STATUTORY INSTRUMENTS

1985 No. 519

POLICE

The Police (Discipline) (Senior Officers) Regulations 1985

Made - - - - -	*28th March* 1985
Laid before Parliament	*2nd April* 1985
Coming into Operation	*29th April* 1985

ARRANGEMENT OF REGULATIONS

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SCHEDULE: Discipline form.

In exercise of the powers conferred on me by section 33 of the Police Act 1964(**a**) and sections 94(5) and 101 of the Police and Criminal Evidence Act 1984(**b**), and after furnishing a draft thereof to the Police Advisory Board for England and Wales and taking into consideration the representations made by

(**a**) 1964 c.48.
(**b**) 1984 c.60.

the said Board in accordance with section 46(3) of the said Act of 1964, I hereby make the following Regulations:—

Citation and commencement

1. These Regulations shall be cited as the Police (Discipline) (Senior Officers) Regulations 1985 and shall come into operation on 29th April 1985.

Revocations and transitional provisions

2.— (1) Subject to the following provisions of this Regulation, the Police (Discipline) (Senior Officers) Regulations 1977(a) (hereinafter called "the 1977 Regulations") are hereby revoked.

(2) In relation to a charge preferred before 29th April 1985 against a senior officer—

(a) nothing in these Regulations shall apply, and

(b) the former discipline provisions shall, so far as applicable, continue to have effect.

(3) In the case of a senior officer—

(a) in whose case anything has been done before 29th April 1985 for the purpose of any provision of the 1977 Regulations, but

(b) who has not been charged with an offence, before that date, under those Regulations,

anything done, before that date, for the purpose of any provision of the 1977 Regulations shall have effect, on and after that date, as if it had been done for the purpose of the corresponding provision of these Regulations and, in particular, where an officer is immediately before 29th April 1985 suspended under the 1977 Regulations, he shall be treated on and after that date as if he had been suspended under these Regulations.

(4) Where a senior officer has been charged with an offence, before 29th April 1985, under the 1977 Regulations, and without prejudice to paragraph (2), in connection with the charge and offence in question the provisions of the 1977 Regulations relating to suspension from membership of the force and the office of constable and to punishment shall continue to have effect.

Regulations applicable only to senior officers

3. These Regulations shall not apply except in relation to an offence committed, or alleged to have been committed, by a senior officer, that is to say, by a chief constable, deputy chief constable or an assistant chief constable or, in the case of the City of London and metropolitan police forces, by a member of the force in question of, or above, the rank of commander.

(a) S.I. 1977/581; there are no amending instruments.

Interpretation

4.— (1) In these Regulations, unless the context otherwise requires, the following expressions have the meanings respectively assigned to them, that is to say:—

"the Act of 1984" means the Police and Criminal Evidence Act 1984(**a**);

"the appropriate authority" means, in relation to a senior officer of the metropolitan police force, the Commissioner of Police of the Metropolis or the deputy commissioner acting in his place and, in relation to a senior officer of any other police force, the police authority for the force's area;

"the Authority" means the Police Complaints Authority established under section 83(1) of the Act of 1984;

"the chief officer" shall be construed as including a reference to a person discharging the functions of a chief officer;

"the former discipline provisions" means the provisions relating to the determination of questions whether offences against discipline have been committed by senior officers, and for the imposition of punishments in respect thereof, in force immediately before 29th April 1985;

"investigating officer" means an officer appointed under section 86(3) of the Act of 1984, or under Regulation 5(3), to investigate a complaint or other matter relating to the conduct of a senior officer;

"offence" or "disciplinary offence" means an offence against discipline within the meaning of Regulation 5 of the Police (Discipline) Regulations 1985(**b**);

"police force concerned" means, in relation to a senior officer who may have committed, or has been accused of, an offence, the police force of which he is a member; and, in relation to him, any reference to the chief officer concerned is a reference to the chief officer of that force;

"representative" means, in relation to disciplinary proceedings against a senior officer, counsel, a solicitor or a member of a police force selected by him for the purpose of those proceedings;

"senior officer" has the meaning assigned thereto by Regulation 3;

"tribunal" means such a tribunal as is mentioned in Regulation 12.

