STATUTORY RULES OF NORTHERN IRELAND

2004 No. 122

POLICE

The Police Service of Northern Ireland (Secondment) (Garda Síochána) Regulations 2004

Made - - - - - *11th March 2004*

Coming into operation *30th April 2004*

To be laid before Parliament

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SCHEDULES

Schedule 1 – Modifications of the 1996 regulations for members seconded from the Garda Síochána

Schedule 2 – Modifications of the conduct regulations for members seconded from the Garda Síochána

The Secretary of State, in pursuance of sections 25, 27 and 33 of the Police (Northern Ireland) Act 1998(**a**), after consulting the Northern Ireland Policing Board and the Police Association for Northern Ireland in accordance with section 25(8) of that Act, and after taking into account the recommendations made by the Police Negotiating Board for the United Kingdom and supplying that Board with a draft of the regulations in accordance with section 62(1) of the Police Act 1996(**b**), hereby makes the following regulations:

PART I

GENERAL

Citation and commencement

1.—(1) These regulations may be cited as the Police Service of Northern Ireland (Secondment) (Garda Síochána) Regulations 2004.

(2) These regulations shall come into operation on 30th April 2004.

Interpretation

2.—(1) Any reference in these regulations to a member seconded from the Garda Síochána is a reference to a person –

(a) who is appointed to the Police Service of Northern Ireland under section 36A(1) of the Police (Northern Ireland) Act 2000(**c**) (fixed-term appointments to the PSNI), and

(b) who is a member of the Garda Síochána at the time of the appointment.

(2) In these regulations –

"the 1996 regulations" means the Royal Ulster Constabulary Regulations 1996(**d**);

"the 1998 Act" means the Police (Northern Ireland) Act 1998;

(**a**) 1998 c. 32. Section 25 was modified by the Police (Northern Ireland) Act 1998 (Modification) Order 2003 (S.R. 2003 No. 376)

(**b**) 1996 c. 16

(**c**) 2000 c. 32. Section 36A was inserted by the Police (Northern Ireland) Act 2003

(**d**) S.R. 1996 No. 473, as amended by S.R. 1997 No. 362, S.R. 1999 No. 412, S.R. 2000 No. 316, S.R. 2002 No. 95, S.R. 2003 No. 184 and S.R. 2003 No. 372

"breach of Garda Síochána discipline" means a breach of discipline according to the law and procedure for the time being governing the discipline of members of the Garda Síochána;

"the conduct regulations" means the Royal Ulster Constabulary (Conduct) Regulations 2000(**a**);

"the Garda Síochána investigation" means, in relation to a member whose case is referred to a supervising member under regulation 14, the investigation mentioned in paragraph (1) of that regulation;

"the inter-governmental agreement" means the agreement of 29th April 2002 between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland on police co-operation;

"relevant service" has the same meaning as in section 27 of the 1998 Act.

PART II
SECONDMENTS FROM THE GARDA SÍOCHÁNA

Efficiency and effectiveness of seconded officers

3.—(1) Where a candidate for appointment under section 36A(1) of the Police (Northern Ireland) Act 2000 is a member of the Garda Síochána, the Chief Constable shall not make the appointment unless he is satisfied that the candidate –

(a) is fitted physically and mentally to perform the duties of a member of the Police Service of Northern Ireland, and

(b) is likely to become an efficient and well-conducted member of the Police Service of Northern Ireland.

(2) The Chief Constable shall make arrangements for such training as he considers appropriate for the purposes of ensuring that a member seconded from the Garda Síochána is able to perform the duties of his office efficiently and effectively.

Appointment of seconded officers

4. Where a member of the Garda Síochána is appointed to the Police Service of Northern Ireland under section 36A(1) of the Police (Northern Ireland) Act 2000, the appointment is subject to the provisions of any such protocols, addressing detailed aspects of secondments from the Garda Síochána to the Police Service of Northern Ireland, as may be signed under Article 3 of the inter-governmental agreement.

