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Criminal Justice Committee
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Police Conduct Regulations

This paper is to support Committee scrutiny of the:

- Police Service of Scotland (Conduct) Amendment Regulations 2026 ("the conduct regulations") and
- Police Service of Scotland (Senior Officers) (Conduct) Amendment Regulations 2026 ("the senior conduct regulations").

The senior conduct regulations apply to senior police officers. The conduct regulations apply to all other ranks of police officer. Senior officers are those of the rank of chief constable, deputy chief constable and assistant chief constable.

Background

These regulations make changes to the procedures for dealing with allegations of misconduct and gross misconduct. They do this by amending the existing conduct regulations:

- Police Service of Scotland (Conduct) Regulations 2014
- Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013

All of the changes made by the 2026 regulations are set out in the explanatory notes to each instrument (here for the conduct regulations and here for the senior conduct regulations).

The regulations give effect to several recommendations in the Angiolini Review.

Angiolini Review

In June 2018, the Scottish Government and the Lord Advocate jointly commissioned an independent review led by Dame Elish Angiolini (now Lady Angiolini) - the Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing ("the Angiolini Review").

The Angiolini Review began in September 2018, a Preliminary Report was published in June 2019 and a Final Report in November 2020. There were 111 recommendations across both reports. They related to a range of organisations including Police Scotland, the Scottish Police Authority (SPA), the Police

Investigations and Review Commissioner and the Crown Office and Procurator Fiscal Service.

The recommendations which did not require legislative change were taken forward and their implementation overseen by the Complaints, Investigations and Misconduct in Policing: Ministerial Group. In March 2026, the co-chairs of the group, Angela Constance MSP, then Cabinet Secretary for Justice and Home Affairs, and Dorothy Bain KC, then Lord Advocate, wrote to the session 6 Criminal Justice Committee to confirm that all of the non-legislative policing recommendations were now complete.

The recommendations which required legislative change were addressed by the Police (Ethics, Conduct and Scrutiny) (Scotland) Act 2025 (but note that some of these recommendations require regulations to be implemented in full – including those currently before the Committee).

Police (Ethics, Conduct and Scrutiny) (Scotland) Act 2025

The overarching policy objective of the Police (Ethics, Conduct and Scrutiny) (Scotland) Act 2025 (2025 Act) was to ensure there were robust, clear and transparent mechanisms in place for investigating complaints, allegations of misconduct, or other issues of concern in relation to the conduct of police officers in Scotland (see Scottish Government Policy Memorandum for the Bill).

It makes changes in four key areas:

- Police ethics - requiring a police code of ethics to be created and adding a duty of candour on the police,
- Police conduct - enabling changes to procedures for misconduct (it is this element to which the regulations before the Committee relate) and requiring the creation of an advisory list and barred list of people who are, or have been, subject to proceedings for misconduct,
- Police Investigations and Review Commissioner (PIRC) functions - increasing the range of possible functions of the PIRC (and clarifying some issues relating to the existing functions of the Commissioner),
- PIRC advisory board - establishing an advisory board to the Police Investigations and Review Commissioner.

As noted, the regulations currently before the Committee make changes to procedures for misconduct. In particular, they give effect to provision in section 10(2) of the 2025 Act. This amends section 52 of the Police and Fire Reform (Scotland) Act 2012 to require regulations to provide for:

> (a) the Scottish Police Authority to determine any case which relates to the standard of ***performance*** of a senior officer,
>
> (b) a panel independent of the Authority to determine any case which relates to the standard of ***behaviour*** of a senior officer or a person who has ceased to be a senior officer.

Paragraph (b), in referring to behaviour, requires provision to be made for a new independent panel to consider cases of senior officer ***misconduct***. Paragraph (a) ensures that cases of senior officer ***performance*** continue to be considered by the Scottish Police Authority. (See more on this change below.)

