STATUTORY INSTRUMENTS

1987 No. 2226 (S.148)

POLICE

The Police (Discipline) (Scotland) Amendment Regulations 1987

Made - - - -	*16th December 1987*
Laid before Parliament	*11th January 1988*
Coming into force	*1st February 1988*

The Secretary of State, in exercise of the powers conferred on him by section 26 of the Police (Scotland) Act 1967(**a**), and of all other powers enabling him in that behalf, after taking into consideration any recommendations made by the Police Negotiating Board for the United Kingdom and having furnished the Board with a draft of these Regulations in accordance with section 2(1) of the Police Negotiating Board Act 1980(**b**), and after taking into consideration any representations made by the Joint Central Committee of the Police Federation for Scotland and such bodies and associations as appear to him to be representative of police authorities, chief constables and superintendents (including chief superintendents) respectively, following the submission of a draft of the Regulations in accordance with section 26(9) of the said Act of 1967, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Police (Discipline) (Scotland) Amendment Regulations 1987 and shall come into force on 1st February 1988.

(2) In these Regulations, the expression "the principal Regulations" means the Police (Discipline) (Scotland) Regulations 1967(**c**).

Amendments to principal Regulations

2. In regulation 3 of the principal Regulations there shall be substituted for the definition of "presenting officer" the following:–

""presenting officer" means the constable presenting the case against an accused constable in terms of regulation 11A(1) and includes an advocate or a solicitor presenting that case where relevant in terms of regulation 11A(4).".

3. In regulation 6 of the principal Regulations there shall be inserted the following paragraph after paragraph (2):–

"(2A) Where the deputy chief constable decides that the constable subject to investigation should be charged with a disciplinary offence, and where he is of the opinion that there should on a finding of guilt be available any such punishment as is mentioned in sub-paragraphs (a), (b) and (c) of regulation 17(1), he shall give the constable, on the copy of the discipline form served on him, an opportunity to elect to be legally represented at the hearing in accordance with the provisions of regulation 11A of these Regulations.".

(**a**) 1967 c.77; section 26(7) was amended by the Police and Criminal Evidence Act 1984 (c.60), Schedule 6, paragraph 32; section 26(9) was amended by the Police Negotiating Board Act 1980 (c.10), section 2(4); section 26(1A) and (10) were inserted by section 111 of the said Act of 1984.

(**b**) 1980 c.10.

(**c**) S.I. 1967/1021, amended by S.I. 1971/843, 1975/1544, 1976/1073 and 1982/902.

4. For regulation 9 of the principal Regulations there shall be substituted the following regulation:–

"**Information from the accused in response to the discipline form**

9.—(1) Where an accused has been served with a copy of the discipline form, he shall within the time limits specified in paragraph (2) of this regulation give notice to the deputy chief constable of the matters specified hereunder, namely:–

(a) whether he admits or denies the charge;

(b) whether he wishes to offer any explanation;

(c) whether he intends to be represented or assisted by a member of a police force at the hearing;

(d) in any case in which the accused has been given the opportunity to make an election in terms of regulation 6(2A), whether he intends to be represented by an advocate or solicitor.

(2) The accused shall give notice in terms of paragraph (1) by returning the copy of the discipline form duly completed and signed by him to the deputy chief constable within 14 days from the date on which it was served on him, or within 14 days from the date on which the last of the documents required by regulation 8 to be supplied to the accused was supplied, if later.

(3) The deputy chief constable may, on the application of the accused, extend the period of time appointed under paragraph (2), notwithstanding that the time appointed may have expired.

(4) The deputy chief constable shall invite the accused to state whether he proposes to call any witnesses to relevant facts at the hearing and the names and addresses of any such witnesses whose attendance he wishes the deputy chief constable to take steps to secure.

(5) Where the deputy chief constable is informed by the accused that he intends to lead the evidence of any witness, and where the accused identifies that witness, then the deputy chief constable shall inform the investigating officer, and the investigating officer shall so far as is reasonable and practicable invite that witness to provide a statement and shall supply to the accused a copy of any such statement.".

5. After regulation 9 of the principal Regulations there shall be inserted the following regulation:–

"**Variation of election on legal representation**

9A—(1) In any case in which an accused has elected in terms of regulation 9 not to be legally represented, then the accused may apply in writing to the chief constable to vary the election and shall give notice of any such application to the deputy chief constable.

(2) In any case in which an accused makes an application under paragraph (1), the deputy chief constable may make representations to the chief constable.

(3) In any case in which an accused makes an application under paragraph (1), the chief constable may, having considered any representations whether oral or in writing, and if he is satisfied that it is reasonable to do so, permit the accused to vary the election made by him under regulation 9 and, where the chief constable so permits, the accused shall be deemed to have elected to be legally represented under regulation 9.