(2) In relation to a senior officer of the metropolitan police force these Regulations shall have effect as if the references in Regulations 9(3) and 12(2) to a member, officer or servant of the police authority, or of any local authority which appoints any member of the police authority, were references to a member of the metropolitan civil staffs within the meaning of section 15 of the Superannuation (Miscellaneous Provisions) Act 1967(**c**).

(3) In these Regulations, unless the context otherwise requires, any reference to a Regulation shall be construed as a reference to a Regulation contained in these Regulations and any reference in a Regulation to a paragraph shall be construed as a reference to a paragraph of that Regulation.

(**a**) 1984 c.60.
(**b**) S.I. 1985/518.
(**c**) 1967 c.28.

Investigating officers

5.— (1) Where a report, allegation or complaint is received from which it appears that an offence may have been committed by a senior officer, the following provisions of this Regulation shall have effect for the purpose of investigating the matter.

(2) The provisions of paragraphs (3) and (4) shall have effect—

(a) in relation to cases arising otherwise than from a complaint to which Part IX of the Act of 1984 applies; and

(b) in cases arising from such a complaint when the requirements of the said Part IX are dispensed with by or under regulations made thereunder.

(3) Unless the appropriate authority decides that no disciplinary proceedings need be taken, the matter shall be referred to an investigating officer who shall cause it to be investigated.

(4) The investigating officer shall be—

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

(b) if the chief officer of some other force is requested and agrees to provide an investigating officer, a member of that other force,

and of at least the rank of the senior officer under investigation.

(5) Neither—

(a) the chief officer concerned, nor

(b) any member of the police force concerned serving in the same subdivision or branch as the senior officer under investigation,

shall be appointed as the investigating officer for the purposes of paragraph (3) or section 86(3) of the Act of 1984.

(6) The provisions of this Regulation are without prejudice to the powers of the Authority under section 89(4)*(a)* and *(b)* of the Act of 1984 (which provide for approval by the Authority of investigating officers) where an investigation is to be supervised by the Authority.

Initial personal explanation

6. The investigating officer shall, as soon as is practicable (without prejudicing his or any other investigation of the matter), in writing inform the officer subject to investigation of the report, allegation or complaint and give him a written notice—

(a) informing him that he is not obliged to say anything concerning the matter, but that he may, if he so desires, make a written or oral statement concerning the matter to the investigating officer or to the appropriate authority, and

(b) warning him that if he makes such a statement it may be used in any subsequent disciplinary proceedings.

Personal explanation following investigation

7.— (1) Where, following the investigation of a report, allegation or complaint, it appears that a senior officer may have committed an offence, the appropriate authority shall consider whether disciplinary proceedings need be taken.

(2) Unless the appropriate authority decide that no disciplinary proceedings need be taken, the authority shall inform the senior officer in writing of the report, allegation or complaint and give him a written notice—

(a) asking him whether or not he admits that he has committed an offence;

(b) informing him that he is not obliged to say anything concerning the matter but that he may, if he so desires, make a written or oral statement concerning the matter to the authority; and

(c) containing such a warning as is mentioned in Regulation 6*(b)*.

(3) If the appropriate authority decide that no disciplinary proceedings need be taken, they shall so inform the senior officer in writing forthwith.

Punishment without hearing charges

8.— (1) If the senior officer admits that he has committed an offence, the appropriate authority may impose a punishment in accordance with Regulation 20 without the case being dealt with in accordance with Regulations 9 to 19.

(2) Notwithstanding that the senior officer admits that he has committed an offence, the appropriate authority may, after considering the report of the investigation, deal with the matter according to the appropriate authority's discretion if they are satisfied that it does not justify the imposition of any punishment under these Regulations.

