



**XII
2011**

BILLET D'ÉTAT

WEDNESDAY, 29th JUNE, 2011

**HOME DEPARTMENT –
POLICE COMPLAINTS COMMISSION**

B I L L E T D ' É T A T

TO THE MEMBERS OF THE STATES OF THE ISLAND OF GUERNSEY

I have the honour to inform you that a Meeting of the States of Deliberation will be held at **THE ROYAL COURT HOUSE**, on **WEDNESDAY**, the **29TH JUNE, 2011**, immediately after the meeting already convened for that day, to consider the item contained in this Billet d'État which has been submitted for debate.

G. R. ROWLAND
Bailiff and Presiding Officer

The Royal Court House
Guernsey
3 June 2011

HOME DEPARTMENT

POLICE COMPLAINTS COMMISSION

The Chief Minister
Policy Council
Sir Charles Frossard House
La Charroterie
St Peter Port

5th May 2011

Dear Sir

1. Executive Summary

- 1.1 In accordance with section 13(1)(c) of the Police Complaints (Guernsey) Law, 2008 ("the Law"), the States is requested to approve the disciplinary code for members of the Island's Police Force contained in the appended Police Complaints (Conduct Proceedings and Investigations) (Guernsey) Regulations, 2011.
- 1.2 These regulations comprise procedures to be followed in proceedings arising from a complaint made under the Law or a supervised investigation of any matter referred to the Police Complaints Commission under the Law, together with a set of standards of professional behaviour to be followed by members of the Force.
- 1.3 In accordance with section 13(1)(h) of the Law, the States is requested to approve the regulations which establish the membership, power and procedures of the Appeal Tribunal established by the Law and contained in the Police Complaints (Appeal Tribunal) (Guernsey) Regulations, 2011, which are appended.
- 1.4 The Department proposes that the 1st July 2011 shall be the date for implementation of the Commencement Order and the Regulations to give effect to the Law.
- 1.5 It is imperative that the Law and new disciplinary procedures and appeals process established by the Regulations are enacted on the same date, as without the Regulations, which provide a new code of conduct for the Police, the Law will be impossible to administer appropriately. The Department sought the permission of the Bailiff for the publication of this additional Billet as,

regrettably, the Regulations missed the submission dates for the regular June Billet.

2. Background

- 2.1 The States of Deliberation debated the Department's States Report on the introduction of a Police Complaints Commission on 26th January 2005, Billet D'État I (2005), approving the preparation of legislation to give effect to the States Resolutions.
- 2.2 The States considered a further States Report from the Department on 26th November 2008, Billet D'État XVIII, proposing amendments to the appeals procedures originally outlined in the 2005 Report and the introduction of an independent Police Appeal Tribunal. The States approved the preparation of legislation to give effect to the Resolution.
- 2.3 The States of Guernsey approved the Police Complaints (Guernsey) Law, 2008 on 10th December 2008, Billet D'État XV 2008.
- 2.4 The Law received Royal Assent in October 2010.
- 2.5 Section 13(1)(c) of the Police Complaints (Guernsey) Law, 2008 requires the States to approve regulations which set out the disciplinary code for members of the Island Police Force, prior to these regulations coming into effect.
- 2.6 Section 13(1)(h) of the Police Complaints (Guernsey) Law, 2008 requires the States to approve regulations which set out the membership, powers and procedures of the Appeal Tribunal, prior to these regulations coming into effect.

3. The Police Complaints (Conduct Proceedings and Investigations) (Guernsey) Regulations, 2011

- 3.1 The Island Police discipline procedure has been reviewed to reflect the work of a modern Force. The procedure contained within the Conduct Proceedings and Investigations Regulation reflect the approach of the UK in that it moves away from confrontational and legalistic disciplinary procedures to a less formal system, with greater emphasis on the hands-on management of problems.
- 3.2 The proposed procedure is one that the Department consider that Police Officers, complainants and the general public will have confidence in.
- 3.3 These Regulations set out the procedures to be followed in proceedings arising from a complaint made under the Police Complaints (Guernsey) Law, 2008 or a supervised investigation of any matter referred to the Police Complaints Commission ("the Commission") under that Law. These regulations should be read together with the provisions of the Law.