(4) In any case in which the chief constable permits variation of an election in terms of paragraph (3), he shall notify the accused and the deputy chief constable accordingly and he may discharge the hearing, and in that case the deputy chief constable shall make all necessary arrangements in accordance with regulation 10 for the case to be heard at a later date.

(5) The chief constable shall not be entitled to consider any application under paragraph (1) unless it has been received by him not later than 48 hours prior to the date fixed for the hearing of the charge.".

6. For regulation 10 of the principal Regulations there shall be substituted the following regulation:–

"**Arrangements for the hearing**

10.—(1) The deputy chief constable shall make all necessary arrangements for the hearing of the charge before the chief constable and shall determine the time, date and place of the hearing.

(2) The deputy chief constable shall give notice to the accused specifying the time, date and place of the hearing.

(3) When the accused has intimated that he wishes to be represented or assisted at the hearing by a member of a police force other than his own, the deputy chief constable shall inform the chief constable of that other force of that intimation and shall give notice of the time, date and place of the hearing.

(4) Where the hearing arises out of a complaint by a member of the public, the deputy chief constable shall, if the accused has denied the charge or any part thereof, give notice to the complainer specifying the time, date and place of the hearing and shall draw the complainer's attention to the provisions of regulation 12(9).

(5) The deputy chief constable shall take all reasonable steps to secure the attendance at the hearing of any witnesses required in connection with the case against the accused, and any witnesses whose attendance the accused has requested the deputy chief constable to take steps to secure.

(6) In any case in which in terms of this regulation the deputy chief constable is required to give notice to any person, such notice shall be given so as to be received not less than 21 days prior to the hearing of the charge by the chief constable.".

7. After regulation 11 of the principal Regulations there shall be inserted the following regulation:–

"**Representation of parties**

11A—(1) Subject to paragraph (4), the case against the accused shall be presented by a constable of rank equal to or above that of the accused, other than the chief constable, a deputy chief constable, the investigating officer or any witness.

(2) The accused shall be entitled to conduct his case in person or he may be represented by another member of a police force selected by him, and such other member may be a representative of a Police Federation, or he may be represented in accordance with paragraph (3) of this regulation.

(3) In any case in which the accused has given notice in terms of regulation 9 that he wishes to be legally represented, or has been permitted to vary his election under regulation 9A, the accused may be represented, at his option, at the hearing under regulation 12, either by an advocate or by a solicitor.

(4) Notwithstanding the terms of paragraph (1) of this regulation, if the accused has given notice in terms of regulation 9 that he wishes to be legally represented or has been allowed to vary his election under regulation 9A, the case against him may be presented by an advocate or solicitor whether or not the accused is actually so represented.

(5) The presenting officer and the accused, or as the case may be the representative of the accused, may be assisted at the hearing by a member of a police force.".

8.—(1) There shall be inserted after regulation 12(1) of the principal Regulations the following:–

"(1A) In any case in which the accused has given notice of election in terms of regulation 9 that he wishes to be legally represented, or in which the accused has been allowed to vary his election under regulation 9A, the chief constable may, if he thinks fit, appoint an advocate or solicitor to sit with him at the hearing as a legal assessor.".

(2) In regulation 12, paragraph (4) shall be deleted.

(3) For regulation 12(5) there shall be substituted the following paragraph:–

"(5) Without prejudice to the terms of regulation 11A(2) and (3), the accused or his representative may cross-examine any witness called in support of the case against the accused and may call witnesses and make representations in his defence. The accused may also give evidence on his own behalf:

Provided that if the accused is represented by a member of a police force, the accused, as well as his representative, may cross-examine the witnesses called in support of the case against him.".

9. After regulation 17(2) of the principal Regulations there shall be inserted the following paragraph:–

"(3) Where the punishment under regulation 17(1)(b) has been imposed and where the accused has not resigned from the force in accordance with the requirement specified in the decision, then the effect of the decision shall be to dismiss the accused from the force either forthwith or on the date specified in the decision.".

10. For regulation 18 of the principal Regulations there shall be substituted the following regulation:–

"**Limitations on punishments**

18.—(1) The punishment of dismissal, requirement to resign or reduction in rank shall not be imposed unless the accused has been given an opportunity in terms of regulation 6(2A) to elect to be legally represented at the hearing.

(2) If an accused–

(a) fails without reasonable cause to give notice in accordance with regulation 9 that he intends to be legally represented; or

(b) gives notice in accordance with regulation 9 that he does not intend to be legally represented,

any such punishment as is mentioned in paragraph (1) above may be awarded without his being legally represented.

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

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

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

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

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

11. For Schedule 3 to the principal Regulations there shall be substituted Schedule 3 as set out in the Schedule to these Regulations.