Formulation of charges

9.— (1) This Regulation shall apply where the senior officer—

(a) admits that he has committed an offence but the appropriate authority do not proceed as mentioned in Regulation 8(1) or (2); or

(b) does not admit that he has committed an offence but the appropriate authority, after taking into account any statement he may have made under Regulation 7, are not satisfied that he has not committed an offence.

(2) Subject to paragraph (5), where this Regulation applies the appropriate authority shall—

(a) instruct an independent solicitor to draw up, and enter on a discipline form, the offence with which the senior officer is to be charged together with such particulars as will leave him in no doubt as to the precise offence alleged, and

(b) cause the senior officer to be charged with that offence by being served with a copy of the discipline form.

(3) The reference in paragraph (2) to an independent solicitor is a reference to a solicitor who is not a member, officer or servant of the appropriate

authority or of any local authority which appoints any member of the appropriate authority.

(4) A discipline form shall be in the form set out in the Schedule hereto or in a form to the like effect.

(5) Notwithstanding that a case is one to which paragraph (1)*(b)* applies, if, after considering the report of the investigation, the appropriate authority are satisfied that the offence in question, even if proved, would not justify the imposition of any punishment under these Regulations, the steps mentioned in paragraph (2) need not be taken and the matter may be dealt with according to the appropriate authority's discretion.

Withdrawal of charges

10. At any time before the beginning of the hearing of a charge, the appropriate authority may direct that the charge be withdrawn; and, where they so direct, they shall, as soon as possible, cause—

(a) their direction to be noted on the discipline form, and

(b) the senior officer to be served with a written notice of their direction.

Documents to be supplied to accused

11.— (1) Where a senior officer is charged with an offence, he shall, at least 21 days before the date of the hearing of the charge, be supplied with copies—

(a) of any statements he may have made under Regulations 6 and 7;

(b) of the report, allegation or complaint on which the charge is founded (or so much thereof as relates to the accused) and of any reports thereon (other than the report arising out of the investigation referred to in Regulation 7) notwithstanding that they may be confidential;

(c) of any statement relating to the charge made by any witness to be called in support of the charge, together with the witness's name and address, and

(d) of any statement relating to the charge made by any person, other than a witness to be called in support of the charge, in the course of the investigation referred to in Regulation 7, to the appropriate authority or to anybody acting on their behalf, together with the person's name and address.

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

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

Hearing by tribunal

12.— (1) A charge against a senior officer shall be heard by a tribunal consisting of a single person selected and appointed by the appropriate authority from a list of persons nominated by the Lord Chancellor.

(2) To assist the tribunal on matters pertaining to the police there shall also be appointed by the appropriate authority one or more assessors selected by that authority with the approval of the tribunal one of whom is or has been a chief officer of police, so, however, that there shall not be so appointed—

(a) a person who is one of Her Majesty's inspectors of constabulary;

(b) the chief officer of the force of which the accused is a member, or

(c) a member, officer or servant of the appropriate authority or of any local authority which appoints any member of the appropriate authority.

Procedure at hearing

13.— (1) The hearing shall be in private.

(2) The case against the accused shall be presented—

(a) by the independent solicitor mentioned in Regulation 9 (2)*(a)*; or

(b) by some other independent solicitor.

(3) In paragraph (2)*(b)* "independent solicitor" has the same meaning as in Regulation 9.

(4) If the accused does not admit the charge, the hearing shall proceed as though he denied the charge.

(5) Before the case against the accused is presented, the accused may submit that the facts alleged in the charge are not such as to constitute the offence with which he is charged and the tribunal, if it upholds that submission, shall determine that the charge to which the submission relates should be dismissed.

(6) The accused may conduct his case either in person or by a representative:

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.

(7) Any question as to whether any evidence is admissible, or whether any question should or should not be put to a witness, shall be determined by the tribunal.

