

Complaints Against the Police in Scotland

A CONSULTATION PAPER

Foreword



The Police in Scotland have a vital role in making Scotland a country where people are safer and feel safer. They prevent and detect crime, and provide support and security for our citizens and communities. They also carry out their duties against an increasingly complex legal background, sometimes in the most difficult of circumstances and at great personal danger.

For the police to be effective, it is vital that the public have confidence in them. An important element of this confidence is that the public can expect any complaint about the behaviour of the police to be thoroughly investigated and, if upheld, action taken.

The Scottish Executive's response to the Macpherson Report on the murder of Stephen Lawrence (*The Stephen Lawrence Inquiry: An action plan for Scotland*, July 1999) recognised that concerns existed among the public about the perceived lack of independence in the present system of investigating complaints against the police. Subsequently, I indicated that a further independent element in relation to police procedures would be desirable both in the public interest and in the interests of the police. This consultation paper considers how to enhance the independence of the police complaints system.

A handwritten signature in black ink that reads "Jim Wallace". The signature is written in a cursive style and is underlined with a single horizontal stroke.

Jim Wallace MSP
Deputy First Minister and Minister for Justice
July 2001

Introduction

1. This consultation paper puts forward proposals for enhancing the independence of the police complaints system.
2. Part I of the paper explores the existing system in Scotland for the making and investigation of complaints against the police. Part II examines the current processes for external examination of the complaints processes and the avenues open to the dissatisfied complainer. Part III discusses how greater independence might be introduced into the supervision and investigation of police complaints in Scotland.
3. The paper also addresses recommendations made in the report by Her Majesty's Inspector of Constabulary – *A Fair Cop?* – on the police complaints system in Scotland, published in April last year. This suggested that the key elements of any police complaints system were independence, impartiality, effectiveness and accessibility. The report concluded that the police service in Scotland investigates the overwhelming majority of complaints against its officers with thoroughness, impartiality and integrity. However, it also found that the independent role of the Procurator Fiscal in dealing with criminal allegations was poorly understood, that some complainers found it hard to get complaints registered by the police and that a small number of complaints were not investigated properly by the police.
4. In reviewing systems for dealing with police complaints in other countries, *A Fair Cop?* suggested that Scotland's current system was around the centre of a range from self-regulation to independent regulation and indicated ways in which the role of independent regulation in Scotland might be strengthened. As such, it provides a valuable background to this consultation paper and should be read together with it (it is published on the Scottish Executive Website and is also available from the Stationery Office). Some of the recommendations and suggestions made in the Report are reiterated in this paper; the others are complementary to the measures proposed here. A summary of the recommendations, and those responsible for action is at Annex I.
5. The consultation paper contains a number of questions on which Scottish Ministers invite opinions. General comments on the paper and the subject are also welcome. Responses should be sent by **12 October 2001** to:

Gerald Byrne
Scottish Executive Justice Department
Saughton House
Edinburgh
EH11 3XD

Or by e-mail to Gerald.Byrne@scotland.gsi.gov.uk

Responses may be published unless respondees make clear they wish their response to remain private.

PART 1: The Current System

Legislative framework

6. The procedures for handling complaints against the police in Scotland are regulated by statute, principally the Police (Scotland) Act 1967, the Police (Conduct)(Scotland) Regulations 1996 and the Police (Conduct) (Senior Officers) (Scotland) Regulations 1999.
7. The 1967 Act allows Scottish Ministers to make regulations governing conduct matters; enables a dissatisfied complainant to ask Her Majesty's Inspectorate of Constabulary (HMIC) to review the case; and requires police authorities and HMIC to keep themselves informed about the handling of complaints by forces. The Regulations under the Act (see Annexes II and III) set up a system for dealing with misconduct by police officers. These regulations are relevant when a complaint against the police consists of an allegation of misconduct against an individual officer. They do not set up a system that deals with complaints about the quality of service provided by the police or the force as a whole. Hence the view, quoted in *A Fair Cop?*, that the police "do not have a process for dealing with complaints. They have an internal discipline system...".
8. At present complaints against officers up to and including the rank of (Chief) Superintendent are the responsibility of the Deputy Chief Constable. (Legislation will shortly be brought forward to reinstate the ranks of Chief Superintendent and Deputy Chief Constable in statute. In the interim, as all forces currently designate an Assistant Chief Constable to act as Deputy, the term Deputy Chief Constable is used for convenience throughout this paper.) Any investigation and hearing is dealt with by the force concerned, although the Deputy Chief Constable may ask another force to investigate if that seems necessary. Where a criminal offence may have been committed, the matter must be reported to the Regional Procurator Fiscal who will investigate and determine whether there should be criminal proceedings. Where a complaint is made against a chief officer, it is the responsibility of the police authority to handle the complaint. Any investigation is undertaken by the Chief Constable of another force and any hearing is chaired by an independent person. Criminal allegations, however, would be a matter for the Regional Procurator Fiscal to investigate, regardless of the rank of the officer involved.

What is a complaint against the police?

9. Just over 2,000 complaints are registered annually in Scotland, of which about 40 per cent allege assault. The balance is distributed equally between procedural irregularity, incivility, neglect of duty and oppressive conduct or harassment. Complaints can be divided between those that allege misconduct and those that allege the commission of a criminal offence. The Police (Conduct) (Scotland) Regulations 1996 and the Police (Conduct) (Senior Officers) (Scotland) Regulations 1999 both apply to:

a report, allegation or complaint from which it may be reasonably inferred that an act or omission, or an alleged act or omission, of a constable of the force concerned amounts to or may amount to misconduct.

Misconduct is defined in the Regulations as:

1. *Conduct likely to bring discredit on the police force or service, including:*
 - (a) *insubordination or incivility;*
 - (b) *corrupt practice;*
 - (c) *breach of confidence;*
 - (d) *drinking any intoxicating liquor while on duty or being unfit for duty through such liquor;*
 - (e) *suppression of complaints;*
 - (f) *wilful or careless damage to, or loss of, property belonging to the police authority or within the care of the police;*
 - (g) *disorderly conduct; or*
 - (h) *acting towards, or treating, any person in an oppressive or improper manner.*
2. *Failure to comply, without good and sufficient cause, with a lawful order.*
3. *Failure to report any matter which it is the senior officer's duty to report or to account for any act or omission in the ordinary course of duty which he has a duty to account for.*
4. *Neglect of duty.*
5. *Wilful or careless falsehood.*
6. *Malingering.*
7. *Being absent from duty, or being late for duty, without leave.*
8. *Contravention of regulation 5 of, or Schedule 1 to, the Police (Scotland) Regulations 1976.*
9. *Having been found guilty by a criminal court of a criminal offence in any part of the United Kingdom or in any of the Channel Islands or the Isle of Man.*

Where the matter relates to:

a report, allegation or complaint from which it may be reasonably inferred that a constable of a police force may have committed a criminal offence,

the Regulations provide that the matter must be referred to the Procurator Fiscal as soon as possible.

10. There are two groups of staff in the police service not covered by the above: special constables and civilian employees. *A Fair Cop?* recognised the different employment conditions of police support staff and special constables and recommended that Chief Constables, the Scottish Executive and the Police Support Staff Council (Scotland) develop a code covering complaints against police staff who are not regular constables (Recommendation 10). Allegations of criminal conduct against special constables and civilian staff would be investigated in the same way by the Regional Procurator Fiscal as allegations against police officers. But there are no specific regulations concerning

complaints against police support staff who make up almost one third of all "police" employees, sometimes in a front line role. This raises questions about the access given to complainants in the case of such staff some of whom will have direct contact with members of the public in the course of their duties.

Q1: Are the current descriptions of a complaint in regulations adequate?

Q2: Should there be one complaints system that includes all police staff or is there a need for separate arrangements for dealing with complaints against Special Constables and civilian employees?

The Initial Response

11. Reporting a complaint against the police can take a variety of forms. Most frequently, the complaint will arise from alleged police action or inaction. Complainers will telephone, call in person or write, sometimes through a third party, to make their complaint. Force instructions exist to register these complaints, which in general require the completion of an internal report form for complaints made verbally. Written complaints stand in their own right.
12. A practical response to minor complaints is encouraged (see paragraph 20 below for what constitutes "minor"). The rationale is that complainers may receive the most satisfactory resolution of their concern if they can get a prompt explanation as to what occurred, with an apology if appropriate. However, while this may result in an outcome which is wholly satisfactory to the complainer, informal and immediate conciliation can result in the matter not being registered as a formal complaint. HMIC therefore recommended that all communications to police forces which infer an allegation of criminal behaviour or misconduct by police officers be recorded as complaints against the police for statistical purposes (Recommendation 3). But this could be regarded as over-bureaucratic and could discourage use of local reconciliation mechanisms. There is also a question about how instructions on recording complaints should be given to the police, whether by forces, from the Association of Chief Police Officers in Scotland (ACPOS) or by the Executive.

Q3: Do we need national guidance to emphasise the need for records to be kept of all complaints, even where these are minor and resolved quickly by informal means?

13. Ease of access is also an important issue. Complainants must know to whom they should complain, how to make the complaint and whom to contact if they wish to raise questions about how the complaint is being dealt with. It is the responsibility of individual forces to ensure they operate an accessible complaints system, although the Executive also issues a leaflet called "Complaints against the police" (reproduced at Annex IV). The need to complain directly to the Chief Constable of the force, or at a police station, can put people off and can also raise immediate doubts about the impartiality of the system. HMIC therefore recommended in *A Fair Cop?* that Chief Constables develop and publicise means of recording a complaint against the police which allows much wider opportunities and choices to a potential complainer (Recommendation 4). HMIC mention such bodies as Citizen Advice Bureau, the Commission for Racial Equality and police authorities, as well as the possibility of making a complaint through the Internet.

Q4: Would national accessibility guidance, which encouraged the adoption of a range of ways for people to make a complaint, be beneficial?

Categorising Complaints

14. Conduct complained of may vary widely in its gravity and relevance to police duties and not all complaints need be dealt with in the same way. The current regulations create, in effect, three categories of conduct: (i) minor or trivial, (ii) serious and (iii) criminal. It should be noted that these categories do not allow for a wider failure by a force to meet acceptable standards in carrying out its duties.

Criminal allegations

15. Around half the complaints made annually (ie just over 1,000) in recent years have involved criminal allegations. In any case where an act of **criminality** is alleged or inferred, the matter must be reported quickly through the Deputy Chief Constable to the Regional Procurator Fiscal who has a particular role in complaints against the police. Early intervention may be important to ensure evidence is protected and witnesses identified, and in some cases the police will make limited initial enquiries into the allegation in order to preserve and enhance the information that can be provided to the Regional Procurator Fiscal. This action can of course be taken because police are on duty continuously on every day of the week. The Regional Procurator Fiscal, who works to Crown Office instructions on the handling of complaints against the police (see Annex V), will determine whether to accept or reject the referral and seek a further police report. Occasionally directions will be given or sought in relation to particular lines of enquiry. The conduct of the investigation is the responsibility of the Regional Procurator Fiscal and in certain cases the Regional Procurator Fiscal may decide to conduct further enquiries using an outside force or without involving the police at all.
16. If the reference is accepted by the Regional Procurator Fiscal as inferring an allegation of criminal conduct, an enquiry officer will be appointed to conduct a criminal investigation. In some forces, the enquiry officer will simultaneously be appointed as an 'Investigating Officer' within the terms of the Regulations to investigate any misconduct issues arising out of the allegation. Some complaints may involve allegations that cover both criminal and misconduct issues. Where reports into criminal allegations and potential misconduct are made at the same time, consideration of the misconduct issues may be deferred until the criminal issues have been dealt with by the Regional Procurator Fiscal or the Crown Office.
17. On receipt of the report into the criminal allegation, the Regional Procurator Fiscal will continue consideration of the matter, referring cases of substance or which may justify prosecution to the Crown Office for direction. The Regional Procurator Fiscal may provide a copy of the complainant's police statement and ask the witnesses if they have any comments, amendments or additions to suggest or alternatively whether they would prefer to be interviewed. In most cases meriting further investigation however, the Regional Procurator Fiscal will arrange to precognosce the complainant and other important witnesses. Over the last three years about twenty cases a year have gone forward to criminal proceedings, resulting in four convictions in total.

18. If it is decided not to take criminal proceedings, the Regional Procurator Fiscal will write to inform the complainer of the decision, intimating that the Deputy Chief Constable will also be advised, so that consideration can be given to misconduct issues. On occasions, the Regional Procurator Fiscal will make reference to any particular aspect of the behaviour of the subject officers, when it appears that these should be considered by the Deputy Chief Constable in determining how to dispose of the case.
19. We consider that these arrangements ensure the independence and rigour in dealing with complaints of a criminal nature. One area for improvement identified by HMIC was the police response to requests by the procurator fiscal for investigation by an outside force. HMIC recommended that chief constables formalise arrangements for the investigation of complaints by external forces in a way which ensures that the requirements of the fiscal service can be met on every occasion (Recommendation 2). The Executive is pursuing this recommendation with ACPOS. In addition, there are acknowledged shortcomings in keeping victims informed where criminal investigation and criminal proceedings are involved. Scottish Ministers are addressing these through improvements in victim information schemes and these may have a particularly important contribution to make in improving the handling of cases which allege criminal conduct by police officers. In addition, as a result of a parallel thematic review carried out by the Crown Office, improvements have been made to the frequency and extent of information provided to complainers during the progress of the case.

Non-criminal minor or trivial complaints

20. In **non-criminal** cases, the Police (Conduct)(Scotland) Regulations 1996 provide for the Deputy Chief Constable to put in place arrangements to deal with **minor and trivial** complaints – that is the alleged misconduct is of a nature which would be unlikely to merit a misconduct hearing – which can be brought to a conclusion at a local level. Local managers should identify the actual subject of complaint, establish what actually occurred, and seek conciliation by explanation if possible. Although supervising officers directly responsible for managing the officer(s) involved may enquire into the matter, the complainer should usually be satisfied that his or her complaint has been fully looked into by someone of appropriate seniority. If the local enquiry reveals that the matter is not minor or trivial it should be referred to the Deputy Chief Constable. The complainer should be informed of the outcome of the examination of his/her complaint at a local level. Where the matter is referred to the Deputy Chief Constable on the basis that the initial examination suggests that the matter is of a more serious nature, the Deputy Chief Constable can decide that, on examining the issue, the matter is in fact minor or trivial and, if appropriate, arrange for it to be dealt with by way of a formal warning. If, however, the Deputy Chief Constable agrees that the matter is not minor or trivial, an Investigating Officer must be appointed, as under paragraph 21, or, if the matter appears to be criminal, referred to the Regional Procurator Fiscal, as under paragraph 15.

Non-criminal serious complaints

21. Where the **non-criminal** allegation as reported is evidently **serious**, it should be immediately referred to the Deputy Chief Constable who must appoint an "Investigating Officer" who should be independent of the officer(s) against whom the allegation is made, and of at least the rank of Inspector. The Investigating Officer defined as "independent" should not be serving in the same branch or sub-division and reports directly to the Deputy Chief Constable.

22. As in criminal cases, the Deputy Chief Constable may decide that serious misconduct cases should not be investigated by officers of the force. In these cases, the Deputy Chief Constable may seek the assistance of investigators from another force. The report will still be made to the Deputy Chief Constable of the host force. Where a complaint involves a chief officer, the police authority must appoint the Chief Constable of another force as investigating officer where it considers that an inquiry into the complaint is required.
23. On receipt of the Investigating Officer's report and, where appropriate, once any consideration of criminal proceedings has been concluded by the Regional Procurator Fiscal, the Deputy Chief Constable will consider the case. If the complaint is upheld the options are to conclude the matter with a warning to the officer involved, or to refer the matter to a misconduct hearing chaired by an independent officer of at least Superintendent rank. Alternatively, the Deputy Chief Constable may decide that the findings of the investigation merit no further action against the officer, or that the most appropriate course is one of counselling or retraining for the officer concerned. Where the complaint is against a chief officer, the hearing would be chaired by an independent person.
24. In a misconduct hearing evidence is led by both sides, witnesses may be called, including the complainer, and in some situations legal representation is allowed. The hearing will reach a decision, apply the test of the balance of probability and, if misconduct is found to have occurred, potential action includes dismissal, a requirement to resign, reduction in rank, reduction in rate of pay, imposition of a fine, a reprimand or a caution.
25. There is an appeal from a finding of the Hearing Chairman in the first instance to the Chief Constable, and thereafter to the Police Appeals Tribunal where dismissal, reduced rank or resignation are involved.