Changes made by the 2026 conduct regulations

Changes made by both sets of regulations

In most respects, both the conduct regulations and the senior conduct regulations make similar changes. There was some discussion in the Angiolini review about combining these two sets of regulations:

> "There is a strong case for combining these two sets of regulations into one. That is a matter for the Scottish Ministers to consider but combined legislation would in my view be more straightforward and user-friendly." (paragraph 30.8)

However, this did not constitute one of the formal recommendations (listed from page 455 of the report).

This issue was raised in correspondence with the Cabinet Secretary for Justice by Stephen Kerr MSP. The response from the Cabinet Secretary received on 6 October (found in Annexe D of the Note by the Clerk for these instruments) stated:

> "In terms of your question about why we have continued with two sets of regulations, I am aware that the Scottish Government was asked during the Review to consider combining the regulations. However, it was recognised that this was ultimately a matter for the Scottish Government to determine. The substantive position remains that the regulations only diverge where there is a policy justification for doing so."

Some of the most significant changes that are made in both sets of regulations are listed below. Where these relate directly to recommendations of the Angiolini review, this is noted. The regulations:

- prevent a police representative or a legal representative answering questions on behalf of a constable/senior officer (see regulations 6 and 7 of each set of regulations),
- require consideration of temporary redeployment as an alternative to suspension (see regulation 8 of each set of regulations) (this corresponds with recommendation 57 of the Angiolini review),
- allow joint investigations where allegations relate to both senior police officers and non-senior officers who are therefore covered by different sets of regulations (see regulation 9 of the conduct regulations and regulation 10 of the senior conduct regulations) (this corresponds with recommendation 55 of the Angiolini review),

- require certain complainants to be notified if an allegation is determined to involve no case to answer (see regulation 13 of the conduct regulations and 18 of the senior conduct regulations),
- allow measures that support the effective participation of witnesses (e.g. giving evidence remotely or using screens) (see regulation 16 of the conduct regulations and 20 of the senior conduct regulations) (this corresponds with recommendation 53 of the Angiolini review),
- allow police officers of all ranks to participate via live television link (see regulation 18 of the conduct regulations and 25 of the senior conduct regulations),
- remove verbal warnings and revise the periods for which written and final warnings remain in effect (see regulation 20 of the conduct regulations and 28 of the senior conduct regulations),
- require publication of the written report of the outcome of misconduct proceedings (see regulation 21 of the conduct regulations and 29 of the senior conduct regulations) (this corresponds with recommendation 58 of the Angiolini review),
- establish accelerated misconduct hearings (see regulation 22 of the conduct regulations and 30 of the senior conduct regulations) (this corresponds with recommendation 51 of the Angiolini review).

Scottish Police Federation, in a letter to the Committee on 27 October stated its concern about accelerated misconduct hearings: “expedition must not undermine the proper testing of evidence or an officer’s ability to prepare a defence”.

Changes that differ between the conduct regulations and the senior conduct regulations

An independent panel for senior officers

Another significant change made by the senior conduct regulations is in giving effect to section 10(2) of the 2025 Act, which requires provision to be made for a new independent panel to consider cases of senior officer misconduct. Regulations 22 and 23 of the senior conduct regulations make the required provision.

This relates to recommendation 27 of the Angiolini review, which states:

> “Gross misconduct hearings for all ranks should have 1) an independent legally qualified chair appointed by the Lord President, 2) an independent lay member appointed by the Lord President and 3) a policing member. This means in senior officer cases the role of Chair should transfer from the SPA to the independent legally qualified person. The policing member in senior officer cases should be appointed by the Lord President; in all other cases the policing member should be appointed by the Chief Constable.”

However, the provision in section 10(2) of the 2025 Act (and therefore the provision made by the current regulations) relates to senior officers only, whereas the recommendation applied to all ranks. The Policy Memorandum for the Bill said (at paragraph 107):

> "In implementing the recommendation for a legally qualified chair ("LQC") the Scottish Government considered whether it was proportionate to have LQCs in both senior and non-senior cases. It is felt that the proportionate response is that a LQC of a hearing could properly hold a senior officer to account and also not leave the process open to perceptions of proximity bias between senior officers and SPA (who would currently chair senior officer hearings). This was not the case with non-senior officers. There is also a significant difference in the number of non-senior officer cases which would potentially be delayed and incur large costs."

