Police Investigations &
Review Commissioner

David Linden MSP
Convener
Criminal Justice Committee

Via email criminaljustice.committee@parliament.scot

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Dear Convener

The Police Service of Scotland (Senior Officers) (Conduct) Amendment Regulations 2026 (SSI 2026/277)

As you will be aware, I have statutory responsibility, in my capacity as Commissioner, for the operational application of the Senior Officer Conduct Regulations. It is from that perspective that I wish to offer the following observations.

I have noted the ongoing commentary and reporting regarding elements of the revised police conduct framework, particularly the provisions contained within the *Police Service of Scotland (Conduct) Amendment Regulations 2026*. Given the close interplay between those Regulations and the corresponding Senior Officer Conduct Regulations, and the need to ensure that both regimes operate coherently and effectively in practice, I consider it appropriate to set out PIRC's position on a number of matters that bear directly on the compatibility and operation of the two frameworks.

On 10 August 2026, PIRC submitted a detailed response to the Scottish Government's consultation on the draft Senior Officer Conduct Regulations. The principal concerns identified by PIRC related to the practical operation of the proposed joint investigation framework, specifically where allegations arise against both a Senior Officer (Assistant Chief Constable rank or above) and a non-senior officer (Constable to Chief Superintendent rank) and those officers are subject to investigations under their separate statutory misconduct regimes.

While PIRC strongly supports the policy intention of enabling joint investigations in such circumstances, our response highlighted a number of areas where greater clarity and procedural certainty are required. In particular, we raised questions regarding investigative leadership, governance arrangements, decision-making responsibilities, dispute resolution mechanisms, reporting requirements and the practical operation of separate misconduct proceedings arising from a single set of facts.

PIRC's position has consistently been that a properly constructed joint investigation framework has the potential to improve efficiency, reduce duplication, promote consistency and, importantly, provide a more victim-centred and trauma-informed approach. However, for those benefits to be fully realised, the legislative framework must clearly articulate how the separate statutory responsibilities of the relevant

authorities are intended to operate in practice where conduct allegations arise from the same incident or sequence of events.

Accordingly, PIRC's consultation response focused on ensuring that the proposed arrangements deliver not only efficiency and effectiveness, but also procedural fairness, legal certainty and public confidence in the police misconduct system.

I have provided a copy of the relevant sections of PIRC's consultation response in the enclosed appendix.

Our concern is not with the policy objective itself, but with the manner in which the draft Regulations seek to implement it.

The Regulations acknowledge that the conduct regimes governing senior officers and non-senior officers remain legally distinct. Separate statutory responsibilities continue to apply in relation to assessment, investigation, decision-making and hearings. Yet while the draft provisions permit a joint investigation, they do not provide sufficient clarity as to how these parallel statutory frameworks are intended to operate in practice when allegations arise from a single set of facts relating to the same incident.

In particular, there is insufficient clarity regarding who would lead and direct a joint investigation, who would determine investigative strategy, how disagreements between the Commissioner and the Deputy Chief Constable would be resolved, how separate misconduct proceedings would be coordinated, and how final decisions would be reached where the allegations arise from a single incident. These are not merely operational matters. They go to the heart of accountability, procedural fairness and legal certainty.

PIRC considers that the most effective and proportionate model would be one in which a single authority assumes responsibility for leading the investigation from outset to conclusion. Given PIRC's existing statutory role in relation to senior officer conduct matters, there is a strong argument for PIRC to undertake that role, while ensuring that Police Scotland remains appropriately involved in matters relating to suspension, restricted duties and wider employment considerations affecting non-senior officers.

A further and more fundamental concern relates to Regulation 7D(3), which appears to prohibit the production of a single investigation report following a joint investigation.

That prohibition appears difficult to reconcile with the very rationale for establishing a joint investigative framework. Where a single investigation examines the same sequence of events or incident, applies the same Standards of Professional Behaviour and uses the same civil standard of proof, it is difficult to identify a convincing policy justification for requiring separate investigative reports. While separate statutory decision-makers may necessarily be required to reach independent determinations, it does not necessarily follow that the underlying evidential analysis must be duplicated.

Indeed, requiring multiple reports based upon the same evidence is likely to create inefficiency, duplication and a heightened risk of inconsistency. A single investigation report could provide a common evidential foundation while fully preserving separate statutory decision-making responsibilities and outcomes.

PIRC is also concerned that many of the efficiencies intended by a joint investigation model could be lost if the Regulations ultimately require separate misconduct hearings arising from the same facts.

