviewer must, following completion of the discussion stage, produce a reflective review development report.

(2) A reflective review action report must contain-

- (a) a summary of the issue and any relevant background circumstances;
- (b) a summary of the reflective practice review discussion;
- (c) key actions to be undertaken within a specified time period;
- (d) any lessons identified for the participating officer;
- (e) any lessons identified for the line management or the police force;
- (f) a specified period of time for reviewing the report and the actions taken.

(3) The reviewer must send a copy of the report to the appropriate authority.

(4) The appropriate authority must take appropriate action to ensure that any lessons identified for the line management or police force are addressed.

(5) A copy of the report, together with a note of the review of the report and of actions taken, must be retained.

(6) The report and review notes must be discussed as part of the participating officer's performance and development review during the 12 month period following agreement of the report.

Failure to engage with the reflective practice review process

71. If the reviewer considers that the participating officer is failing to engage with the reflective practice review process, the reviewer may refer that failure for assessment by the appropriate authority under regulation 14.

Made by Order of the British Transport Police Authority

SCHEDULE 1

Modifications to these Regulations in their application to former officers

Modification to regulation 2 (interpretation and delegation)

1. Regulation 2 is to be read as if

(a) In paragraph (1)-

(i) the following definitions were inserted in the appropriate places-

“”Condition C person” means a person in relation to whom regulation 4(2)(a) and (5)(a) and (b) is satisfied;”;

“”Condition C special determination” has the meaning given in regulation 4A(2);”;

“”disciplinary action for gross misconduct” means a finding that the officer concerned would have been dismissed if the officer had not ceased to be a member of the police force or a special constable;”;

“”relevant time” means the time immediately before the officer concerned ceased to be a member of the police force or a special constable;”;

(ii) the definitions of “appeal meeting”, “disciplinary action”, “human resources professional”, “line manager”, “misconduct meeting”, “practice requiring improvement” and “reflective practice review process” were omitted;

(iii) in the definition of “allegation”, for “,conduct matter or practice requiring improvement” there were substituted “or conduct matter”.

(iv) for the definition of “appropriate authority”, there were substituted-

“”appropriate authority” means, subject to regulation 26(3), where the officer concerned was-

(a) the chief constable or acting chief constable of the police force at the relevant time, the local policing body;

(b) any other police officer at the relevant time, the chief constable of the police force;”;

(iv) in the definition of “gross misconduct, for “as to justify dismissal” there were substituted “that the officer concerned would have been dismissed if the officer had not ceased to be a member of the police force or a special constable”;

(vi) in the definition of “misconduct”-

(aa) “,other than in regulation 23(2)(a) and the first reference to “misconduct” in regulation 23(2)(b),” were omitted;

- (bb) for “so serious as to justify disciplinary action” there were substituted
“not so serious that the officer concerned would have been dismissed if
the officer had not ceased to be a member of the police force or a special
constable”;
- (vii) in the definition of “misconduct hearing”; after “disciplinary action”, there were
inserted “for gross misconduct”;
- (viii) for the definition of “misconduct proceedings”, there were substituted-
“misconduct proceedings” means a misconduct hearing;”;
- (ix) for the definition of “police officer”, except in its application to regulation 4, there
were substituted-
““police officer” and “officer” mean a person who has ceased to be a member of
the police force or a special constable”
- (ix) in the definition of “proposed witness”, “conducting or” were omitted;
- (x) for the definition of “staff association”, there were substituted-
““staff association means-
 - (a) in relation to an officer who was a member of the force of the rank of chief
inspector or below at the relevant time, the British Transport Police
Federation;
 - (b) in relation to an officer who was a member of the police force of the rank of
superintendent or chief superintendent at the relevant time, the Police
Superintendents’ Association; and
 - (c) in relation to an officer who was a senior officer at the relevant time, the Chief
Police Officers’ Staff Association;””;
- (b) for paragraph (4), there were substituted-
“(4) Where the appropriate authority delegates its functions under regulation 49, a decision
under that regulation as to whether to certify a case as one where the special conditions are
satisfied must be authorised by a senior officer.”.

Modification: insertion of Part 1A

- 2.** These Regulations apply as if after regulation 4 there were inserted-

“PART 1A

Condition C special determination

Condition C special determination: matters to be taken into account

4A. –(1) This Part applies where the Director General is required under paragraph 23(5A)(ba)³² of Schedule 3 to the 2002 Act (as applied with modifications by regulation 42 of, and Schedule 2 to, the Complaints and Misconduct Regulations) to make a Condition C special determination.