Transitional

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

James Douglas-Hamilton
Parliamentary Under Secretary of State,
Scottish Office

New St. Andrew's House, Edinburgh
16th December 1987

SCHEDULE

Regulation 11

SCHEDULE 3 TO THE PRINCIPAL REGULATIONS AS SUBSTITUTED BY THESE REGULATIONS

"SCHEDULE 3

Regulations 6 and 24

POLICE (DISCIPLINE) (SCOTLAND) REGULATIONS 1967

DISCIPLINE FORM

PART I

(TO BE COMPLETED BY THE DEPUTY CHIEF CONSTABLE)

CHARGE

1. Charge Against – Rank and Name .....

Division .....

Reg. No. .....

Rate of Pay .....

Rank and Name of Investigating Officer .....

Offence(s) against discipline of which constable is accused

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2. Particulars of alleged offence(s), including time, date and place

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WITNESSES

3. Names and Addresses of Witnesses to be called in support of the charge(s)

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DOCUMENTS

4. There are attached, where applicable, copies of–

(a) any statement made by you under regulation 5(3)(b);

(b) the report, allegation or complaint on which the charge is founded;

(c) the related reports by

(i) .....

(ii) .....

(iii) .....

(d) statements made by witnesses listed in paragraph 3 above;

(e) statements relating to the charge made by any person other than those listed in paragraph 3 above, being statements by

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.....

(f) list of productions.

NOTICE OF PUNISHMENTS

5. If you are found guilty of any of the disciplinary offences listed above, punishment(s) may be imposed on you. The range of punishments which may be imposed shall/shall not* include the punishments of dismissal, requirement to resign as an alternative to dismissal and reduction in rank mentioned in regulation 17(1)(a), (b) and (c) of the above Regulations.

LEGAL REPRESENTATION

***6.** If you are found guilty of [any of] the offence(s) listed above, the chief constable will be entitled to have available the full range of punishments including reduction in rank, requirement to resign as an alternative to dismissal, and dismissal. You are therefore entitled to elect to be legally represented at the hearing. You should indicate below at paragraph 10 whether or not you intend to be so represented.

RETURN TO DEPUTY CHIEF CONSTABLE

7. You must return the copy of this discipline form having completed Part III to the Deputy Chief Constable by ..... (Date)

*You are reminded that you may forfeit your right to legal representation if, without reasonable cause, you fail to state your intention on this matter by the above date. If you forfeit your right to legal representation, the full range of penalties will remain available to the chief constable.

Signature of Deputy Chief Constable .....

Date .....

*Delete if inappropriate

PART II

(TO BE COMPLETED BY THE OFFICER SERVING THE FORM)

SERVICE

8. The discipline form of which this is a full copy was today served upon you

(Details of Accused Officer) .....

.....

by me

(Enter rank and name of officer serving form) .....

.....

on behalf of the Deputy Chief Constable of ..... (Force)

Signature ..... Date .....

PART III

(TO BE COMPLETED BY THE ACCUSED)

QUESTIONS TO BE ANSWERED BY THE ACCUSED

9.—(1) Do you admit or deny the charge(s)? (Give a separate answer as respects each charge.)

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(2) Do you wish to offer any explanation? YES/NO (If YES, the explanation should be written on a separate sheet and attached hereto)

(3) Do you intend to select a member of a police force to represent you or to assist you in presenting your case? If so, give his name, rank and police force or indicate that this information will be given later. If not, write "NO" (Note: You may also be entitled to legal representation – see paragraphs 6 and 10)

(Particulars of Member) .....

.....

(4) If you intend to call witnesses whose attendance at the hearing you wish the deputy chief constable to secure you should give their names and addresses on this form or indicate that this information will be given later.† If not, write "NO".

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(5) Do you intend to make your own arrangements for any witnesses to attend? YES/NO. It would assist in the preparation of the hearing, if you would indicate the number of witnesses you intend to call.

(Indicate number) .....

†The investigating officer will, so far as is reasonable and practicable, invite these witnesses to provide a statement and he will supply you with a copy; and the deputy chief constable will take all reasonable steps to secure their attendance at the hearing.

LEGAL REPRESENTATION

10. *I do/I do not intend to be legally represented at the disciplinary hearing.

Signature of accused ..... Date .....

*Delete if inappropriate

PART IV

(TO BE COMPLETED BY OR ON BEHALF OF THE DEPUTY CHIEF CONSTABLE)

HEARING

11. Date ..... Time .....

Place .....

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Notified to accused at ..... Time ..... Date

By whom (rank and name).....

Initials of accused..... Date .....

Date(s) of any continuation .....

Time(s) .....

Place(s) .....

