SCOTTISH STATUTORY INSTRUMENTS

2026 No. 277

POLICE

The Police Service of Scotland (Senior Officers) (Conduct) Amendment Regulations 2026

Made - - - -	*29th September 2026*
Laid before the Scottish Parliament	*1st October 2026*
Coming into force - -	*26th November 2026*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 48, 55 and 125(1) of the Police and Fire Reform (Scotland) Act 2012(**a**) and all other powers enabling them to do so.

In accordance with section 54(2) of that Act, they have consulted and shared a draft of the Regulations with the persons mentioned in section 54(2)(a)(i) to (vi) of that Act and have considered any representations made.

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Police Service of Scotland (Senior Officers) (Conduct) Amendment Regulations 2026 and come into force on 26 November 2026.

Interpretation

2. In these Regulations—

"the 2014 Conduct Regulations" means the Police Service of Scotland (Conduct) Regulations 2014(**b**),

"the Senior Officers' Conduct Regulations" means the Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013(**c**),

"the Senior Officers' Performance Regulations" means the Police Service of Scotland (Senior Officers) (Performance) Regulations 2016(**d**).

(**a**) 2012 asp 8.
(**b**) S.S.I. 2014/68 as amended by section 3(5) of the Police (Ethics, Conduct and Scrutiny) (Scotland) Act 2025 (asp 5) and S.S.I. 2025/378.
(**c**) S.S.I. 2013/62 as amended by section 3(4) of the Police (Ethics, Conduct and Scrutiny) (Scotland) Act 2025 (asp 5), S.S.I. 2014/68 and S.S.I. 2020/453.
(**d**) S.S.I. 2016/51 as amended by S.S.I. 2020/453.

PART 2

Amendments to the Senior Officers' Conduct Regulations

Amendments to the Senior Officers' Conduct Regulations

3. The Senior Officers' Conduct Regulations are amended in accordance with regulations 4 to 32.

Interpretation

4. In regulation 2 (interpretation)—

(a) before the definition of "the Act", insert the following definitions—

""the 2014 Conduct Regulations(**a**)" means the Police Service of Scotland (Conduct) Regulations 2014,

"accelerated misconduct hearing" means a hearing to which the senior officer is referred under regulation 24B after the case has been certified as one where special conditions are satisfied,",

(b) omit the definition for "appeal hearing",

(c) omit the definition for "appeal notice",

(d) in the definition of "chairing member of the panel", after "regulation 18(2)(a)", insert "or, in the case of an accelerated misconduct hearing, the individual appointed by virtue of regulation 24H(2)(a)",

(e) before the definition of "disciplinary action", insert—

""data subject" has the same meaning as in section 3 of the Data Protection Act 2018(**b**)",

(f) in the definition of "disciplinary action", after "regulation 23(3)", insert "or regulation 24M(4)",

(g) after the definition of "disciplinary action", insert—

""document" means anything in which information of any description is recorded,",

(h) before the definition of "gross misconduct", insert—

""First-tier Tribunal" means the First-tier Tribunal for Scotland General Regulatory Chamber,",

(i) after the definition of "improvement action", insert—

""informant" means a person who provides information to an investigation on the basis that the person's identity is not disclosed,",

(j) in the definition of "investigator"—

(i) in paragraph (a)—

(aa) omit from "in a case" to "regulation 9,",

(bb) for "10(2)(b)", substitute "7C(a)",

(cc) for "that investigation", substitute "a misconduct investigation",

(dd) after "Commissioner's behalf;", omit "or",

(ii) omit paragraph (b),

(k) in the definition of "misconduct", after "Behaviour", insert "that is so serious as to justify disciplinary action",

(l) for the definition of "misconduct allegation", substitute—

(**a**) S.S.I. 2014/68 as amended by section 3(5) of the Police (Ethics, Conduct and Scrutiny) (Scotland) Act 2025 (asp 5).
(**b**) 2018 c. 12.

""misconduct allegation" means any report, allegation, complaint or other information—

(a) whether made or received formally or informally, and

(b) from which it can reasonably be inferred, having regard to—

(i) the substance of that information, and

(ii) any available evidence or surrounding circumstances,

that any conduct of the senior officer may amount to misconduct or gross misconduct,",

(m) after the definition of "misconduct investigation", insert—

""misconduct pre-hearing" means a pre-hearing arranged under regulation 18A(5) to determine preliminary matters,",

(n) in the definition of "panel", after "regulation 18(1)", insert "or, in the case of an accelerated misconduct hearing, the panel appointed under regulation 24H(1)",

(o) after the definition of "panel", insert—

""personal data" has the same meaning as in section 3 of the Data Protection Act 2018,",

(p) after the definition of "reporting officer", insert—

""special conditions" has the meaning given by regulation 24B,",

(q) for the definition of "the senior officer", substitute—

""the senior officer" means—

(a) a senior officer in respect of whom a misconduct allegation has been made and who is subject, in relation to that allegation, to any proceedings under these Regulations,

(b) a constable, other than a senior officer, whose conduct occurring on or after 26 November 2026 is the subject of a misconduct allegation, and who subsequent to that conduct, has been promoted (whether permanently or on a temporary basis) to the rank of senior officer and who is subject, in relation to that allegation, to any proceedings under these Regulations, or

(c) a constable, other than a senior officer, whose conduct occurring on or after 26 November 2026 is the subject of a misconduct allegation, and who, at the time of that conduct, was temporarily appointed to the rank of senior officer and who is subject, in relation to that allegation, to any proceedings under these Regulations,

and, in a case falling within paragraph (b) or (c), references in these Regulations to a senior officer are to be read as references to that constable as if the constable were a senior officer for the purposes of these Regulations,",

(r) before the definition of "working day", insert—

""trauma-informed practice" is a means of operating that—

(a) recognises that a person may have experienced trauma,

(b) understands the effects which trauma may have on the person, including how trauma may affect any evidence given by the person, and

(c) based on that understanding, involves adapting and implementing processes and practices to—

(i) seek to avoid, or minimise the risk of, exposing the person to any recurrence of past trauma or further trauma,

(ii) seek to avoid, or minimise the risk of, negatively impacting the person's recovery from trauma,

(iii) enable the person to participate effectively in proceedings,".

Application

5. In regulation 3 (application), for paragraph (1), substitute—

"(1) These Regulations apply to—

(a) conduct of a senior officer occurring on or after 1 April 2013,

(b) conduct of a constable below the rank of assistant chief constable occurring on or after 26 November 2026 where that constable, subsequent to the conduct, is promoted to senior officer, whether permanently or on a temporary basis, and

(c) conduct of a constable below the rank of assistant chief constable occurring on or after 26 November 2026 where the conduct occurred when the constable was promoted temporarily to senior officer.".

Police representative

6. In regulation 4 (police representative)—

(a) in sub-paragraph (3)(b), for "the misconduct hearing", substitute "any misconduct pre-hearing, misconduct hearing or accelerated misconduct hearing",

(b) after paragraph (3), insert—

"(3A) A police representative may not answer any question asked of the senior officer at any interview or hearing which forms part of any proceedings under these Regulations.".

Legal representation

7. In regulation 5 (legal representation)—

(a) in paragraph (1)—

(i) after "any" insert "misconduct pre-hearing,",

(ii) for "appeal hearing", substitute "accelerated misconduct hearing",

(b) for paragraph (2), substitute—

"(2) If the senior officer intends to be represented in accordance with paragraph (1), the senior officer must notify the chairing member of the panel of that intention not less than 5 working days before the date of the relevant hearing.",

(c) after paragraph (3), insert—

"(3A) The senior officer's legal representative may not answer any question asked of the senior officer during any hearing which the senior officer attends under these Regulations.",

(d) in paragraph (4), for "a misconduct hearing or appeal hearing", substitute "any misconduct pre-hearing, misconduct hearing or accelerated misconduct hearing".

Suspension

8. In regulation 6 (suspension)—

(a) before paragraph (1), insert—

"(A1) The Commissioner may recommend to the Authority that the Authority suspend the senior officer from the office of constable where the Commissioner considers that not suspending the senior officer may—

(a) prejudice an effective misconduct investigation, or

(b) prejudice an effective criminal investigation.

(A2) A recommendation under paragraph (A1) must be made in writing and give supporting reasons for the recommendation.

(A3) The Authority must take into account any recommendation made by the Commissioner when considering whether to suspend the senior officer.",

(b) in paragraph (2)—

(i) for "at least one of", substitute "following",

(ii) for "is", substitute "are",

(c) for paragraph (3), substitute—

"(3) The suspension conditions are that—

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

(b) it appears to the Authority that at least one of the following applies—

(i) an effective criminal or misconduct investigation may be prejudiced if the senior officer is not suspended, or

(ii) having regard to the nature of the allegation and any other relevant considerations, the public interest requires the senior officer's suspension.".