The only evidence on this change from the recommendation that was highlighted in the session 6 Criminal Justice Committee's Stage 1 report was that of Margaret Gribbon, an employment lawyer who has represented several female police officers, including those making claims of sex discrimination against Police Scotland. She stated that implementing this change for senior officers only would mean that it will "apply to a tiny number of police officers" and have limited effect. She stated that the Angiolini recommendation was not only to address proximity bias, saying that:

> "The reason why she recommended that is that she took the view that all panels must be seen to have an impartial process … The Scottish Government's Policy Memorandum for the bill says that its rationale for that decision is that the issue of proximity bias does not apply to non-senior officers. I accept that it does not apply to them to the same extent as it does to senior officers. However, the review recommendations in that respect did not stem only from concerns about proximity bias." (paragraph 389 of the stage 1 report).

The SPICe summary of evidence received on the Bill highlights one submission from the Coalition for Racial Equality and Rights that suggested the provision should extend to all ranks. Otherwise, it states that respondents "were almost all supportive of the provisions in this section". Police Scotland, the Scottish Police Authority and the Police Investigations and Review Commissioner all expressed support for the provision without passing further comment on the application to senior officers only. In absence of further comment, it is unclear whether support was specifically for a differing approach for different ranks (and, if so, why that was supported) but no qualifications to support were expressed or concerns raised on this section by these bodies. All responses received to the Committee's call for views on the Bill are available on the Parliament's website. The issue did not feature prominently in the Stage 1 debate nor were any amendments to that provision lodged at either Stage 2 or Stage 3.

Subsequently, concerns have been raised in correspondence to the Committee from a serving police officer (found in Annexe C of the Note by the Clerk for these instruments). The officer raises concerns that not having an independent legally qualified chair in misconduct cases for all ranks is potentially in breach of article 6 of

the European Convention of Human Rights (ECHR) – the right to a fair trial. The officer highlights an article by Nick Hawkins, a barrister who formerly worked as a legally qualified chair in police misconduct hearings in England and Wales (before the system was changed to remove legally qualified chairs). The article states:

> "I believe that an argument that the hearing was an abuse of process due to a breach of ECHR Article 6(1) would have a reasonable chance of success. I would recommend that those involved in representing officers look up the case of Findlay and consider whether they draw the same conclusions that I have set out in this article."

The case referred to in this extract, Findlay v the United Kingdom (22107/93), considered the meaning of an "independent and impartial" tribunal and stated:

> "in order to establish whether a tribunal can be considered as "independent", regard must be had *inter alia* to the manner of appointment of its members and their term of office, the existence of guarantees against outside pressures and the question whether the body presents an appearance of independence (…)
>
> As to the question of "impartiality", there are two aspects to this requirement. First, the tribunal must be subjectively free of personal prejudice or bias. Secondly, it must also be impartial from an objective viewpoint, that is, it must offer sufficient guarantees to exclude any legitimate doubt in this respect." (paragraph 73)

The officer also refers to the case of Porter v Magill [2001] UKHL 67. This case provides a test for cases of alleged bias in relation to article 6(1) ECHR: "whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased".

The Scottish Police Federation also wrote to the Committee on 27 October stating that they were "deeply concerned about a two-tier system". A letter from Calum Steele, former General Secretary of the Scottish Police Federation, dated 25 October expressed similar concerns, also raising the issue of compatibility with article 6 ECHR. It states:

> "The provisions concerning the reconsideration of earlier decisions, the role of the presenting officer and the acceptance of written evidence without the opportunity to test that evidence must be considered in that context.
>
> The Committee should not assume that any resulting difficulties can safely be left to individual officers to resolve through appeals or judicial review after the event. Such challenges would bring further cost, delay and uncertainty, while leaving the officer concerned to bear the personal and professional consequences of proceedings whose fairness is in question."