(8) A verbatim record of the proceedings before the tribunal shall be taken and a transcription of the record shall be made and sent to the appropriate authority and, if a punishment is imposed by that authority and the accused contemplates an appeal to the Secretary of State, at his request made within the period during which notice of appeal may be given, a copy thereof shall be supplied to him.

Statements in lieu of oral evidence

14.— (1) Subject to the provisions of this Regulation, the tribunal may admit evidence by way of a written statement made by a person, notwithstanding that he may not be called as a witness, so, however, that evidence shall not be admissible hereunder if it would not have been admissible had it been given orally.

(2) For the purposes hereof, a written statement purporting to be made and signed by a person and witnessed by another person shall be presumed to have been made by that person unless the contrary be shown.

(3) If either the accused or the person presenting the case against him (in this Regulation referred to as "the parties") proposes to adduce written evidence in pursuance of this Regulation at a hearing, he shall give the other party a copy of the statement at least 21 days before the date of that hearing and invite that party to agree or object, in writing, to the admission of the statement in evidence without the maker thereof being called as a witness and being available for cross-examination and, if that party within 14 days from the receipt by him of the copy of the statement has so objected, the statement shall only be admitted in evidence if the maker thereof is called and is available as aforesaid:

Provided that if the parties in writing so agree in the case of a particular statement, this paragraph shall have effect in relation to that statement as though—

(a) the reference to a period of 21 days were a reference to such shorter period as they may agree;

(b) the reference to a period of 14 days were a reference to such shorter period, expiring before the date of the hearing, as they may agree.

(4) Where, notwithstanding that the other party has not so objected and a written statement has been admitted in evidence without the maker thereof being called and being available as aforesaid, the tribunal is of the opinion that oral evidence should be given, it may request that the maker be called as a witness and, in such case, unless the maker gives oral evidence, the tribunal shall be entitled to disregard the written evidence.

(5) Nothing in this Regulation shall prejudice the admission of written evidence which would be admissible apart from the provisions thereof.

Adjournment of hearing

15. The tribunal may from time to time adjourn the hearing if it considers it necessary or expedient so to do for the due hearing of the case.

Hearing in absence of accused

16.— (1) It shall be within the discretion of the tribunal to proceed with the hearing of the case in the absence of the accused if it appears just and proper so to do.

(2) Where, owing to the absence of the accused, it is impossible to comply

with any of the procedure described in Regulations 6, 7, 9 and 11 that procedure shall be dispensed with.

Attendance of complainant at hearing

17.— (1) This Regulation shall apply in relation to the hearing of a charge against a senior officer where the charge is in respect of a matter or matters complained of in a complaint against him received from a member of the public.

(2) Notwithstanding anything in Regulation 13(1) but subject to paragraph (4), the tribunal shall allow the complainant to attend the hearing while witnesses are being examined, or cross-examined, on the facts alleged in the charge and, if the tribunal considers it appropriate so to do on account of the age of the complainant, or otherwise, shall allow him to be accompanied by a personal friend or relative who is not to be called as a witness at the hearing:

Provided that—

(a) where the complainant is to be called as a witness at the hearing, he and any person allowed to accompany him shall not be allowed to attend before he gives his evidence, and

(b) where it appears to the tribunal that a witness may, in giving evidence, disclose information which, in the public interest, ought not to be disclosed to a member of the public, it shall require the complainant and any person allowed to accompany him to withdraw while that evidence is given.

(3) Where the accused gives evidence, then, after the person presenting the case against him has had an opportunity of cross-examining him, the tribunal shall put to him any questions which the complainant requests should be so put and might have been properly so put by way of cross-examination and, at its discretion, may allow the complainant himself to put such questions to the accused.

(4) Subject as aforesaid, the complainant and any person allowed to accompany him shall neither intervene in, nor interrupt, the hearing; and if he or such a person should behave in a disorderly or abusive manner, or otherwise misconduct himself, the tribunal may exclude him from the remainder of the hearing.