Alleged offences

9. In regulation 7 (alleged offences), in paragraphs (1) and (2), for "Authority", substitute "Commissioner".

Referral of misconduct allegations

10. After regulation 7 (alleged offences), insert—

"Referral of misconduct allegations

7A. Where a misconduct allegation against a senior officer, or a constable to whom these Regulations apply in accordance with regulation 3, is received by, or otherwise comes to the attention of, the Authority or the chief constable, the Authority or the chief constable (as the case may be) must refer the allegation to the Commissioner without delay.

Assessment by Commissioner

7B.—(1) This regulation applies where a misconduct allegation—

(a) is referred to the Commissioner under regulation 7A, or

(b) is otherwise received by, or comes to the attention of, the Commissioner from any source.

(2) The Commissioner must assess whether the conduct which is the subject matter of the misconduct allegation would, if that conduct were proved, amount to—

(a) misconduct,

(b) gross misconduct, or

(c) neither.

(3) The Commissioner must make the assessment under paragraph (2) as soon as reasonably practicable after the misconduct allegation is referred, received or otherwise comes to the Commissioner's attention, having regard to the information available at that time.

(4) Where the Commissioner assesses that the conduct would, if proved, amount to neither misconduct nor gross misconduct, the Commissioner must return the allegation to the Authority (with any such recommendations as are considered appropriate) and the Authority may—

(a) take no action,

(b) take improvement action, or

(c) refer the matter to the senior officer's reporting officer to be dealt with in accordance with the Senior Officers' Performance Regulations.

(5) Where the Commissioner assesses that the conduct would, if proved, amount to misconduct, the Commissioner must decide whether the misconduct allegation is to be investigated.

(6) Where the Commissioner assesses that the conduct would, if proved, amount to gross misconduct, the Commissioner must investigate the misconduct allegation.

(7) If, following an assessment under paragraph (5), the Commissioner decides not to investigate the misconduct allegation, the Commissioner must send the allegation to the Authority (with such recommendations as are considered appropriate) and the Authority may—

(a) take no action,

(b) take improvement action, or

(c) refer the matter to the senior officer's reporting officer to be dealt with in accordance with the Senior Officers' Performance Regulations.

(8) In making an assessment under paragraph (5) the Commissioner must take into account the public interest and whether the misconduct allegation—

(a) was made anonymously,

(b) was specific in time and location,

(c) can reasonably be inferred to be unfounded or frivolous in nature,

(d) appears, on the face of the allegation, to be either vexatious or malicious.

(9) Where the Authority decides under this regulation to take no further action, take improvement action or to refer the matter to the senior officer's reporting officer to be dealt with in accordance with the Senior Officers' Performance Regulations, the Authority must notify the senior officer as soon as practicable.

(10) The Commissioner may, at any time before sending a misconduct form to the senior officer in accordance with regulation 16(2), revise the assessment made under paragraph (2).

Investigation by Commissioner

7C. Where, following an assessment under regulation 7B, a misconduct allegation is to be investigated, the Commissioner must, as soon as reasonably practicable—

(a) appoint a member of the Commissioner's staff to carry out that investigation on the Commissioner's behalf (the "investigator"),

(b) notify the Authority that the Commissioner is to carry out a misconduct investigation,

(c) keep the Authority informed, by giving further notices as the Commissioner considers appropriate, of any significant developments arising out of the misconduct investigation.

Joint investigation by Commissioner and deputy chief constable

7D.—(1) This regulation applies where—

(a) a misconduct investigation arises from facts and circumstances that concern both—

(i) a senior officer to whom these Regulations apply, and

(ii) a constable to whom the 2014 Conduct Regulations apply, and

(b) the Commissioner and the deputy chief constable each determine that a joint investigation is appropriate.

(2) Nothing in this regulation—

(a) affects the separate statutory functions and duties of the Commissioner, and the investigator appointed, under these Regulations,

(b) affects the separate statutory functions and duties of the deputy chief constable, and the investigator appointed, under the 2014 Conduct Regulations,

(c) permits the substitution, modification or merging of any notice, procedure, report or decision required by these Regulations or the 2014 Conduct Regulations.

(3) A joint investigation report must not be produced.

(4) A joint investigation must not prejudice—

(a) the procedural fairness to the constables involved in the investigation, in particular—

(i) the right to make representations,

(ii) the right to be represented,

(b) the ability of independent determinations to be reached under these Regulations and the 2014 Conduct Regulations.

Conducting joint investigations

7E.—(1) Where the Commissioner and the deputy chief constable determine that a joint investigation is appropriate, the Commissioner and the deputy chief constable must agree and record in writing a joint investigation strategy to determine—

(a) the scope of any shared lines of enquiry,

(b) whether, in relation to each witness, any interview would more appropriately be conducted—

(i) jointly, by the investigator appointed under these Regulations and the investigator appointed under the 2014 Conduct Regulations, or

(ii) separately, with records or summaries shared between investigators,

(c) any safeguarding or welfare considerations in relation to any witness or victim involved in the investigation, including ensuring that any witness or victim is treated in a way that accords with trauma-informed practice.

(2) A joint investigation strategy must state—

(a) whether a witness will be interviewed jointly or separately by each investigator,

(b) the reasons for that decision,

(c) the arrangements for sharing documents, audio recordings, written records, evidence or other materials.

Joint interviews

7F.—(1) A joint interview of a constable and a senior officer must not take place.

(2) A joint interview of a witness may be conducted where—

(a) the Commissioner and the deputy chief constable agree,

(b) the approach is consistent with trauma-informed practice,

(c) the rights of each constable under the applicable Regulations are not prejudiced.

(3) A joint interview of a witness must—

(a) be audio recorded unless both investigators agree that doing so would be inappropriate, in which case a single agreed written record must be prepared,

(b) be made available in the appropriate form to both investigators for the purposes of preparation of their respective investigator's reports.

Joint investigations: information sharing

7G. Investigators may share—

(a) records of interviews (audio or written),

(b) witness statements,

(c) relevant documents,

(d) an investigator's report, and

(e) any other material required for the conduct of each investigation,

including information relating to the matters specified in paragraphs (a) to (e).".

Preliminary assessment

11. Omit regulation 8 (preliminary assessment).

Assessment by Commissioner

12. Omit regulation 9 (assessment by Commissioner).

Investigation by Commissioner

13. Omit regulation 10 (investigation by Commissioner).

Investigation by Authority

14. Omit regulation 11 (investigation by the Authority).

Notice of investigation

15. In regulation 12 (notice of investigation)—

(a) before "The investigator", insert "(1)",

(b) after paragraph (1), insert—

"(2) If at any time after the notice mentioned in paragraph (1) is issued but before the report mentioned in regulation 14(1) is issued, the investigator's assessment of—

(a) whether the senior officer's conduct would, if proved, amount to misconduct or gross misconduct, or

(b) the conduct forming the subject matter of the misconduct allegation,

changes, the investigator must issue a further notice of investigation as soon as reasonably practicable in accordance with this regulation notifying the senior officer of that change.".

Investigator's report

16. In regulation 14 (investigator's report)—

(a) in sub-paragraph (1)(b), for "Authority", substitute "Commissioner",

(b) after paragraph (1), insert—

"(1A) The investigator must send a summary of the report submitted under paragraph (1) to the Authority.",

(c) in paragraph (3)—

(i) in sub-paragraph (a) after "regulation 13(7)" insert ", or, where no audio recording is made, a copy of the written record made under regulation 13(8)",

(ii) for sub-paragraph (b), substitute—

"(b) any written representations made by the senior officer during the misconduct investigation, together with any documents submitted alongside those representations.",

(d) after paragraph (3), insert—

"(4) If, at any time during the investigation, the investigator believes that the Commissioner 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 Commissioner—

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

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

(5) If at any time during the investigation the investigator believes that, in light of evidence made available to the investigator that was not available to the Commissioner when the Commissioner made their assessment under regulation 7B, the Commissioner 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 Commissioner—

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

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

(c) a statement of the investigator's opinion as to whether the matter should be referred to be dealt with under the Senior Officers' Performance Regulations, by improvement action or by taking no action.

(6) Where a report is submitted to the Commissioner under paragraph (5), the Commissioner must make a further assessment under regulation 7B.

(7) If the Commissioner 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.

(8) If the Commissioner 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 7B,

(b) the investigation must be promptly concluded, and

(c) the Commissioner must, as soon as practicable, give the senior officer notice in writing that—

(i) the notice given to the senior officer under regulation 12(1) has been withdrawn,

(ii) no further action will be taken pursuant to that notice,

(iii) the investigation has been concluded.".

Referral to misconduct hearing

17. In regulation 15 (referral to misconduct hearing)—

(a) in paragraph (1)—

(i) before "On receipt of", insert "Subject to regulation 24B,",

(ii) for "Authority", substitute "Commissioner",

(b) in paragraph (2)—

(i) for "Authority", substitute "Commissioner",

(ii) for "it may", substitute "the Commissioner must refer the matter to the Authority, and the Authority may",

(c) in paragraph (3)—

(i) for "Authority", substitute "Commissioner",

(ii) for "it", substitute "the Commissioner".