(2) A Condition C special determination is a determination by the Director General as to whether the taking of disciplinary proceedings against a Condition C person in respect of alleged gross misconduct would be reasonable and proportionate having regard to –

- (a) the seriousness of the alleged gross misconduct;
- (b) the impact of the allegation on public confidence in the police, and
- (c) the public interest.

(3) When assessing the seriousness of the alleged gross misconduct for the purposes of paragraph (2)(a), the matters which the Director General must take into account are–

- (a) whether it appears that the alleged misconduct amounts to a criminal offence;
- (b) whether it appears that a complainant or other person has been harmed (whether physically or psychologically) by the alleged gross misconduct and, if so, the extent and seriousness of the harm;
- (c) where it appears that a complainant or other person has been so harmed, whether that person was a vulnerable person;
- (d) whether it appears that the alleged gross misconduct was intentional;
- (e) whether it appears that the purpose, or one of the purposes, of the alleged gross misconduct was personal gain or benefit for the officer concerned;
- (f) whether it appears that the alleged gross misconduct is aggravated by discriminatory behaviour on the grounds of a person’s race, gender, disability, age, religion or belief, sexual orientation or gender identity;
- (g) whether it appears that the officer concerned acted with one or more other persons serving with the police force;
- (h) the extent to which the alleged gross misconduct involved abuse of a position of trust or authority held by the officer concerned;

³² Paragraph 23(5A) was inserted by section 16 of and paragraphs 9 and 26(1) and (2) of Schedule 5 to the Policing and Crime Act 2017.

(i) whether it appears that the officer concerned has taken steps to prevent the alleged gross misconduct being identified or to obstruct investigations into it, other than lawful steps in the officer's defence;

(j) whether it appears that the alleged gross misconduct has had an adverse effect on community relations;

(k) whether it appears that there are mitigating circumstances arising out of the health (whether physical or mental) of the officer concerned at the time of the alleged gross misconduct, and

(l) any other matters that the Director General considers relevant.

(4) When assessing the impact of the allegation on public confidence in the police for the purposes of paragraph (2)(b), the matters which the Director General must take into account are-

(a) whether it appears that the alleged gross misconduct has had an effect on relations between the members of the community where the alleged gross misconduct occurred and the police force ;

(b) the extent of any apparent harm to public confidence in the police, and, in particular, in the police force;

(c) the effect that a decision not to take disciplinary proceedings might have in public confidence in the police;

(d) any other matters that the Director General considers relevant.

(5) When assessing the public interest for the purpose of paragraph (2)(c), the matters which the Director General must take into account are-

(a) the length of time since the alleged gross misconduct occurred;

(b) whether it appears that the officer concerned will be held to account in respect of the alleged gross misconduct through other means, such as criminal or other proceedings;

(c) where it appears that a complainant or other person has been harmed (whether physically or psychologically) by the alleged gross misconduct, whether it appears that a decision not to take disciplinary proceedings would adversely affect that person;

(d) whether it appears that the officer concerned is unfit to be subject to or to participate in disciplinary proceedings by reason of disability or ill-health, and

(e) any other matters that the Director General considers relevant.

(6) In paragraph (3)(c), "vulnerable person" means a person who, by reason of age, disability or ill-health, is, or may be, unable to –

- (a) take care of himself or herself, or
- (b) protect himself or herself against harm or exploitation.

Condition C special determination: procedure

4B. – (1) Before making a Condition C special determination the Director General must give a notification in writing to-

- (a) any complainant;
- (b) any interested person; and
- (c) the officer concerned.

(2) A notification under paragraph (1) must-

- (a) state that the Director General is to make a Condition C special determination and the consequences under Schedule 3 to the 2002 Act of such a determination;
- (b) explain the effect of regulation 4A;
- (c) explain that if disciplinary proceedings are taken and the allegation of gross misconduct is proved, the officer concerned may be subject to a finding that the officer would have been dismissed if the officer had not ceased to be a member of the police force or a special constable;
- (d) subject to the harm test, set out any findings relating to the conduct to which the investigation relates in any special report or investigation report submitted to the Director General under Schedule 3 to the 2002 Act;
- (e) set out the person's rights under paragraph (3);
- (f) in the case of the officer concerned, state that the officer has the right to seek advice from the officer's staff association or any other body and the effect of regulation 7(1) and (2).