Keeping the Complainer Informed

26. As the investigation into the complaint progresses, it is good practice to keep the complainer regularly informed as to the progress being made. This is sometimes done by the officer dealing with the complaint, and more formally by the Deputy Chief Constable. If the complaint proceeds to a Misconduct Hearing, the complainer and other witnesses may be asked to attend to give evidence. Where an officer denies the allegations, the Chairman of the Hearing may allow the complainer to be present while witnesses are giving evidence.
27. Once the examination and consideration of the complaint has been concluded, it is also good practice for the complainer to be given an explanation as to the findings. Often this will be done personally by the officer dealing with the complaint, in some cases there may be a meeting at a more senior level.
28. It is important that the public can have confidence that any complaint which they may wish to make will be taken seriously. It is accepted that, to some, the prospect of making a complaint against the police will seem like a further ordeal on top of the stresses of whatever incident had prompted the police involvement in the first instance. Although some progress has been made in simplifying the reporting process, a new complaints process should ensure that the methods of complaining about police actions which offer ease of access are made widely available.

29. A recurring theme in the dissatisfaction of complainers about the police complaints system relates to the brevity of the final letter, and the resultant feeling that their complaint has not been properly considered. There appears to be a view that police forces have traditionally been circumspect about publicly acknowledging failings of individuals or processes. There will be a variety of reasons why this might be the case. At the very least, it may be assessed that a minimalist response might best serve the long-term interests of the force if it reduces the amount of "material" available to support subsequent court actions whether these are justified or not. A balance has to be achieved however if the price paid for this approach is a risk of discrediting the whole complaints process. HMIC made particular reference to the importance of the final letter in *A Fair Cop?* and suggested that letters to complainers should be comprehensive, free of jargon and, where appropriate, contain a brief précis of the investigating officer's report.

Quality of Service/System failure complaints

30. The remaining category of complaint relates to quality of service or system failure issues. There have been varying practices as to the recording of these allegations as they do not necessarily fit the description of individual misconduct, act or omission. For example, a delay in response time or the provision of access to information may be a problem to do with in-force systems or policy rather than the action of an individual officer. These are often described as quality of service issues. In the view of the complainer they still involve a complaint against the police, but the misconduct regulations do not apply.
31. HMIC considered this matter and recommended that Chief Constables agree and publish national guidelines for addressing communications made to police forces which, while appearing to constitute "complaints" within the conventional meaning of the word, do not primarily fall within the statutory definition set out in the Regulations. The guidelines should encompass counting rules, investigation procedures and the rights of complainers (Recommendation 11). It may be more appropriate for the Executive to address this subject than Chief Constables. HMIC also saw value in a more direct involvement of police authority members in overseeing and auditing the process by which such complaints are addressed.

Q5: Should the complaints involving quality of service issues be subject to formal procedures covering their recording, investigation and conclusion which are separate from those involving alleged misconduct?

PART II: Scrutiny of the Complaints Process and the Dissatisfied Complainer

32. Responsibility for scrutiny of the way in which police forces handle complaints falls both to the police authority and HM Inspectorate of Constabulary. Both have general responsibility under statute to satisfy themselves as to the way in which complaints are handled by the Chief Constable.
33. The practice of Police Authorities in the past has been simply to examine the 'Complaints Book' kept by forces on a regular basis. More recently, there has been a more robust approach taken, with a dedicated Police Authority sub-committee examining complaints files at random.
34. HM Inspectorate of Constabulary, and in particular HM Lay Inspector of Constabulary who has a singular remit in this regard, examine complaints handling processes as part of the annual inspection process. In addition, by virtue of the Police and Magistrates' Courts Act 1994, the Police (Scotland) Act 1967 was amended to give HM Inspectors of Constabulary a responsibility to examine the handling of specific complaints at the request of a dissatisfied complainer. Around 40 such requests are made annually. This power does not extend to re-investigation of the complaint or the interview of witnesses, but consists of an examination of the work done by the force in dealing with the complaint. Decisions taken by the Regional Procurator Fiscal and Crown Office are beyond the remit of review by HMIC.
35. Requests for clarification of detail will often lead to the force engaging in further work on the complaint, and in some cases, a formal investigation is undertaken for the first time. As a last resort, where HMIC remains dissatisfied with the way in which the complaint has been handled by a force, the Chief Constable can be directed to re-examine the complaint. In such cases, the Scottish Ministers and the Police Authority are advised that such a direction has been made. In any event, HMIC reports the finding of the re-examination of the complaint to the complainer and a copy of the correspondence is sent to the Police Authority for their information.
36. HMIC considered the role of the police authorities and the Inspectorate itself in *A Fair Cop?*. HMIC noted examples of good practice, for example, a publication by an authority offering members of the public the opportunity to make complaints through any member of the authority and detailing investigations into allegations against the force's police officers over a three year period and the outcome of these cases. Overall, however, HMIC concluded that, taken as a whole, police authorities exhibited a disappointingly low profile in respect of complaints against police officers. HMIC suggested that COSLA and the Scottish Executive jointly consider the role of police authorities in carrying out their statutory function in dealing with complaints, with a view to producing national guidance on good practice. Meanwhile authorities should review their own procedures in the light of their own experience and that of others. Our view on the future involvement of police authorities is discussed further at paragraph 43 below. The Executive will be pursuing the question of guidance on good practice with COSLA.

37. HMIC also considered whether the role of the Inspectorate in reviewing complaints could be developed to strengthen the democratic oversight provided by police authorities. As a result, HMIC proposed that in the future it makes police authorities aware of the final outcomes of those complaints examined by the Inspectorate. HMIC suggested that the outcome of a review by the Inspectorate should at least be formally noted by the appropriate committee of the authority.

Legal Action

38. While not covered by police regulations, it is open to the complainant to take legal action against a force in relation to a complaint. As well as conventional civil claims (for example, personal injury), under the Human Rights Act, individuals may seek remedy in domestic courts for infringements of their rights by public authorities. Such infringements may begin as a complaint against the police. HMIC considered that, in the context of complaints against the police, actions raised against forces can help highlight problems in a force's performance. HMIC suggested that forces establish procedures to analyse civil claims in a way which allows learning opportunities to be fed back into the operational environment.

PART III: Options for change

39. *A Fair Cop?* provides some analysis of systems utilised to manage complaints against the police in other countries. While each has its own strengths, there was no one particular approach that appeared ideal to adopt as a model for Scotland, particularly given the role and responsibility of the Crown for criminal investigation.
40. This section attempts to describe the key elements of a comprehensive system, against which comparisons might be made with the existing arrangements. The key elements of such a system would include:–
- (a) a clearly independent element so that complainants are assured that complaints are dealt with or reviewed impartially;
 - (b) a capacity to resolve minor complaints quickly and effectively;
 - (c) openness in relation to the findings of the conduct investigation;
 - (d) regular communication with the complainant so that they know what action is being taken;
 - (e) demonstrable and proportionate thoroughness and objectivity in the way the complaint is considered and dealt with;
 - (f) compliance with the ECHR;
 - (g) monitoring and review procedures, and
 - (h) a means for ensuring that procedures work effectively and, so far as is possible, to the satisfaction of all involved
41. The Criminal Justice System in Scotland provides a well-established process for the independent consideration of allegations of criminal conduct. **We propose that there should be no changes made to the independent investigation/oversight of the alleged criminal actions of police staff by the Regional Procurator Fiscal.**
42. For non-criminal complaints, or for those the Regional Procurator Fiscal has decided not to pursue, at present the independent element is provided in the review of the complaints systems by the involvement through statute of police authorities and HMIC, particularly HM Lay Inspector. The responsibilities of HMIC to a dissatisfied complainer additionally provide considerable scrutiny of investigations, often re-igniting relevant lines of enquiry. Notwithstanding the role of the police authority and HMIC, the view persists that independence in the investigation is lacking.
43. We do not consider that giving a greater role to HMIC will lead to change in the public perception about the independence of the complaints process. Similarly, providing police authorities with additional responsibilities to become involved with the complaints process will do little to instil a perception of strengthened independence. Indeed, they already have a more involved role in respect of Chief Officer conduct issues, and there is no indication that public satisfaction is any greater or less with the way these are handled. **We propose therefore that: (a) the achievement of a greater independent element in the Police Complaints process should not be through the greater involvement of either HMIC or police authorities; (b) HMIC and police authorities should maintain their respective efficiency and management roles by the general review of the handling of complaints; and (c) a different body should deal with complainers.** Issues relating to these alternatives are explored below.

44. There are two main potential models for such an independent model in the police complaints process:
 - an Ombudsman to look into the investigation of complaints, with a role wider than that currently undertaken by HMIC.
 - a new independent Police Complaints Body with responsibility for handling all complaints in the first instance. Thus all complaints made would either be made to, or directly referred to, the new body to deal with.
45. The key differences in these approaches are the stage at which the independent element becomes actively involved in the process, and the impact that has. The Ombudsman option would enable any such body to stand apart from the processing and investigation of a complaint, allowing it to act as a fully independent judge of the complaints process.
46. The independent Police Complaints body option would be actively involved in the processing and potentially the investigation of complaints. In those cases where a complainant was dissatisfied with the complaints process, the latter option would mean the new body would have to review its own actions and decisions, subject to scrutiny by the Scottish Parliament Ombudsman and the Courts.

An Ombudsman-type body

47. The Ombudsman type body need not be restricted to the traditional role of examining maladministration in response to dissatisfied complainants, but could also be involved in an overview capacity in the handling of all non-criminal complaints. A public profile in sensitive cases could add to the confidence of the public that not only would the Regional Procurator Fiscal be considering the case from a criminal perspective, but that after that stage, independent scrutiny would continue until the point at which the Deputy Chief Constable considers the report. A comprehensive system of oversight might require that the body should be notified of:
 - all complaints at the time they are recorded
 - the results of any investigation
 - the solution proposed
 - the response to the complainant
 - where a hearing is convened, the body should be able to be present in the role of observer to ensure that the proceedings are conducted fairly and impartially
 - where a force declines to take any action in response to a complaint, the complainant would have a right of appeal to the body
 - where a complainant is dissatisfied with the solution proposed by a force or any action taken in dealing with a complaint, he or she may apply to the new authority for a review.

The body would have a number of options including:

- inquiring into the conduct of the complaint procedure
- ordering a fresh investigation
- requesting a force or authority to review its decision with a view to altering this in the light of any further inquiries.

In addition, the body might be given a supervisory role in relation to further investigation following an application for review, by overseeing the fresh investigation for which it would have powers to appoint and direct police officers to assist it. Finally, the Ombudsman could carry out "random testing" of the measures taken to address individual complaints to help ensure high standards.

Q6: Would changes of this kind strengthen the independent element sufficiently to remove grounds for doubts about the complaints system?

An independent Police Complaints body

48. An alternative would be to give a new body responsibility for handling all complaints in the first instance. Thus all complaints made would either be made directly or referred to the new body to deal with. Subject to this, there are various options as follows:
- (1) the new body might determine whether there was a prima facie case for an investigation and then refer the matter to the police to deal with broadly as at present. It could however also undertake the supervisory role described at paragraph 47 above; or
 - (2) the new body would refer less serious complaints to the police to deal with, but supervise the investigation of serious complaints, referring those involving criminal allegations to the Regional Procurator Fiscal. Its findings in relation to complaints involving misconduct would be referred to the police authority to deal with; or
 - (3) the new body would supervise investigations into all complaints, or
 - (4) the new body would undertake its own investigations into serious or all complaints.
49. Option (1) would introduce an independent element into the registering of complaints and determining whether an investigation was required. Option (2) would introduce an independent element into the supervision of the investigation of serious complaints, providing an opportunity for the authority to provide early remedies to the complaints most likely to be addressed by mediation and reconciliation where officers have erred in some way. This may be preferable to Option (3) which removes the supervisory responsibility for investigation entirely from senior police officers or the authority, but may risk introducing an element of delay into the handling of all complaints.
50. Options (1) to (3) rely on the use of serving police officers to undertake the investigation, whereas the last option, Option (4) envisages the new body employing its own investigation staff.

Q7: Which of these models would provide the best balance between independent examination of complaints against the police and speedy and efficient investigation?

51. The Scarman Report into the Brixton Riots (1981) recognised that an important element in any complaints system was the capacity to deal with minor complaints quickly and effectively. In any organisation this will best be dealt with locally. The issues can be quickly identified, managers can retain ownership of the problem and it is in their interests to find a quick and satisfactory solution, and the inevitable bureaucracy brought by the systems and checks of an external organisation is avoided.

Q8: Would any of the four variations of an independent police complaints body permit minor complaints to be dealt with rapidly?

52. **Scottish Ministers would welcome views on these various options.** We see both attractions and drawbacks in each of the options detailed above. The key issues relate to the extent of independent involvement which is considered necessary and at which stage of the process, and the impact on effectiveness in terms of time taken and cost.
53. Primary legislation would be required to effect changes of the kind described above. Current procedures are governed mainly by secondary legislation. If a new body were to be created then that body, whatever its remit, would clearly wish to be involved in any important changes to the current regulations. The timing of the introduction of any Bill would depend on the availability of Parliamentary time for its consideration and the Executive's assessment of its priorities for legislation generally. *A Fair Cop?* revealed that there was some dissatisfaction with the current regulations and concern that they may not be fully compliant with the ECHR. We would welcome comments on these, given that it may be feasible to make specific changes in secondary legislation, where these would clearly improve the way complaints are dealt with, ahead of new primary legislation. Likewise *A Fair Cop?* made a number of recommendations which could be implemented without legislation. A full list with the Scottish Executive's comments on these recommendations is attached at Annex I. Again, views would be welcomed on any administrative changes which might be made ahead of any more fundamental reform.

ANNEX I

A FAIR COP? - RECOMMENDATIONS AND SUGGESTIONS

Recommendation	Comment and further action
Recommendation 1 - HMIC recommends that chief constables review the standard letters to complainers and undertake any changes which may assist in making clear the independent investigative role of the fiscal service.	Action for Chief Constables. All forces have now implemented this recommendation.
Recommendation 2 - HMIC recommends that chief constables formalise arrangements for the investigation of complaints by external forces in a way which ensures that the requirements of the fiscal service can be met on every occasion.	Action for Chief Constables and Crown Office. See Paragraph 19 of the consultation paper.
Recommendation 3 - HMIC recommends that all communications to police forces which infer an allegation of criminal behaviour or misconduct by police officers be recorded as complaints against the police for statistical purposes.	Action for Chief Constables. All forces are implementing this recommendations but see Paragraph 12 of the consultation paper.
Recommendation 4 - HMIC recommends that chief constables develop and publicise means of recording a complaint against the police which allows much wider opportunities and choices to a potential complainer.	Action for Chief Constables. Most forces have addressed this recommendation but see Paragraph 13 of the consultation paper.
Recommendation 5 - HMIC recommends that in cases where there is strong evidence of serious misconduct forces move to a formal hearing at the earliest opportunity and that investigations be undertaken in a way which allows this to happen.	Action for Chief Constables. Forces have not yet implemented this recommendation and there may be a need for guidance from ACPOS and the Crown Office.
Recommendation 6 - HMIC recommends that chief constables and the Scottish Executive agree a national code of practice for the investigation of complaints. The code would cover issues such as timescales, the disclosure of information to complainers, Members of Parliament and other interested parties and the use of investigators from outside forces.	The Executive envisages that any independent body set up as a result of this consultation paper would take on this task, in consultation with forces and other interested bodies, as one of its first priorities.