Notification of complainant where there is no case to answer

18. After regulation 15 (referral to misconduct hearing), insert—

"**Notification of complainant where there is no case to answer**

15A.—(1) This regulation applies where, following consideration under regulation 15(2), the Commissioner determines that the senior officer has no case to answer in respect of misconduct or gross misconduct.

(2) Where this regulation applies and the misconduct allegation arose from a complaint made by a member of the public, a constable, a member of the Authority's staff or a member of police staff, the Commissioner must notify the person who made the complaint in writing, as soon as reasonably practicable, of—

(a) the determination that there was no case to answer in respect of misconduct or gross misconduct,

(b) whether—

(i) no further action is to be taken,

(ii) improvement action is to be taken, or

(iii) the matter has been referred to be dealt with under the Senior Officers' Performance Regulations, and

(c) the reasons for the determination.

(3) The Commissioner may withhold or limit the notification under paragraph (2) insofar as the Commissioner considers that preventing the disclosure of information is—

(a) necessary to avoid prejudicing current or future criminal proceedings,

(b) necessary for the purpose of the prevention or detection of crime or the apprehension or prosecution of offenders,

(c) necessary for the prevention or detection of misconduct by other constables or police staff,

(d) necessary and proportionate for the protection of the welfare and safety of any informant, witness or other person,

(e) necessary and proportionate to prevent the disclosure of personal data or sensitive information relating to the senior officer or any other person which is not required to enable the member of the public to understand the determination and the reasons for it, or

(f) otherwise in the public interest.

(4) Where notification is withheld or limited in reliance on paragraph (3), the Commissioner must record the reasons for that decision.".

Arrangement of misconduct hearing

19. In regulation 16 (arrangement of misconduct hearing)—

(a) in paragraph (1)—

(i) for "Authority", substitute "Commissioner",

(ii) after "misconduct hearing", insert "and a panel has been appointed in accordance with regulation 18 to conduct the misconduct hearing",

(b) for paragraph (2), substitute—

"(2) The Commissioner must send a misconduct form to the senior officer not less than 20 working days before the date of the misconduct hearing set by the chairing member of the panel appointed in accordance with regulation 18(2)(a).",

(c) in paragraph (3)—

(i) in sub-paragraph (c), for "facts established", substitute "evidence gathered and relied upon",

(ii) in sub-paragraph (d)—

(aa) for "Authority's", substitute "Commissioner's",

(bb) after "it can be", insert "reasonably",

(cc) for "established facts", substitute "evidence in the report",

(d) in paragraph (4)—

(i) for "Authority", substitute "Commissioner",

(ii) in sub-paragraph (a), omit "and",

(iii) after sub-paragraph (a), insert—

"(aa) a copy of any audio recording made under regulation 13(7), or, where no audio recording is made, a copy of the written record made under regulation 13(8); and",

(e) after paragraph (4), insert—

"(4A) For the purposes of paragraph (5), a misconduct form is to be treated as having been given to the senior officer—

(a) if given to the senior officer in person, on the date on which it is given,

(b) if sent to the senior officer by email or by any other means of electronic communication, on the date on which it is sent,

(c) if left with a person at the senior officer's last known address, on the date on which it is left,

(d) if sent to the senior officer's last known address by first class post using a recorded delivery service or any other postal service which provides for recorded delivery the next working day, on the second working day after the date on which it is sent.

(4B) Where a misconduct form is required to be sent to the senior officer under paragraph (2), it may instead be sent to—

(a) a police representative chosen by the senior officer in accordance with regulation 4, or

(b) a legal representative acting for the senior officer in accordance with regulation 5,

and any such sending is to be treated for the purposes of this regulation (including paragraph (4A)) as sending the misconduct form to the senior officer.",

(f) in paragraph (5)—

(i) for "15", substitute "10",

(ii) for "from the date of receipt of the misconduct form", substitute "from the date on which the misconduct form is treated as having been given to the senior officer",

(iii) for "Authority", substitute "Commissioner",

(g) after paragraph (5), insert—

"(5A) If the senior officer does not provide the written notice required under paragraph (5), the Commissioner may refer the misconduct allegation to a misconduct hearing notwithstanding the senior officer's failure to provide the written notice.",

(h) in paragraph (8), for "Authority", substitute "Commissioner",

(i) in paragraph (9), for "Authority", substitute "Commissioner".

Witnesses

20. In regulation 17 (witnesses)—

(a) in paragraph (1)—

(i) at the beginning, insert "Subject to any directions given at any misconduct pre-hearing under regulation 18A(5)",

(ii) in sub-paragraph (a), for "Authority", substitute "chairing member of the panel appointed in accordance with regulation 18(2)(a)",

(iii) in head (i) of sub-paragraph (a)—

(aa) for "Authority", substitute "Commissioner",

(bb) omit "together with brief details of the evidence each witness is able to adduce",

(iv) in head (i) of sub-paragraph (b)—

(aa) for "Authority", substitute "chairing member of the panel",

(bb) omit "together with brief details of the evidence each witness is able to adduce",

(v) in head (ii) of sub-paragraph (b), for "Authority", substitute "chairing member of the panel",

(b) in paragraph (2)—

(i) for "Authority", substitute "chairing member of the panel",

(ii) after "paragraph (1)", insert "or identified in accordance with any direction given under regulation 18A(5)(b)",

(c) after paragraph (2), insert—

"(3) Where a witness is to give evidence, the chairing member of the panel may, where satisfied that it is appropriate for the effective participation of the witness or for the efficient conduct of proceedings, take any of the following steps—

(a) allow such other persons to be present during the witness's evidence as appears reasonable having regard to the circumstances (and, in particular, a parent or guardian may be permitted to attend where the witness is a child),

(b) permit the witness to participate in the hearing by live television link or other suitable remote means, or from behind a screen, or with a supporter present, or by any combination of such measures,

(c) direct that the witness give evidence in private,

(d) make such other provision for the taking of the witness's evidence as the chairing member of the panel considers necessary to secure the effective giving of evidence.

(4) The chairing member of the panel may take any of the steps mentioned in paragraph (3) only where satisfied that doing so would not give rise to a significant risk of prejudice to the fairness of the proceedings or otherwise to the interests of justice.

(5) For the purposes of this regulation, "child" means a person under the age of 18 years.".

Public notification of misconduct hearing

21. After regulation 17 (witnesses), insert—

"**Public notification of misconduct hearing**

17A.—(1) The chairing member of the panel appointed in accordance with regulation 18(2)(a) may require the Authority to give notice of the misconduct hearing which contains information relating to one or more of—

(a) the name of the senior officer,

(b) the date of the hearing,

(c) the time of the hearing,

(d) the location 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 and as set out in the misconduct form given under regulation 16(2).

(2) Where the chairing member of the panel requires notice to be given in accordance with paragraph (1), the Authority must publish the notice on its website as soon as practicable—

(a) after notice of the hearing is given in a misconduct form issued under regulation 16(2), or

(b) where a misconduct pre-hearing takes place, after the date, time and location of the misconduct hearing have been confirmed.

(3) Any person to whom this paragraph applies may make written representations to the chairing member of the panel in relation to—

(a) whether, and if so the extent to which, the chairing member of the panel should exclude any person from the whole, or part, of the hearing under regulation 21(4)(a),

(b) whether the chairing member of the panel should impose any conditions under regulation 21(4)(b),

(c) whether the chairing member of the panel should give directions prohibiting the publication of any matter relating to the proceedings under regulation 21(4)(c),

(d) in light of representations made under sub-paragraphs (a) to (c)—

(i) whether the chairing member of the panel should require notice to be given under paragraph (1),

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

(4) Paragraph (3) applies to—

(a) the senior officer,

(b) where the proceedings have arisen out of a complaint made by a member of the public, a constable, a member of the Authority's staff or a member of police staff, the person who made the complaint,

(c) any witness, and

(d) the Commissioner.

(5) Any written representations made in accordance with paragraph (3) must be provided no later than the date specified by the chairing member of the panel for provision of such representations.

(6) The chairing member of the panel must notify each person listed in paragraph (4) of the date by which any written representations under paragraph (3) must be provided.".

Appointment of panel

22. For regulation 18 (appointment of panel), substitute—

"**Appointment of panel**

18.—(1) Where the Commissioner refers a case to a misconduct hearing under regulation 16, a panel of 3 individuals must be appointed to conduct the misconduct hearing.

(2) A panel under paragraph (1) must comprise—

(a) a chairing member, appointed by the Lord President from the legal members of the First-tier Tribunal, and

(b) two members appointed by the Authority—

(i) one member who is a senior expert in policing,

(ii) one independent lay member, who the Authority considers has the appropriate skills, knowledge and expertise to serve on the panel.

(3) The senior expert in policing must not previously have worked directly with the senior officer.

(4) The Lord President, or the Authority, as appropriate, may not appoint to a panel—

(a) a member of the Authority,

(b) a member of the Authority's staff,

(c) a member of any committee of the Authority established under paragraph 9(1) of schedule 1 of the Act,

(d) any individual whose appointment could give rise to a reasonable concern as to whether that individual could act impartially in relation to the misconduct hearing.