(3) A person given a notification under paragraph (1) may, within the period of 21 working days beginning with the day on which the notice is given or such longer period as the Director General may agree, provide a written statement and any document which the person wishes the Director General to take into account for the purposes of the Condition C special determination.

(4) Before making a Condition C special determination the Director General may consult any other person the Director General thinks fit.

(5) When making a Condition C special determination the Director General must take into account in addition to the matters specified in regulation 4A-

- (a) any written statement or document provided under paragraph (3);

- (b) any response to a consultation carried out under paragraph (4);
- (c) any findings relating to the conduct to which the investigation relates in any investigation report submitted to the Director General under Schedule 3 to the 2002 Act; and
- (d) any other relevant evidence.

(6) The Director General must give notification in writing of a Condition C special determination and the consequences under Schedule 3 to the 2002 Act of the determination to the persons mentioned in paragraph (1).”.

Modification to regulation 7 (police friend)

3. Regulation 7 is to be read as if-

- (a) in paragraph (1), for sub-paragraph (c), there were substituted-
 - “(c) any other person nominated by the officer concerned and approved by the chief constable of the police force,”;
- (b) In paragraph (2)-
 - (i) “Subject to regulation 66(1),” were omitted;
 - (ii) in sub-paragraph (b), “or appeal meeting” were omitted;
 - (iii) in sub-paragraph (d), “,meeting” were omitted.

Modification to regulation 8 (legal and other representation)

4. Regulation 8 is to be read as if-

- (a) In paragraph (3), for “the officer may be dismissed or” there were substituted “disciplinary action for gross misconduct may be imposed in relation to the officer or the officer may”;
- (b) in paragraph (4), “or an appeal meeting” were omitted;
- (c) in paragraph (5)-
 - (i) in the opening words, “or an appeal meeting” were omitted;
 - (ii) in sub-paragraph (b) “only”, and the words before it were omitted;
- (d) in paragraph (6), “Subject to paragraph (7)”, “conducting or” and “or appeal meeting” were omitted;
- (e) paragraph (7) were omitted.

Modification to regulation 9 (provision of notices or documents)

5. Regulation 9 is to be read as if-

(a) the existing text were paragraph (1);

(b) after paragraph (1), there were inserted-

“(2) The appropriate authority must make reasonable enquiries in order to determine the last known address of the officer concerned for the purposes of paragraph (1)(b).”.

Modification: omission of regulation 11 (suspension)

6. These Regulations are to be read as if regulation 11 were omitted.

Modification to regulation 12 (record of disciplinary proceedings)

7. Regulation 12 is to be read as if for “and decision on disciplinary action”, there were substituted “,any decision on disciplinary action for gross misconduct”.

Modification to regulation 14 (severity assessment)

8. Regulation 14 is to be read as if-

(a) in paragraph (1)-

(i) at the beginning, there were inserted “Subject to paragraph (6A),”;

(ii) “misconduct or” and “or neither” were omitted;

(b) in paragraph (2), for the words from “amount”, in the first place that word occurs, to the end, there were substituted “not amount to gross misconduct, it must take no further action.”;

(c) paragraphs (3) and (4) were omitted;

(d) in paragraph (5)-

(i) at the beginning, there were inserted “Subject to paragraph (6A),”;

(ii) for the words from “misconduct or” to the end, there were substituted “gross misconduct, the matter must be investigated.”;

(e) in paragraph (6), at the beginning there were inserted “Subject to paragraph (6A),”;

(f) after paragraph (6), there were inserted-

“(6A) The appropriate authority must take no action or no further action under paragraph (1), (5) or (6) if-

(a) it is satisfied that the officer concerned is unfit for disciplinary proceedings to be brought against the officer by reason of disability or ill-health, or

(b) the appropriate authority has made all reasonable efforts to establish the last known address of the officer but it has been unsuccessful.”;

(g) in paragraph (7), for the words “or to refer” to the end there were substituted “or is required under paragraph (6A)(a) to take no action or no further action, it must so notify the officer concerned in writing as soon as practicable.”.