(5) In this Regulation a reference to the complainant is a reference to the person by or on behalf of whom the complaint was made.

Tribunal's report

18.— (1) The tribunal shall, as soon as possible after the hearing, submit a report to the appropriate authority setting out—

(a) a statement of the facts admitted or found to be proved so far as they are material to the case;

(b) a statement as to the charges found to be proved or not to be proved;

(c) if any charges are found to be proved, a recommendation as to any

punishment which, subject to Regulation 19, in its opinion should be imposed therefor;

(d) any other matter arising out of the hearing which it desires to bring to the notice of the appropriate authority.

(2) For the purposes of this Regulation, a charge shall not be regarded as being proved unless it is—

(a) admitted by the accused; or

(b) proved by the person presenting the case to the tribunal hearing the case beyond reasonable doubt.

(3) The tribunal shall send the accused a copy of the report.

Decision of appropriate authority

19.— (1) On receipt of the report of the tribunal the appropriate authority shall decide either to dismiss the case or—

(a) to record a finding of guilt but to take no further action thereon, or

(b) to record a finding of guilt and impose a punishment.

(2) As soon as possible after the appropriate authority has taken its decision in the case that decision shall be recorded on the discipline form and notified in writing to the accused.

Punishment

20.— (1) For the purposes of Regulation 8, 18(1)*(c)* or 19(1), the punishments which may be recommended or imposed shall be—

(a) dismissal from the force;

(b) requirement to resign from the force as an alternative to dismissal, either forthwith or on such date as may be specified in the recommendation or decision;

(c) reprimand.

(2) Where the question of the punishment to be imposed is being considered by the appropriate authority under Regulation 8 or 19(1)—

(a) they shall have regard to the accused's record of police service and may receive evidence from any witness whose evidence would, in their opinion, assist them in determining the question, and

(b) the accused, or his representative, shall be afforded an opportunity to make oral, or if he thinks fit, written representations as respects the question or to adduce evidence relevant thereto.

(3) Regulation 13(7) shall apply to proceedings at which such evidence as is referred to in paragraph (2)*(a)* or *(b)* or such oral representations as are referred to in paragraph (2)*(b)* is given or are made as it applies to the proceedings before the tribunal.

Copy of report and decision to be sent to the Secretary of State

21. A copy of the report of the tribunal together with the decision of the appropriate authority shall be sent by the appropriate authority to the Secretary of State.

Expenses of hearing

22.— (1) All the expenses of a hearing under these Regulations, including the costs of the accused, shall be defrayed out of the police fund.

(2) Any costs payable under this Regulation shall be subject to taxation in such manner as the Secretary of State may direct.

Suspension—ordinary procedure

23.— (1) Where it appears to the appropriate authority, on receiving a report, allegation or complaint from which it appears that a senior officer may have committed a disciplinary or criminal offence, that the senior officer concerned ought to be suspended from membership of the force and from his office as constable, the appropriate authority may, subject to the following provisions of this Regulation, so suspend him.

(2) The appropriate authority shall not so suspend a senior officer unless it appears to them that either of the following conditions ("the suspension conditions") is satisfied, namely—

(a) that the effective investigation of the matter may be prejudiced unless the senior officer concerned is so suspended;

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

(3) If the appropriate authority determine that a senior officer ought to be suspended under this Regulation, they shall forthwith notify the Authority of their decision and of the suspension condition appearing to them to justify their decision.

(4) If, upon being so notified of the decision of the appropriate authority, the Authority are satisfied that the suspension condition in question is fulfilled, they shall as soon as practicable notify their approval of the suspension of the senior officer concerned to the appropriate authority; and the suspension of the officer shall not have effect unless the approval of the Authority is so given.