(5) An individual appointed to serve on the panel must declare to the person appointing them any conflicts of interest which may arise from appointment to a panel.

(6) The chairing member of the panel may appoint up to two individuals to act as assessors to assist the panel.

(7) An assessor appointed under paragraph (6) may provide the panel with such advice and assistance as the panel requests, but may not otherwise participate in the proceedings.

(8) Where a panel has been constituted under this regulation, a determination of the panel—

(a) is valid if made by a majority,

(b) must not disclose whether it was unanimous or by a majority.

(9) The Authority must pay panel members such remuneration and allowances as the Authority, with the approval of the Scottish Ministers, determines.

(10) In this regulation, "legal member" means an individual holding membership of the First-tier Tribunal in accordance with section 15(2) of the Tribunals (Scotland) Act 2014(**a**).".

Role of chairing member of the panel of misconduct hearing

23. After regulation 18 (appointment of panel), insert—

"**Role of chairing member of the panel of misconduct hearing**

18A.—(1) The chairing member of the panel appointed under regulation 18(2)(a) must take appropriate action to ensure the efficient and effective bringing of proceedings and that proceedings are conducted in a timely, fair and transparent manner.

(2) In particular, and subject to paragraph (3), the chairing member of the panel must ensure that the first day of the misconduct hearing is not more than 100 working days later than the date on which the misconduct form is treated as having been given to the senior officer in accordance with regulation 16(4A).

(3) Where the chairing member of the panel considers that it would be in the interests of justice to do so, the chairing member of the panel may extend the period of 100 working days specified in paragraph (2).

(**a**) 2014 asp 10.

(4) Failure to comply with the time limits in paragraphs (2) and (3) does not invalidate the proceedings.

(5) The chairing member of the panel must decide, before the end of 6 working days beginning with the date on which the investigator's report and related documents are received by the chairing member of the panel in accordance with regulation 18B, whether to conduct a misconduct pre-hearing, in order to agree directions in advance of the misconduct hearing, and to determine any outstanding issues relating to—

(a) the date, time and location of the misconduct hearing as notified in the misconduct form given under regulation 16(2),

(b) any lists of witnesses and which, if any, witnesses should attend the misconduct hearing,

(c) any documents or other information supplied under regulation 14,

(d) any procedural or preliminary legal arguments or points of law raised which the chairing member of the panel considers appropriate to be dealt with at the misconduct pre-hearing,

(e) disclosure of documents, and

(f) any representations on exclusion from or conditions on attendance at the misconduct hearing, or prohibitions on publication of matters considered at the misconduct hearing.

(6) At the misconduct pre-hearing, the chairing member of the panel may give such directions as the chairing member considers appropriate for the fair, efficient and timely conduct of the proceedings.

(7) Directions given under paragraph (6) are binding on the parties and the panel unless varied or revoked by the chairing member of the panel.

(8) The chairing member of the panel may vary or revoke a direction where satisfied that it is in the interests of justice to do so.

(9) A misconduct pre-hearing—

(a) must be—

(i) conducted by the chairing member of the panel alone,

(ii) held in private, and

(b) may be attended by the senior officer and the Commissioner (including any representative of either).

(10) 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 chairing member of the panel.

(11) Where the chairing member of the panel decides to hold a misconduct pre-hearing, the chairing member of the panel must, as soon as practicable, and subject to any reasonable alternative date and time proposed by the senior officer, give reasonable notice to the senior officer and the Commissioner of the date, time, expected duration and location of the misconduct pre-hearing.

(12) Where a person entitled to attend a misconduct pre-hearing has been given reasonable notice in accordance with paragraph (11) but fails to attend, the chairing member of the panel may proceed with the misconduct pre-hearing in that person's absence.

(13) Where the chairing member of the panel decides to conduct a misconduct pre-hearing, the pre-hearing must be held as soon as reasonably practicable, having regard to the duty under paragraph (1) and the time limit specified in paragraph (2).

(14) Within the period of 5 working days beginning with the date of the misconduct pre-hearing, the chairing member of the panel must serve on the parties—

(a) a summary of the key matters discussed at the misconduct pre-hearing, and

(b) a record of any directions issued,

which must include details of any witness lists agreed by the parties and any determinations and directions made as to the witnesses who are to give evidence at the misconduct hearing.

(15) For the purposes of this regulation, "the parties" means the senior officer and the Commissioner and any representatives of the same.

Documents to be supplied

18B.—(1) Not more than 10 working days from the date on which the senior officer complied with regulation 16(5), the Commissioner must supply the chairing member of the panel appointed under regulation 18(2)(a) with a copy of—

(a) any documents given to the senior officer under regulation 16(2) and (4),

(b) any documents provided by the senior officer under regulation 16(5), (6) and (7).

(2) Where the senior officer has not complied with regulation 16(5), the Commissioner must, as soon as reasonably practicable, supply the chairing member of the panel with a copy of the documents referred to in paragraph (1)(a).".

Procedure at misconduct hearing

24. In regulation 19 (procedure at misconduct hearing)—

(a) for paragraph (2), substitute—

"(2) At the misconduct hearing the chairing member of the panel must permit—

(a) evidence to be heard from any witness,

(b) the Commissioner to address the proceedings, and the Commissioner must do so for the purpose of—

(i) presenting the case against the senior officer,

(ii) responding to any view expressed at the proceedings, and

(iii) addressing the panel on any matter arising under these Regulations and, subject to paragraph (3), questioning any witnesses,

(c) the senior officer, or their representative, to address the proceedings in order to—

(i) present the case of the senior officer,

(ii) respond to any view expressed at the proceedings, and

(iii) address the panel on any matter arising under these Regulations and, subject to paragraph (3), question any witnesses.

(2A) Where the Commissioner is required to address the proceedings under paragraph (2)(b), the Commissioner may be represented by a solicitor or advocate.",

(b) for paragraph (4), substitute—

"(4) The chairing member of the panel may permit the admission of documents (including written statements) in lieu of oral evidence where satisfied that doing so would not prejudice the fairness of the proceedings, having given the senior officer an opportunity to make representations.",

(c) in paragraph (6), sub-paragraph (d), for "interview", substitute "misconduct hearing".

Proceedings in senior officer's absence

25. In regulation 20 (proceedings in senior officer's absence), in paragraph (1)—

(a) after "reasonable,", insert "including the senior officer's welfare,",

(b) for "video link or other suitable means", substitute "live television link or other suitable remote means".

Attendance of third parties

26. For regulation 21 (attendance of third parties), substitute—

"Reporting restrictions, participation and exclusions from misconduct hearing

21.—(1) Subject to paragraph (4), the misconduct hearing must be held in public.

(2) The investigator, or suitable replacement with sufficient knowledge of the investigation to be able to answer questions, must attend the misconduct hearing at the request of the chairing member of the panel to answer questions.

(3) Where the misconduct hearing has arisen from a complaint made by a member of the public, a constable, a member of the Authority's staff or a member of police staff, the chairing member of the panel must notify that individual of the date, time and location of that hearing.

(4) Having considered any representations received under regulations 17A(3) and 18A(5)(f), the chairing member of the panel 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 part of it,

(b) impose such conditions as they see fit relating to the attendance 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.

(5) Where it appears to the chairing member of the panel that any person may, in giving evidence, disclose information, being information to which paragraph (6) applies, which ought not to be disclosed to any person attending the proceedings (other than a party to the proceedings) the chairing member must require such attending persons to withdraw while the evidence is given.

(6) This paragraph applies to information insofar as the chairing member of the panel 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 for the purpose of the prevention or detection of crime, or the apprehension or prosecution of offenders,

(c) necessary for the purpose of the prevention or detection of misconduct by other constables or police staff,

(d) necessary and proportionate for the protection of the welfare and safety of any informant or witness, or

(e) otherwise in the public interest.".

Determination

27. In regulation 22 (determination),

(a) in paragraph (1)—

(i) in sub-paragraph (b), for "Authority", substitute "Commissioner",

(ii) in sub-paragraph (c), for "Authority", substitute "Commissioner",

(b) in paragraph (4), for "the Authority may", substitute ", the panel must determine whether the Authority is to".

Disciplinary action

28. In regulation 23 (disciplinary action)—

(a) in paragraph (3)—

(i) omit sub-paragraph (a),

(ii) in sub-paragraph (d), for "Authority", substitute "panel",

(b) in paragraph (4), for "neither a verbal warning nor a written warning may be given", substitute "a further written warning may not be given",

(c) for paragraph (5), substitute—

"(5) Where, on the date of the determination under regulation 22(1)(b), the senior officer was subject to a final written warning which was in effect, neither a written warning nor a final written warning may be given.",

(d) for paragraphs (7) and (8), substitute—

"(7) A written warning or final written warning remains in effect—

(a) in the case of a written warning, for a period of 18 months from the date on which it is given, or

(b) in the case of a final written warning, for a period of 2 years from the date on which it is given.