In cases involving serious misconduct, witnesses and complainers may already have experienced significant trauma. Requiring those individuals to participate in at least two hearings concerning the same events risks avoidable re-traumatisation and sits uneasily alongside the wider commitment to trauma-informed practice reflected throughout the proposed reforms and detailed in the review by Lady Angiolini. There is also the practical risk that witnesses who have already participated fully in one process may subsequently become unwilling or unable to engage in a second, potentially leading to inconsistent evidential foundations and differing outcomes.

A single hearing, chaired by an independent legally qualified chair and supported by an appropriately constituted panel, would provide a more proportionate solution. It would reduce duplication, minimise witness burden, promote consistency in factual findings, improve efficiency, reduce costs and strengthen public confidence in the integrity of the misconduct process, whilst preserving appropriate safeguards and independent decision-making.

In summary, PIRC remains fully supportive of the policy objective underpinning joint investigations. Nevertheless, the Regulations require greater precision and procedural certainty if they are to achieve their intended aims. Without further clarification, there is a material risk of operational difficulty, legal challenge, delay and inconsistency. Against that background, PIRC is disappointed that our consultation response, which proposed both the option of a single joint investigation report and, where allegations arise from the same sequence of events, a joint hearing model, chaired by an independent legally qualified chair, has not been reflected in the final form of the Regulations presented.

Such an approach, in my view, would better reflect the principles of fairness, transparency, efficiency, consistency and victim-centred practice that these reforms are intended to promote.

I hope these observations are helpful to the Committee's consideration of this matter.

Yours sincerely

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Appendix

Extract from PIRC consultation response on The Police Service of Scotland (Senior Officers) (Conduct) Amendment Regulations 2026 (SSI 2026/277).

Regulation 7D – Joint Investigation by Commissioner and Deputy Chief Constable

PIRC strongly supports the principle of establishing a statutory framework for joint investigations involving senior and non-senior officers. Such a framework has the potential to deliver significant benefits, including greater investigative efficiency, reduced duplication of effort, improved consistency of outcomes and a more proportionate approach where allegations arise from the same factual circumstances.

Importantly, a joint investigation model also promotes a more victim-centered and witness-focused approach by reducing the prospect of individuals being required to participate in multiple investigations concerning the same events and being subjected to multiple interviews, increasing the need for victims and witnesses to relive sometimes traumatic experiences.

Notwithstanding this support, PIRC considers that the draft Regulations do not yet provide sufficient clarity regarding governance, decision-making responsibilities and the practical operation of the proposed framework.

The draft Regulations recognise that the existing conduct frameworks for senior and non-senior officers remain separate and distinct, with assessment, investigation, decision-making and hearing functions vested in different authorities depending upon the rank of the subject officer. While provision is made for joint investigations, the Regulations make clear that the underlying statutory processes cannot be merged or conflated.

PIRC considers that the Regulations would benefit from greater clarity as to how these parallel but separate frameworks are intended to operate where allegations concerning senior and non-senior officers arise from the same sequence of events. In particular, the draft does not fully articulate how investigative efficiencies arising from a joint investigation are to be reconciled with the requirement for separate statutory decision-making, reporting and hearing processes.

Clarification on this point would assist operational delivery, minimise the risk of procedural challenge, and ensure a consistent and coherent approach to the handling of linked misconduct allegations.

In particular, clarification is required on:

- which authority will lead and direct the joint investigation.
- which authority will determine investigative strategy and operational decisions.
- how disagreements between the Commissioner and the Deputy Chief Constable are to be resolved;
- how two separate misconduct hearings are envisaged; and
- the mechanism by which final decisions will be reached where allegations arise from one incident.

In PIRC's view, the most effective and proportionate model would be for a single authority to lead the investigation throughout. Given PIRC's existing statutory role in relation to senior officer conduct matters, consideration should be given to PIRC assuming responsibility for the overall conduct of joint investigations, with Police Scotland remaining appropriately informed regarding matters relevant to suspension, restricted duties or other employment considerations affecting non-senior officers.

The Regulations should also address circumstances where agreement on a joint investigation cannot be reached, including whether one authority may seek to rely upon the evidence of an officer who is the subject of parallel conduct proceedings and what safeguards would apply in such circumstances.

Absent such clarity, there is a real risk of procedural complexity, inconsistent approaches and challenges based upon procedural fairness, particularly in cases involving serious misconduct allegations.