Seconded officers not eligible for promotion

5. A member who is seconded from the Garda Síochána and appointed to a rank in the Police Service of Northern Ireland under section 36A(1) of the Police (Northern Ireland) Act 2000 shall not be eligible for any promotion to a higher rank.

Police Association for Northern Ireland

6. In regulation 5 of the Police Association for Northern Ireland Regulations 1991(**b**) (every member of the police force shall be a member of the Police Association) after "force" insert "(other than a member seconded from the Garda Síochána (within the meaning of the Police Service of Northern Ireland (Secondment) (Garda Síochána) Regulations 2004))".

(**a**) S.R. 2000 No. 315, as amended by S.R. 2003 No. 68
(**b**) S.R. 1991 No. 168

Conditions of service

7. The 1996 regulations shall not apply in relation to any member seconded from the Garda Síochána, except as provided by Schedule 1.

Conduct

8.—(1) In relation to any member seconded from the Garda Síochána, the conduct regulations shall have effect with the modifications set out in Schedule 2.

(2) The Royal Ulster Constabulary (Appeals) Regulations 2000(**a**) shall not apply in relation to any member seconded from the Garda Síochána.

Notices about misconduct cases

9.—(1) Where the Chief Constable suspends a member seconded from the Garda Síochána under regulation 5 of the conduct regulations, the Chief Constable shall notify the Commissioner of the Garda Síochána in writing of the suspension.

(2) Where an officer appointed under regulation 8 of the conduct regulations ("the investigating officer") gives notice under regulation 9 of those regulations to a member seconded from the Garda Síochána of the matters mentioned in regulation 9(a) of those regulations, the investigating officer shall send a copy of the notice to the Commissioner of the Garda Síochána.

(3) Where the investigating officer appointed to investigate a case relating to the conduct of a member seconded from the Garda Síochána submits a report under regulation 10 of the conduct regulations, he shall send a copy of the report to the Commissioner of the Garda Síochána.

(4) Where an officer to whom a case is referred under regulation 7 of the conduct regulations gives notice to a member seconded from the Garda Síochána under regulation 13(1) of the conduct regulations of a decision to refer the case to a hearing, he shall send to the Commissioner of the Garda Síochána –

(a) a copy of the notice, and

(b) copies of anything supplied to the member under regulation 13(1).

(5) At the conclusion of any hearing under the conduct regulations the presiding officer or (in a directed hearing) the Chief Constable shall inform the Commissioner of the Garda Síochána in writing of the finding and shall send to the Commissioner a copy of the record of the hearing taken under regulation 30 of those regulations.

(6) The Chief Constable may delegate any of his functions under paragraph (1) or (5) to another senior officer.

Members of the Garda Síochána whose appointment to the PSNI has ended

10.—(1) The conduct regulations shall apply to any person –

(a) who was a member seconded from the Garda Síochána,

(b) whose appointment under section 36A(1) of the Police (Northern Ireland) Act 2000 has ended, and

(c) who remains a member of the Garda Síochána,

as if he were still a member seconded from the Garda Síochána, subject to the modifications set out in paragraphs (2) to (4).

(2) In regulation 5(3) after "paragraph (2)(a) to (d)" there shall be inserted "or until the member concerned ceases to be a member".

(3) Any reference to the rank of the member concerned shall be construed as –

(a) a reference to the rank which he held under the appointment referred to in paragraph (1)(b), or

(**a**) S.R. 2000 No. 317

(b) (if higher) the rank which is designated by the Secretary of State for the purposes of this regulation as the rank in the Police Service of Northern Ireland corresponding to the rank which the member holds for the time being in the Garda Síochána.

(4) Any reference to the sub-division or branch in which a member under investigation is serving includes a reference to any sub-division or branch in which the member served during the appointment referred to in paragraph (1)(b).

Pensions and injury benefit

11. The regulations relating to Police Service of Northern Ireland pensions and injury benefit for the time being in force shall not apply in relation to any service as a member seconded from the Garda Síochána.