(8) Where a final written warning is given under paragraph (3)(c), the period in paragraph (7)(b) may be extended by a panel conducting any subsequent misconduct hearing to a maximum period of 5 years.".

Notification of determination and action to be taken

29. For regulation 24 (notification of determination and action to be taken), substitute—

"**Notification of determination, action to be taken and publication**

24.—(1) The chairing member of the panel must, as soon as reasonably practicable and not later than 10 working days from the date of conclusion of the misconduct hearing, submit a report to the Authority setting out—

(a) the determination of the panel under regulation 22(1),

(b) the reasons for the determination,

(c) what improvement or disciplinary action is to be taken, and

(d) where it was determined that the conduct of the senior officer amounted to gross misconduct but the disciplinary action imposed was not dismissal without notice, the reasons for that decision.

(2) Before the report under paragraph (1) is submitted to the Authority, the chairing member of the panel must, having regard to paragraph (4), consider, separately in relation to—

(a) submission to the Authority,

(b) disclosure to the senior officer,

(c) disclosure to any person under paragraph (7), and

(d) publication under paragraph (9),

whether any information contained in the report should be withheld, redacted or anonymised.

(3) Where the chairing member of the panel determines that information should be withheld, redacted or anonymised for any purpose specified in paragraph (2), the chairing member of the panel must—

(a) record the reasons for that determination, including the category of disclosure to which it applies, and

(b) ensure that the appropriate version of the report is prepared and used for that purpose.

(4) In considering the matters mentioned in paragraph (2), the chairing member of the panel may produce different versions of the report where the chairing member of the panel considers this to be necessary and proportionate, having regard to—

(a) the nature of the information concerned,

(b) the purpose of the disclosure,

(c) the rights and interests of any data subject.

(5) A report submitted to the Authority under paragraph (1) must—

(a) in a case where a written warning has been given, explain the effect of regulation 23(4) in relation to any future misconduct allegation,

(b) in a case where a final written warning has been given, explain the effect of regulation 23(5), (6) and (7) in relation to such an allegation,

(c) include notice of the senior officer's right to appeal the decision of the panel to impose disciplinary action to the First-tier Tribunal under section 56(1) or (1A) of the Act and the procedure for making such an appeal.

(6) As soon as practicable after receiving the report, the Authority must notify the senior officer of the outcome of the misconduct hearing by providing a copy of the report, subject to such withholding, redaction or anonymisation as the chairing member of the panel considers necessary in accordance with paragraph (2)(b).

(7) The Authority must provide a copy of the report to—

(a) the Commissioner,

(b) where the misconduct hearing arose from a complaint made by a member of the public, a constable, a member of the Authority's staff or a member of police staff, the person who made the complaint,

subject to such withholding, redaction or anonymisation as the chairing member of the panel considers necessary in accordance with paragraph (2)(c).

(8) In determining what information may be withheld, redacted or anonymised for the purposes of paragraph (7), the chairing member of the panel must have particular regard to whether the information—

(a) comprises personal data relating to the senior officer or any other individual which is not necessary to enable the recipient to understand the outcome and reasoning of the panel, or

(b) relates to private or personal circumstances which do not materially affect the determination or disciplinary outcome.

(9) Subject to paragraph (11), the chairing member of the panel must require the Authority to publish a version of the report.

(10) In relation to publication, the chairing member of the panel may only withhold, redact or anonymise information in the report—

(a) insofar as the chairing member of the panel considers this is—

(i) necessary for the purpose of preventing the premature or inappropriate disclosure of information that is relevant to, or may be used in, criminal proceedings,

(ii) necessary for the purpose of the prevention or detection of crime, or the apprehension or prosecution of offenders,

(iii) necessary for the purpose of the prevention or detection of misconduct by other constables or police staff,

(iv) necessary and proportionate for the protection of the welfare and safety of any informant or witness,

(v) otherwise in the public interest, and

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

(11) The chairing member of the panel may dispense with the duty to require publishing of the report under paragraph (9) where, having regard to the matters set out in paragraph (10), the chairing member of the panel considers publication to be inappropriate in the particular circumstances of the case.

(12) In making a decision under paragraph (11), the chairing member of the panel may have regard to any representations made during the misconduct hearing.

(13) Information that has already lawfully been published during the course of the proceedings may not be withheld, redacted or anonymised for the purposes of publication under this regulation.

(14) Where the Authority is required to publish the report under paragraph (9), it must do so—

(a) as soon as practicable after the senior officer is notified under paragraph (6),

(b) on its website for a period of 28 days.".

Accelerated Misconduct Hearings

30. After Part 3 (misconduct hearings), insert—

"PART 3A

Accelerated Misconduct Hearings

General

24A. Any time period specified in this Part in relation to an accelerated misconduct hearing may be reduced by agreement between the Commissioner and the chairing member of the panel appointed in accordance with regulation 24H(2)(a).

Referral of case to accelerated misconduct hearing

24B.—(1) Subject to paragraph (2), after receipt of the investigator's report under regulation 14(1), the Commissioner may at any time determine whether the special conditions specified in paragraph (4) are satisfied.

(2) Where the case is referred to a misconduct hearing, the Commissioner must not make a determination under paragraph (1) on or after the date of the misconduct hearing.

(3) On receipt of a statement submitted by the investigator under regulation 14(4), the Commissioner must determine whether the special conditions are satisfied.

(4) 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 senior officer constitutes gross misconduct, and

(b) it is in the public interest for the senior officer to cease to hold office without delay.

(5) In a case where a misconduct hearing or an accelerated misconduct hearing has been suspended or postponed by virtue of regulation 7(1), as soon as practicable after—

(a) the appropriate prosecutor intimates to the Commissioner that criminal proceedings are not to be brought in respect of any matter mentioned in the misconduct allegation, or

(b) any criminal proceedings which have been brought have been concluded,

the Commissioner 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.

(6) Where the Commissioner determines that the special conditions are satisfied, unless the Commissioner considers that the circumstances are such as to make it inappropriate to do so, the Commissioner must certify the case as one where the special conditions are satisfied and refer it to an accelerated misconduct hearing.

(7) Where the Commissioner 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,

the Commissioner 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 regulation 15 and Part 3.

(8) Where the Commissioner is to proceed in accordance with regulation 15 and Part 3, regulation 15(1) must be read as if the words "Subject to regulation 24B, on receipt of the investigator's report," were omitted.

(9) In this regulation, "appropriate prosecutor" has the same meaning as in regulation 7.

Remission of case

24C.—(1) At any time after the case has been referred to an accelerated misconduct hearing but before the beginning of that hearing, the Commissioner may direct that the case be dealt with in accordance with regulation 15 and Part 3 if the Commissioner considers that the special conditions are no longer satisfied.

(2) Where a direction is made under paragraph (1), the senior officer must be notified before the end of 4 working days beginning with the date on which that direction is made and the Commissioner must proceed in accordance with regulation 15 and Part 3.

(3) Where the Commissioner is to proceed in accordance with regulation 15 and Part 3, regulation 15(1) must be read as if the words "Subject to regulation 24B, on receipt of the investigator's report," were omitted.

Notice of referral to accelerated misconduct hearing

24D.—(1) Where a case is certified under regulation 24B(6) as one where the special conditions are satisfied and referred to an accelerated misconduct hearing, the Commissioner must, unless paragraph (2) applies, as soon as practicable give the senior officer notice of these matters and must supply the senior officer with a copy of—

(a) the certificate issued under regulation 24B(6),

(b) any statement or written representations the senior officer may have made to the investigator during the course of the investigation,

(c) the investigator's report (together with any document attached to or referred to in that report as relates to the senior officer), and

(d) any other relevant document obtained during the course of the investigation.

(2) This paragraph applies where the Commissioner considers that preventing the disclosure of any document mentioned in paragraph (1) is—

(a) necessary to avoid prejudicing current or future criminal proceedings,

(b) necessary for the purpose of the prevention or detection of crime or the apprehension or prosecution of offenders,

(c) necessary for the purpose of the prevention or detection of misconduct by other constables or police staff,

(d) necessary and proportionate for the protection of the welfare and safety of any informant or witness, or

(e) otherwise in the public interest.

(3) Where any document is withheld by virtue of the application of paragraph (2), the Commissioner must, so far as is reasonably possible without prejudicing any of the matters mentioned in that paragraph, provide the senior officer with a summary of the content of that document.

(4) The notice given under paragraph (1) must—

(a) describe the conduct that is the subject matter of the case and how that conduct is alleged to amount to gross misconduct,

(b) specify that the Commissioner will address the proceedings under regulation 24L(5),

(c) notify the senior officer of the effect of regulations 4 and 5,

(d) notify the senior officer of the right to seek advice from a staff association.

(5) For the purposes of paragraph (1), a notice is to be treated as having been given to the senior officer—

(a) if given to the senior officer in person, on the date on which it is given,

(b) if sent to the senior officer by email or by any other means of electronic communication, on the date on which it is sent,

(c) if left with a person at the senior officer's last known address, on the date on which it is left,

(d) if sent to the senior officer's last known address by first class post using a recorded delivery service or any other postal service which provides for recorded delivery the next working day, on the second working day after the date on which it is sent.