(5) Where the Authority give their approval to the suspension of a senior officer, his suspension shall take effect from the time he receives notice of the Authority's approval thereof from the appropriate authority, and he shall be suspended until—

(a) the Authority decide otherwise; or

(b) the appropriate authority decide otherwise; or

(c) it is decided that the officer shall not be charged with a disciplinary offence; or

(d) he has been so charged and—

(i) all the charges have been dropped; or

(ii) a finding of guilt has been recorded but no further action has been taken thereon; or

(iii) a punishment has been imposed,

whichever first occurs.

Suspension—urgent cases

24.— (1) Subject to paragraph (2), in cases of urgency, the like power of suspension as under Regulation 23 may be exercised with immediate effect—

(a) in relation to a chief constable or a person for the time being discharging his functions, by the police authority, and

(b) in any other case, by the chief officer concerned.

(2) Where a senior officer has been suspended under paragraph (1), the appropriate authority shall notify the Authority forthwith.

(3) Without prejudice to Regulation 23(5), the suspension of a senior officer under this Regulation shall cease to have effect at the expiry of 24 hours from the imposition thereof unless within that period the Authority have notified the appropriate authority of their approval thereof.

Leon Brittan,
One of Her Majesty's Principal Secretaries of State.

Home Office.
28th March 1985.

Regulation 9

SCHEDULE

DISCIPLINE FORM

CHARGE AGAINST Name.....
Rank .....
Particulars of Service.....

CHARGE

Offence of which member is accused	Particulars of alleged offence, including time, date and place	Names and addresses of witnesses in support of charge and whose statements are attached
		1. .... 2. .... 3. .... 4. .... 5. .... 6. ....

DATE OF DISCIPLINARY HEARING

You will be notified as soon as possible of the date of the hearing and told where it is to be held. This notification which will be in writing will be given to you at least 21 days before the date set for the hearing.

EVIDENCE

You will be provided with a copy of such documents and statements as are referred to in Regulation 11(1) of the Police (Discipline) (Senior Officers) Regulations 1985 at least 21 days before the date set for the hearing.

POLICE AUTHORITY'S DECISIONS ON FINDING AND PUNISHMENT

The police authority has found the accused guilty/not guilty of the disciplinary offence with which he has been charged and has taken note of the accused's record of police service.

Punishment imposed [or decision to take no further action thereon].....
Date..... Signature.....
Police authority's decisions notified to accused.
I have been notified of the police authority's decisions.
Date..... Signature of accused.....

FOR OFFICE USE ONLY

1. Copy of discipline form served on the accused.	Initials..... Date.....
2. Decisions of police authority notified in writing to accused.	Initials..... Date.....

PARTICULARS OF ANY APPEAL TO THE SECRETARY OF STATE

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EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations replace the Police (Discipline) (Senior Officers) Regulations 1977 ("the 1977 Regulations") with effect from 29th April 1985. They take account of the introduction by Part IX of the Police and Criminal Evidence Act 1984 ("the Act of 1984") of a formal process for the investigation of complaints against senior police officers (that is, officers above the rank of chief superintendent), and of the creation by section 83(1) of the Act of 1984 of the Police Complaints Authority (in place of the Police Complaints Board established under the Police Act 1976 (c.46)).

The changes of substance are as follows. Regulation 5 provides for the appointment of an investigating officer where it appears that an offence may have been committed. By Regulation 6 an officer subject to investigation must as soon as is practicable be given an opportunity to make a statement (under caution) about the matter. Regulation 18(2) provides that a disciplinary charge must be proved beyond reasonable doubt. Regulation 19(1)*(a)* expressly permits the appropriate authority to record a finding of guilt but to take no further action thereon. Regulation 20(2)*(b)* allows an officer who has admitted a charge to address the disciplinary authority in mitigation.

Regulation 23 requires the approval of the Police Complaints Authority for the suspension of a senior officer in discipline cases; Regulation 24 provides a summary procedure for suspension in urgent cases subject to subsequent approval by the Authority.

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