Modification of regulation 15 (appointment of investigator)

9. Regulation 15 is to be read as if in paragraph (3)-

(a) for sub-paragraph (c), there were substituted-

“(c) if they worked, directly or indirectly, under the management of the officer concerned at the relevant time”;

(b) in sub-paragraph (d), for “is a senior officer, if they are” there were substituted “was a senior officer at the relevant time, if they were at that time”;

Modification to regulation 16 (investigation)

10. Regulation 16 is to be read as if “misconduct or”, in both places where those words appear, were omitted.

Modification to regulation 17 (written notices)

11. Regulation 17 is to be read as if in paragraph (1)-

(a) sub-paragraph (d) were omitted;

(b) for sub-paragraph (e) there were substituted-

“(e) that if the allegation of gross misconduct is proved, the officer may be subject to a finding that the officer would have been dismissed if the officer had not ceased to be a member of the police force or a special constable”;

(c) after sub-paragraph (g), “and” were omitted and there were inserted-

“(ga) that it may harm the officer’s case if the officer fails to attend an interview of which the officer has been given notice under regulation 20(6) (interviews during investigation), and”

(d) in sub-paragraph (h), after 18(1)", there were inserted ",20A(2)".

Modification to regulation 20 (interviews during investigation)

12. Regulation 20 is to be read as if-

- (a) in paragraph (1), after "practicable" there were inserted "and subject to regulation 20A";
- (b) in paragraph (5), for the words from "must" to the end there were substituted "must be reasonable"

Modification: insertion of regulation 20A

13. These Regulations are to be read as if after regulation 20 there were inserted-

"Notice of enquiry of police officer during investigation

20A – (1) Where the investigator is satisfied that, having regard to the circumstances of the officer concerned, it would be unreasonable to require the officer to attend an interview, the investigator may cause the officer concerned to be given a written notice of enquiry.

(2) A notice of enquiry given under paragraph (1) must-

- (a) state any question the investigator wishes to ask the officer concerned; and
- (b) request a response to any such question from the officer concerned within a specified period.

(3) The investigator must make a record of any notice of enquiry and response received under this regulation."

Modification to regulation 21 (report of investigation)

14. Regulation 21 is to be read as if-

(a) in paragraph (2)-

- (i) after sub-paragraph (b), "and" were inserted;
- (ii) for sub-paragraphs (c) and (d) there were substituted-

"(c) indicate the investigator's opinion as to whether-

- (i) there is a case to answer in respect of gross misconduct or there is no case to answer;
- (ii) where the investigator's opinion is that there is no such case to answer, there may nevertheless have been a breach of the Standards of Professional

Behaviour that would have justified the bringing of disciplinary proceedings had the officer still been serving.”;

(b) in paragraph (4)-

(i) for “would amount to neither misconduct nor”, there were substituted “would not amount to”;

(ii) in sub-paragraph (a), for “it,” there were substituted “it, and”;

(iii) sub-paragraph (c), and “and” before it were omitted;

(c) in paragraph (6) and (7), “misconduct or” were omitted;

Modification to regulation 22 (general)

15. Regulation 22 is to be read as if “conducting or” were omitted.

Modification to regulation 23 (referral of case to misconduct proceedings)

16. Regulation 23 is to be read as if-

(a) in paragraph (1)-

(i) in sub-paragraph (a), in the first place it occurs, “misconduct or” were omitted;

(ii) for sub-paragraph (b) and (c), there were substituted-

“(b) whether or not misconduct proceedings should be brought against the officer concerned, and

(c) if the appropriate authority determines the officer has no case to answer, whether there may have been a breach of the Standards of Professional Behaviour that would have justified the bringing of disciplinary proceedings had the officer still been serving.”;

(b) in paragraph (2)-

(i) in sub-paragraph (a), “misconduct (within the meaning of paragraph 29 of Schedule 3 to the 2002 Act) or” were omitted;

(ii) for sub-paragraphs (b) to (d), there were substituted-

“(b) whether or not misconduct proceedings should be brought against the officer concerned, and

(c) if the appropriate authority determines that the officer has no case to answer, whether there may have been a breach of the Standards of

Professional Behaviour that would have justified the bringing of disciplinary proceedings had the officer still been serving;"

(c) in paragraph 3-

(i) "and paragraph (10)" were omitted;

(ii) for "paragraph (2)(a) to (d)" there were substituted ", paragraph (2)(a) to (c)";

(d) paragraphs (4), (6), (8) and (10) were omitted;

(e) in paragraph (5), for the words from "assess" to the end, there were substituted "take no further disciplinary action against the officer concerned";

(f) in paragraph (7)-

(i) for "completed the assessment under paragraph (5)", there were substituted "determined there is no case to answer or that no misconduct proceedings will be brought".