Regulation 7D(3) – Prohibition on a Joint Investigation Report

PIRC would welcome further explanation of the policy rationale underpinning Regulation 7D(3), which appears to prohibit the production of a single investigation report following a joint investigation.

The provision appears difficult to reconcile with the purpose of establishing a joint investigative framework. Where a single investigation has examined the sequence of events, applying the same Standards of Professional Behaviour and the same civil standard of proof, it is not immediately apparent why separate Investigation reports should be required.

The practical effect of the provision appears likely to be the duplication of investigative work, including the preparation of multiple reports analysing the same evidence and making substantially similar factual findings. Such an approach risks unnecessary complexity, inefficiency and inconsistency in the presentation of the evidential material.

While PIRC recognises that separate statutory decision-makers may ultimately be required to reach independent determinations, it does not follow that separate investigative reports are necessary. A single investigation report could provide a common evidential foundation while preserving distinct statutory decision-making functions and outcomes, including due consideration to be consistently applied to disclosure obligations.

Indeed, the prohibition appears particularly difficult to reconcile with Regulation 7G, which expressly contemplates both investigating authorities producing separate reports arising from the same investigation. The interaction between these provisions would therefore benefit from further clarification.

PIRC would accordingly invite reconsideration of Regulation 7D(3) and suggest that the Regulations permit the preparation of a single joint investigation report, while maintaining separate statutory responsibilities for subsequent decision-making.

We address the prospect of separate hearings, with which we have significant concerns, at the end of this submission.

Regulation 7E – Conducting joint investigations

PIRC considers that Regulation 7E is overly prescriptive in requiring both authorities to agree and record investigative strategies at a detailed operational level.

While strategic oversight and collaboration are essential features of a joint investigation, the requirement for two separate authorities to agree operational decisions, potentially including witness interview strategies and investigative actions, risks introducing unnecessary complexity, delay and duplication.

This is particularly significant given the existence of established investigative protocols governing specialist interviews, vulnerable witnesses and other evidential procedures that investigators are already required to follow.

In PIRC's view, greater efficiency and accountability would be achieved by identifying a lead investigative authority with responsibility for determining and implementing the investigative strategy, subject to appropriate consultation and information sharing with the other authority.

The Regulations should also make provision for resolving disputes where agreement cannot be reached. As currently drafted, no mechanism is provided for arbitration or final determination, creating the potential for delay and procedural uncertainty in complex or high-profile investigations. Such an omission does not achieve the policy intent of increasing trust and confidence in police conduct matters, as envisaged by Lady Elish Angiolini, which is germane to the revisions substantively detailed herein.

A clearly defined decision-making structure would better support efficient investigations, accountability and procedural fairness while preserving the collaborative objectives that underpin the joint investigation model.

Other observations

PIRC is concerned that a number of provisions within the draft Regulations lack the degree of precision and procedural certainty required for a framework that governs matters of such significance as Senior Police Officer conduct. Whilst the policy objectives are broadly understood ambiguity in relation to powers, responsibilities, decision-making functions and procedural requirements creates a material risk of challenge by any party affected by the process.

Misconduct proceedings frequently engage issues of reputation, career, livelihood and professional standing. Where the Regulations are capable of differing interpretations, disputes are likely to arise regarding jurisdiction, procedure, disclosure obligations, service requirements, investigatory powers, hearing arrangements and decision-making authority. Such uncertainty inevitably increases the likelihood of procedural challenge, appeal and judicial review.

PIRC remains strongly supportive of the principle underpinning the introduction of joint investigations involving senior and non-senior officers. The ability for the PIRC and

Police Scotland's Professional Standards Department to investigate a single sequence of events on a joint basis has the potential to improve efficiency, reduce duplication, minimise delay and, importantly, reduce the likelihood of victims and witnesses being subjected to multiple investigative processes arising from the same circumstances.

However, PIRC has significant concerns regarding the manner in which the draft Regulations seek to give effect to that framework.

At the heart of the misconduct regime lies the fundamental objective of ensuring that those entrusted with the powers, privileges and responsibilities of policing conduct themselves with honesty, integrity and accountability, thereby maintaining public confidence in the Standards of Professional Behaviour and the rule of law. Those standards are deliberately universal in their application. They apply equally to every police officer, irrespective of rank, from Constable to Chief Constable. Equally, the evidential standard applied in determining misconduct remains identical throughout the service: the civil standard of proof, namely the balance of probabilities.