Unsatisfactory performance

12. The Royal Ulster Constabulary (Unsatisfactory Performance) Regulations 2000(**a**) shall not apply in relation to any member seconded from the Garda Síochána.

PART III

SECONDMENTS TO THE GARDA SÍOCHÁNA

Conduct of member on relevant service with Garda Síochána

13. Where an investigation is carried out in accordance with the law and procedure for the time being governing the discipline of members of the Garda Síochána into whether any conduct by a member of the Police Service of Northern Ireland engaged on relevant service with the Garda Síochána amounts to a breach of Garda Síochána discipline, any requirement imposed on the member under that law and procedure shall be treated as imposed under the conduct regulations.

Supervising member

14.—(1) Where the Chief Constable is notified that an investigation is being or has been carried out by the Garda Síochána into an alleged breach of Garda Síochána discipline by a member engaged on relevant service with the Garda Síochána ("the member concerned"), he may refer the case to an officer ("the supervising member") to supervise the consideration of the question of imposing any sanction.

(2) A supervising member must satisfy the conditions in regulation 7(3) of the conduct regulations.

(3) The Chief Constable shall supply to the supervising member any report, notice or other document which he receives from the Garda Síochána in connection with the case.

Referring case to hearing

15.—(1) The supervising member to whom a case is referred under regulation 14 shall decide whether to refer a case to a hearing on the question of whether to impose a sanction.

(2) The supervising member shall not decide to refer a case to a hearing until he has been informed –

(a) that a decision has been taken –

(i) at a hearing under the law and procedure for the time being governing the discipline of members of the Garda Síochána, or

(**a**) S.R. 2000 No. 316

(ii) on appeal against the finding of such a hearing,

that the conduct of the member concerned was a breach of Garda Síochána discipline, and

(b) that –

(i) no appeal lies against the decision, or

(ii) if leave to appeal against the decision is required, leave is refused or the time to apply for leave has expired without leave being granted, or

(iii) if leave to appeal against the decision is granted or is not required, the time to appeal against the finding has expired without any appeal being brought.

(3) Where the supervising member is informed that a decision has been taken not to refer the case to a hearing under the law and procedure for the time being governing the discipline of members of the Garda Síochána, the supervising member shall not refer the case to a hearing.

(4) Where the supervising member decides not to refer the case to a hearing, no reference to the case shall be made on the personal record of the member concerned.

(5) Where the supervising member decides to refer the case to a hearing –

(a) the Garda Síochána investigation, and any steps taken in relation to it, shall be treated as having been carried out by an investigating officer appointed under regulation 8 of the conduct regulations;

(b) any hearing –

(i) to which the case is referred under the law and procedure for the time being governing the discipline of members of the Garda Síochána, or

(ii) on an appeal from such a hearing,

and any steps taken in relation to either such hearing, shall be treated as having been carried out in accordance with regulations 13 to 30 of the conduct regulations; and

(c) any decision of such a hearing that the member concerned did commit a breach of Garda Síochána discipline shall be treated as a decision taken under regulation 23(3) of the conduct regulations that his conduct did not meet the appropriate standard.

Withdrawal of case

16.—(1) At any time before the beginning of the hearing the supervising member to whom a case is referred under regulation 14 may direct that the case be withdrawn.

(2) Where a case is withdrawn it shall be treated as if the supervising member had decided not to refer the case to a hearing.

Notice of decision to refer case to hearing

17.—(1) The supervising member to whom a case is referred under regulation 14 shall ensure that, as soon as practicable, the member concerned is given written notice of any decision taken under regulation 15.

(2) A notice given under paragraph (1) shall specify –

(a) the conduct of the member concerned which was alleged to be a breach of discipline;

(b) any admission made by the member concerned that the conduct was a breach of discipline;

(c) any finding, reached by a hearing to which the case is referred under the law and procedure for the time being governing the discipline of members of the Garda Síochána, that the conduct was a breach of discipline; and

(d) any decision taken on an appeal against such a finding.