Stephen Kerr MSP wrote to the Convener on 21 September highlighting concerns with the instrument, including the issue of parity across ranks in relation to

independent legally qualified chairs. This letter highlighted the Scottish Government's consultation on the proposal to introduce legally qualified chairs (this consultation sought views on this in relation to all ranks, not just senior officers). The analysis of that consultation states (at page 39):

> "Most respondents (24 out of 31) agreed that the appointed Chair of gross misconduct hearings should be an independent legally qualified person.
>
> (…)
>
> Where respondents provided further information, the importance of impartiality and transparency in the gross misconduct hearings was frequently mentioned. There was a view among some respondents that police members (retired or in service) or any other individuals affiliated with the police should not participate in hearings to ensure impartiality and a fairer procedure."

The Scottish Government's response to Stephen Kerr MSP of 6 October (see Annexe D of the Note by the Clerk) stated:

> "It is important to recognise that the framework within which these regulations have been developed was considered by Parliament during scrutiny of the Police (Ethics, Conduct and Scrutiny) (Scotland) Act 2025. In particular, Parliament approved provision for independently chaired misconduct panels in relation to senior officers, whilst not making equivalent provision for other ranks and endorsed a differentiated approach between senior officers and other ranks when enacting the primary legislation. Ministers are taking forward an approach which is consistent with that framework and with the policy position approved in the 2025 Act."

The Cabinet Secretary made a similar statement in a letter to the Committee on 27 October: "the existence of different procedures for senior and non-senior officers reflects a deliberate and proportionate policy choice which was subject to detailed parliamentary scrutiny and subsequently endorsed by Parliament".

The 27 October letter further stated:

> "The Scottish Government's position remains that the recommendations of Dame Elish should be implemented faithfully while ensuring that reforms are translated into a workable and legally sustainable framework. As with any major programme of legislative reform, recommendations must be considered alongside legal requirements, operational realities and the conclusions reached through parliamentary scrutiny."

These letters from the Cabinet Secretary also outline some policy justifications for the difference in approach:

> "Such a model [one where all misconduct hearings have an independent legally qualified chair] would introduce additional costs and administrative complexity, risk extending the time taken to conclude misconduct proceedings, and remove an important element of the Chief Constable's

> responsibility for the direction, control and discipline of police officers. Extending access to thousands of Constables, including for minor sanctions, would have serious implications for both Police Scotland and the Scottish Courts and Tribunals Service". (6 October letter)
>
> "Senior officers occupy positions of significant public authority and visibility, with responsibility for the strategic leadership of policing. It is therefore appropriate that proceedings relating to their conduct are subject to a greater degree of public transparency. Different considerations arise in relation to more junior officers, where proportionality, privacy and fairness considerations require careful balancing. The existence of different procedural arrangements does not indicate a difference in standards of accountability". (27 October letter)

Both letters also refer to the wider statutory framework that attaches to misconduct hearings providing additional protections, including rights to appeal.

Conducting proceedings/presenting cases

The conduct regulations make provision in regulation 15 about the role of the person conducting the proceedings and requiring a "presenting officer" to be appointed by the deputy chief constable. The presenting officer will present the case against the constable and may be:

- a constable of a rank senior to the constable who is subject to the allegation,
- a member of police staff,
- a legally qualified person.

The deputy chief constable must not appoint someone as the presenting officer if their appointment "could give rise to a reasonable concern as to whether that person could act impartially".

This is not replicated in the senior conduct regulations as in that case provision is made that the case must be presented by the Police Investigation and Review Commissioner (see regulation 24). This gives effect to recommendation 40 of the Angiolini review:

> "The PIRC should be given a new statutory function and power to present a case at a senior officer gross misconduct hearing where the case would be determined by a three-person panel comprising an independent legally qualified chair, a lay person and an expert in senior policing."