(ii) in sub-paragraph (a), for "the outcome of its assessment" there were substituted "its determination";

(g) in paragraph (9)-

(i) in sub-paragraph (a), the words from "of a form" to the end were omitted;

(ii) in sub-paragraph (b), "of the form specified in the recommendation" were omitted;

(iii) in sub-paragraph (c), the words from "of a form" to the end were omitted;

(iv) in the words after sub-paragraph (c), "of the form specified" were omitted;

Modification to regulation 25 (joint misconduct proceedings)

17. Regulation 25 is to be read as if –

(a) paragraph (2) were omitted;

(b) in paragraph (5), "conducting or" were omitted;

(c) in paragraph (6), for "are senior officers" there were substituted "were senior officers at the relevant time".

Modification to regulation 26 (delegation of functions)

18. Regulation 26 is to be read as if –

(a) in paragraph (1)(a), for "is" there were substituted "was at the relevant time";

(b) in paragraph (3)(b), in the definition of "originating authority", for "is" there were substituted "was at the relevant time".

Modification to regulation 27 (withdrawal of misconduct proceedings)

19. Regulation 27 is to be read as if-

- (a) in paragraph (1), “misconduct or” were omitted;
- (b) in paragraph (2)-
 - (i) in sub-paragraph (a), for the words from “may” to the end there were substituted “must take no further action against the officer concerned;”;
 - (ii) in sub-paragraph (b)(i), “indicating whether any action will be taken under paragraph (2)(a)” were omitted;
- (a) paragraph (3) were omitted.

Modification to regulation 28 (persons conducting misconduct proceedings)

20. Regulation 28 is to be read as if-

- (a) paragraphs (1) to (3) were omitted;
- (b) in paragraph (4)(b), after “officer concerned” there were inserted “was at the relevant time”.
- (c) in paragraph (5), for “is a senior officer” there were substituted “was a senior officer at the relevant time”.

Modification to regulation 30 (notice of referral to misconduct proceedings)

21. Regulation 30 is to be read as if-

- (a) in paragraph (1)-
 - (i) in sub-paragraph (a)-
 - (aa) in paragraph (ii), “misconduct or” and “as the case may be” were omitted;
 - (bb) in paragraph (iv), the words from “conduct” to “a chair”, there were substituted “chair the misconduct proceedings and”;
 - (cc) in paragraph (vi), “in relation to the form of misconduct proceedings to which the case is being referred” were omitted;
 - (dd) after paragraph (vii), “and” were omitted;
 - (ee) after paragraph (viii), there were inserted-

“(ix) the fact that the officer will be subject to disciplinary proceedings under these Regulations, and

(x) the fact that, if the allegation of gross misconduct is proved, the officer may be subject to a finding that the officer would have been dismissed if the officer had not ceased to be a member of the police force or a special constable;”;

(ii) in sub-paragraph (c), after paragraph (i), “and” were omitted and there were inserted-

“(ia) in the case of a Condition C person, any written statement or document provided to the Director General under regulation 4B(3) and any consultation response provided under regulation 4B(4); and”;

(b) in paragraph (2), “conducting or” were omitted;

(c) in paragraph (3)-

(i) in sub-paragraph (a), for “conduct, or as the case may be chair” there were substituted “chair”;

(ii) in sub-paragraph (b), “conducting or, as the case may be,” were omitted;

(d) in paragraph (5)-

(i), “conduct or, as the case may be,” were omitted;

(ii) “conducting or” were omitted;

(e) in paragraph (6), “and (7)” were omitted;

(f) in paragraph (7)-

(i) “conduct or, as the case may be” were omitted;

(ii) “conducting or” were omitted.

Modification to regulation 31 (procedure on receipt of notice)

22. Regulation 31 is to be read as if-

(a) in paragraph (1)(b), “conducting or” were omitted;

(b) in paragraph (2)(a), (b) and (c), “misconduct or” and “as the case may be” were omitted;

(c) in paragraph (2)(c)(ii), “person or” were omitted.

Modification to regulation 32 (witnesses and documents to be supplied)

23. Regulation 32 is to be read as if-

- (a) in paragraphs (1), (3), (5), in both places where the words appear, (6), (9), (11) and (13)(b), “conducting or” were omitted;
- (b) in paragraph (6)(c), for “misconduct or gross misconduct as the case may be” there were substituted “gross misconduct”.

