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Scottish Government
Riaghaltas na h-Alba

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Dear Convener,

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

I am writing ahead of my appearance before the Criminal Justice Committee on Wednesday 18 November, when I will give evidence on the Police Service of Scotland (Conduct) Amendment Regulations 2026 and the Police Service of Scotland (Senior Officers) (Conduct) Amendment Regulations 2026.

I am grateful to the Committee for its scrutiny of the Regulations and have noted carefully the evidence provided by relevant stakeholders during the Committee's meeting on Wednesday 4 November. The issues raised during that session reflect the importance of ensuring that the police conduct system is fair, effective, transparent and capable of maintaining public confidence.

Before turning to the regulations, I want to recognise the hard work and dedication of police officers across Scotland. The overwhelming majority carry out their duties with professionalism, integrity and commitment to the communities they serve. However, when things do go wrong, it is essential that there is a robust, fair and transparent system capable of addressing misconduct, maintaining public confidence and upholding the high standards rightly expected of all police officers.

The Regulations have been developed through an extensive process of consultation and engagement. This began during the development and parliamentary consideration of the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill ("the Bill") in 2024 and continued through two further consultation exercises specifically concerning the Regulations. The Regulations, and that Act – passed unanimously (apart from one member), implements many of the recommendations made by Dame Elish Angiolini in her *Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing*.

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The Scottish Government considered the responses to those consultations carefully and has continued to engage with key stakeholders as the detailed provisions have been refined.

That engagement included Police Scotland, the Scottish Police Authority, His Majesty's Inspectorate of Constabulary in Scotland, the Police Investigations and Review Commissioner and the police staff associations. Officials have also engaged with the Home Office and Northern Ireland officials considering the operation of comparable conduct arrangements elsewhere in the United Kingdom, while ensuring that the Regulations remain suited to Scotland's distinct policing and legal context.

Stakeholders expressed a range of views on individual aspects of the proposed procedure with views differing about how the system should balance procedural safeguards, operational effectiveness, transparency and the need to resolve cases without unnecessary delays.

The Committee will be aware that Parliament considered and approved a differentiated approach to misconduct proceedings through the Act, including provision for legally qualified chairs in senior officer gross misconduct cases only. The Regulations give effect to that framework. Extending an equivalent model to officers below senior rank would represent a different policy approach and would require further primary legislation rather than amendment of these Regulations.

The arrangements also reflect the principle that responsibility for standards and responsibility for disciplinary outcomes should remain aligned. If the Chief Constable is accountable for standards within policing, it is appropriate that the Chief Constable retains meaningful responsibility for enforcing those standards. A similar rationale underpinned the UK Government's recent decision to reverse the legally qualified chair model in England and Wales and return responsibility for misconduct hearings to chief officer leadership.

The Committee may also wish to consider the practical implications of extending independently chaired panels across all ranks. Recent reporting to the Scottish Police Authority's Complaints and Conduct Committee demonstrates that the conduct system deals with a significant volume of cases each year. A model based on independently chaired panels for all gross misconduct proceedings (424 initial assessments in 2025) would require substantial additional financial, administrative and legal resource and, in practice, a significantly expanded role for an independent body such as the Police Investigations and Review Commissioner in supporting and administering proceedings. The Scottish Government does not consider that such an approach would be proportionate or assist the timely resolution of cases. It would potentially include three different legally qualified people, appointed by the Lord President to complete preliminary assessment, conduct the hearing and hear any appeal.

The Committee may also wish to be aware that both the Scottish Police Federation and the Association of Scottish Police Superintendents (ASPS) opposed the introduction of independent misconduct panels for the ranks they represent during the Bill's Stage 1 evidence session. Chief Superintendent and ASPS President, Rob Hay stated that the Association did *"…not think that the case has been made for an entirely independent approach*." The Scottish Police Federation expressed similarly strong concerns about extending the role of the Police Investigations and Review Commissioner (PIRC), and called for the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill to be paused in their letter responding to the Criminal Justice Committee's call for views on the Bill.