(3) There shall be supplied to the police officers conducting the hearing a copy of the notice given under paragraph (1).

Notice and documents

18.—(1) The supervising member to whom a case is referred under regulation 14 shall ensure that the member concerned is given written notice –

(a) informing him that he has the right to seek advice from his Staff Association; and

(b) informing him that he has the right to be accompanied to any meeting, interview or hearing by a person selected by him, who –

(i) shall be a member of the Police Service of Northern Ireland, a member of the Garda Síochána or a member of another police force, and

(ii) shall not be an interested party.

(2) The supervising member shall ensure that not less than 28 days before the date of the hearing, the member concerned is supplied with copies of any report, notice or other document submitted to the supervising member under regulation 14(3) and any other relevant documents obtained by the supervising member.

Consideration of facts

19. The officers conducting a hearing to which a case is referred under regulation 15 shall consider the facts of the case and decide whether, in all the circumstances, it would be reasonable to impose a sanction.

Conduct regulations

20.—(1) The following provisions of the conduct regulations, namely –

(a) regulations 14 to 18,

(b) regulation 20, except paragraph (b),

(c) regulations 21, 22, 23(1) and 24,

(d) regulation 26, except the words "subject to regulation 25 paragraphs (2) and (3)",

(e) regulations 27 to 30,

(f) regulation 31, except the words "or in a directed case, the Chief Constable", and

(g) regulations 32 and 33,

shall apply in relation to a hearing to which a case is referred under regulation 15 as they apply in relation to a hearing to which a case is referred under regulation 11 of the conduct regulations.

(2) In the application of the provisions mentioned in paragraph (1) to a hearing to which a case is referred under regulation 15 –

(a) any reference to giving notice or supplying copies of documents under regulation 13 of the conduct regulations shall be construed as a reference to doing so under regulation 18(2); and

(b) any reference to conduct not meeting the appropriate standard shall be construed as a reference to a breach of Garda Síochána discipline.

Request for a review

21.—(1) Where a sanction is imposed at a hearing to which a case is referred under regulation 15, the member concerned shall be entitled to request the Chief Constable to review the sanction.

(2) Regulations 34(2) and (3), 35(1) and (3), 36 and 37 of the conduct regulations shall apply to a review requested under this regulation as they apply to a review requested under regulation 34(1) of those regulations.

Disciplinary proceedings

22. Proceedings at or in connection with a hearing to which a case is referred under regulation 15 shall, for the purposes of section 50 of the 1998 Act, be disciplinary proceedings.

Northern Ireland Office
11th March 2004

Jane Kennedy
Minister of State

SCHEDULE 1

Regulation 7

MODIFICATIONS OF THE 1996 REGULATIONS FOR MEMBERS SECONDED FROM THE GARDA SÍOCHÁNA

The following provisions of the 1996 regulations shall apply in relation to a member seconded from the Garda Síochána, namely –

(a) regulations 1(1) and (2) (citation and interpretation);

(b) regulation 4 (ranks);

(c) regulation 5(1) to (2) and (4) to (6) (part-time appointments), and Schedule 1 (as modified by the omission of any reference to a provision of the 1996 regulations which, by virtue of this Schedule, does not apply to a member seconded from the Garda Síochána);

(d) regulation 6 and Schedule 2 (restrictions on the private life of members);

(e) regulation 7(1) to (9) (business interests incompatible with membership of the force);

(f) regulation 8(1) (business interests precluding appointment to the force);

(g) regulation 15 (contents of personal records), with the following paragraph substituted for paragraph (2) –

"(2) The personal record shall contain such particulars as may be specified by the Chief Constable.";

(h) regulation 17 as substituted by the following regulation –

"**Retention and destruction of personal record at end of secondment**

17. Where a member ceases to be a member, his personal record shall be kept for such time as the Chief Constable may think fit and shall then be destroyed.";