The Scottish Police Federation expressed concerns about the appointment of presenting officers in its letter to the Committee of 27 October: "The Federation remains opposed to introducing presenting officers as a matter of principle because of the risk of making proceedings increasingly adversarial".

The letter from Calum Steele, former General Secretary of the Scottish Police Federation, also raised concerns about regulation 15 in relation to the role of the person conducting the misconduct proceedings, particularly as relates to:

- their duties in relation to the timing of proceedings which Mr Steele states "appear to offer little of practical value",
- misconduct pre-hearings, the provisions for which Mr Steel states "present a more serious concern" as they "contemplate a person conducting a misconduct pre-hearing who is not legally qualified having to determine potentially complex legal arguments raised in advance of the hearing",
- the ability of the person conducting proceedings to vary or revoke a direction which Mr Steele states "creates a further concern by apparently allowing the person conducting the hearing to revisit an earlier decision without an evident mechanism for resolving the resulting dispute other than through further legal proceedings, potentially including judicial review."

Publicity of proceedings

The senior conduct regulations make provision, in regulation 26, to replace regulation 21 of the corresponding 2013 regulations which required misconduct hearings to be held in private. The replacement provisions create a presumption of public hearings (see also regulation 21 of the new senior conduct regulations which require public notification of hearings).

The conduct regulations do not replicate this but do, in regulation 19, add provision that where proceedings result from a complaint from a member of the public, that person must be informed of proceedings and permitted to attend.

This relates to recommendation 52 of the Angiolini review that:

> "Police officer gross misconduct hearings should be held in public. The Chair should have discretion to restrict attendance as appropriate but the aim should be to ensure that as much of a hearing is held in public as possible."

As with recommendation 27, discussed above, recommendation 52 is only being given effect to in relation to senior officers.

The Scottish Police Federation's letter of 27 October also comments on these provisions:

> "The Federation recognises the value of transparency but asks that publication, redaction and attendance decisions properly protect fairness, privacy, sensitive information and officers' families. The safeguards must be clear and consistently applied."

(Note that "misconduct hearings" under the regulations consider whether behaviour amounts to misconduct and whether it amounts to gross misconduct. Misconduct hearings therefore include, but are not limited to, hearings considering whether

behaviour amounts to “gross misconduct”. “Gross misconduct” is a breach of the Standards of Professional Behaviour that is serious enough that demotion in rank or dismissal may be justified. Some of the Angiolini recommendations refer to “gross misconduct hearings” but the regulations refer to “misconduct hearings”, which would appear to be broader.).

Wider issues with the conduct regulations raised with the Committee

The letter from the Scottish Police Federation on 27 October also raises some wider concerns about the police conduct regulations that do not directly relate to changes being proposed by the SSIs currently before the Committee. These include:

- opposition to demotion in rank as a sanction for gross misconduct,
- performance and management matters being treated as misconduct,
- lengthy investigations causing serious harm to officers and their families.

The letter from Calum Steele, former General Secretary of the Scottish Police Federation, also raised wider concerns about the police conduct regulations, including:

- allegations being too readily classified as gross misconduct,
- pressure being put on hearing chairs to deliver certain sanctions (Mr Steele suggests having independent legally qualified chairs for all ranks would go some way to addressing this),
- misconduct investigations focussing on evidence to support the allegation rather than evidence that might contradict it (again, Mr Steele suggests independent legally qualified chairs might have an impact here as he believes that would encourage “more proportionate and impartial investigative techniques”),
- failure to use performance procedures, with dismissal being viewed as “the only satisfactory outcome for an officer considered to be underperforming” (note the similar concern about misconduct procedures being used to manage performance raised by the Scottish Police Federation),
- the disparity in financial arrangements applying to chief officers and junior officers, with junior officers having to bear more of the cost of proceedings “themselves through the finite resources of the [Scottish Police Federation]”. Mr Steele states that “The proposed procedures risk compounding this disparity”.

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