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In setting out its position on independent chairs, the Federation highlighted concerns around interference with the operational independence of the Chief Constable and stated: "*The changes that Lady Elish asked for in England and Wales haven't worked and they are now changing their processes away from what was previously put in place.*"

Assertions that the misconduct system for non-senior officers is unfair, predetermined or captures minor conduct issues are not borne out by either the available data or the types of cases that proceed to formal misconduct hearings. The regulations strike an appropriate balance between robust procedural protections for officers and stronger safeguards for complainers and witnesses, ensuring that misconduct is addressed fairly, transparently and in a way that commands public confidence. Non senior officers have the ability to appeal to the First Tier Tribunal which is independent.

The Scottish Government considers that the Regulations before Parliament provide the best overall balance of the views and evidence gathered, ensure fairness and importantly improve on the current regulations. They will support effective reform of the police conduct system while protecting the rights of officers, strengthening accountability and providing a clearer and more responsive process for those affected by misconduct allegations.

The benefits of the Regulations are a reformed framework that addresses identified weaknesses in the current system. During scrutiny of the Bill, concerns were raised that officers could remain in post and continue to receive salary for extended periods even in cases where the evidence was considered clear and compelling. This can prolong uncertainty for victims and witnesses, create avoidable costs and resource pressures for Police Scotland and risk undermining wider public confidence in the misconduct system. The Regulations therefore introduce provision to fast-track the most clear-cut and serious cases while maintaining appropriate safeguards and procedural fairness.

Vitally, the Regulations also strengthen support for victims, witnesses and complainers, improve transparency through enhanced notification requirements, and help ensure that misconduct proceedings are concluded more quickly and effectively. These improvements are particularly important in serious cases, including those involving allegations of violence against women and girls. Information recently provided to the Scottish Police Authority's Complaints and Conduct Committee highlighted that approximately 80 officers are currently suspended. The majority of these matters concern alleged off-duty criminality, with a large proportion involving allegations of violence against women and girls. There are also additional rights to complainers which allows them to see that justice is served.

I have heard concerns about bias, however the regulations themselves specifically state a person should not be involved if it could give rise to a reasonable concern as to whether that constable could act impartially in relation to the misconduct investigation. It is therefore the case that any instances of actual bias would amount to procedural irregularity and would be legally challengeable on grounds of procedural fairness. The Scottish Government will consider how this could be further addressed in guidance. While principally a matter for the chief constable and not for the face of the regulations, we will also examine how minimum training requirements and continuous professional development for hearing chairs could be incorporated into the guidance. The regulations also support hearing chairs by introducing a presenting officer, helping to manage the practicalities of holding a hearing.

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The Committee may wish to consider the practical consequences of annulment. Annulment would not result in an alternative model coming into force. Rather, it would retain the current conduct framework that independent review, Parliament and stakeholders have concluded requires significant reform.

In particular, annulment would prevent implementation of a range of important improvements, including:

- accelerated hearings for clear and serious cases of gross misconduct;
- enhanced support for victims and witnesses, including trauma-informed measures and improved opportunities to participate in proceedings;
- greater transparency through notification requirements, publication of outcomes and clearer information for affected parties;
- more proportionate suspension arrangements, including express consideration of alternatives to suspension where appropriate; and
- measures intended to reduce delay and enable cases to be progressed more efficiently and effectively.

For officers below senior rank, annulment would mean that the existing arrangements continue for the vast majority of Police Scotland officers, preventing reforms designed to improve timeliness, transparency, accountability, support for victims and witnesses, more proportionate use of policing resources and public confidence from taking effect.

To assist the Committee's consideration of the Regulations, I have enclosed an annex providing further background on the intended impact of the reforms and addressing points raised in recent stakeholder evidence and wider commentary, including why the Act introduces a separate system for the small number of senior officers regarding gross misconduct. The annex sets out why the Regulations implement, rather than alter, the policy framework approved by parliament, why proposals for legally qualified chairs in all gross misconduct cases would require a fundamentally different legislative model, and how the regulations will improve timeliness, transparency and support for those involved in proceedings.

I look forward to discussing these matters with the Committee on 18 November and responding to members' questions.