<p>Recommendation 7 - HMIC recommends that chief constables agree broad criteria of principle governing matters which merit different degrees of disciplinary action and that these be published as part of the code of practice referred to at recommendation 6.</p>	<p>See Recommendation 6</p>
<p>Recommendation 8 - HMIC recommends that criteria for suspension and the support available to suspended officers be included in a national code of practice referred to at recommendation 6.</p>	<p>See Recommendation 6</p>
<p>Recommendation 9 - HMIC recommends that chief constables review their arrangements for selecting personnel for complaints departments in order to ensure that the requirements of equal opportunities are being fully met.</p>	<p>Action for Chief Constables. Most forces have implemented this recommendation.</p>
<p>Recommendation 10 - HMIC recommends that chief constables, the Scottish Executive and the Police Support Staff Council (Scotland) develop a code covering complaints against police staff who are not regular constables.</p>	<p>See Paragraph 10 of the consultation paper.</p>
<p>Recommendation 11 - HMIC recommends that chief constables agree and publish national guidelines for addressing communications made to police forces which, while appearing to constitute "complaints" within the conventional meaning of the word, do not primarily fall within the statutory definition set out in the Regulations. The guidelines should encompass counting rules, investigation procedures and the rights of complainers.</p>	<p>See Paragraph 31 of the consultation paper</p>
<p>Recommendation 12 - HMIC recommends that chief constables discuss with the Scottish Executive the need to bring Scotland's national policing organisations within a statutory framework which provides for an effective complaints procedure and clearer lines of accountability in matters of professional conduct. The current review of Scotland's policing structure may provide an opportunity to take this issue forward.</p>	<p>The Executive agrees with this recommendation which will be implemented with any proposals arising from this consultation paper.</p>

<p>Recommendation 13 - HMIC recommends that chief constables, the Scottish Executive and COSLA establish a fair and cost effective policy for dealing with persistent complainers. Any such policy should be published.</p>	<p>The Executive proposes that this is dealt with in the Code of Practice discussed in Recommendation 6.</p>
<p>Recommendation 14 - HMIC recommends that forces schedule complaints investigation to an early review under the Best Value programme and in particular that they should seek savings in the area of investigation support.</p>	<p>Action for Chief Constables. Most forces have implemented this recommendation.</p>
<p>Recommendation 15 - HMIC recommends that the Scottish Executive liaise with the Crown to establish arrangements for the production and publication of an annual report setting out national statistics and trends in complaints against the police in Scotland, supported by objective comment on good practice and remedial action.</p>	<p>The Executive supports this recommendation. Figures are available from HMIC and forces annual reports but the Executive will be examining how it can be made more accessible. In due course the Executive envisages any independent body producing an annual report of this sort.</p>
<p>Recommendation 16 - HMIC recommends that all chief constables prepare, publish and implement a programme for providing adequate secure sound and vision CCTV coverage of custody areas. Such a programme should be targeted to achieve full implementation before the end of 2003.</p>	<p>Action for Chief Constables. Some forces have implemented this recommendation and the others have programmes in preparation.</p>
<p>Recommendation 17 - HMIC recommends that after 6 months of operation the lay visitor scheme be subject to evaluation with a view to chief constables introducing similar arrangements in their police areas.</p>	<p>Action for Chief Constables. Some forces have implemented this recommendation. Others have arrangements in preparation.</p>
<p>Recommendation 18 - HMIC recommends that chief constables liaise with police authorities in order to agree and publish a code of ethical standards for the service based on the "seven principles of public life" (known as the Nolan principles) and implement procedures to ensure that the principles are enforced and their compliance measured.</p>	<p>Action for Chief Constables/ACPOS. Forces are working on this recommendation. The Executive supports this recommendation and will be discussing the way forward with ACPOS.</p>

Suggestion**Comment and further action**

<p>the Scottish Executive, COSLA and ACPOS give further consideration to the regulations dealing with complaints against chief police officers, and in particular seek to clarify the extent to which the 1999 regulations allow a preliminary enquiry prior to full consideration of a complaint or allegation.</p>	<p>See Paragraph 53 of the consultation paper.</p>
<p>COSLA and the Scottish Executive jointly consider the role of police authorities in carrying out their statutory function in dealing with complaints, with a view to producing national guidance on good practice.</p>	<p>See Paragraph 36 of the consultation paper</p>
<p>forces maintain statistical records of letters of appreciation received as an indicator of the good and in some cases exemplary service provided by their officers and other staff.</p>	<p>Action for Chief Constables</p>
<p>chief constables develop common procedures in respect of how disciplinary warnings are administered and the use to which they may be put on a future occasion.</p>	<p>Action for Chief Constables.</p>
<p>it would be good practice for only trained senior officers to chair misconduct hearings.</p>	<p>Action for Chief Constables</p>
<p>ACPOS liaise with the director of the Scottish Police College to consider training for investigating officers appointed under the misconduct regulations.</p>	<p>Action for ACPOS and the Scottish Police College</p>
<p>forces establish procedures to analyse civil claims in a way which allows learning opportunities to be fed back into the operational environment.</p>	<p>Action for Chief Constables. See Paragraph 38 of the consultation paper.</p>
<p>forces set and monitor tight timescales for preliminary enquiries and attempted conciliation. In order to avoid uncertainty as to whether conciliation has been achieved it should be "signed off" in a way which leaves no room for misunderstanding.</p>	<p>Action for Chief Constables.</p>
<p>letters to complainers should be comprehensive, free of jargon and where appropriate contain a brief précis of the investigating officer's report.</p>	<p>Action for Chief Constables. See Paragraph 29 of the consultation paper.</p>

<p>the Scottish Executive commission research into customer expectations and experiences in respect of the police complaints system and that the findings be used to assist in developing some of the procedures and guidelines recommended in this report.</p>	<p>The Executive is considering this suggestion. Our initial view is that such research is not required at the moment but that it might be more appropriate for any future independent body to consider.</p>
<p>forces work towards using the same software, to provide a common level of complaint statistics and management information essential for annual review/analysis.</p>	<p>Action for Chief Constables</p>

ANNEX II

STATUTORY INSTRUMENTS

1996 No. 1642 (S.138)

POLICE

The Police (Conduct) (Scotland) Regulations 1996

Made 19th June 1996

Laid before Parliament 11th July 1996

Coming into force 1st August 1996

The Secretary of State, in exercise of the powers conferred on him by section 26 of the Police (Scotland) Act 1967, and of all other powers enabling him in that behalf, after taking into consideration any representations made by the Police Advisory Board for Scotland following the submission of a draft of the Regulations in accordance with section 26(9) of the said Act of 1967, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Police (Conduct) (Scotland) Regulations 1996 and shall come into force on 1st August 1996.

Application

2. These Regulations shall apply only-

(a) in relation to misconduct on the part of a constable below the rank of assistant chief constable;

(b) to any report, allegation or complaint from which it may reasonably be inferred that any act or omission which was committed or made by a constable below that rank on or after 1st August 1996 may amount to misconduct; and

(c) to any case where there is in respect of such a constable a finding of guilt as mentioned in paragraph 9 of Schedule 1 on or after that date, even although the act or omission which constituted the criminal offence of which the constable was found guilty was committed or made before that date.

Interpretation

3.—(1) Unless the context otherwise requires, in these Regulations-

"the assistant chief constable" means a constable of that rank who is required by the chief constable to exercise any function of the assistant chief constable

specified in these Regulations in relation to any particular report, allegation or complaint which is subject to investigation or consideration in terms of these Regulations and shall include a constable acting in place of that assistant chief constable;

"audio recording" means a recording made on any disc, tape, soundtrack or other device in which sounds or other data are recorded so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom;

"complainer" means the person who, aggrieved by the act or omission of a constable, originates a complaint which may give rise to a misconduct hearing, notwithstanding that the complaint is made through some other person or body;

"the constable" means the constable of a police force in respect of whom a report, allegation or complaint is received from which it may reasonably be inferred that an act or omission of that constable may amount to misconduct on his part and who is the subject of any proceedings taken in relation to the allegation of misconduct in terms of these Regulations;

"constable of a police force" includes, in this regulation and in regulations 9(1)(c) and 10(3), a constable of a police force who is engaged on relevant service within the meaning given by section 38A(1) of the Police (Scotland) Act 1967;

"the former discipline provisions" means the provisions relating to the determination of any question whether a disciplinary offence has been committed by a constable of a police force, and for the imposition of punishments in respect thereof, contained in the Police (Discipline) (Scotland) Regulations 1967 in force immediately before 1st August 1996;

"investigating officer" means a constable who is appointed under regulation 5(4);
"misconduct" shall be construed in accordance with regulation 4;

"misconduct form" means such a form as is mentioned in regulation 6(4)(a);

"misconduct hearing" means a hearing arranged in terms of regulation 10;

"presenting officer" means the person presenting the case against the constable in terms of regulation 12(1) and includes an advocate or a solicitor presenting the case where relevant in terms of regulation 12(5);

"representative" means a constable of a police force, an advocate or a solicitor, who may represent the constable at a misconduct hearing.

(2) In these Regulations, unless the context otherwise requires, any reference to a numbered regulation or Schedule is a reference to the regulation or Schedule in these Regulations which bears that number and any reference in a regulation to a numbered paragraph is a reference to a paragraph bearing that number in that regulation.

Misconduct

4. For the purposes of these Regulations, an act or omission of a constable shall amount to misconduct on the part of the constable if it falls within any of the kinds of conduct described in Schedule 1.

Preliminary investigation procedure

5.—(1) The assistant chief constable shall prepare and maintain procedures in order to secure that where any report, allegation or complaint is received from which it may reasonably be inferred that an act or omission, or an alleged act or omission, of a constable of the police force concerned amounts, or may amount, to misconduct-

(a) the report, allegation or complaint is in the first instance considered by another constable of the same force of an appropriate rank; and

(b) any such constable who is authorised to consider the report, allegation, or complaint is also authorised to arrange for the matter-

(i) if in the opinion of that constable it involves an allegation of misconduct of a minor or trivial nature, to be dealt with in accordance with the procedures; or

(ii) in any other case, to be referred to the assistant chief constable.

(2) The assistant chief constable shall ensure that the procedures for dealing with an allegation of misconduct of a minor or trivial nature make provision for-

(a) the constable to be given an opportunity to comment upon the report, allegation or complaint; and

(b) in any case where it is considered that in view of the circumstances it is appropriate that the constable be given a warning-

(i) the warning to be given by a constable of the same force of a rank above that of the constable; and

(ii) the person giving the warning to arrange for a record of it to be kept.

(3) Where a report, allegation or complaint has been referred to the assistant chief constable in terms of paragraph (1)(b)(ii) and he is satisfied there is sufficient evidence of misconduct of a minor or trivial nature on the part of the constable-

(a) he may arrange for the constable to be given an opportunity to comment upon a statement of the report, allegation or complaint and, where appropriate, thereafter to be given a warning (whether orally or in writing) by a constable of the same force of a rank above that of the constable; and

(b) where a warning is given, the person giving the warning may arrange for a record of it to be kept.

(4) In relation to any report, allegation or complaint which has been referred to the assistant chief constable in terms of paragraph (1)(b)(ii), the assistant chief constable shall, unless he-

- (a) has dealt with the report, allegation or complaint in terms of paragraph (3); or
- (b) decides to deal with the report, allegation or complaint in terms of regulation 7,

appoint an investigating officer who shall cause the matter to be investigated.

(5) The investigating officer shall be-

- (a) a constable of the police force concerned (other than its chief constable) or, if the chief constable of some other force is requested by the assistant chief constable and agrees to provide an investigating officer, a constable of that other force;
- (b) of at least the rank of inspector; and
- (c) of at least the rank of the constable subject to investigation.

(6) The assistant chief constable shall not appoint himself as the investigating officer nor shall he appoint as the investigating officer any constable-

- (a) who it appears to him may be a material witness or is interested in the matter otherwise than as a constable; or
- (b) of the police force concerned serving in the same sub-division or branch as the constable.

(7) Subject to regulation 7, as soon as practicable after being appointed, the investigating officer shall-

- (a) cause to be prepared an investigation form-
 - (i) containing a statement of the report, allegation or complaint;
 - (ii) informing the constable that although he is not obliged to do so following receipt of the form, he may make a written or oral statement concerning the matter to the investigating officer and provide the names and addresses of any persons whom he may wish to give evidence; and
 - (iii) warning him that such a statement may be used in evidence in any subsequent misconduct proceedings; and
- (b) send a copy of the investigation form to the constable.

(8) Paragraph (7)(a)(ii) is without prejudice to any obligation on the constable to make a written or oral statement in the ordinary course of duty.

Requirement to appear before a misconduct hearing

6.—(1) Subject to regulation 7, the investigating officer shall, after due investigation, submit to the assistant chief constable a report on the allegation of misconduct, together with-

- (a) the investigation form;
- (b) any written statement, or a record of any oral statement, which the constable has made by virtue of regulation 5(7)(a)(ii); and
- (c) any statement obtained from any witness.

(2) Except where he decides to delay reaching a decision in accordance with regulation 7, the assistant chief constable, after considering the report of the investigating officer and the other papers mentioned in paragraph (1), shall decide whether or not the constable should be required to appear before a misconduct hearing.

(3) Where the assistant chief constable decides that the constable should not be required to appear before a misconduct hearing, he shall cause to be sent to the constable a written notice of his decision as soon as possible.

(4) Where the assistant chief constable decides that the constable should be required to appear before a misconduct hearing, he shall cause-

(a) to be prepared a form (hereinafter referred to as "the misconduct form") containing-

- (i) particulars of the alleged act or omission which it is considered amounts to misconduct on the part of the constable;
- (ii) a statement of the reasons why the assistant chief constable considers that the alleged act or omission amounts to misconduct; and
- (iii) a notice that the constable is required to attend a misconduct hearing, at a time and place to be notified, at which the allegation of misconduct will be heard; and

(b) a copy of the misconduct form to be sent to the constable.

(5) Where the assistant chief constable decides that the constable should be required to appear before a misconduct hearing, and is of the opinion that there should be available to the hearing any such disposal as is mentioned in sub-paragraphs (a), (b) and (c) of regulation 18(1), he shall inform the constable by giving notice of that opinion in the misconduct form and shall give the constable an opportunity to elect to be legally represented at the hearing in accordance with the provisions of regulation 12.

(6) Without prejudice to paragraph (3), where the assistant chief constable is satisfied that there is sufficient evidence of minor misconduct on the part of the constable he may, where it appears to him appropriate to do so and instead of requiring the constable to appear before a

misconduct hearing, decide to arrange for the constable to be given an opportunity to comment upon that evidence (other than the report of the investigating officer) and, where appropriate, thereafter to be given a warning (whether orally or in writing) by a constable of the same force of a rank above that of the constable.

(7) Where a warning is given in terms of paragraph (6), the constable giving the warning may arrange for a record of it to be kept.

(8) At any time before the misconduct hearing commences, the assistant chief constable may direct that the allegation shall not be considered at a misconduct hearing and thereafter cause-

(a) such direction to be noted on the misconduct form; and

(b) to be sent to the constable written notice of such direction.

(9) For the purposes of section 40A(2) of the Police (Scotland) Act 1967, proceedings by virtue of section 26(2A)(a) of that Act, insofar as relating to a constable to whom these Regulations apply, shall be taken to have commenced on the day on which a misconduct form is sent to the constable in terms of paragraph (4).

Alleged criminal offence

7.—(1) Notwithstanding regulations 5 and 6, where a report, allegation or complaint is received from which it may reasonably be inferred that a constable of a police force may have committed a criminal offence, the assistant chief constable-

(a) shall as soon as possible refer the matter to the procurator fiscal; and

(b) may decide-

(i) not to appoint an investigating officer in terms of regulation 5(4) for the purpose of investigating the matter;

(ii) where an investigating officer was appointed in terms of regulation 5(4), to instruct the officer not to prepare or not to send a copy of the investigation form to the constable or not to carry out any investigation into any matter arising out of or referred to in that report, allegation or complaint, insofar as it might be the subject of criminal proceedings; or

(iii) to delay considering whether or not the constable should be required to appear before a misconduct hearing,

until the procurator fiscal has intimated either that criminal proceedings are not to be brought in respect of any matter arising out of or referred to in that report, allegation or complaint or, if he has intimated that criminal proceedings are to be brought, those proceedings are completed.