(i) regulation 18 (fingerprints) with the omission in paragraph (3) (destruction or transfer) of the words from "except" to the end;

(j) regulation 19 (duty to carry out lawful orders);

(k) regulation 20 (normal daily period of duty), with the omission in paragraph (3)(b) of the words "subject to paragraph 4 of Schedule 4";

(l) regulation 21 (meaning of "day" in Part III);

(m) regulation 22 and Schedule 3 (variable shift arrangements), as modified by –

(i) the substitution of –

"for hours of duty equivalent to those resulting from the application of regulations 20(2) and 25(2) to other members seconded from the Garda Síochána"

in regulation 22(3) for the words from the beginning of sub-paragraph (a) to "to other members",

(ii) the substitution of "and paragraph 2" for "paragraph 2 and paragraph 3" in regulation 22(5), and

(iii) the omission of paragraphs 3, 6, 7 and 10 of Schedule 3;

(n) regulation 23 (rostering of duties);

(o) regulation 25 (public holidays and rest days for ranks below inspector) with the omission of –

(i) in paragraph (2), the words "be allowed a day's leave on each public holiday and",

(ii) paragraphs (3) to (8),

(iii) in paragraph (9), sub-paragraphs (a) to (d), (f) and (g), and

(iv) paragraph (10);

(p) regulation 26 (public holidays and rest days for inspectors and chief inspectors) with the omission of –

(i) in paragraph (2), the words "be allowed a day's leave on each public holiday and", and

(ii) paragraph (3);

(q) regulation 27 (public holidays and monthly leave days for ranks above chief inspector) with the omission of –

(i) in paragraph (2), the words "be allowed a day's leave on each public holiday and", and

(ii) paragraphs (3) and (4);

(r) regulation 28 (travelling time treated as duty) with the omission of –

(i) paragraph (1)(a)(ii),

(ii) in paragraph (2) the words "on a public holiday or", and

(iii) in paragraph (3) the words "any period of overtime for the purposes of regulation 24 or";

(s) regulation 29 (Police Association meetings treated as duty);

(t) regulation 30, as substituted by the following regulation –

"**Annual leave**

30. Where a member seconded from the Garda Síochána is, under the terms of any protocols relating to secondments to the Police Service of Northern Ireland signed under Article 3 of the Agreement of 29th April 2002 between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland on police co-operation, entitled to days of annual leave –

(a) the days may be taken, at the discretion of the Chief Constable and subject to the exigencies of duty, as a single period, or as single days, or in periods of more than one day, or as half days;

(b) in the case of a member below the rank of superintendent, not more than three days shall be taken as half days; and

(c) in the case of a member below the rank of superintendent, where days of annual leave are taken as half days, he –

(i) shall do duty on that day for four hours, and

(ii) shall not be entitled to be allowed an interval for refreshment such as is mentioned in regulation 20(3).".

(u) regulations 47, 48, 53, 58, 59 and 61 and paragraphs 2 and 3 of Schedule 7 (allowances);

(v) regulation 56 (allowance in respect of medical charges), with the insertion after paragraph (3) of –

"(4) Where any provision mentioned in paragraph (1) enables a charge to be made in Northern Ireland for an item or service of any description, and a member, by reason of an injury such as is mentioned in that paragraph, incurs a charge in the Republic of Ireland for an item or service of that description, he shall be reimbursed so much of the charge as does not exceed the amount that would, were the charge incurred in Northern Ireland, be reimbursed under that paragraph."; and

(w) Part VI (uniform and equipment).

SCHEDULE 2

Regulation 8

MODIFICATIONS OF THE CONDUCT REGULATIONS FOR MEMBERS SECONDED FROM THE GARDA SÍOCHÁNA

1. Any reference in regulation 9(a)(iv), 26(2) or 35(3) of the conduct regulations to a member, or a member of a police force, accompanying a member seconded from the Garda Síochána at a hearing or meeting shall include a reference to a member of the Garda Síochána.