Yours sincerely,

NEIL GRAY

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ANNEX
Police (Ethics, Conduct and Scrutiny) (Scotland) Act 2025 and Police Service of Scotland (Conduct) Amendment Regulations 2026

Background to The Act

The independent review led by Dame Elish Angiolini (DEA) was commissioned in 2018 to examine *complaints handling, investigations and misconduct in policing*. Published in November 2020, the Review made 111 recommendations aimed at improving fairness, transparency, accountability and proportionality while safeguarding human rights and reflected growing concerns about police culture, misconduct and public confidence, as well as concerns from both the public and police officers about the fairness and transparency of existing complaints and conduct processes.

Together, these issues highlighted the need for comprehensive reform to strengthen accountability, fairness and confidence in policing which led to the implementation of a wide-ranging programme of reform. The vast majority of the Review's recommendations have now been implemented, through both legislative and non-legislative reforms, with remaining work progressing through established oversight bodies.

The Police (Ethics, Conduct and Scrutiny) (Scotland) Act 2025, was scrutinised and unanimously (aside from the one member of Alba) approved by Parliament. The Act introduced a statutory Code of Ethics, a duty of candour, enhanced powers for the PIRC, statutory police vetting framework and enabling powers for new conduct regulations, including independent legally qualified chairs for senior officer gross misconduct hearings.

The revised conduct regulations do not establish a new policy direction; they give effect to the principal policy framework underpinning police conduct reform as agreed by Parliament in the Act. Had Parliament wished to adopt a legally qualified chair model for non-senior officers, it could have legislated for this during scrutiny of the Bill. Such a change cannot be delivered through these Regulations alone and would require further primary legislation. As such, a change of approach would require reconsideration of the policy settled by Parliament.

Police Service of Scotland (Conduct) Regulations 2026

Following the conclusion of the formal consultation on the updated conduct regulations in November 2025, we identified several matters requiring further discussion and engagement with stakeholders, and it was evident that the Scottish Police Federation's position on independent panels had materially shifted from their position at the time of the Bill being introduced.

The Scottish Government revised the regulations and there was another period of consultation between June and August 2026. Relevant stakeholders submitted formal responses for consideration as part of that process which showed differing views. These final Conduct Regulations put before Parliament deliver many improvements on the current system and were intended to take account of the majority of views heard throughout the process.

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Misconduct

The regulations revise the definition of misconduct to mean:
"conduct which amounts to a breach of the Standards of Professional Behaviour that is so serious as to justify disciplinary action (but does not, unless the context otherwise requires, include gross misconduct)."

This clarification ensures that only breaches warranting disciplinary action are treated as misconduct. Minor matters that do not meet this threshold can instead be addressed through other mechanisms, such as performance management procedures.

If the Chief Constable is to be held accountable for standards within policing, it follows that the Chief Constable must retain meaningful responsibility for enforcing those standards. The Regulations adopt a proportionate approach intended to secure appropriate legal expertise without creating avoidable delays in misconduct proceedings.

The Police (Ethics, Conduct and Scrutiny) Scotland) Act 2025 and the Senior Officers Regulations moved Senior Officer conduct matters away from the Scottish Police Authority.

Requiring a legally qualified chair for every gross misconduct hearing would be a major change following a significant period of consultation ahead of the Bill being introduced as well as Parliament's considerable scrutiny during the Act which agreed the current position.

It would have significant resource and operational implications, given the potential caseload across a workforce of over 16,500 officers. It would require substantial new administrative arrangements or expansion of the Police Investigations & Review Commissioner to oversee cases from preliminary considerations, investigations and case presentation and would significantly increase the appointments and administrative burden on the Lord President and the Scottish Courts and Tribunals Service to appoint judges for each case. To do so for the number of cases each year (in 2024-25 Police Scotland assessed 356 cases as potential misconduct or gross misconduct) would significantly increase time taken for cases to conclude.

It is notable that, following a review of police dismissals, the Home Office reversed the legally qualified chair model in England and Wales on the basis that chief officers are accountable for standards within their forces and should therefore bear responsibility for key disciplinary decisions. As the Home Office observed, "Chief officers are the heads of their respective workforces and are held to account on the standards in their forces".

There is also a wider public sector comparison to consider. The majority of public sector employees facing disciplinary proceedings are subject to processes led by appropriately senior managers within their own organisation. They are not routinely provided with independent legally qualified chairs at first instance. Extending legally qualified chairs to all police misconduct hearings would therefore introduce an element that is not commonly found in comparable public sector arrangements and would move policing away from, rather than towards, wider public sector norms.