(2) If he decides to exercise any power conferred by paragraph (1)(b), the assistant chief constable shall arrange for the constable to be informed and warned that misconduct

proceedings may subsequently be taken, irrespective of whether or not criminal proceedings are brought against him or of the disposal of any such proceedings.

(3) Where the criminal offence referred to in paragraph (1) may have been committed in any part of the United Kingdom (other than Scotland) or in any of the Channel Islands or the Isle of Man, the references in that paragraph to "the procurator fiscal" shall be construed as references to the person who either has responsibility for considering whether to institute criminal proceedings in relation to the matter or has instituted such proceedings.

Documents to be supplied to the constable

8.—(1) Where the assistant chief constable decides pursuant to regulation 6(2) that the constable should be required to appear before a misconduct hearing, he shall arrange for the constable to be supplied, as soon as possible and in addition to the misconduct form to be sent pursuant to regulation 6(4), with a copy of-

(a) any statement which the constable may have made by virtue of regulation 5(7)(a)(ii);

(b) the report, allegation or complaint on which the decision to arrange a misconduct hearing is founded (or so much thereof as relates to the constable) and any reports thereon (other than the report of the investigating officer), notwithstanding that they may be confidential;

(c) any statement relating to the alleged misconduct made by any witness who may be called by the presenting officer, together with the name and address of each such witness; and

(d) any statement relating to the alleged misconduct made by any person, other than a witness to be called by the presenting officer, to the investigating officer or to anyone on his behalf, together with the name and address of each such person.

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

(3) Notwithstanding anything in paragraph (1)(b), the assistant chief constable may withhold from the constable a report upon the report, allegation or complaint on which the decision to arrange a misconduct hearing is founded if he is satisfied that considerations of national security require that it should not be supplied, but, where he withholds such a report, he shall inform the constable, but only so far as is practicable without prejudicing the purposes for which that information is not disclosed, of the gist of that report.

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

Information from the constable in response to the misconduct form

9.—(1) Where a copy of the misconduct form has been sent to the constable, he shall within the time limits specified in paragraph (2) give notice to the assistant chief constable-

- (a) whether he admits or denies the allegation of misconduct on his part;
- (b) whether he wishes to offer any explanation;
- (c) whether he intends to be represented or assisted by a constable of a police force at the misconduct hearing;
- (d) whether he wishes witnesses to be called to give evidence to relevant facts at the misconduct hearing and, if he does, notice of the names and addresses of any such witnesses; and
- (e) in any case in which in terms of regulation 6(5) the constable has been given the opportunity to elect to be legally represented, whether he intends to be represented by an advocate or a solicitor.

(2) Subject to paragraph (3), the constable shall give notice of the information required by paragraph (1) by entering on the copy of the misconduct form the relevant information, signing the form and returning it to the assistant chief constable within the period of 14 days after the date on which-

- (a) the form was sent to the constable; or
- (b) the last of the documents required by regulation 8 to be supplied is supplied to the constable,

whichever is the later date.

(3) The assistant chief constable may, on the application of the constable, extend the period of time mentioned in paragraph (2), notwithstanding that that time limit may have expired.

(4) Notwithstanding paragraph (1)(d), the assistant chief constable may, on the written application of the constable at any time before the misconduct hearing is commenced, permit him to nominate further witnesses whom he wishes to call to give evidence to relevant facts at the hearing.

(5) Where in terms of paragraph (1) or (4) the assistant chief constable is informed by the constable that he wishes to lead the evidence of any witness, and where the constable identifies that witness, then the assistant chief constable shall inform the investigating officer, and the investigating officer shall so far as is reasonable and practicable invite that witness to provide a statement and shall supply to the constable a copy of any such statement.

(6) Paragraph (5) is without prejudice to the right of the constable to invite the witness to provide a statement to the constable or his representative.

Arrangement of misconduct hearing

10.—(1) Where the assistant chief constable has in terms of regulation 6(2) decided that the constable should be required to attend a misconduct hearing, he shall make all necessary arrangements for the hearing and shall determine the time, date and place of the hearing.

(2) The assistant chief constable shall by notice in writing require the constable to appear at the hearing at the time, date and place specified in the notice.

(3) Where the constable has intimated that he wishes to be accompanied at the hearing by a representative who is a constable of a police force other than his own, the assistant chief constable shall inform the chief constable of that other force of that intimation and shall give notice of the time, date and place of the hearing.

(4) Where the hearing arises out of a complaint by a member of the public, the assistant chief constable shall, if the constable has denied the allegation or any part thereof, give notice to the complainer specifying the time, date and place of the hearing and shall draw the complainer's attention to the provisions of regulation 13(8)(b) and (9).

(5) The assistant chief constable shall take all reasonable steps to secure the attendance at the hearing of any witnesses required to give evidence to relevant facts at the hearing.

(6) In any case in which in terms of paragraphs (2) to (4) the assistant chief constable is required to give notice to any person, such notice shall be sent not less than 21 days prior to the commencement of the hearing, provided that the constable may, in writing, waive his entitlement to receive 21 days' notice of the hearing.

(7) At any time before the date fixed for hearing in accordance with paragraph (2), the assistant chief constable may, if he is of the opinion that it is expedient or necessary to do so, discharge the hearing and shall make all necessary arrangements in accordance with paragraphs (1) to (6) for the misconduct hearing to be held at a later date.

Variation of election on legal representation

11.—(1) In any case in which the constable has elected in terms of regulation 9 not to be legally represented, then he may by notice in writing to the assistant chief constable vary the election.

(2) A notice under paragraph (1)-

(a) shall only be valid if it is received by the assistant chief constable not later than 48 hours before the time fixed for the misconduct hearing to commence; and

(b) subject to sub-paragraph (a) above, shall have the effect of deeming the constable as having elected in terms of regulation 9 to be legally represented.

Representation at misconduct hearing

12.—(1) Subject to paragraph (5), the case against the constable shall be presented by a constable (other than the chief constable, the assistant chief constable, the investigating officer or any witness) of a rank equal to or above that of the constable.

(2) The constable shall be entitled to conduct his case in person and be represented by another constable of a police force selected by him, or he may be represented subject to and in accordance with paragraph (4).

(3) The presenting officer may be assisted by a member of a police force.

(4) In any case in which the constable has given notice in terms of regulation 9 that he wishes to be legally represented, or has varied his election under regulation 11, the constable may be represented, at his option, at the misconduct hearing, either by an advocate or by a solicitor.

(5) Notwithstanding the terms of paragraph (1) of this regulation, if the constable has given notice in terms of regulation 9 that he wishes to be legally represented, or has in terms of regulation 11 varied his election, the case against him may be presented by an advocate or solicitor whether or not he is so represented.

Procedure at misconduct hearing

13.—(1) An allegation of misconduct against a constable shall be heard by a constable (other than the chief constable) who is appointed for the purpose by the assistant chief constable and who shall act as chairman of the misconduct hearing.

(2) The chairman shall be-

(a) a constable of the police force concerned, or, if the chief constable of some other force is requested by the assistant chief constable and agrees to provide a constable for the purpose, a constable of that other force; and

(b) of at least the rank of superintendent.

(3) The chairman may be assisted by up to two other constables who are also of at least the rank of superintendent who shall act as assessors.

(4) In any case in which the constable has given notice in terms of regulation 9 that he wishes to be legally represented, or has in terms of regulation 11 varied his election, the chairman may, if he thinks fit, appoint an advocate or a solicitor to sit with him at the misconduct hearing as a legal assessor.

(5) Subject to the provisions of this regulation and regulations 14 to 16, the procedure at the misconduct hearing shall be such as the chairman may determine.

(6) If the constable admits the allegation of misconduct, the chairman, after giving the presenting officer and thereafter the constable or his representative an opportunity of making a statement, may dispose of the case forthwith.

(7) Subject to paragraph (8), the misconduct hearing shall be held in private.

(8) Notwithstanding paragraph (7)-

(a) where a child is giving evidence, the chairman may allow a parent or guardian to be present and, when any witness is giving evidence, the chairman may, subject to consideration of any objections raised by the constable, allow such other persons to be present as may seem reasonable to him because of any special circumstances;

(b) where the hearing arises out of a complaint made by a member of the public and the constable denies the allegation of misconduct or any part thereof, the chairman may allow the complainer to be present at the hearing while witnesses are giving evidence; and

(c) the chairman may allow any other person to be present if the presenting officer and the constable agree.

(9) In any case to which paragraph (8)(b) applies-

(a) the complainer shall not be entitled to put questions to the constable, or except where the complainer is giving evidence as a witness, to participate in the proceedings in any way;

(b) where the complainer is to be called as a witness at the hearing, he shall not be allowed to attend before giving evidence; and

(c) the chairman may exclude the complainer from the whole or any part of the hearing and, without prejudice to the foregoing generality, shall exclude the complainer-

(i) during any period when he considers that a witness may, in giving evidence, disclose information which, in the public interest, ought not to be disclosed to a member of the public; or

(ii) if the complainer behaves in a disorderly manner.

(10) If the constable wishes to make an objection to the effect that the facts alleged in the misconduct form in relation to any allegation are not such as to amount to misconduct on the part of the constable, he shall give written notice of the objection to the assistant chief constable at least 7 days before the misconduct hearing is due to commence.

(11) Where the constable has given notice of an objection in terms of paragraph (10), the assistant chief constable shall forthwith provide the chairman with a copy of the notice of objection and the chairman shall determine any such objection at the beginning of the misconduct hearing and, if he upholds the objection, he shall make a finding that there has been no misconduct on the part of the constable in relation to the allegation in question.

(12) The constable or his representative, or both of them, may put questions to any witness called by the presenting officer.

(13) The constable may give evidence on his own behalf and he or his representative may call witnesses in support of his denial of the allegation of misconduct.

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

(15) After all the evidence has been led, the presenting officer and thereafter the constable or his representative shall be entitled to make oral submissions on the case before the hearing is concluded.

(16) The chairman shall-

- (a) prepare a written note summarising the proceedings at the misconduct hearing;
and
- (b) arrange for an audio recording to be made of those proceedings.

Statements in lieu of oral evidence

14.—(1) Subject to the provisions of this regulation, the chairman may, in lieu of oral evidence, admit evidence by way of a written statement but evidence shall not be admissible in pursuance of this regulation if it would not have been admissible had it been given orally.

(2) If either the presenting officer or the constable (in this regulation referred to as "the parties") proposes in pursuance of this regulation to adduce written evidence at the misconduct hearing, he shall-

- (a) at least 21 days, or such shorter period as the parties may agree in writing, before the date of the hearing-
 - (i) give the other party a copy of the statement; and
 - (ii) invite that party to join in a minute of agreement to the admission of the statement in evidence without the maker thereof being called as a witness; and
- (b) at least 10 days, or such shorter period as the parties may agree in writing, before the date of the hearing, lodge any such minute of agreement with the assistant chief constable.

(3) The chairman shall admit evidence by way of written statement under paragraph (1) only if-

- (a) such statement is accompanied by a minute of agreement signed by the parties;
or
- (b) either party requests the chairman to admit the written statement and the other party does not object.

(4) Where, notwithstanding that a written statement has been admitted in evidence without the person who made the statement being called and being available, the chairman is of the opinion that oral evidence should be given, he may request that the person be called as a witness and, in such case, unless that person gives oral evidence, the chairman shall be entitled to disregard the written evidence.

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

Adjournment of misconduct hearing

15. The chairman may from time to time adjourn the hearing to a later time or date, if it appears necessary or expedient to do so for the due hearing of the case.

Hearing in absence of the constable

16.—(1) If the constable does not attend at the misconduct hearing or at any adjournment thereof, the hearing may be proceeded with and concluded in his absence if it appears to the chairman just and proper to do so.

(2) Notwithstanding the terms of paragraph (1)-

(a) if the constable is detained while serving the sentence of a court in-

(i) a prison or other institution to which the Prisons (Scotland) Act 1989^[5] applies; or

(ii) any prison or other institution or place in any part of the United Kingdom (other than Scotland) or in any of the Channel Islands or the Isle of Man, being a prison, institution or place mentioned in subsection (1) or (1A) of section 29 of the Criminal Justice Act 1961^[6] (transfer of prisoners for certain judicial purposes),

and expresses a desire to make representations in person at the hearing, the hearing shall not be concluded until the constable has been able to make such representations; and

(b) if any other good reason is given to the chairman by, or on behalf of, the constable why he is unable to attend the hearing, the hearing shall be postponed or adjourned, as the case may be.

(3) Subject to paragraph (2), where, owing to the absence of the constable, it is not possible to comply with the whole or any part of the procedure described in these Regulations, the case may be proceeded with as if that procedure had been complied with.

Finding

17.—(1) Subject to paragraph (2), at the conclusion of the misconduct hearing, the chairman shall reach a decision on the allegation of misconduct.

(2) The chairman may, at the conclusion of the hearing, defer reaching his decision until a later time or date if it appears necessary to do so.

(3) The decision of the chairman, which shall be recorded in the misconduct form, shall state-

(a) the finding and any disposal which he makes in terms of regulation 18; and

(b) his reasons.

(4) After recording his decision in the misconduct form in terms of paragraph (3), the chairman shall forthwith send-

(a) to the constable, a copy of the completed misconduct form together with a copy of each of the written note and the audio recording made in accordance with regulation 13(16); and

(b) to the assistant chief constable, the completed misconduct form, the written note and the audio recording.

(5) Where the hearing arises out of a complaint made by a member of the public, the assistant chief constable shall notify the complainer in writing of the finding made.

Disposal

18.—(1) Subject to regulation 19, where the chairman makes a finding that an act or omission of the constable amounts to misconduct, he shall make in relation to that constable one of the following disposals:-

(a) dismissal from the force;

(b) requirement to resign from the force either forthwith or at such date as shall be specified in the decision as an alternative to dismissal;

(c) reduction in rank;

(d) reduction in rate of pay for such period, not exceeding 12 months, as shall be specified in the decision;

(e) fine;

(f) reprimand; or

(g) caution;

and separate disposals may be made in relation to separate findings of misconduct in relation to the subject matter considered at the misconduct hearing.

(2) In considering which disposal to make, the chairman-

(a) shall have regard to the constable's personal record; and

(b) may invite a constable of the force above the rank of the constable to give an oral report on the character of the constable, provided that, where such oral report is made, the constable or his representative shall be given the opportunity to comment thereon.

(3) Where the disposal under regulation 18(1)(b) is made and where the constable has not resigned from the force in accordance with the requirement specified in the decision, then the effect of the decision shall be to dismiss the constable from the force either forthwith or on the date specified in the decision.

Limitations on disposals

19.—(1) None of the disposals mentioned in sub-paragraphs (a), (b) and (c) of regulation 18(1) shall be made by the chairman unless the constable has been given an opportunity in terms of regulation 6(5) to elect to be legally represented at the misconduct hearing.

(2) If the constable-

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

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

any such disposal as is mentioned in paragraph (1) may be made without him being legally represented.

(3) If the chairman decides to make a disposal in terms of regulation 18(1)(d), he shall not specify a reduction in pay in relation to the subject matter considered at the misconduct hearing (irrespective of the number of separate findings of misconduct) which would reduce the constable's pay below the amount applicable to the pay category for a constable of the same rank which is-

(a) 2 categories lower than the pay category applicable to the constable; or

(b) if the constable is at pay category A or B of the pay categories for constables of the same rank, category A.

(4) If the chairman decides to make a disposal in terms of regulation 18(1)(e)-

(a) he shall not specify a fine in relation to the subject matter considered at the misconduct hearing (irrespective of the number of separate findings of misconduct) which exceeds in the aggregate one week's pay; and

(b) the fine shall be recovered by stoppage of pay in amounts not exceeding one-seventh of the constable's weekly pay, except in the event that he leaves the force when the whole amount of any fine then unpaid may be deducted from any pay then due.