Modification: omission of regulation 34 (timing of misconduct meeting)

24, These Regulations are to be read as if regulation 34 were omitted.

Modification to regulation 35 (notice of misconduct proceedings and panel)

25. Regulation 35 is to be read as if-

- (a) in paragraph (2)-
 - (i) the words from the beginning to “panel”, were omitted;
 - (ii) “for “that panel” there were substituted “the panel”;
- (b) in paragraph (10), the words from “or to” to “regulation 40(6)” were omitted.

Modification to regulation 36 (public notification of misconduct hearings)

26. Regulation 36 is to be read as if –

- (a) in paragraph (1)-
 - (i) after sub-paragraph (d), “and” were omitted;
 - (ii) in sub-paragraph (e), for “misconduct or gross misconduct as the case may be”, there were substituted “gross misconduct”;
 - (iii) after sub-paragraph (e), there were inserted –
 - “;and
 - (f) where the officer concerned is a Condition C person, the Condition C special determination”.
- (b) in paragraph (3)(d)(ii), for “(e)” there was substituted “(f)”.

Modification to regulation 37 (attendance of officer concerned at misconduct proceedings)

27. Regulation 37 is to be read as if-

- (a) in paragraph (2), in both places where the words appear, “conducting or” were omitted;
- (b) in paragraph (3)(a)(ii), “in case of a misconduct hearing” were omitted.

Modification to regulation 38 (participation of the Director General and investigator at misconduct proceedings)

28. Regulation 38 is to be read as if-

- (a) in paragraph (2)(a), “if it is a misconduct hearing” were omitted;
- (b) in paragraph (2)(c),(3) and (4), “conducting or” were omitted;

Modification to regulation 39 (reporting restrictions, participation and exclusion from proceedings)

29. Regulation 39 is to be read as if-

- (a) paragraphs (2) and (5) were omitted;
- (b) in paragraph (3)-
 - (i) “conducting or” were omitted;
 - (ii) in sub-paragraph (c), the words from the beginning to “28(4),” were omitted;
- (c) in paragraph (4) and (7), “conducting or” were omitted.

Modification to regulation 40 (attendance of complainant, interested parties and others at misconduct proceedings)

30. Regulation 40 is to be read as if –

- (a) paragraphs (3), (4) and (6) were omitted;
- (b) in paragraph (5), “conducting or” were omitted.

Modification to regulation 41 (procedure at misconduct proceedings)

31. Regulation 41 is to be read as if-

- (a) in paragraphs (1), (3), (5), (10) and (11) “conducting or” were omitted;

- (b) in paragraph (2), “in relation to the form of misconduct proceedings taking place” were omitted;
- (c) in paragraph (5), for “misconduct or gross misconduct, as the case may be”, there were substituted “gross misconduct”;
- (d) in paragraph (8), “(at a misconduct hearing)” were omitted;
- (e) after paragraph (10), there were inserted-
 - “(10A) Where evidence is given or considered at the misconduct hearing that the officer concerned was given written notice of an interview under regulation 20(6) (interviews during investigation) of these Regulations or under regulation 21(6)(a) of the Complaints and Misconduct Regulations and failed to attend the interview, paragraph 14 applies.”.
- (f) in paragraph (12)(b)-
 - (i) after “18(1)” there were inserted “,20A(2)”;
 - (ii) for “of the Complaints and Misconduct Regulations” there were substituted “or 21A(2) of the Complaints and Misconduct Regulations, as modified by regulation 42 of, and Schedule 2, to those Regulations”;
- (g) in paragraphs (14) and (16), “person or” were omitted;
- (h) for paragraph (15) there were substituted -
 - “(15) The persons conducting the misconduct proceedings must review the facts of the case and decide whether the conduct of the officer concerned amounts to misconduct or gross misconduct or neither.”;
- (i) in paragraph (17), “At misconduct proceedings conducted by a panel”, were omitted;

Modification to regulation 42 (outcome of misconduct proceedings)

32. These Regulations are to be read as if for regulation 42 there were substituted-

“ Outcome of misconduct hearing

42. – (1) The persons conducting a misconduct hearing may, subject to the provisions of this regulation-

- (a) where they find the conduct amounts to gross misconduct, impose disciplinary action for gross misconduct, or
- (b) where they find that the conduct amounted to misconduct but not gross misconduct, record a finding of misconduct but take no further action.