I have noted some commentary around legal expenses for senior officers. The reimbursement of reasonable expenses for senior officers is a longstanding feature of the separate senior officer regime. It is not a new policy introduced by the Act or these Regulations. It is important to distinguish between implementation of the framework enacted

by Parliament and arguments for further policy change. Unlike the Scottish Police Federation, the Scottish Police Chief Officers Staff Association represents a very small cohort of members, limiting its ability to provide the collective legal support arrangements available to officers of federated rank. The position of federated ranks is not unusual. As with most employees across the wider public sector, they are generally expected to look to their representative body for support in disciplinary matters.

Cases

Information recently provided to the Scottish Police Authority's Complaints and Conduct Committee highlighted that approximately 80 officers are currently suspended. The majority of these matters concern alleged off-duty criminality, with a large proportion involving allegations of violence against women and girls. Allegations must be taken seriously, victims listened to and supported, and perpetrators investigated and held accountable, regardless of their occupation, rank or status. These cases also reinforce the need for a robust police conduct system that can act promptly following criminal proceedings, determine whether an individual remains fit to serve and retain public confidence.

More generally, the available evidence demonstrates that the formal misconduct framework is being used in a proportionate and targeted way. As set out in Police Scotland's submission to the Committee, the majority of matters referred to Professional Standards do not progress to formal misconduct investigation. Instead, where appropriate, they are addressed through management action, learning, performance procedures or no further action. By contrast, all cases assessed as potential gross misconduct are subject to formal investigation. The figures therefore show that formal misconduct proceedings are being concentrated on the most serious allegations, consistent with the policy intention underpinning the Regulations.

Latest Data on Cases

- Police Scotland reported 52 live Gross Misconduct investigations and 6 live Misconduct investigations. In addition to the approximately 80 suspended officers, there are 140 officers on restricted duties. This is less than 1% of the workforce.
- Of the suspended officers, over half are awaiting outcomes from COPFS or criminal justice proceedings. Nearly two-thirds (64%) of all suspensions relate to either domestic abuse allegations (39.8%) or sexual allegations (24.1%).
- A number of conduct cases remain live for significant periods, with 15 conduct matters exceeding 12 months from preliminary assessment, reflecting the complexity of investigations, legal challenges, evidential issues and links to criminal proceedings.
- 60 officers resigned or retired in the previous 12 months whilst subject to criminal or disciplinary proceedings, including 37 while suspended and 23 while restricted.

Appeals

In 2024-25, Police Scotland assessed 356 cases as potential misconduct or gross misconduct. After assessment and potential hearings, there were four police conduct appeals concluded during the same year. The outcome of an appeal may not depend only on whether misconduct occurred, but also on whether the sanction imposed was proportionate in the particular circumstances. For example, an appeal may be allowed where dismissal is considered disproportionate because the conduct occurred many years earlier, even where the underlying behaviour, such as the use of discriminatory language or inappropriate messages, remains unacceptable.

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Welfare

The welfare and wellbeing of officers subject to conduct proceedings are taken seriously. The draft regulations strengthen safeguards by requiring proceedings to be conducted fairly, efficiently and within clearer timescales, providing for consideration of alternatives before suspension and allowing remote participation where an officer is unable to attend on reasonable grounds, including relating to their welfare. Timely resolution of cases is important for all those affected by the process. Protracted proceedings can place significant strain on officers, victims and witnesses alike, prolonging uncertainty and delaying outcomes. The Regulations are therefore designed to reduce unnecessary delay, support effective participation and ensure that matters are resolved as quickly as is compatible with fairness, while maintaining a robust process that protects the interests of victims, witnesses and the wider public.

Witness Support

The provisions on supportive measures for witnesses and notification where there is no case to answer are important reforms that will strengthen confidence in police misconduct proceedings. The Regulations introduce specific measures to require notification to certain complainants where a determination is made that there is no case to answer in respect of misconduct or gross misconduct. This responds to concerns that individuals affected by an officer's conduct can feel excluded from the process or left without a clear explanation when proceedings do not result in a misconduct hearing. By improving communication and ensuring that relevant parties are informed of outcomes, the Regulations will help provide greater transparency, reduce uncertainty and strengthen confidence in the fairness of the system.

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