(5) A fine or reduction in the rate of pay shall not result in any increment in pay being retarded or withheld.

Appeal to the chief constable

20.—(1) Where in terms of regulation 17 the chairman has made a finding that an act or omission of the constable amounts to misconduct, the constable may appeal in accordance with this regulation against—

- (a) both the finding and the disposal made in terms of regulation 18; or
- (b) the disposal only.

(2) The appeal shall be instituted by the appellant giving written notice of appeal to the chief constable specifying whether he is appealing under sub-paragraph (a) or (b) of paragraph (1).

(3) The notice of appeal shall state-

- (a) the name and address of the appellant;
- (b) that the notice is a notice of appeal;
- (c) the date of the relevant finding and disposal;
- (d) the grounds upon which the appeal is made;
- (e) the name and address of any representative of the appellant and whether the chief constable should send replies or notices concerning the appeal to the representative instead of the appellant; and
- (f) whether he requests the chief constable to obtain a transcript of all or a specified part of the proceedings at the misconduct hearing.

(4) The appellant shall attach to the notice of appeal-

- (a) any documentary evidence upon which he intends to rely for the purposes of the appeal; and
- (b) a copy of the misconduct form containing the finding and disposal of the chairman.

(5) The appellant or his representative shall sign the notice of appeal.

(6) The appellant shall send the notice of appeal, together with the documents referred to in paragraph (4), to the chief constable not later than 28 days after the date on which notification of the finding of the chairman was sent in accordance with regulation 17(4).

(7) Where the appellant is unable to send the notice of appeal within the period specified in paragraph (6), he may include in his notice of appeal a request for the appeal to be received late and shall state the reasons why he was unable to send it timeously.

(8) The chief constable may receive a notice of appeal which is late where he is satisfied, by reason of the special circumstances of the case, that it is just and right that the appeal should be entertained after the expiry of the period specified in paragraph (6).

(9) The chief constable may obtain a transcript of all or part of the audio recording made of the proceedings at the misconduct hearing-

(a) where in the appellant's notice of appeal he requests the chief constable to obtain a transcript of all or a specified part of the proceedings and the chief constable considers that it is necessary to obtain such a transcript; or

(b) notwithstanding that no request has been made by the appellant, where the chief constable considers that it is necessary to obtain a transcript.

(10) Where in accordance with paragraph (9) the chief constable obtains a transcript of all or part of the audio recording, he shall forthwith send a copy of that transcript to the appellant and to the chairman of the misconduct hearing.

(11) Where the appellant requests the chief constable to obtain a transcript of all or a specified part of the audio recording made of the proceedings at the misconduct hearing, the chief constable shall determine that request as soon as reasonably practicable and thereafter shall forthwith notify the appellant and the chairman of the misconduct hearing of his decision.

(12) Where pursuant to paragraph (11) the chief constable refuses the appellant's request, the appellant may, at his own expense, obtain a transcript of all or part of the audio recording made of the proceedings at the misconduct hearing and submit the transcript no later than 21 days after the date on which the chief constable notified him of his decision in terms of paragraph (11).

(13) Where the chief constable receives a transcript in terms of paragraph (12), he shall forthwith send a copy of it to the chairman of the misconduct hearing and invite him, if he so wishes, to make any written representations with respect to the accuracy of the transcript within 14 days after the date on which it was sent to him.

(14) If the chairman of the misconduct hearing disputes the accuracy of the transcript submitted by the appellant, the chief constable shall-

(a) send a copy of any representations to the appellant and afford him the opportunity of making written representations in reply within 7 days after the date on which the chairman's representations are sent to him; and

(b) after considering the representations of the chairman and any representations by the appellant, determine what, if any, amendment of the transcript is required.

(15) Where at the time at which the notice of appeal is sent in accordance with paragraph (6)-

(a) the chief constable of the force is absent, incapacitated or suspended from duty and it is likely that his absence, incapacity or suspension will continue for a period of more than 28 days; or

(b) there is a vacancy in the office of chief constable for the force,

the assistant chief constable shall arrange for a chief constable of another police force to carry out the functions of the chief constable specified in this regulation and regulation 21 in relation to the appeal.

Determination of appeal

21.—(1) Subject to the following provisions of this regulation, the chief constable shall consider the appeal on the basis of-

(a) the notice of appeal, the misconduct form and any other documents submitted with the notice;

(b) the written note summarising the proceedings at the misconduct hearing which the chairman prepared in accordance with regulation 13(16);

(c) to such extent as he considers necessary, the audio recording made of the proceedings at the misconduct hearing in accordance with regulation 13(16); and

(d) any transcript of all or part of such an audio recording where such a transcript is obtained in terms of regulation 20(9) or is submitted in terms of regulation 20(12).

(2) Where the chief constable considers that it is necessary for the purpose of determining the appeal, he may afford the opportunity to the appellant and the chairman of the misconduct hearing of making oral representations in relation to the subject matter of the appeal.

(3) Where the chief constable decides to afford the opportunity to make oral representation, he shall give reasonable notice of the time and place at which those representations may be made.

(4) At any hearing fixed for the purposes of paragraph (2)-

(a) each of the appellant and the chairman of the misconduct hearing may be represented by another constable of a police force selected by him or by an advocate or a solicitor; and

(b) the chief constable may put questions to the appellant and the chairman of the misconduct hearing or any representative of them.

(5) The chief constable shall determine the appeal as soon as reasonably practicable after considering the documents and recording referred to in paragraph (1) and, where applicable, any representations made in accordance with paragraph (4).

(6) The decision of the chief constable shall be recorded in a document which shall contain-

(a) the terms of the decision which shall specify any variation of the disposal made by the chairman of the misconduct hearing; and

(b) a statement of the reasons for the decision,

and shall be signed and dated by the chief constable.

(7) The chief constable shall forthwith send a copy of the document to the appellant and, if any, his representative and to the chairman of the misconduct hearing.

(8) The chief constable shall have power in determining an appeal to vary the disposal made by the chairman of the misconduct hearing in terms of regulation 18 but shall not have power to make a disposal which is more severe than that made by the chairman.

(9) A decision of the chief constable to allow an appeal or to vary a disposal shall have effect from the date of the finding of the chairman of the misconduct hearing except that-

(a) where the disposal as varied is such as in sub-paragraph (b) of regulation 18(1) and where the constable has not resigned from the force in accordance with the requirement specified in the decision of the chief constable in terms of paragraph (6), the effect of the decision shall be to dismiss the constable from the force either forthwith or on the date specified in the decision; and

(b) where the disposal as varied is such as is specified in sub-paragraph (c) of regulation 18(1), that disposal shall have effect from a date not earlier than, or from the date of, the decision of the chief constable in terms of paragraph (6).

(10) Where in an appeal under sub-paragraph (a) or (b) of regulation 20(1)-

(a) the appellant submitted pursuant to regulation 20(12) a transcript of all or part of the audio recording made of the proceedings at the misconduct hearing; and

(b) the chief constable allowed the appeal either in whole or in part,

the police authority shall reimburse the appellant the reasonable costs incurred by the appellant in obtaining the transcript.

Suspension

22.—(1) Where a report, allegation or complaint is received from which it may reasonably be inferred that an act or omission of a constable may amount to misconduct or that he may have committed a criminal offence, the constable may be suspended from duty by any constable of the force of higher rank.

(2) The assistant chief constable may terminate a suspension imposed under paragraph (1) with effect from the date of the constable's suspension or from any subsequent date and shall do so-

(a) when he has decided that the constable shall not be required to appear before a misconduct hearing, unless the constable has submitted his resignation; or

(b) when misconduct proceedings have been completed but have not resulted in a disposal of dismissal from the force or a requirement to resign from the force as an alternative to dismissal.

(3) Where the assistant chief constable has terminated the suspension of a constable, that constable may not be suspended again in respect of the report, allegation or complaint which led to the suspension which has been terminated.

(4) Subject to the provisions of paragraph (6), where the constable suspended from duty-

(a) has been found guilty of a criminal offence; or

(b) is absent from duty and his whereabouts are unknown to the assistant chief constable,

he shall not in respect of any period of imprisonment or, as the case may be, in respect of the period during which his whereabouts are unknown to the assistant chief constable, be entitled to pay under the Police (Scotland) Regulations 1976.

(5) Subject to the provisions of paragraph (6), the constable suspended from duty shall not in respect of the period of suspension be entitled to any allowances under the Police (Scotland) Regulations 1976, except-

(a) insofar as he is entitled in terms of the Schedule to the Police (Scotland) Amendment (No.2) Regulations 1994, a replacement allowance mentioned in paragraph 2, 3, 4, 5 or 6 of that Schedule; or

(b) a provided accommodation allowance.

(6) Where the constable who has been suspended from duty returns to duty and-

(a) it has been decided that he shall not be required to appear before a misconduct hearing;

(b) he has been required to appear before a misconduct hearing and no finding of misconduct has been made in relation to any of the allegations; or

(c) he has been required to appear before a misconduct hearing and has received a reduction in rate of pay for a period of less than 12 months, a fine, a reprimand or a caution,

he shall receive, for the period of suspension, the pay or allowances to which, but for the provisions of paragraphs (4) and (5), he would have been entitled by virtue of the Police (Scotland) Regulations 1976.

(7) The Police (Scotland) Regulations 1976 and these Regulations shall apply to a constable suspended from duty subject to the provisions of this regulation.

Misconduct by constables of different police forces

23.—(1) Where a report, allegation or complaint is received from which it may reasonably be inferred that acts or omissions of constables of two or more police forces acting together may amount to misconduct on the part of those constables, the provisions of these Regulations shall apply, subject to the modifications mentioned in paragraphs (2) to (4).

(2) The assistant chief constables of the forces concerned may appoint one investigating officer to investigate the matter.

(3) Where the assistant chief constables decide, after considering the report of that investigating officer, that the constables should be required to appear before a misconduct hearing, they may arrange for the case to be determined by a misconduct hearing comprising a chairman from a force other than the forces of the constables concerned.

(4) Where the chairman of the misconduct hearing makes a finding that an act or omission of any of the constables amounts to misconduct, he shall make any of the disposals as mentioned in regulation 18 and shall submit a report to the chief constable concerned together with-

- (a) the misconduct form;
- (b) a statement as to the act or omission of the constable which he has found amounted to misconduct;
- (c) a statement as to any disposal made in respect of the constable; and
- (d) a copy of the audio recording.

Records

24.—(1) The assistant chief constable shall keep at the headquarters office of the police force and, where the police force is divided into divisions, may also cause to be kept at the divisional headquarters-

- (a) a record of every complaint made by a member of the public against any constable of the force or, as the case may be, of the division concerned, together with an account of the action taken in connection therewith;
- (b) a misconduct record of every report, allegation or complaint from which it was inferred that an act or omission of a constable of the force or, as the case may be, of the division concerned, may have amounted to misconduct, together with an account of the action taken in connection therewith;
- (c) where any such report, allegation or complaint results in a constable being required to appear before a misconduct hearing, on the misconduct record, details

of the allegation, together with the finding of the hearing and any disposal made;
and

(d) where any appeal is made in terms of regulation 20, details of the decision of the chief constable including any variation of the disposal.

(2) The chief constable shall retain-

(a) any audio recording made in accordance with regulation 13(16) for a period of not less than 3 years from the date on which the recording was sent pursuant to regulation 17(4); and

(b) any transcript of all or part of such an audio recording where it has been obtained in terms of regulation 20(9) or was submitted in terms of regulation 20(12) for a period of not less than 3 years from the date on which the audio recording was sent pursuant to regulation 17(4).

Revocations, savings and transitional provisions

25.—(1) Subject to the following provisions of this regulation, the Regulations specified in column 1 of Schedule 2 to these Regulations are, insofar as not previously revoked, hereby revoked to the extent mentioned in relation thereto in column 3 of that Schedule.

(2) Notwithstanding paragraph (1), the Regulations specified in column 1 of Schedule 2 to these Regulations, insofar as not previously revoked, shall continue to apply to an existing case within the meaning given in article 1(2) of the Police and Magistrates' Courts Act 1994 (Commencement No.10 and Savings) (Scotland) Order 1996, where the constable concerned is below the rank of assistant chief constable.

James Douglas-Hamilton
Minister of State, Scottish Office
St Andrew's House, Edinburgh

19th June 1996

SCHEDULE 1

Regulation 4

CONDUCT CONSTITUTING MISCONDUCT

1. Conduct likely to bring discredit on the police force or service, including-
 - (a) insubordination or incivility;
 - (b) corrupt practice;
 - (c) breach of confidence;
 - (d) drinking any intoxicating liquor while on duty or being unfit for duty through such liquor;
 - (e) suppression of complaints;
 - (f) wilful or careless damage to, or loss of, property belonging to the police authority or within the care of the police;
 - (g) disorderly conduct; or
 - (h) acting towards, or treating, any person in an oppressive or improper manner.
2. Failure to comply, without good and sufficient cause, with a lawful order.
3. Failure to report any matter which it is the constable's duty to report or to account for any act or omission occurring in the ordinary course of duty which he has a duty to account for.
4. Neglect of duty.
5. Wilful or careless falsehood.
6. Malingering.
7. Being absent from duty, or being late for duty, without leave.
8. Contravention of regulation 5 of, or Schedule 1 to, the Police (Scotland) Regulations 1976.
9. Having been found guilty by a criminal court of a criminal offence in any part of the United Kingdom or in any of the Channel Islands or the Isle of Man.

ANNEX III

STATUTORY INSTRUMENTS

1999 No. 1074 (S. 85)

POLICE

The Police (Conduct) (Senior Officers) (Scotland) Regulations 1999

<i>Made</i>	<i>24th March 1999</i>
<i>Laid before Parliament</i>	<i>6th April 1999</i>
<i>Coming into force</i>	<i>1st May 1999</i>

The Secretary of State, in exercise of the powers conferred on him by section 26 of the Police (Scotland) Act 1967, and of all other powers enabling him in that behalf, after taking into consideration any representations made by the Police Advisory Board for Scotland following the submission of a draft of the Regulations in accordance with section 26(9) of the said Act of 1967, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Police (Conduct) (Senior Officers) (Scotland) Regulations 1999 and shall come into force on 1st May 1999.

Application

2. These Regulations shall apply only-

(a) in relation to misconduct on the part of a senior officer;

(b) to any report, allegation or complaint from which the police authority considers that it may reasonably be inferred that any act or omission which was committed or made, or is alleged to have been committed or made, by a senior officer on or after 1st May 1999 may amount to misconduct; and

(c) to any case where there is in respect of such an officer a finding of guilt as mentioned in paragraph 9 of the Schedule to these Regulations on or after that date, even although the act or omission which constituted the criminal offence of which the officer was found guilty was committed or made before that date.

Interpretation

3. - (1) Unless the context otherwise requires, in these Regulations-

"the 1996 Regulations" means the Police (Conduct) (Senior Officers) (Scotland) Regulations 1996;

"audio recording" means a recording made on any disc, tape, soundtrack or other device in which sounds or other data are recorded so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom;

"complainer" means the person who, aggrieved by the act or omission of a senior officer, originates a complaint which may give rise to a misconduct hearing, notwithstanding that the complaint is made through some other person or body;

"constable of a police force" includes, in the definition of "representative" in this regulation and in regulations 12(1)(c), 15(3), 16(2)(b) and (3) and 23(5)(b), a constable of a police force who is engaged on relevant service within the meaning given by section 38A(1) of the Police (Scotland) Act 1967;

"investigating officer" means a constable who is appointed under regulation 5(1);

"misconduct" shall be construed in accordance with regulation 4;

"misconduct form" means such a form as is mentioned in regulation 7(5)(a);

"misconduct hearing" means a hearing arranged in terms of regulation 15;

"representative" means a constable of a police force, an advocate or a solicitor who may represent the senior officer at a misconduct hearing;

"a senior officer" means a constable of a police force who is a chief constable or an assistant chief constable;

"the senior officer" means a senior officer in respect of whom a report, allegation or complaint is received from which it may reasonably be inferred that an act or omission of that officer may amount to misconduct on his part and who is the subject of any proceedings taken in relation to the allegation of misconduct in terms of these Regulations.