(2) Where the question of disciplinary action is being considered, the persons considering it-

(a) must have regard to the record of police service of the officer concerned as shown on the officer's personal record;

(b) may receive evidence from any witness whose evidence would, in their opinion, assist them in determining the question, including evidence of mitigating circumstances disclosed prior to the hearing to-

(i) a police force;

(ii) a registered medical practitioner, or

(iii) a staff association;

(c) must give-

(i) the officer concerned

(ii) if the officer concerned is legally represented, the officer's relevant lawyer or, if the officer is not legally represented, the officer's police friend;

(iii) the appropriate authority, or, as the case may be, the originating authority or the person appointed to represent such authority in accordance with regulation 8(5); and

(iv) the Director General or the Director General's relevant lawyer, where the Director General made a decision under regulation 24(1) to present the case,

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

(d) where representations are received into mitigating circumstances-

(i) must consider whether those circumstances have been mentioned at an earlier stage in the proceedings and, if they have not been so mentioned, whether the officer concerned could reasonably have been expected to so mention them and

(ii) in the light of their conclusions under paragraph (i), may determine that it is appropriate to place less weight on those circumstances."

Modification to regulation 43 (notification of outcome)

33. Regulation 43 is to be read as if-

(a) in paragraph (1)-

- (i) “conducting or” and “or misconduct meeting” were omitted;
- (ii) in sub-paragraph (a), “person or” were omitted;
- (iii) for sub-paragraphs (c) and (d), there were substituted-
“ (c) whether disciplinary action for gross misconduct was imposed.”;
- (b) in paragraph (2)(b), “misconduct or” were omitted and for “in accordance with paragraph (3)”, there were substituted “to a police appeals tribunal (within the meaning of section 85 of the 1996 Act)”;
- (c) paragraph (3) were omitted.
- (d) in paragraph (4), “In all cases referred to in paragraph (3)” were omitted.

Modification to regulation 44 (record of misconduct proceedings)

- 34.** Regulation 44 is to be read as if, for paragraph (1), there were substituted-
“(1) A verbatim record of the misconduct proceedings must be taken”.

Modification: omission of regulations 45 to 47 (appeals)

- 35.** These Regulations are to be read as if regulations 45 to 47 were omitted.

Modification to regulation 55 (persons conducting accelerated misconduct hearing)

- 36.** Regulation 55 is to be read as if-
- (a) in paragraph (1), for “is an officer other than a senior officer” there were substituted “was a senior officer at the relevant time”;
 - (b) in paragraph (3), for “is a senior officer” there were substituted “was a senior officer at the relevant time”.

Modification to regulation 61 (procedure at accelerated misconduct hearing)

- 37.** Regulation 61 is to be read as if-
- (a) after paragraph (10), there were inserted-
“(10A) Where evidence is given or considered at the misconduct hearing that the officer concerned was given written notice of an interview under regulation 20(6) (interviews during investigation) of these Regulations or under regulation 21(6)(a) of the Complaints and Misconduct Regulations and failed to attend the interview, paragraph (13) applies.”;

(b) in paragraph (12)(b)-

- (i) after “regulation 18(1)” there were inserted “,20A(2)”;
- (ii) after “regulation 20” there were inserted “or 21A(2)”;
- (iii) after “Regulations” there were inserted “(as modified by regulation 41 of and Schedule 2 to those Regulations)”.

Modification: substitution of regulation 62 (outcome of accelerated misconduct hearing)

38. These Regulations are to be read as if for regulation 62 there were substituted-

“Outcome of accelerated misconduct hearing

62.- (1) Subject to the provisions of this regulation, the person or persons conducting the accelerated misconduct hearing may-

- (a) where the person or persons find the conduct amounts to gross misconduct, impose disciplinary action for gross misconduct, or
- (b) where the person or persons find the conduct amounts to misconduct but not gross misconduct, record a finding of misconduct but take no further action.

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

- (a) must have regard to the record of police service of the officer concerned as shown on the officer’s personal record;
- (b) may consider such documentary evidence as would, in their opinion, assist them in determining the question; and
- (c) must give-
 - (i) the officer concerned, and
 - (ii) if the officer concerned is legally represented, the officer’s relevant lawyer or, if the officer is not legally represented, the officer’s police friend;
 - (iii) the appropriate authority or, as the case may be, the originating authority or the person appointed to represent such authority in accordance with regulation 8(5); and
 - (iv) the Director General or the Director General’s relevant lawyer, where the Director General made a decision under regulation 24(1) to present the case, an opportunity to make oral or written representations and

(b) where representations are received in relation to mitigating circumstances-

(i) must consider whether those circumstances have been mentioned at an earlier stage in the proceedings and, if they have not been so mentioned, whether the officer concerned could reasonably have been expected to so mention them, and

(ii) in the light of their conclusions under paragraph (i), may determine that it is appropriate to place less weight on those circumstances.”.