Notified to accused at .....Time ..... Date

By whom (rank and name).....

Initials of accused..... Date .....

(NOTE: If you intend to be represented at the hearing you should ensure that your representative is fully aware of the arrangements for the hearing.)

PART V

(TO BE COMPLETED BY THE CHIEF CONSTABLE)

CHIEF CONSTABLE'S DECISION

12. I find the accused guilty/not guilty of the disciplinary offence(s) with which he has been charged as follows:

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I have had regard to the personal record of the accused and impose the following punishment(s):

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Date .....

Signature ..... "

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Police (Discipline) (Scotland) Regulations 1967 ("the principal Regulations").

They make provision for constables of the rank of chief superintendent or below to elect to be represented by an advocate or solicitor in connection with certain disciplinary proceedings; in any such proceedings for the case against the accused officer to be presented by an advocate or solicitor; and for a chief constable to have an advocate or solicitor sit with him as a legal assessor. Other, mainly consequential, amendments are made to procedures at hearings, to the arrangements for the attendance of witnesses, and to clarify the circumstances in which certain punishments can be imposed. The effect of the punishment of requirement to resign in circumstances where it is not complied with is stated. A new style of discipline form is prescribed in the Schedule. The principal changes are described below.

Regulation 7 inserts a new regulation 11A into the principal Regulations. It sets out the entitlement of the accused to conduct his case in person or to be represented by another member of a police force (who may be a representative of a Police Federation) or, where he has accepted an opportunity to so elect, to be represented by an advocate or solicitor. Where the accused has so elected (and whether or not he is actually so represented at the hearing), the case against the accused may be presented by an advocate or solicitor. The presenting officer and the accused or his representative may be assisted at the hearing by a member of a police force.

Regulation 10 substitutes a new regulation 18 in the principal Regulations to provide that the punishments of dismissal, requirement to resign or reduction in rank cannot be imposed unless the accused officer has been given an opportunity to elect to be legally represented at the hearing. Any such punishment may be imposed where the accused has failed without reasonable cause to give notice that he intends to be legally represented or has given notice that he does not intend to be so represented.

Regulation 2 amends the definition of "presenting officer" in the principal Regulations to reflect the fact that the case against the accused constable may in certain circumstances be presented by an advocate or solicitor.

Regulation 3 inserts a new paragraph (2A) into regulation 6 of the principal Regulations. It provides that, where the deputy chief constable decides that an officer should be charged with a disciplinary offence and that the punishments of dismissal, requirement to resign or reduction in rank should be available to the chief constable if the officer is found guilty, he shall give the officer, on the copy of the discipline form served on him, an opportunity to elect to be legally represented.

Regulation 4 substitutes a new regulation 9 in the principal Regulations. It prescribes the matters of which the accused officer is to give notice to the deputy chief constable (including whether he intends to be legally represented); stipulates that such notice must be given within 14 days by returning the copy of the discipline form duly completed and signed; and makes provision for such period to be extended by the deputy chief constable on the application of the accused officer. (The principal Regulations laid down no time limit for the return of the discipline form.) The accused officer is invited to indicate whether he intends to call witnesses and, if so, whether he wishes the deputy chief constable to secure their attendance at the hearing. Where witnesses are identified, the investigating officer will invite them to give statements, which will be copied to the accused.

Regulation 5 introduces a new regulation 9A to the principal Regulations. It allows an accused officer, who initially had elected not to be legally represented, to submit to the chief constable an application to vary his election. Such an application can only be considered by the chief constable if it is made not later than 48 hours before the hearing. The chief constable, having considered the application and any representations by the deputy chief constable, may permit the election to be varied and, where appropriate, he may discharge the hearing, leaving the deputy chief constable to arrange a new date.

Regulation 6 substitutes a new regulation 10 in the principal Regulations. It describes the arrangements which the deputy chief constable is to make for the hearing and requires that,

where notice is to be given to any person, it must be such as to be received not less than 21 days before the hearing.

Regulation 8–

(a) introduces a new regulation 12(1A) into the principal Regulations, providing that where an accused officer has elected to be legally represented, the chief constable may appoint an advocate or solicitor to sit with him as a legal assessor;

(b) substitutes a new regulation 12(5) in the principal Regulations, clarifying that, where the accused officer is represented by a member of a police force, he as well as the representative may cross-examine witnesses called in support of the charge against him.

Regulation 9 inserts a new regulation 17(3) into the principal Regulations, making clear that where the punishment of requirement to resign has been imposed and the accused has not resigned on the date specified in the chief constable's decision, the effect wil be to regard him as having been dismissed on that date.

Regulation 11 replaces Schedule 3 in the principal Regulations with a new Schedule which reflects the changes made by these Regulations and makes other minor changes to the style of the discipline form.