Against that backdrop, PIRC finds it difficult to identify the policy rationale for a framework that permits the joint investigation of a common set of facts, yet expressly prohibits the production of a joint investigation report.

The draft Regulations provide no explanation as to why a single investigation into the same incident or sequence of events, involving the same witnesses, the same evidential material, the same Standards of Professional Behaviour and the same standard of proof, should require separate investigative reports to be produced. This is particularly striking given that a central purpose of any joint investigation would ordinarily be the establishment of a common evidential foundation (Investigator's report) upon which subsequent decisions can be made. Whilst separate statutory decision-makers may legitimately be required to reach independent determinations, it does not necessarily follow that separate evidential analyses and investigative reports are required.

In many of the cases likely to engage these provisions, allegations will arise from incidents involving potentially serious misconduct and may involve victims or witnesses who have already experienced significant distress or trauma. It is therefore difficult to reconcile a genuinely victim-centred and trauma-informed approach with a framework that appears to require the duplication of investigative analysis, reporting and, potentially, hearing processes despite the investigation itself having been conducted jointly.

PIRC accepts the logic in preserving separate statutory decision-making responsibilities where officers fall under different regulatory regimes. However, that objective can be achieved without requiring duplication of the underlying evidential product. A single investigation report could properly set out the factual findings, evidential analysis and relevant circumstances whilst preserving distinct statutory powers and outcomes for the respective authorities.

PIRC is equally concerned by the practical consequences of requiring separate misconduct hearings following a joint investigation into the same factual circumstances. Whilst the proposed model seeks to eliminate duplication during the investigative phase, many of those efficiencies risk being lost if victims and witnesses

are subsequently required to participate in multiple hearing processes concerning the same events.

In cases involving allegations of serious misconduct, witnesses may already have provided detailed accounts of difficult, deeply personal or traumatic experiences during the investigative stage. Requiring those individuals to give evidence on more than one occasion carries an obvious risk of re-traumatisation and appears inconsistent with the trauma-informed principles that are otherwise reflected throughout the proposed framework and wider Scottish Government policy.

There is also a significant practical concern that a witness who has fully participated in one hearing may subsequently become unwilling or unable to engage in a second process due to the passage of time, personal circumstances, the stress of proceedings or the emotional impact of having previously given evidence. Such an outcome has the potential to prejudice the fairness and effectiveness of proceedings and may result in separate decision-makers considering closely connected allegations on materially different evidential bases. That is not to mention the potential challenges should a witness's evidence vary given the passage of time between hearings or perceptional distortion through trauma.

Notably, the draft Regulations contain no express provision for mechanisms commonly utilised to reduce witness burden and preserve evidence, such as the adoption of previous statements, the use of recorded evidence, or the taking of evidence on commission where appropriate. Nor do they appear to contemplate the evidential difficulties that may arise where a witness has already fully participated in one regulatory process arising from the same incident.

Given the stated objectives of efficiency, proportionality, witness welfare and public confidence, PIRC considers that further consideration should be given to whether the proposed framework adequately protects victims and vulnerable witnesses from unnecessary repetition and avoidable distress. The absence of appropriate safeguards risks undermining many of the very benefits that the joint investigation model is intended to achieve.

PIRC submits that an obvious and proportionate solution would be to permit the constitution of a joint hearing, chaired by a legally qualified chair and supported by an appropriately constituted panel empowered to consider all allegations arising from the common factual circumstances. Such an approach would preserve the necessary procedural safeguards, ensure proper observance of legal rights and maintain independent decision-making, whilst avoiding the duplication inherent in separate hearing processes.

A single hearing would significantly reduce the likelihood of victims and witnesses being required to give evidence more than once. It would promote consistency in factual findings, enhance procedural efficiency, reduce cost, minimise the risk of conflicting determinations and strengthen confidence in the integrity of the process. Most importantly, it would ensure that proceedings are conducted in a manner that is fair, proportionate, transparent and genuinely trauma-informed, while safeguarding the rights and interests of complainers, witnesses and subject officers alike.

Conversely, requiring witnesses to participate in multiple hearings concerning the

same events creates a material risk of witness attrition, inconsistent evidence, procedural unfairness and avoidable re-traumatisation. Such outcomes would be directly contrary to the principles of efficiency, proportionality, witness care and public confidence that the proposed joint investigation provisions are intended to advance.

PIRC therefore invites further consideration of the policy intent underpinning these provisions and recommends that the Regulations permit both the production of a single joint investigation report and the convening of joint hearings in cases arising from the same sequence of events and facts.