Modification to regulation 63 (notification of outcome)

39. In regulation 63(1), for sub-paragraph (c) there were substituted-

“(c) whether disciplinary action for gross misconduct was imposed.”.

Modification: omission of Part 6 (reflective practice review process)

40. These Regulations are to be read as if Part 6 were omitted.

SCHEDULE 2

Standards of professional behaviour

Honesty and Integrity

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

Authority, Respect and Courtesy

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

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

Equality and Diversity

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

Use of force

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

Orders and Instructions

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

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

Duties and Responsibilities

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

Police officers have a responsibility to give appropriate cooperation during investigations, inquiries and formal proceedings, participating openly and professionally in line with the expectations of a police officer when identified as a witness.

Confidentiality

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

Fitness for Duty

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

Discreditable conduct

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

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

Challenging and Reporting Improper Conduct

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke and replace the British Transport Police (Conduct) Regulations 2015 (“the 2015 Regulations”) and have been drafted to take account of the changes made by the Police (Conduct) Regulations 2020 to reflect changes made to the handling of police complaints and police disciplinary matters made by the Policing and Crime Act 2017 (2017 c.3). These Regulations deal with internal conduct matters brought to the attention of the British Transport Police otherwise than under Schedule 3 of the Police Reform Act 2002 (“the 2002 Act”). They operate alongside the British Transport Police (Complaints and Misconduct) Regulations 2020 which deal with public complaints and other discipline related matters arising under Schedule 1 to the 2002 Act.

Part 1 contains preliminary provisions, including interpretation provisions and a statement of the harm test. The definition of “misconduct” (regulation 2(1)) has been changed since the 2015 Regulations. The term is defined as a breach of the Standards of Professional Behaviour that is so serious as to justify disciplinary action. Regulation 4 deals with the application of the Regulations and provides for the Regulations to apply with the modifications set out in Schedule 1 to former officers.

Part 2 contains general provisions including a statement of the harm test.

Part 3 deals with investigations. Regulation 13 provides that this Part does not apply to cases to which paragraph 16, 18 or 19 of Schedule 3 to the Police Reform Act 2002 (2002 c.30) applies, (investigations by an appropriate authority on its own behalf and investigations directed or undertaken by the Director General). Regulation 14 provides for the appropriate authority to make a severity assessment in relation to the conduct which is the subject matter of the allegation. There is a new provision in this regulation for a matter to be referred to be dealt with under the reflective practice review process under Part 6 of the Regulations (see description below). Regulation 19 makes provision about the timeliness of investigations.

Part 4 makes provision about misconduct proceedings. New provisions in this Part include, in particular, regulation 24, which provides for the Director General to decide to present a case on behalf of the appropriate authority; regulation 25, which makes provision about joint misconduct proceedings, where two or more cases arise from the same matter or incident; regulation 26 which provides for the appropriate authority to delegate functions in relation to the administration of a hearing to another local policing body (where the officer concerned is the chief officer or acting chief officer) or in any other case to the chief officer of another police force; regulation 29, which specifies the role of the chair of the panel, in the case of a misconduct hearing, and regulation 33, which, where a matter is referred to a misconduct hearing, makes provision for a misconduct pre-hearing.

Part 5 makes provision about accelerated misconduct hearings. Such hearings were previously referred to as special case hearings under the Police (Conduct) Regulations 2012.

Part 6 makes provision for a reflective practice review process. This process does not amount to disciplinary proceedings, as defined in regulation 2(1). There is provision for a matter to be referred to be dealt with under this process by the appropriate authority when making a severity assessment (under regulation 14(4)) or, following an investigation under regulation 23(8) and by a person or persons conducting misconduct proceedings, under regulation 42(1)(b). The reflective practice review process consists of two stages; a fact-finding stage (dealt with in regulation 68) and a discussion stage (dealt with in regulation 69). Following completion of the discussion stage, the reviewer must produce a reflective review action report, in accordance with regulation 70.