2. Any reference in the conduct regulations to a staff association shall include a reference to an association representing members of the Garda Síochána.

3. Any requirement in the conduct regulations to give a member the opportunity to elect to be legally represented shall apply in any case in which the supervising member considers that the circumstances of the case are such that, were the member concerned not seconded from the Garda Síochána, the supervising member would be of the opinion that the hearing should have available the sanctions of dismissal, requirement to resign or reduction in rank.

4. The following provisions of the conduct regulations shall be omitted –

(a) regulations 10(2) and 11(3) (special cases);

(b) regulation 14 (limitation on sanctions);

(c) in regulation 23(3) (decisions of officers conducting the hearing), the words "and, if it did not, whether in all the circumstances it would be reasonable to impose any, and if so which, sanction";

(d) in regulation 29(4) (remission of cases) the words "or of the sanction which might be imposed";

(e) regulation 31 (sanctions);

(f) regulation 32 (personal record to be considered before sanction imposed);

(g) in regulation 33 (member to be informed of finding) the words "and of any sanction imposed";

(h) regulation 36(4); and

(i) regulation 39 (special cases).

5. In regulation 29(2)(b) of the conduct regulations (remission of cases) for the words from the beginning to "available and that" there shall be substituted "the member concerned was not given an opportunity under regulation 16 to elect to be legally represented at the hearing, and it appears to the presiding officer concerned that –

"(i) were the member concerned not seconded from the Garda Síochána, the sanctions referred to in that regulation ought to be available on a finding against him, and

(ii)".

6. For regulation 34(1) of the conduct regulations (request for a review) there shall be substituted –

"(1) The member concerned shall be entitled to request the Chief Constable to review the finding of the hearing".

7. For regulation 36(2) of the conduct regulations (finding of the review) there shall be substituted –

"(2) The Chief Constable may confirm the finding of the hearing or reach a different finding".

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These regulations make provision about secondments between the Police Service of Northern Ireland and An Garda Síochána.

Section 36A of the Police (Northern Ireland) Act 2000 (inserted by section 24 of the Police (Northern Ireland) Act 2003) permits fixed term appointments to be made to the Police Service of Northern Ireland. Part II of these regulations makes provision about the terms on which such appointments may be made in relation to persons seconded from An Garda Síochána ("Garda officers on secondment to the PSNI").

Regulation 3 makes provision about the efficiency and effectiveness of Garda officers on secondment to the PSNI.

Regulation 4 states that the secondment of Garda officers to the PSNI is subject to protocols signed under Article 3 of the Agreement of 29th April 2002 between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland on police co-operation.

Regulation 5 prohibits Garda officers on secondment to the PSNI being promoted within the Police Service of Northern Ireland.

Regulation 6 removes a requirement for Garda officers on secondment to the PSNI to join the Police Association of Northern Ireland.

Regulations 7, 11 and 12 and Schedule 1 provide for regulations about the conditions of service of members of the PSNI to be modified in relation to Garda officers on secondment to the PSNI. In particular, provisions about pay and pensions do not apply to officers on secondment, as An Garda Síochána continues to be responsible for such matters.

Regulations 8 to 10 and Schedule 2 provide for regulations about the conduct of members of the PSNI to be modified in relation to Garda officers on secondment to the PSNI. In particular, the power to impose a sanction in disciplinary proceedings does not apply to officers on secondment, as it is for An Garda Síochána to make decisions as to sanctions.

Part III of these regulations makes provision about disciplinary proceedings against a member of the Police Service of Northern Ireland who has been seconded to An Garda Síochána. The regulations require a member to co-operate with any investigation into his conduct by An Garda Síochána. Where such an investigation leads to a hearing at which his conduct is found to be a breach of the discipline of that police force, the regulations modify the Royal Ulster Constabulary (Conduct) Regulations 2000 to provide for a hearing by the Police Service of Northern Ireland into the question of imposing a sanction.

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