(2) In these Regulations, unless the context otherwise requires, any reference to a numbered regulation is a reference to the regulation in these Regulations which bears that number and any reference in a regulation to a numbered paragraph is a reference to a paragraph bearing that number in that regulation.

Misconduct by senior officers

4. For the purposes of these Regulations, an act or omission of a senior officer shall amount to misconduct on the part of that officer if it falls within any of the kinds of conduct described in the Schedule to these Regulations.

Preliminary investigation procedure

5. - (1) Subject to paragraphs (2) to (4), where a report, allegation or complaint is received from which the police authority considers that it may reasonably be inferred that an act or omission of a senior officer amounts, or may amount, to misconduct, the police authority for

the force of which that officer is a constable shall appoint an investigating officer to investigate the matter.

(2) Where in the opinion of the police authority a report, allegation or complaint is received which-

(a) appears to relate, or may relate, to an act or omission of a senior officer; but

(b) does not contain sufficient particulars to enable the police authority to determine whether there is a reasonable inference that an act or omission of a senior officer amounts, or may amount, to misconduct,

the police authority may take such steps as it considers reasonable to obtain further particulars.

(3) Where in the opinion of the police authority a report, allegation or complaint is received which-

(a) appears to relate, or may relate, to an act or omission of a senior officer and which alleges, or appears to allege, that the act or omission amounts to misconduct; but

(b) does not contain any allegation of an act or omission of a senior officer which would, if proven, amount to misconduct on his part,

the police authority may make a finding to that effect and decide that no action shall be taken under these Regulations against the senior officer concerned in relation to the matter, and in that case the police authority shall forthwith notify the senior officer and the complainer in writing.

(4) Where in the case of any report, allegation or complaint referred to in paragraph (1) the police authority considers that it-

(a) is unfounded or frivolous in nature; or

(b) contains allegations of acts or omissions of a senior officer which would, if proven, amount to misconduct of a minor or trivial nature only,

the police authority may make a finding to that effect and decide that no action shall be taken under these Regulations in relation to the matter and in particular that an investigating officer shall not be appointed, and in that case the police authority shall forthwith notify the senior officer in writing.

(5) Where an investigating officer requires to be appointed, he shall be a chief constable of a police force in Scotland other than the force of which the senior officer is a member.

(6) The police authority shall not appoint as an investigating officer any chief constable who it appears to it may be a material witness or is interested in the matter otherwise than as a member of a police force and, accordingly, it shall require any chief constable whom it considers for appointment, and that chief constable shall declare, whether he is such a witness or is so interested before the appointment is made.

(7) Subject to regulation 9, as soon as practicable after being appointed, the investigating officer shall-

(a) cause to be prepared an investigation form-

(i) containing a statement of the report, allegation or complaint;

(ii) informing the senior officer that although he is not obliged to do so following receipt of the form, he may make a written or oral statement concerning the matter to the investigating officer and provide the names and addresses of any persons whom he may wish to give evidence; and

(iii) warning him that such a statement may be used in evidence in any subsequent misconduct proceedings; and

(b) send a copy of the investigating form to the senior officer.

(8) Paragraph (7)(a)(ii) is without prejudice to any obligation on the senior officer to make a written or oral statement in the ordinary course of duty

Report of investigation

6. - (1) The investigating officer shall, after due investigation in which he shall take all reasonable steps to obtain statements from witnesses, submit to the police authority a report of his investigation together with-

(a) the investigation form;

(b) any written statement, or a record of any oral statement, which the senior officer has made under regulation 5(7)(a)(ii); and

(c) any statement obtained from any witness.

(2) Following receipt of the investigating officer's report, the police authority shall decide whether there is sufficient evidence of misconduct on the part of the senior officer which would justify requiring him to appear before a misconduct hearing.

(3) If the police authority decides that further proceedings would not be justified they shall so inform the senior officer in writing forthwith.

Appointment of independent solicitor

7. - (1) This regulation applies in relation to any case in which the police authority has decided in terms of regulation 6(2) that there is sufficient evidence of misconduct on the part of the senior officer which would justify requiring the senior officer to appear before a misconduct hearing.

(2) In any case to which this regulation applies, the police authority shall instruct a solicitor (hereinafter referred to as "the independent solicitor") to consider whether the senior officer should be required to attend a misconduct hearing.

(3) The independent solicitor shall be a solicitor not being either-

(a) a member, officer or servant of the police authority or, where an amalgamation scheme is in force, of the joint police board; or

(b) a former constable of the police force of which the senior officer is a constable.

(4) The police authority shall submit to the independent solicitor a copy of the investigating officer's report together with copies of such other documents specified in regulation 6(1) as may have been submitted to it.

(5) Where the independent solicitor considers that the senior officer should be required to appear before a misconduct hearing, he shall-

(a) prepare a form (hereinafter referred to in these Regulations as "the misconduct form") containing-

(i) particulars of the alleged act or omission which he considers amounts to misconduct on the part of the senior officer; and

(ii) a statement of the reasons why he considers that the alleged act or omission amounts to misconduct; and

(b) thereafter submit the misconduct form to the police authority.

(6) Where the independent solicitor considers that there is insufficient evidence that any act or omission, or alleged act or omission, of the senior officer amounted to misconduct on his part, he shall direct that no further proceedings shall be taken against the senior officer under these Regulations in relation to the matter as referred to him, and where he so directs he shall forthwith notify the police authority and the senior officer in writing.

(7) Where the independent solicitor makes a direction under paragraph (6) of this regulation then no further proceedings under these Regulations may be taken against the senior officer subject to investigation in relation to the matter referred to the independent solicitor.

Requirement to appear before a misconduct hearing

8. - (1) This regulation applies to any case in which the independent solicitor has submitted a misconduct form to the police authority in terms of regulation 7(5).

(2) The police authority shall, having considered the terms of the misconduct form, decide whether the senior officer should be required to appear before a misconduct hearing and, if it decides that he should, it shall direct the independent solicitor accordingly.

(3) Where the police authority has decided in terms of paragraph (2) that the senior officer should not be required to appear before a misconduct hearing, then it shall forthwith notify the senior officer in writing.

(4) If so directed in terms of paragraph (2), the independent solicitor shall cause-

(a) the misconduct form to be completed containing a notice that the senior officer is required to attend-

(i) a misconduct hearing at a time, date and place to be notified;

(ii) if the chairman of the misconduct hearing adjourns the hearing in accordance with regulation 19, at the adjourned hearing at the time, date and place specified by the chairman; and

(b) a copy of the misconduct form containing that notice to be sent to the senior officer.

(5) For the purposes of section 40A(2) of the Police (Scotland) Act 1967, proceedings by virtue of section 26(2A)(a) of that Act, insofar as relating to a senior officer, shall be taken to have commenced on the date on which a copy of the misconduct form is sent to him in terms of paragraph (4).

Alleged criminal offence

9. - (1) Notwithstanding anything in regulations 5 and 6, where a report, allegation or complaint is received from which the police authority considers that it may reasonably be inferred that a senior officer may have committed a criminal offence, a member of the same force who is required by the police authority to do so shall, as soon as possible, refer the matter to the procurator fiscal appearing to be concerned.

(2) In such a case, the police authority may decide-

(a) not to appoint an investigating officer in terms of regulation 5(1) for the purpose of investigating the matter;

(b) where an investigating officer was appointed in terms of regulation 5(1), to instruct that officer not to prepare or not to send an investigation form to the senior officer or not to carry out any investigation into any matter arising out of or referred to in that report, allegation or complaint, insofar as it might be the subject of criminal proceedings; or

(c) to delay considering in terms of regulation 6(2) whether there is sufficient evidence of misconduct which would justify requiring the senior officer to appear before a misconduct hearing,

until the procurator fiscal has intimated that criminal proceedings are not to be taken in respect of any matter arising out of or referred to in that report, allegation or complaint or, if he has intimated that criminal proceedings are to be brought, those proceedings are completed.

(3) If the police authority decides to exercise any power conferred upon it by paragraph (2), it shall arrange for the senior officer to be informed to that effect and to be warned that misconduct proceedings may subsequently be taken against him under these Regulations, irrespective of whether or not criminal proceedings are brought against him or of the disposal of any such proceedings.

(4) Where the criminal offence referred to in paragraph (2) may have been committed in any part of the United Kingdom (other than in Scotland) or in any of the Channel Islands or the Isle of Man, the reference to "the procurator fiscal" shall be construed as a reference to the person who either has responsibility for considering whether to institute criminal proceedings in relation to the matter or has instituted such proceedings.

Termination of proceedings

10. - (1) If, at any time after a copy of the misconduct form has been sent to the senior officer in accordance with regulation 8(4) but before the conclusion of the misconduct hearing, it appears to the police authority that, in the light of any new information or event, it is no longer appropriate that the allegation against the senior officer should be heard, it may direct that the allegation shall no longer be considered at the misconduct hearing.

(2) Where the police authority makes a direction in terms of paragraph (1), it shall, as soon as possible-

(a) cause that direction to be noted on the misconduct form; and

(b) notify the senior officer and the complainer in writing.

Documents to be supplied to the senior officer

11. - (1) Where the senior officer has been sent a copy of the misconduct form in terms of regulation 8(4), the independent solicitor shall arrange for the senior officer to be supplied, as soon as possible, with a copy of-

(a) any statement which the senior officer may have made by virtue of regulation 5(7)(a)(ii);

(b) the report, allegation or complaint on which the decision to arrange a misconduct hearing is founded (or so much thereof as relates to the senior officer) and any reports thereon (other than the report of the investigating officer), notwithstanding that they may be confidential;

(c) any statement relating to the alleged misconduct made by any witness who may be called by the independent solicitor, together with the name and address of each such witness;

(d) any statement relating to the alleged misconduct made by any person, other than a witness who may be called by the independent solicitor, to the investigating officer or to anyone on his behalf, together with the name and address of each such person; and

(e) a list of any relevant documents or other articles being produced as evidence.

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

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

Information to be supplied by the senior officer in response to the misconduct form

12. - (1) Where the senior officer has been sent a copy of the misconduct form in terms of regulation 8(4), he shall within the time limits specified in paragraph (2) give notice to the independent solicitor-

(a) whether he admits or denies the allegation of misconduct on his part;

(b) whether he wishes to offer any explanation;

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

(d) whether he wishes witnesses to be called to give evidence to relevant facts at the misconduct hearing and, if he does, notice of the names and addresses of any such witnesses; and

(e) whether he intends to be represented by an advocate or a solicitor.

(2) Subject to paragraph (3), the senior officer shall give notice of the information required by paragraph (1) by entering on the copy of the misconduct form the relevant information, signing the form and returning it to the independent solicitor within the period of 14 days after the date on which -

(a) the form was sent to the senior officer; or

(b) the last of the documents required by regulation 11 to be supplied is supplied to the senior officer,

whichever is the later date.

(3) The police authority may, on the application in writing of the senior officer, extend the period of time mentioned in paragraph (2), notwithstanding that that time limit may have expired.

(4) Notwithstanding paragraph (1)(d), the police authority may, on the written application of the senior officer at any time before the misconduct hearing is commenced, permit him to nominate further witnesses whom he wishes to call to give evidence to relevant facts at the hearing.

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

(6) Paragraph (5) is without prejudice to the right of the senior officer to invite the witness to provide a statement to him or his representative.

(7) The independent solicitor shall on receiving notice from the senior officer in terms of paragraph (2) pass that notice to the police authority.

Cases in which the senior officer admits misconduct

13. - (1) This regulation applies in any case in which-

(a) in terms of regulation 12, the senior officer has admitted an allegation of misconduct on his part; and

(b) there are no allegations of misconduct on his part specified on the misconduct form which, in terms of regulation 12, he has denied.

(2) In any case to which this regulation applies the police authority may determine to deal with the case without referring it to a misconduct hearing under regulation 15, and where it has so determined it shall proceed to deal with the case in accordance with regulation 22.

Appointment of the chairman of a misconduct hearing

14. - (1) This regulation applies to any case which has not been dealt with under regulation 13.

(2) An allegation that an act or omission of a senior officer amounts to misconduct shall be heard by a single person who shall act as the chairman of the misconduct hearing being a person selected and appointed by the police authority from a list of persons nominated by the Lord President of the Court of Session.

(3) To assist the chairman on matters pertaining to the police the police authority shall, with the approval of the chairman, appoint an assessor who shall be a chief constable or a retired chief constable.

(4) The police authority shall not appoint as an assessor under paragraph (3)-

(a) a person who is one of Her Majesty's Inspectors of Constabulary;

(b) the chief constable of the police force of which the senior officer is a constable;

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

(d) the investigating officer;

(e) the independent solicitor; or

(f) any chief constable who appears to the authority may be a material witness or is interested in the matter otherwise than as a constable of a police force.

(5) The police authority may appoint a clerk to the chairman and shall do so if so requested by the chairman.

Arrangement of misconduct hearing

15. - (1) Where an allegation of misconduct is to be heard at a misconduct hearing, the police authority shall make all necessary arrangements for the hearing before the chairman and shall determine the time, date and place of the hearing.

(2) The police authority shall by notice in writing require the senior officer to appear at the hearing at the time, date and place specified in the notice.

(3) Where the senior officer has intimated that he wishes to be accompanied at the hearing by a representative who is a constable of a police force other than his own, the police authority shall inform the chief constable of that other force of that intimation and shall give notice of the time, date and place of the hearing.

(4) Where the hearing arises out of a complaint by a member of the public, the police authority shall, if the senior officer has denied the allegation or any part thereof, give notice to the complainer specifying the time, date and place of the hearing and shall draw the complainer's attention to the provisions of regulation 17(4)(b) and (5).

(5) The police authority shall take all reasonable steps to secure the attendance at the hearing of any witnesses required to give evidence to relevant facts at the hearing.

(6) In any case in which in terms of this regulation the police authority is required to give notice to any person, such notice shall be sent not less than 21 days prior to the commencement of the hearing, provided that the senior officer may, in writing, waive his entitlement to receive 21 days' notice of the hearing.

(7) At any time before the date fixed for hearing in accordance with paragraph (2), the police authority may, if it is of the opinion that it is expedient or necessary to do so, discharge the hearing and shall make all necessary arrangements in accordance with paragraphs (1) to (6) for the misconduct hearing to be held at a later date.

Representation at misconduct hearing

16. - (1) The case against the senior officer shall be presented by the independent solicitor who may for that purpose instruct an advocate or a solicitor to appear on his behalf, and in that case the restrictions on the appointment of the independent solicitor specified in regulation 7(3) shall apply to the appointment of counsel or solicitor concerned.

(2) The senior officer shall be entitled to conduct his own case or he may be represented-

(a) either by an advocate or a solicitor; or

(b) by another constable of a police force selected by him, and such other constable may be a representative of an association representing senior officers.

(3) Both the person presenting the case against the senior officer and the senior officer, or as the case may be his representative, may be assisted at the hearing by a constable (or former constable) of a police force.

Procedure at misconduct hearing

17. - (1) Subject to the provisions of this regulation and of regulations 18 to 20, the procedure at the misconduct hearing shall be such as the chairman may determine.

(2) If the senior officer admits the allegation of misconduct, the chairman, after giving the person presenting the case and thereafter the senior officer or his representative an opportunity of making a statement, may dispose of the case forthwith.

(3) Subject to paragraph (4), the misconduct hearing shall be held in private.

(4) Notwithstanding paragraph (3)-

(a) where a child is giving evidence, the chairman may allow a parent or guardian to be present and, when any witness is giving evidence, the chairman may, subject to consideration of any objections raised by the senior officer, allow such other persons to be present as may seem reasonable to him because of any special circumstances;

(b) where the hearing of the case arises out of a complaint made by a member of the public and the senior officer denies the allegation of misconduct or any part thereof, the chairman may allow the complainer to be present at the hearing while witnesses are giving evidence; and

(c) the chairman may allow any other person to be present if the independent solicitor and the senior officer agree.