(6) Where a notice is required to be given to the senior officer under paragraph (1), it may instead be given to—

(a) a police representative chosen by the senior officer in accordance with regulation 4, or

(b) a legal representative acting for the senior officer in accordance with regulation 5,

and any such giving is to be treated for the purposes of this regulation (including paragraph (5)) as giving the notice to the senior officer.

Notice of accelerated misconduct hearing

24E. The chairing member of the panel appointed in accordance with regulation 24H(2)(a) 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 24D(1) and must as soon as practicable—

(a) notify the senior officer of the date, time and place of that hearing, and

(b) notify the senior officer of the effect of regulations 4 and 5 in relation to an accelerated misconduct hearing,

(c) notify the senior officer of the names of the persons appointed to the panel in accordance with regulation 24H(1).

Public notification of accelerated misconduct hearing

24F.—(1) The chairing member of the panel may require the Authority to give notice of the hearing which contains information relating to one or more of—

(a) the name of the senior officer,

(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 24D(1).

(2) Where the chairing member of the panel requires notice to be given in accordance with paragraph (1), the Authority must publish the notice on its website as soon as practicable after notice of the hearing is given under regulation 24E(1).

(3) Any person to whom this paragraph applies may make written representations to the chairing member of the panel in relation to—

(a) whether, and if so the extent to which, the chairing member of the panel should exclude any person from the whole or part of the hearing under regulation 24K(2)(a),

(b) whether the chairing member of the panel should impose any conditions under regulation 24K(2)(b),

(c) whether the chairing member of the panel should give directions prohibiting the publication of any matter relating to the proceedings under regulation 24K(2)(c),

(d) in light of the representations made under sub-paragraphs (a) to (c)—

(i) whether the chairing member of the panel 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 senior officer,

(b) where the proceedings have arisen out of a complaint made by a member of the public, a constable, a member of the Authority's staff or a member of police staff, the person who made the complaint, and

(c) the Commissioner.

(5) Any written representations made in accordance with paragraph (3) must be provided no later than the date specified by the chairing member of the panel for provision of such representations.

(6) The chairing member of the panel must notify each person listed in paragraph (4) of the date by which any written representations under paragraph (3) must be provided.

Procedure on receipt of notice

24G.—(1) Before the end of 8 working days beginning with the date on which the senior officer is notified in accordance with regulation 24D(1), the senior officer must give the Commissioner and the chairing member of the panel—

(a) written notice of whether or not they accept that 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 chairing member of the panel,

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

(2) If the senior officer does not provide the written notice required under paragraph (1)(a) to (d), the Commissioner may refer the misconduct allegation to an accelerated misconduct hearing notwithstanding the senior officer's failure to provide the written notice.

Appointment of panel

24H.—(1) Where a case is—

(a) certified under regulation 24B(6) as one where the special conditions are satisfied, and

(b) referred to an accelerated misconduct hearing,

a panel of 3 individuals must be appointed to conduct the accelerated misconduct hearing.

(2) A panel under paragraph (1) must comprise—

(a) a chairing member, appointed by the Lord President from the legal members of the First-tier Tribunal, and

(b) two members appointed by the Authority—

(i) one member who is a senior expert in policing, and

(ii) one independent lay member, who the Authority considers has the appropriate skills, knowledge and expertise to serve on the panel.

(3) The senior expert in policing must not previously have worked directly with the senior officer.

(4) The chairing member of the panel must take appropriate action to ensure the efficient and effective bringing of proceedings and that they are conducted in a timely, fair and transparent manner.

(5) An individual appointed to serve on the panel must declare to the person appointing them any conflicts of interest which may arise from appointment to a panel.

(6) The Lord President, or the Authority, as appropriate, may not appoint to a panel—

(a) a member of the Authority,

(b) a member of the Authority's staff,

(c) a member of any committee of the Authority established under paragraph 9(1) of schedule 1 of the Act,

(d) any individual whose appointment could give rise to a reasonable concern as to whether that individual could act impartially in relation to the misconduct hearing.

(7) The chairing member of the panel may appoint up to two individuals to act as assessors to assist the panel.

(8) An assessor appointed under paragraph (7) may provide the panel with such advice and assistance as the panel requests, but may not otherwise participate in the proceedings.

(9) Where a panel has been constituted under this regulation, a determination of the panel—

(a) is valid if made by a majority,

(b) must not disclose whether it was unanimous or by a majority.

(10) The Authority must pay panel members such remuneration and allowances as the Authority, with the approval of the Scottish Ministers, determines.

(11) In this regulation, "legal member" means an individual holding membership of the First-tier Tribunal in accordance with section 15(2) of the Tribunals (Scotland) Act 2014(**a**).

(**a**) 2014 asp 10.

Documents to be supplied

24I. As soon as reasonably practicable prior to the accelerated misconduct hearing, the Commissioner must supply the chairing member of the panel with a copy of—

(a) the notice given to the senior officer under regulation 24D(1),

(b) the other documents given to the senior officer under regulation 24D(1), and

(c) the documents provided by the senior officer under regulation 24G(1).

Proceedings in senior officer's absence

24J.—(1) Where the senior officer informs the chairing member of the panel that the senior officer is unable to attend the accelerated misconduct hearing on grounds which the chairing member considers to be reasonable, including the senior officer's welfare, the chairing member may permit the senior officer to participate in the proceedings by live television link or other suitable remote means.

(2) Paragraph (3) applies where the senior officer—

(a) participates in the accelerated misconduct hearing in accordance with paragraph (1), or

(b) otherwise does not attend that hearing.

(3) Where this paragraph applies—

(a) the senior officer may be represented at the accelerated misconduct hearing by the senior officer's police representative, an advocate or a solicitor, and

(b) the hearing may proceed and conclude in the senior officer's absence, whether or not the senior officer is so represented.

Reporting restrictions, participation and exclusions from accelerated misconduct hearing

24K.—(1) Subject to paragraph (2), an accelerated misconduct hearing must be held in public.

(2) Having considered any representations received under regulation 24F(3), the chairing member of the panel 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 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 it appears to the chairing member of the panel that any person may, in giving evidence, disclose information, being information to which paragraph (4) applies, which ought not to be disclosed to any person attending the proceedings (other than a party to the proceedings) the chairing member must require such attending persons to withdraw while the evidence is given.

(4) This paragraph applies to information insofar as the chairing member of the panel 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 for the purpose of the prevention or detection of crime, or the apprehension or prosecution of offenders,

(c) necessary for the purpose of the prevention or detection of misconduct by other constables or police staff,

(d) necessary and proportionate for the protection of the welfare and safety of any informant or witness, or

(e) otherwise in the public interest.

(5) Where the accelerated misconduct hearing has arisen from a complaint made by a member of the public, a constable, a member of the Authority's staff or a member of police staff, the chairing member of the panel must notify the person who made the complaint of the date, time and location of that hearing.

Procedure at accelerated misconduct hearing

24L.—(1) Subject to the following paragraphs of this regulation, the chairing member of the panel is to determine the procedure at the accelerated misconduct hearing.

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

(3) Subject to paragraph (4), no witnesses other than the senior officer may give evidence at the accelerated misconduct hearing and the chairing member of the panel must determine whether and by whom the senior officer can be questioned.

(4) The investigator, or suitable replacement with sufficient knowledge of the investigation to be able to answer questions, must attend the accelerated misconduct hearing at the request of the chairing member of the panel to answer questions.

(5) The Commissioner must address the proceedings for the purpose of—

(a) presenting the case against the senior officer,

(b) responding to any view expressed at the proceedings, and

(c) addressing the panel on any matter arising under these Regulations.

(6) Where the Commissioner is required to address the proceedings under paragraph (5), the Commissioner may be represented for that purpose by a solicitor or advocate.

(7) The senior officer, or their representative, may address the proceedings in order to—

(a) present the case of the senior officer,

(b) respond to any view expressed at the proceedings, and

(c) address the panel on any matter arising under these Regulations.

(8) An audio recording may be made of the accelerated misconduct hearing and, where such a recording is made, the senior officer must be provided with a copy of that recording as soon as reasonably practicable after the conclusion of the hearing.

(9) Where no audio recording is made under paragraph (8), a written record of the accelerated misconduct hearing must be prepared and—

(a) the chairing member of the panel must provide a draft of that record to the senior officer,

(b) the senior officer must be given the opportunity to make representations in relation to that draft,

(c) the chairing member of the panel must consider any representations made, and

(d) having considered those representations, if any, the chairing member of the panel must send the final written record of the accelerated misconduct hearing to the senior officer.

Determination and disciplinary action

24M.—(1) At the conclusion of the accelerated misconduct hearing, the panel must—

(a) determine whether the conduct which is the subject matter of the misconduct allegation is the conduct of the senior officer,

(b) determine whether it is established that any conduct of the senior officer amounts to gross misconduct.