(5) In any case to which paragraph (4)(b) applies-

(a) the complainer shall not be entitled to put questions to the senior officer or, except where the complainer is giving evidence as a witness, to participate in the proceedings in any way;

(b) where the complainer is to be called as a witness at the hearing, he shall not be allowed to attend before he gives his evidence; and

(c) the chairman may, if he thinks fit, exclude the complainer from the whole or any part of the hearing and, without prejudice to the foregoing generality, shall exclude him-

(i) during any period when it considers that a witness may, in giving evidence, disclose information which, in the public interest, ought not to be disclosed to a member of the public; or

(ii) if he behaves in a disorderly manner.

(6) If the senior officer wishes to make an objection to the effect that the facts alleged in the misconduct form in relation to any allegation are not such as to amount to misconduct on his part, he shall give written notice of the objection to the chairman at least 7 days before the misconduct hearing is due to commence.

(7) Where the senior officer has given notice of an objection in terms of paragraph (6), the chairman shall determine any such objection at the beginning of the misconduct hearing and, if he upholds the objection, he shall make a finding that there has been no misconduct on the part of the senior officer in relation to the allegation in question.

(8) The senior officer or his representative, or both of them, may put questions to any witness called by the person presenting the case.

(9) The senior officer may give evidence on his own behalf and he or his representative may call witnesses in support of his denial of the allegation of misconduct and, where any such evidence is given, the person presenting the case against the senior officer may put questions to the senior officer or, as the case may be, the other witness.

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

(11) After all the evidence has been led, the person presenting the case and thereafter the senior officer or his representative shall be entitled to make oral submissions on the case before the hearing is concluded.

(12) The chairman shall-

(a) prepare a written note summarising the proceedings at the misconduct hearing; and

(b) arrange for an audio recording to be made of those proceedings.

Statements in lieu of oral evidence

18. - (1) Subject to the provisions of this regulation, the chairman may, in lieu of oral evidence, admit evidence by way of a written statement but evidence shall not be admissible in pursuance of this regulation if it would not have been admissible had it been given orally.

(2) If either the independent solicitor or the senior officer (in this regulation referred to as "the parties") proposes in pursuance of this regulation to adduce written evidence at a hearing, he shall-

(a) at least 21 days, or such shorter period as the parties may agree in writing, before the date of the hearing-

(i) give the other party a copy of the statement; and

(ii) invite that party to join in a minute of agreement to the admission of the statement in evidence without the maker thereof being called as a witness; and

(b) at least 10 days, or such shorter period as the parties may agree in writing, before the date of the hearing, lodge any such minute of agreement with the chairman.

(3) The chairman shall admit evidence by way of written statement under paragraph (1) only if-

(a) such statement is accompanied by a minute of agreement signed by the parties; or

(b) either party requests the chairman to admit the written statement and the other party does not object.

(4) Where, notwithstanding that a written statement has been admitted in evidence without the person who made the statement being called and being available as aforesaid, the chairman is of the opinion that oral evidence should be given, he may request that that person be called as a witness and, in such case, unless that person gives oral evidence, the chairman shall be entitled to disregard the written evidence.

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

Adjournment of misconduct hearing

19. - (1) The chairman may from time to time adjourn the hearing to a later time or date if it appears to him necessary or expedient to do so for the due hearing of the case.

(2) Where the chairman adjourns the hearing to a later date he shall forthwith provide the senior officer with a written notice of the time, date and place of the adjourned hearing.

Hearing in absence of the senior officer

20. - (1) If the senior officer does not attend at the misconduct hearing or at any adjournment thereof, the hearing may be proceeded with and concluded in his absence if it appears to the chairman just and proper to do so.

(2) Notwithstanding the terms of paragraph (1)-

(a) if the senior officer is detained while serving the sentence of a court in a prison or other institution in any part of the British Islands and expresses a desire to make representations in person at the hearing, the hearing shall not be concluded until the senior officer has been able to make such representations; and

(b) if any other good reason is given to the chairman by, or on behalf of, the senior officer why he is unable to attend the hearing, the hearing shall be postponed or adjourned, as the case may be.

(3) Subject to paragraph (2), where, owing to the absence of the senior officer, it is not possible to comply with the whole or any part of the procedure described in these Regulations, the case may be proceeded with as if that procedure had been complied with.

Report of the chairman of the misconduct hearing

21. - (1) Except in any case to which paragraph (2) applies, the chairman of the misconduct hearing shall as soon as possible after the conclusion of the hearing submit a report to the police authority setting out-

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

(b) a statement as to whether in relation to the allegation any act or omission of the senior officer amounted to misconduct;

(c) if any act or omission of the senior officer amounted to misconduct, a recommendation as to the proper disposal which in the opinion of the chairman, having regard to the senior officer's record of service, should be imposed;

(d) any other matter arising out of the misconduct hearing which he desires to bring to the notice of the police authority.

(2) In any case in which after the commencement of a misconduct hearing the police authority has directed that the allegation of misconduct shall no longer be heard, the police authority shall notify the chairman of the misconduct hearing in writing as to that direction, and the chairman shall thereafter terminate the proceedings and report to the police authority accordingly.

(3) The chairman of the misconduct hearing shall send a copy of the report to the senior officer.

Decision of police authority

22. - (1) When the police authority has received the report of the chairman of the misconduct hearing in terms of regulation 21(1), or where it has determined to deal with the case in terms of regulation 13(2), the police authority shall decide either to dismiss the case or-

(a) to make a finding that any act or omission of the senior officer amounted to misconduct but to take no further action thereon; or

(b) to make such a finding and to consider whether to make a disposal.

(2) As soon as possible after the police authority has reached a decision in accordance with paragraph (1), it shall arrange for-

(a) the decision to be recorded on the misconduct form;

(b) the decision to be notified to the senior officer and a copy of misconduct form containing the decision to be sent to him;

(c) where it has made a finding that any act or omission of the senior officer amounted to misconduct and decided to consider whether to make a disposal, a copy of each of the written note and the audio recording made in accordance with regulation 17(12) to be sent to the senior officer; and

(d) when the senior officer is not the chief constable, the decision to be notified in writing to the chief constable of the police force concerned.

(3) Where the misconduct hearing arises out of a complaint made by a member of the public, the police authority shall notify the complainer in writing of the finding made.

Disposal

23. - (1) The disposals which may be recommended by the chairman of the misconduct hearing or made by the police authority shall be one of the following:-

(a) dismissal from the force;

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

(c) fine;

(d) reprimand; or

(e) caution,

and separate disposals may be made in relation to separate findings of misconduct in relation to each allegation of misconduct specified in the misconduct form.

(2) Where the police authority has notified the senior officer that it has decided to consider making a disposal, the senior officer, shall within 14 days of the date on which such notification is made, give notice to the police authority whether he wishes to make oral or written representations in relation to the matter of the disposal.

(3) Where the senior officer gives notice that he wishes to make written representations, he shall submit those representations within 28 days of having received the notification referred to in paragraph (2).

(4) Where the senior officer gives notice that he wishes to make oral representations to the police authority, the authority shall give reasonable notice of the time, date and the place at which those representations may be made.

(5) At any hearing referred to in paragraph (4), the senior officer may be represented-

(a) either by an advocate or a solicitor; or

(b) by another constable of a police force selected by him, and such other constable may be a representative of an association representing senior officers.

(6) The senior officer may waive requirements for notice or agree to shorter periods of notice than those specified in paragraphs (2) to (4), and in any such case the senior officer shall give notice to the police authority in writing to that effect.

(7) The police authority may on the application in writing of the senior officer extend the periods of time appointed under paragraphs (2) and (3) notwithstanding that the time appointed may have expired.

(8) Before deciding on a disposal the police authority shall have regard to the senior officer's record of police service.

(9) After the period within which the senior officer may make representations in relation to the disposal has elapsed and after considering any representations which are being made by or on behalf of him, the police authority may decide either to make no disposal or to make a disposal as mentioned in paragraph (1).

(10) As soon as possible after reaching a decision in accordance with paragraph (9), the police authority shall arrange for-

(a) the decision to be recorded on the misconduct form; and

(b) the decision to be notified in writing to-

(i) the senior officer; and

(ii) when the senior officer is not the chief constable, the chief constable of the police force concerned.

(11) Where a disposal as mentioned in paragraph (1)(b) has been made and the senior officer has not resigned from the force in accordance with the requirement specified in the decision, then the effect of the decision shall be to dismiss the senior officer from the force either forthwith or on the date specified in the decision.

(12) If the police authority decides to make a disposal in terms of paragraph (1)(c)-

(a) it shall not specify a fine in relation to the subject matter specified in the misconduct form (irrespective of the number of separate findings of misconduct) which exceeds in the aggregate one week's pay; and

(b) the fine shall be recovered by stoppage of pay in amounts not exceeding one-seventh of the senior officer's weekly pay, except in the event that he leaves the force when the whole amount of any fine then unpaid may be deducted from any pay then due.

Expenses

24. - (1) All the expenses of a hearing before the chairman of a misconduct hearing or the police authority under these Regulations, including reasonable expenses incurred by the senior officer in preparation and conduct of the defence, shall be defrayed by the police authority.

(2) Any expenses payable under paragraph (1) shall be subject to taxation in such manner as the Secretary of State may direct.

(3) The police authority may reimburse in whole or in part any expenses reasonably incurred by the senior officer in connection with proceedings under these Regulations after the date of service of any investigation form and until either the service of a misconduct form or notification that no proceedings are to be taken.

Suspension - ordinary procedure

25. - (1) Where it appears to the police authority, on receiving a report, allegation or complaint from which it appears that any act or omission, or an alleged act or omission, of a senior officer may amount to misconduct or a criminal offence and that the senior officer ought to be suspended from duty and from his office as a constable of a police force, the police authority may, subject to the following provisions of this regulation, so suspend him.

(2) The police authority shall not so suspend a senior officer unless it appears to it that either of the following conditions ("the suspension conditions") is satisfied-

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

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

(3) If the police authority determines that a senior officer ought to be suspended under this regulation, it shall forthwith notify the Secretary of State in writing of its decision and of the relevant reasons.

(4) If, upon being so notified of the decision of the police authority the Secretary of State is satisfied both as to the suspension condition and reasons, he shall as soon as practicable notify his approval of the suspension of the senior officer to the police authority; and the suspension of the senior officer shall not have effect unless the approval of the Secretary of State is given.

(5) Where the Secretary of State gives his approval to the suspension of a senior officer his suspension shall take effect from the time he receives notice of the Secretary of State's approval thereof from the police authority, and he shall be suspended until-

(a) the Secretary of State decides otherwise;

(b) the police authority decides otherwise;

(c) a decision is taken, or a direction made, under regulation 5(3) or (4), 6(2), 7(6) or 8(2) to the effect that no action or further proceedings shall be taken against the senior officer under these Regulations; or

(d) he has been required to appear before a misconduct hearing and-

- (i) all the allegations of misconduct have been withdrawn or dismissed;
- (ii) a finding that any act or omission of the senior officer amounted to misconduct has been recorded but it has been decided to take no further action thereon; or
- (iii) a disposal has been made in respect of the finding or the police authority has decided pursuant to regulation 23(9) to make no disposal,

whichever first occurs.

(6) The suspension of a senior officer under this regulation shall cease to have effect at the expiry of 3 months from the date of imposition or reimposition unless the police authority shall before such expiration have-

- (a) determined that the suspension should be reimposed;
- (b) notified the Secretary of State to that effect; and
- (c) notified the senior officer accordingly.

(7) Where a suspension is to be reimposed under paragraph (6), the provisions of paragraphs (3) to (5) shall apply to the reimposition

Suspension - urgent cases

26. - (1) Subject to paragraph (2), in cases of urgency, the like power of suspension as under regulation 25 may be exercised with immediate effect by the police authority.

(2) Where a senior officer has been suspended under paragraph (1), the police authority shall notify the Secretary of State forthwith and shall specify the reason for suspension under this regulation.

(3) Without prejudice to regulation 25, the suspension of a senior officer under this regulation shall cease to have effect at the expiry of 72 hours from the imposition thereof unless within that period the Secretary of State has notified the police authority of his approval thereof.

Suspension - termination

27. - (1) This regulation applies in any case in which a senior officer has been suspended from duty and from his office as a constable of a police force in terms of regulation 25 or 26.

(2) Where the suspension of a senior officer ceases to have effect upon the occurrence of any of the events specified in regulation 25(5) and the suspension has not been reimposed in accordance with regulation 25(6), that officer shall not be liable to be suspended again in respect of the report, allegation or complaint which led to the suspension which has ceased to have effect.

Transcripts

28. - (1) Where the police authority make a disposal specified in either sub-paragraph (a) or (b) of regulation 23(1), the senior officer may, not later than 28 days after the date on which the authority's decision is notified in terms of regulation 22(2), by notice in writing addressed to the authority request the authority to provide him with a transcript of all or a specified part of the audio recording of the proceedings at the misconduct hearing made in accordance with regulation 17(12).

(2) In giving notice under paragraph (1), the senior officer shall state whether a transcript of all or part of audio recording is requested and, if only part is requested, specify the relevant part.

(3) If, after considering a notice submitted under paragraph (1), the police authority is of the opinion that the transcript requested is or might be necessary for an appeal in terms of section 30 of the 1967 Act by the senior officer against the authority's decision under regulation 22, it shall arrange for the transcript to be prepared and for a copy to be sent to the appellant.

Police authority to notify decision to Secretary of State

29. The police authority shall give notice to the Secretary of State of any decision made under regulation 22 and any disposal made under regulation 23 and, in any case in which it has received the report of the chairman of the misconduct hearing in terms of regulation 21(1), it shall forward a copy of that report to the Secretary of State.

Records

30. - (1) The police authority shall keep-

(a) a record of every complaint made by a member of the public against any senior officer together with an account of the action taken in connection therewith;

(b) a record of every report, allegation or complaint from which it was inferred that an act or omission of a senior officer may have amounted to misconduct, together with an account of the action taken in connection therewith; and

(c) where any such report, allegation or complaint results in a senior officer being required to appear before a misconduct hearing, on the misconduct record, details of the allegation, together with the finding of the hearing and any disposal made.

(2) The police authority shall retain-

(a) any audio recording made in accordance with regulation 17(12) for a period of not less than 3 years from the date on which the recording was sent pursuant to regulation 22(2); and

(b) any transcript of all or part of such an audio recording where it has been prepared in terms of regulation 28(3) for a period of not less than 3 years from the date on which the audio recording was sent pursuant to regulation 28(3).

Revocations, savings and transitional provisions

31. - (1) Subject to the following provisions of this regulation, the 1996 Regulations are hereby revoked.

(2) Notwithstanding paragraph (1), the 1996 Regulations shall continue to apply (but subject to regulation 31(2) of the 1996 Regulations) to any case where an act or omission was committed or made by a senior officer before 1st May 1999 which amounts or may amount to a disciplinary offence, as defined in regulation 2(1) of the 1996 Regulations, at the time when the act or omission was committed or made, including, without prejudice to that generality, any such case irrespective of whether it is before, on or after that date that-

- (a) a report, allegation or complaint is received in relation thereto;
- (b) the senior officer is charged or found guilty of that disciplinary offence; or
- (c) an appeal is made in relation to such a finding and any punishment imposed or only in relation to a punishment,

but for the avoidance of doubt, the 1996 Regulations do not apply to a case where-

- (i) the disciplinary offence consists of the conviction of the senior constable of a criminal offence as mentioned in paragraph 13 of Schedule 1 to the 1996 Regulations; and
- (ii) such a conviction occurs on or after 1st May 1999, even although the act or omission which constituted the criminal offence of which the senior officer was convicted was committed or made by the senior officer before that date.

Henry B McLeish
Minister of State, The Scottish Office

St Andrew's House, Edinburgh
24th March 1999

SCHEDULE

Regulation 4

CONDUCT CONSTITUTING MISCONDUCT

1. Conduct likely to bring discredit on the police force or service, including-
 - (a) insubordination or incivility;
 - (b) corrupt practice;
 - (c) breach of confidence;
 - (d) drinking any intoxicating liquor while on duty or being unfit for duty through such liquor;
 - (e) suppression of complaints;
 - (f) wilful or careless damage to, or loss of, property belonging to the police authority or within the care of the police;
 - (g) disorderly conduct; or
 - (h) acting towards, or treating, any person in an oppressive or improper manner.
2. Failure to comply, without good and sufficient cause, with a lawful order.
3. Failure to report any matter which it is the senior officer's duty to report or to account for any act or omission in the ordinary course of duty which he has a duty to account for.
4. Neglect of duty.
5. Wilful or careless falsehood.
6. Malingering.
7. Being absent from duty, or being late for duty, without leave.
8. Contravention of regulation 5 of, or Schedule 1 to, the Police (Scotland) Regulations 1976.
9. Having been found guilty by a criminal court of a criminal offence in any part of the United Kingdom or in any of the Channel Islands or the Isle of Man.

ANNEX IV

COMPLAINTS AGAINST THE POLICE

This explains what to do if you need to make a complaint against a police officer in Scotland. It also explains how these complaints are dealt with.

How can I make a complaint?

If you think a police officer has behaved wrongly on duty or has committed an offence you can:

- write to the Chief Constable of the police force concerned, or
- give the details at any police station (or to any police officer), or
- ask a solicitor, your Member of Parliament or your local councillor to take the matter up with the Chief Constable on your behalf, or
- contact the local Procurator Fiscal if it appears the officer may have broken the law, or
- speak to someone at the Citizen's Advice Bureau who will also be able to give you the names and addresses of the people or places mentioned in this leaflet.

What should I say?

- Say as much as you can about your complaint.
- Describe what happened.
- Give the name or number of the officer(s) concerned (if you know them).
- Say where and when the incident took place.
- Give the names and addresses of any witnesses (if you have them).

What happens then?

Normally a senior officer will visit you on an informal basis to tell you about the complaints procedure and to give you the opportunity to discuss your complaint. Whenever possible, the senior officer will explain why the constable subject to complaint took a certain course of action, what the constable's duties were, what the police powers were, and in what circumstances the constable acted. Experience has shown that many people are unaware of the extent of police functions and responsibilities and that an explanation provided by a senior officer may help to clarify the position. If you are satisfied with the explanation given by the senior officer, your complaint will proceed no further. You may be asked to sign a piece of paper confirming that you are happy for this to happen. A record will be maintained of what has taken place. Any allegation of criminal conduct would not be the subject of an attempted informal resolution of this nature.

Who will investigate my complaint?

If things are not sorted out informally your complaint will be investigated by a senior police officer - known as the investigating officer. This senior officer must have had no earlier involvement with your case.

How will my complaint be investigated?

The investigating officer will talk to:

- you;
- the officer(s) you have complained against;
- any witnesses.

If you are not happy with any explanation offered, or if it appears that the officer(s) may have acted wrongly, then the investigating officer will refer an account of the investigation into your complaint to the Assistant Chief Constable, who has responsibility for complaints and conduct.

At this stage the Assistant Chief Constable can:

- decide, after considering the investigating officer's report, that no formal action is needed, or
- deal with the officer(s) under the police misconduct procedures, or
- if it appears that the officer(s) may have broken the law, refer the case to the Procurator Fiscal.

Whatever action is taken you will be told by the Assistant Chief Constable as soon as possible.

The Procurator Fiscal

The Procurator Fiscal is entirely independent of the police. In some cases the Procurator Fiscal may

direct the police to investigate a complaint on his/her behalf before carrying out his/her own investigation.

Criminal Proceedings

On receipt of a report from the police the Procurator Fiscal will:

- start an investigation;
- check the evidence;
- have someone from the Procurator Fiscal service contact you.

Your information is needed by the Procurator Fiscal to assess the strength of the evidence against the officer(s) concerned. You may be asked to go to the Procurator Fiscal's office and speak to someone there.

After looking into the case the Procurator Fiscal will decide whether or not to report the case to the Crown Office (the headquarters of the fiscal service).

What happens if a case is not reported to Crown Office?

If the case is not reported to the Crown Office that means that no criminal proceedings will be taken. **The Procurator Fiscal will let you know that there are to be no criminal proceedings.** The Procurator Fiscal will also refer the matter back to the force and it is for the force to decide whether misconduct proceedings should be taken in respect of the officer.

What happens if a case is reported to Crown Office?

Crown Counsel (senior prosecution lawyers) will consider the case and will decide whether to prosecute the police officer. **The Procurator Fiscal's office will let you know what Crown Counsel decide but the reasons for their decision must remain confidential.** Police officers who are accused of a crime have the same rights under law as any other person and must be treated in the same way. If the case goes to court therefore you and any other witnesses may have to attend court to give evidence.

Police Misconduct Proceedings

The police officer complained against may not have committed a criminal offence but he may have behaved in a fashion considered inappropriate for a police officer. In these circumstances the Assistant Chief Constable may, in conjunction with the officer's immediate supervisors:

- warn the officer about behaviour if the matter is not serious;
- arrange for the officer to appear at a misconduct hearing.

What if I am not satisfied with the handling of my complaint?

It is important that you allow the Chief Constable a reasonable opportunity to carry out an investigation into your complaint and respond in writing to you. If at the conclusion of the investigation you are not satisfied with the manner in which the Chief Constable has dealt with your complaint you can write to Her Majesty's Inspectorate of Constabulary (HMIC) explaining why you are dissatisfied. You should make your approach to HMIC as promptly as possible - if possible within one month of the police letting you know how they have dealt with your complaint.

In normal circumstances a delay of more than 12 months may result in HM Inspectors being able to respond to your complaint.

The address is: 2 Greenside Lane, EDINBURGH, EH1 3AH

What should I say to HM Inspectors?

- Say as much as you can about your original complaint.
- Give the reasons why you are dissatisfied with the way your complaint was dealt with by the force.
- Offer any further information about your case which may have come to light since you first made your complaint.

What happens then?

HM Inspectors will:

- ask the relevant police force for the report of the original investigation into your complaint;
- notify the officer(s) complained against;

- examine the report;
- decide whether your complaint has been handled properly or not.

What happens if HM Inspectors decide that my complaint was properly dealt with in the first place?

If, after careful consideration, HM Inspectors are satisfied that your complaint has been dealt with properly they will write with their findings to:

- you;
- the officer(s) you complained against;
- the Chief Constable

What happens if HM Inspectors decide that my complaint requires to be reconsidered?

HM Inspectors will:

- direct the Chief Constable to reconsider the case, and may
- instruct the Chief Constable to take account of any further information which might have come to light after your original complaint was made.

If this happens HM Inspectors will tell you and the officer(s) you have complained against.

What happens when my complaint has been reconsidered by the Chief Constable?

The Chief Constable will report the outcome to HM Inspectors.

HM Inspectors will then tell:

- you;
- the officer(s) concerned;

what the Chief Constable has decided and how they view the way in which the reconsideration of your complaint has been carried out.

What is the limit of HM Inspectors' power to investigate?

HM Inspectors may not investigate any formal action taken against the officer(s) complained against. Their powers extend only to examining how the complaint was originally investigated by the force concerned. They cannot assist a complainer who is dissatisfied with a decision taken by an Assistant Chief Constable concerning the outcome of the investigation. Nor may they look at any aspect of the Procurator Fiscal's involvement in the case.

What happens if I want to withdraw my complaint?

Wherever possible you should speak to the officer to whom you first made your complaint. Alternatively, you can notify the Chief Constable or HM Inspectors if you have approached them. If your complaint has led to criminal proceedings against any officer any decision to continue with those proceedings will rest with the Procurator Fiscal.

How do I complain about a senior police officer?

If you have a complaint about an Assistant Chief Constable, or Chief Constable you should contact the police authority direct through the Chief Executive of the appropriate council. (The Citizen's Advice Bureau will have the address).

Who makes sure that complaints are dealt with properly?

Both the police authorities and Her Majesty's Inspectors of Constabulary for Scotland have to keep themselves informed as to how complaints made against police officers are investigated and dealt with.

The Chief Constable will give the police authority the information it needs to check that complaints are being dealt with properly. Each Chief Constable also gives details in an annual report to the police authority of how complaints made against his officers are dealt with.

As described above, Her Majesty's Inspectors of Constabulary have the further power in certain circumstances to direct Chief Constables to reconsider the complaints made by members of the public.

An assessment of how complaints are dealt with is contained in reports published by Her Majesty's Chief Inspector of Constabulary for Scotland on the inspection of individual forces, and in the annual report of the Inspectorate.

Malicious Complaints

Anyone who knowingly makes a false complaint against a police officer(s) may be prosecuted by the Procurator Fiscal (and may be liable to civil action by the officer complained against).

This is intended to help you understand how you can make a complaint against a police officer in Scotland. It does not cover every detail and should not be regarded as a comprehensive statement of the law.

ANNEX V

CROWN GUIDELINES FOR THE INVESTIGATION OF COMPLAINTS AGAINST POLICE OFFICERS

The Regional Procurators Fiscal have a duty to investigate all complaints which are made against police officers where the complaint alleges that a crime may have been committed by a police officer or officers in the course of their duty. This duty is exercised in a way which is entirely independent of the police and in carrying out this duty the Regional Procurator Fiscal provides a completely impartial and thorough system of investigation. Most complaints against the police are made, in the first instance, direct to police forces. Where a report, allegation or complaint is made from which it may reasonably be inferred that a constable has committed a criminal offence in the course of duty it must be referred by the Assistant Chief Constable to the Regional Procurator Fiscal. The Regional Procurator Fiscal will advise the Assistant Chief Constable as to whether the matter is properly one inferring criminality, as opposed to misconduct - which is dealt with by the police under a scheme of regulations - and as to any further enquiries which should be made by the police.

The Regional Procurator Fiscal may elect to commence his own investigation at this stage; otherwise, when he has received a full report from the Assistant Chief Constable, he must then investigate the complaint. He may do this (a) personally, or (b) by instructing the Procurator Fiscal of the district concerned to investigate and report to him, or (c) by instructing another Procurator Fiscal in the region or a member of staff of a Procurator Fiscal's office to investigate and report to him.

Complaints against the police are often associated with criminal proceedings against the person making the complaint or another person. Complaints may, of course, be unsubstantiated, but where a complaint is substantiated or gives rise to cause for concern that the associated criminal proceedings should not be pursued, the Regional Procurator Fiscal may advise the district Procurator Fiscal either to discontinue the relevant current proceedings or delay the trial of such proceedings, if the circumstances allow.

The person making the complaint and any material witnesses will normally be interviewed by a member of staff of the Procurator Fiscal Service. At the very least the person making the complaint will be given a copy of the statement made by him or her during the investigation by the police and given the opportunity to check it and elaborate on it and to list any witnesses to the incident of whose identity he or she is aware. He or she will also be given the option of requesting an interview with the member of staff investigating the complaint.

Information obtained solely as a result of an investigation into a complaint against the police is information which would not normally have been available to the Crown in a related prosecution against the complainer. By making a complaint against the police the complainer must not be put in a position where he is prejudiced in respect of related criminal proceedings against him. A complainer who is still to stand trial must be advised, before being interviewed, that he is not obliged to answer any question relating to the subject matter of any outstanding charge against him.

This rule also applies to any other witness who is in the same position.

For the same reason, Assistant Chief Constables are instructed that any statements or information obtained for the purpose of an investigation of a complaint should be sent direct to the Regional Procurator Fiscal and should not be sent or disclosed to any other police officer other than an officer who is involved in the investigation or supervision of the investigation of the complaint.

It is, of course, an offence to make a false and malicious complaint of criminality against a police officer as it is to make such a complaint against any person. Except in cases where the complainer is to be prosecuted for making a false and malicious complaint against a police officer the complainer's statements to the police and members of the Procurator Fiscal Service will not be disclosed to any other Procurator Fiscal or Depute Fiscal except those instructed by the Regional Procurator Fiscal to investigate the complaint.

In particular, the complainer's statements and those obtained from witnesses in relation to the complaint are not made available to the Procurator Fiscal who is to take the complainer's trial. The trial Fiscal will have a note informing him or her that the case is associated with a complaint against the police, with a brief indication of the nature of the complaint and a request that he or she should, where appropriate, prepare a report to the Regional Procurator Fiscal at the conclusion of the trial, in order to assist the investigation of the complaint. The person who interviews the complainer about his complaint against a police officer must not, of course, take or have taken the complainer's trial.

As a general rule, information which comes to light during the investigation of the complaint as a result of that complaint and which is relevant to any related criminal proceedings against the complainer must not be disclosed to the Procurator Fiscal or to any other person with an interest in the related criminal proceedings even though the information may be of assistance to the prosecution case against the complainer.

There is an exception to that rule where information is obtained in the course of the investigation of the complaint which is relevant to any separate or unrelated criminal investigation or prosecution, but the complainer and his solicitor must be informed by the Regional Procurator Fiscal that this information will be disclosed.

The Regional Procurator Fiscal must not withhold any information which would be beneficial to the defence of an accused person, irrespective of whether the accused is the complainer or a co-accused of the complainer or any other individual. If during the investigation of the complaint against the police the Regional Procurator Fiscal obtains information which would assist the complainer in the conduct of his defence, the information must be disclosed to the complainer or to his solicitor and to the relevant Procurator Fiscal. In circumstances where information has been obtained as a result of the investigation of the complaint against the police and it appears to the Regional Procurator Fiscal that the information is likely to be of assistance to the defence of an accused person other than the complainer, the Regional Procurator Fiscal must disclose the information to that individual or to his solicitor and must inform the complainer or the complainer's solicitor and the relevant Procurator Fiscal that the information will be disclosed.

If, after investigation, the Regional Procurator Fiscal concludes there is no substance in the allegation, he will inform the complainer, the Assistant Chief Constable and, where appropriate, the district Procurator Fiscal that there are to be no proceedings.

If the Regional Procurator Fiscal considers there is any substance in the complaint against the police, he will submit a full report of the evidence to Crown Office along with his assessment of the merits of the case and his recommendation. Any information held by the Regional Procurator Fiscal about previous complaints against the officer must be included in the precognition.

A complaint has substance where there is credible evidence to support the allegation in the complaint whether or not the evidence is sufficient to support proceedings. In Scotland, criminal proceedings are not competent - other than in relation to certain minor statutory offences - without corroborated evidence, that is evidence from more than one source, implicating the accused. Complaints which are based on corroborated but unreliable evidence will also be reported to Crown Office.

All reports submitted to Crown Office are considered personally by a Law Officer - the Lord Advocate or (more usually) the Solicitor General for Scotland. Our target is for decisions to be taken and communicated to the Regional Procurator Fiscal by Crown Office within 21 days. The Regional Procurator Fiscal is responsible for informing the complainer, the police and the Procurator Fiscal of the district concerned. The majority of reports do not lead to criminal proceedings being taken against a police officer.

There are many reasons for this. In many complaints no corroborative evidence is available. In others an assessment of the credibility of the available evidence leads to the conclusion that proceedings are not appropriate.

Many complaints reflect the defence to the associated criminal proceedings - eg the complainer states that he was defending himself against an attack by a police officer. If he has been convicted and disbelieved by a trial court it will normally be difficult to justify criminal proceedings against the police officer in the absence of some new or compelling evidence. Other complaints are malicious and lead to criminal charges against the complainer.

All complaints are carefully investigated and considered independently and at a very high level in order to ensure that those cases which can be prosecuted are prosecuted.

Investigation of the complaint against the police should normally be concluded within 4 months of the receipt of the full report from the Assistant Chief Constable.

The Regional Procurators Fiscal and Law Officers take their role in complaints against the police very seriously. In some cases there may not be sufficient evidence to justify criminal proceedings against a named officer, but there may be grounds for concern that the conduct of an individual may fall within the proper scope of internal police misconduct procedures. In such cases our concerns will be reported to the Assistant Chief Constable. In other cases there may be clear evidence inferring criminality or misconduct, but still insufficient, even after exhaustive investigation, to identify the perpetrator. In these cases too the circumstances will be referred to the Assistant Chief Constable with a view to such action as may be necessary to enhance management or supervision in future.