(2) A determination under paragraph (1) is to be made on the balance of probabilities.

(3) Where the panel has determined that the conduct of the senior officer does not amount to gross misconduct, the panel may—

(a) dismiss the case, or

(b) return the case to be dealt with in accordance with regulation 15 and Part 3.

(4) Where the panel has determined that the conduct of the senior officer amounts to gross misconduct, the panel must impose disciplinary action which, subject to the provisions of this regulation, may be—

(a) a final written warning,

(b) dismissal with such notice as the panel may specify, or

(c) dismissal without notice.

(5) Where, on the date of the determination under paragraph (1)(b), the senior officer was subject to a final written warning which was in effect, a final written warning may not be given.

(6) A final written warning remains in effect for a period of 2 years from the date on which it is given.

(7) Where a final written warning is given under paragraph (4)(a), the period in paragraph (6) may be extended by a panel conducting any subsequent accelerated misconduct hearing to a maximum period of 5 years.

Notification of outcome and publication

24N.—(1) The chairing member of the panel must, as soon as reasonably practicable and not later than 10 working days from the date of conclusion of the accelerated misconduct hearing, submit a report to the Authority setting out—

(a) the determination of the panel under regulation 24M(1),

(b) the reasons for the determination,

(c) any disciplinary action imposed under regulation 24M(4), and

(d) where it was determined that the conduct of the senior officer amounted to gross misconduct but the disciplinary action imposed was not dismissal without notice, the reasons for that decision.

(2) Before the report is submitted to the Authority, the chairing member of the panel must, having regard to paragraph (4), consider, separately in relation to—

(a) submission to the Authority,

(b) disclosure to the senior officer,

(c) disclosure to any person under paragraph (7), and

(d) publication under paragraph (9),

whether any information contained in the report should be withheld, redacted or anonymised.

(3) Where the chairing member of the panel determines that information should be withheld, redacted or anonymised for any purpose specified in paragraph (2), the chairing member of the panel must—

(a) record the reasons for that determination, including the category of disclosure to which it applies, and

(b) ensure that the appropriate version of the report is prepared and used for that purpose.

(4) In considering the matters mentioned in paragraph (2), the chairing member of the panel may produce different versions of the report where the chairing member of the panel considers this to be necessary and proportionate, having regard to—

(a) the nature of the information concerned,

(b) the purpose of the disclosure,

(c) the rights and interests of any data subject.

(5) A report submitted to the Authority under paragraph (1) must—

(a) in a case where a final written warning has been given, explain the effect of regulation 24M(5), (6) and (7) in relation to any future misconduct allegation,

(b) include notice of the senior officer's right to appeal the decision of the panel to impose disciplinary action to the First-tier Tribunal under section 56(1) or (1A) of the Act and the procedure for making such an appeal.

(6) As soon as practicable after receiving the report, the Authority must notify the senior officer of the outcome of the accelerated misconduct hearing by providing a copy of the report, subject to such withholding, redaction or anonymisation as the chairing member of the panel considers necessary in accordance with paragraph (2)(b).

(7) The Authority must provide a copy of the report to—

(a) the Commissioner,

(b) where the accelerated misconduct hearing arose from a complaint made by a member of the public, a constable, a member of the Authority's staff or a member of police staff, the person who made the complaint,

subject to such withholding, redaction or anonymisation as the chairing member of the panel considers necessary in accordance with paragraph (2)(c).

(8) In determining what information may be withheld, redacted or anonymised for the purposes of paragraph (7), the chairing member of the panel must have particular regard to whether the information—

(a) comprises personal data relating to the senior officer or any other individual which is not necessary to enable the recipient to understand the outcome and reasoning of the panel, or

(b) relates to private or personal circumstances which do not materially affect the determination or disciplinary outcome.

(9) Subject to paragraph (11), the chairing member of the panel must require the Authority to publish a version of the report.

(10) In relation to publication, the chairing member of the panel may only withhold, redact or anonymise information in the report—

(a) insofar as the chairing member of the panel considers this is—

(i) necessary for the purpose of preventing the premature or inappropriate disclosure of information that is relevant to, or may be used in, criminal proceedings,

(ii) necessary for the purpose of the prevention or detection of crime, or the apprehension or prosecution of offenders,

(iii) necessary for the purpose of the prevention or detection of misconduct by other constables or police staff,

(iv) necessary and proportionate for the protection of the welfare and safety of any informant or witness, or

(v) otherwise in the public interest, and

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

(11) The chairing member of the panel may dispense with the duty to require publishing of the report under paragraph (9) where, having regard to the matters set out in paragraph (10), the chairing member of the panel considers publication to be inappropriate in the particular circumstances of the case.

(12) In making a decision under paragraph (11), the chairing member of the panel may have regard to any representations made during the accelerated misconduct hearing.

(13) Information that has already lawfully been published during the course of the proceedings may not be withheld, redacted or anonymised for the purposes of publication under this regulation.

(14) Where the Authority is required to publish the report under paragraph (9), it must do so—

(a) as soon as practicable after the senior officer is notified under paragraph (6),

(b) on its website for a period of 28 days.".

Appeals

31. For Part 4 (appeals), substitute—

"Part 4

Appeals

Decisions appealable under section 56 of the Act

25.—(1) For the purposes of section 56(1) and (1A) of the Act, a decision of the panel under—

(a) regulation 23(2)(b), or

(b) where applicable, regulation 24M(4),

is to be treated as the decision against which an appeal to the First-tier Tribunal lies.

(2) The date on which the senior officer is sent the report under regulation 24(6), or as the case may be, regulation 24N(6), is to be treated as the date on which that decision is made.".

Expenses

32. For regulation 28 (Expenses), substitute—

"**Expenses**

28.—(1) Subject to paragraph (2), all reasonable expenses incurred by the senior officer in connection with any misconduct hearing, or as the case may be, accelerated misconduct hearing (including reasonable expenses incurred in the course of preparing for either hearing) are to be met by the Authority.

(2) The Authority is not liable to pay any legal expenses incurred by the senior officer in connection with any misconduct hearing, or as the case may be, accelerated misconduct hearing, to the extent that such legal expenses are payable under any private insurance policy accessible by the senior officer.

(3) Any expenses payable by virtue of paragraph (1) may be subject to taxation in such manner as the Scottish Ministers direct.

(4) The Authority may reimburse any other expenses reasonably incurred by the senior officer in connection with proceedings under these Regulations.".

PART 3

Consequential, transitional and saving provision

Consequential amendments

33. Schedule 1 makes consequential amendments.

Transitional and saving provisions

34. Schedule 2 makes transitional and saving provisions.

NEIL GRAY
A member of the Scottish Government

St Andrew's House,
Edinburgh
29th September 2026

SCHEDULE 1

Regulation 33

Consequential amendments

Amendment of the First-tier Tribunal for Scotland General Regulatory Chamber (Police Appeals) (Procedure) Regulations 2025

1.—(1) The rules in the schedule of the First-tier Tribunal for Scotland General Regulatory Chamber (Police Appeals) (Procedure) Regulations 2025(**a**) are amended as follows.

(2) In rule 1 (interpretation)—

(a) Before the definition of "appeal", insert—

""accelerated misconduct hearing" means—

(a) in the case of an appellant who is not a senior officer, a hearing which the appellant was required to attend pursuant to Part 3A of the 2014 Conduct Regulations, or

(b) in the case of an appellant who is a senior officer, a hearing which the appellant was required to attend pursuant to Part 3A of the 2013 Senior Officers Conduct Regulations,",

(b) in the definition of "appeal", after "section 56(1)" insert "or (1A)",

(c) in the definition of "decision", after "section 56(1)" insert "or (1A)",

(d) in the definition of "misconduct hearing"—

(i) in sub-paragraph (a), omit "or",

(ii) in sub-paragraph (b), after "Regulations," insert "or",

(iii) after sub-paragraph (b), insert—

"(c) an accelerated misconduct hearing conducted under Part 3A of—

(i) the 2014 Conduct Regulations, or

(ii) the 2013 Senior Officers Conduct Regulations,",

(e) in the definition of "the respondent", in sub-paragraph (b), after "section 56(1)" insert "or (1A)".

(3) In rule 6(3)(b) (notice of appeal), in head (ii), for "regulation 24(1)", substitute "regulation 24(1) or, as the case may be, regulation 24N(1)".

(4) In rule 7(2) (reply by the respondent)—

(a) in sub-paragraph (c)—

(i) in head (ii), omit "and",

(ii) omit head (iii),

(b) after sub-paragraph (c), insert—

"(ca) where the disputed decision was made following an accelerated misconduct hearing under Part 3A of the 2013 Senior Officers Conduct Regulations, a certified copy of—

(i) the notice given under regulation 24D(1) (notice of referral to accelerated misconduct hearing),

(ii) the audio recording made under regulation 24L(8), or, where no audio recording is made, the written record made under regulation 24L(9), and

(iii) the notice of outcome sent under regulation 24N(6),".

(**a**) S.S.I. 2025/384 as amended by S.S.I. 2026/34 and S.S.I. 2026/46.

Amendment of the Police Service of Scotland (Vetting) Regulations 2026

2.—(1) The Police Service of Scotland (Vetting) Regulations 2026(**a**) are amended as follows.

(2) In regulation 2 (interpretation), for the definition of "the Conduct Regulations", substitute—

""the Conduct Regulations" means the 2013 Regulations and the 2014 Regulations,".

(3) In regulation 13 (conduct or performance proceedings), in paragraph (4)(a), for "regulation 8 of the 2013 Regulations", substitute "regulation 7B of the 2013 Regulations".

(4) In regulation 15 (preliminary assessment), in paragraph (4)(c), for "the Authority", substitute "the Police Investigations and Review Commissioner".

(**a**) S.S.I. 2026/46.

SCHEDULE 2

Regulation 34

Transitional and saving provisions

Transitional and saving provisions

1.—(1) Despite the amendments made by these Regulations, the Senior Officers' Conduct Regulations(**a**) continue to have effect on and after 26 November 2026 as they had effect immediately before that date, in cases where—

(a) it can reasonably be inferred from a report, allegation or complaint made before 26 November 2026 that any conduct of a senior officer to whom those Regulations applied may amount to misconduct and any proceedings under those Regulations in relation to that report, allegation or complaint have not been concluded before that date,

(b) it can reasonably be inferred from a report, allegation or complaint made on or after 26 November 2026 that any conduct of a senior officer to whom those Regulations applied occurring before that date may amount to misconduct.

(2) In paragraph (1), "misconduct" has the meaning given by regulation 2, and schedule 1, of the Senior Officers' Conduct Regulations as they had effect immediately before 26 November 2026.

(**a**) S.S.I. 2013/62 as amended by section 3 of the Police (Ethics, Conduct and Scrutiny) (Scotland) Act 2025 (asp 5), S.S.I. 2014/68 and S.S.I. 2020/453.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013 ("the 2013 Regulations"), which make provision for the procedures to be followed where the conduct of a senior officer of the Police Service of Scotland is alleged to amount to misconduct or gross misconduct.

Part 1 makes provision on the citation, commencement and interpretation of these Regulations. Part 2 (regulations 3 to 32) amends the 2013 Regulations.

Regulation 4 amends the interpretation provisions in regulation 2 of the 2013 Regulations by omitting, modifying, substituting and inserting a number of defined terms, including new definitions for accelerated misconduct hearings, misconduct pre-hearings, special conditions and trauma-informed practice, and by replacing the definition of "senior officer" to address cases where a constable is subsequently promoted to senior officer after the conduct occurred.

Regulation 5 amends regulation 3 so that the 2013 Regulations apply to conduct of a constable below the rank of assistant chief constable occurring on or after 26 November 2026 where the constable is subsequently promoted, on a permanent or temporary basis, to the rank of senior officer or was temporarily promoted at the time of the conduct.

Regulations 6 and 7 amend regulations 4 and 5 of the 2013 Regulations to prevent a police representative or legal representative from answering questions on behalf of a senior officer, and to extend the right to legal representation to misconduct pre-hearings and accelerated misconduct hearings.

Regulation 8 amends the suspension provisions in regulation 6 of the 2013 Regulations, including providing a new power for the Police Investigations and Review Commissioner ("the Commissioner") to recommend suspension to the Scottish Police Authority ("the Authority") and updated suspension conditions requiring consideration of temporary redeployment as an alternative to suspension.

Regulation 9 amends regulation 7 of the 2013 Regulations to transfer responsibility for certain decisions relating to alleged criminal offences from the Authority to the Commissioner.

Regulation 10 inserts new regulations 7A to 7G into the 2013 Regulations. These create a new statutory framework within which all misconduct allegations must be referred to the Commissioner for assessment. They replace the previous preliminary assessment by the Authority with a new assessment by the Commissioner, and make provision for joint investigations where allegations concern both a senior officer and a constable subject to the Police Service of Scotland (Conduct) Regulations 2014. The new provisions require a written joint investigation strategy, regulate joint interviews, and provide for information-sharing while preserving the separate statutory roles and procedural safeguards under both sets of conduct regulations.

Regulations 11 to 14 omit regulations 8 to 11 of the 2013 Regulations, removing the previous preliminary assessment by the Authority and the Authority's investigatory functions. Regulation 15 amends regulation 12 of the 2013 Regulations to require further notice of investigation where the investigator's assessment of the seriousness of the conduct changes. Regulation 16 amends the investigator's report provisions in regulation 14 of the 2013 Regulations to require the investigator to submit an early report where the investigator believes the special conditions for an accelerated misconduct hearing may be satisfied, or where new evidence suggests the conduct would not amount to misconduct or gross misconduct. In such cases the Commissioner must reassess the matter and either, where appropriate, bring the investigation to an end, or, where special conditions are satisfied, certify the case and refer it to an accelerated misconduct hearing in accordance with new regulation 24B of the 2013 Regulations.

Regulation 17 amends the provisions relating to referral to a misconduct hearing in regulation 15 of the 2013 Regulations to reflect the Commissioner's new functions. Regulation 18 inserts new regulation 15A into the 2013 Regulations and requires the Commissioner to notify certain

complainants where a misconduct allegation is determined to involve no case to answer, setting out the outcome and reasons, subject to limited exceptions permitting information to be withheld or restricted in the public interest.

Regulation 19 amends the arrangements for misconduct hearings in regulation 16 of the 2013 Regulations, including updated disclosure obligations, rules on when a misconduct form is treated as received, and provision enabling a hearing to proceed notwithstanding the senior officer's failure to provide written notice in response to the misconduct form.

Regulation 20 amends regulation 17 of the 2013 Regulations to allow measures that support the effective participation of witnesses, including remote evidence, the use of screens, allowing for a supporter or giving evidence in private, where this can be done without prejudicing the fairness of proceedings. Regulation 21 inserts new regulation 17A into the 2013 Regulations allowing the public notification of misconduct hearings, and for representations to the panel chair.

Regulation 22 substitutes the existing provisions on appointment of panels in regulation 18 of the 2013 Regulations with updated arrangements whereby the Lord President appoints a legally qualified chairing member and the Authority appoints the other panel members. Regulation 23 inserts new regulations 18A and 18B into the 2013 Regulations, governing the role of the chairing member of the panel, including the power to hold misconduct pre-hearings and to manage procedural matters in advance of a hearing within specified time limits. Regulation 24 amends the procedure at misconduct hearings set out in regulation 19 of the 2013 Regulations, including requiring the Commissioner to present the case against the senior officer. Regulation 25 amends regulation 20 of the 2013 Regulations to permit the senior officer to attend remotely in certain circumstances. Regulation 26 replaces regulation 21 of the 2013 Regulations on attendance of third parties with new provision establishing public hearings, subject to powers to exclude persons, impose conditions, or prohibit publication where necessary. Regulation 27 makes minor amendments to regulation 22 of the 2013 Regulations on determinations.

Regulation 28 amends the disciplinary action provisions in regulation 23 of the 2013 Regulations to remove verbal warnings, to revise the periods for which written and final written warnings remain in effect, and to provide for the period of a final written warning to be extended up to a maximum of five years. Regulation 29 substitutes regulation 24 of the 2013 Regulations to revise the arrangements for notification and publication following misconduct hearings.

Regulation 30 inserts a new Part 3A (regulations 24A to 24N) into the 2013 Regulations, establishing accelerated misconduct hearings. These regulations make provision for certification of cases where special conditions are met, for the giving of notice, for the conduct of the hearing, for the disciplinary actions available, including dismissal without notice, and for publication of the report prepared in relation to the accelerated misconduct hearing.

Regulation 31 substitutes Part 4 (Appeals) of the 2013 Regulations to prescribe that appeals under section 56(1) or (1A) of the Police and Fire Reform (Scotland) Act 2012 lie to the First-tier Tribunal against panel decisions to impose disciplinary action following a misconduct or accelerated misconduct hearing, and specifies when such decisions are to be treated as made for the purposes of an appeal.

Regulation 32 substitutes regulation 28 of the 2013 Regulations, making provision for the payment by the Authority of reasonable expenses incurred by a senior officer in connection with misconduct and accelerated misconduct hearings. It provides that legal expenses covered by a private insurance policy accessible by the senior officer are not payable by the Authority. The regulation also provides for the taxation of expenses and permits the Authority to reimburse other reasonable expenses incurred in connection with proceedings under the 2013 Regulations.

Part 3, together with schedules 1 and 2, contains consequential amendments, including amendments to the First-tier Tribunal for Scotland General Regulatory Chamber (Police Appeals) (Procedure) Regulations 2025 and the Police Service of Scotland (Vetting) Regulations 2026, and transitional and saving provisions ensuring that cases relating to conduct occurring before 26 November 2026 continue to be dealt with under the legislation in force immediately before that date.

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