- 3.4 Part I allows an officer who is the subject of such a complaint or supervised investigation to choose another officer or someone else as a police friend to advise the officer concerned throughout the proceedings. This Part also sets out when the officer concerned, and the appropriate authority, may be legally or otherwise represented, and provides for the giving of notices. It sets out the effect of outstanding or possible criminal proceedings against the officer concerned, and allows the appropriate authority to suspend that officer in certain circumstances.
- 3.5 Part II sets out procedures to be followed upon receipt of a complaint. Before an investigation is initiated, a preliminary assessment must be made as to whether the conduct that is the subject of the complaint would amount to misconduct, gross misconduct or neither. The complaint also needs to be considered for informal resolution. Any investigation of complaints against senior-ranking officers must be supervised by the Commission. Part II then sets out the procedures to be followed in the event of a formal investigation, including the appointment of the investigator, giving of notices, representations to the investigator, interviews, and the necessary report upon completion of the investigation.
- 3.6 Part III provides for the referral of the case to a misconduct meeting or misconduct hearing, depending on the circumstances. It sets out procedures to be followed in either proceedings, including: notices to be given; witnesses; the persons conducting those proceedings; the attendance and participation of the officer concerned, as well as the Commission and the investigator; procedures at the misconduct meeting or misconduct hearing; possible outcomes; and appeals from misconduct meetings for officers other than senior-ranking officers. Appeals from misconduct meetings involving senior-ranking officers and from misconduct hearings must be conducted according to the provisions of the Law and the Police Complaints (Appeal Tribunal) (Guernsey) Regulations, 2011.
- 3.7 Part IV sets out the fast track procedures to be followed in the event of a special case hearing, which is held where there appears to be sufficient documentary evidence to establish gross misconduct and it is in the public interest for the officer concerned to be dismissed from the Force without delay.
- 3.8 Part V sets out the rights of interested persons and complainants to be kept informed at each stage of the proceedings. Before a complainant can give consent to informal resolution of his complaint, he must be informed that his consent cannot be withdrawn once the procedure for informal resolution has been commenced, and that he has appeal rights relating to informal resolution.
- 3.9 Part V also gives the complainant a right to appeal to the Commission against non-provision of adequate information to him, against the findings of the investigator's report and against determinations made by the appropriate authority. The Commission can require the appropriate authority to provide an

explanatory memorandum and, upon determining an appeal, can review the findings of the investigator's report itself or alternatively, can issue directions to the appropriate authority (including a direction to re-investigate the complaint as a supervised investigation). Where the Commission finds that the appropriate authority has not made an appropriate determination, the Commission can direct a supervised re-investigation of the complaint or give the appropriate authority any other direction it thinks fit.

- 3.10 Part VI authorises the Commission to make public statements in exceptional cases involving an appeal under Part V or any supervised investigation. It sets out the harm test for the release of information in documents used in proceedings, prescribes Division B special constables to be part of the Island Police Force (so that they are subject to these regulations, just like any officer of the salaried police force), and sets out the meaning of special terms and expressions used throughout these Regulations. Finally, it requires the Guernsey Police Association LBG and the Senior Officers' Staff Association to be consulted before these Regulations are amended or revoked.

4. **The Police Complaints (Appeal Tribunal) (Guernsey) Regulations, 2011**

- 4.1 The discipline procedure contained within the Police Complaints (Conduct Proceedings and Investigations) Regulations, 2011 reflect a less formal structure, however, there remains the need for some provision to be made for appeals against adverse findings and sanctions. The Police Appeal Tribunal will include appropriately qualified and experienced members to deal with appeals concerning police discipline matters fairly, without bias and so as to ensure public confidence in the process.
- 4.2 The Police Appeal Tribunal will consider appeals from internal disciplinary procedures (with the exception of appeals from misconduct meetings involving officers other than senior-ranking officers) and appeals from decisions of the Police Complaints Tribunal.
- 4.3 These Regulations set out the composition, jurisdiction and procedures of the Appeal Tribunal established by the Police Complaints (Guernsey) Law, 2008. These Regulations should be read together with section 12 of that Law as well as the Police Complaints (Conduct Proceedings and Investigations) (Guernsey) Regulations, 2011.
- 4.4 Part I of these Regulations deal with the appointment of members of the Tribunal and their remuneration and expenses. It specifies disciplinary proceedings and findings which may be appealed.
- 4.5 Part II gives the right of appeal to the officer against whom the finding was made. It also specifies the respondent in the event of an appeal, grounds of appeal, and procedures on and following notice of appeal. It requires the Tribunal chairman to review each appeal and dismiss it if there is no real prospect of success or if there are compelling reasons not to proceed with it. If

the appeal is not dismissed, the Chairman must decide whether to proceed with it by way of a hearing or (with the appellant's consent) otherwise.

- 4.6 Part III sets out the procedure for appeals dealt with by way of a hearing, including disclosure of documents, notice of hearing, legal or other representation, evidence, the Tribunal's power to summon witnesses, and the attendance and participation of the complainant and interested persons, the Police Complaints Commission and the appropriate authority.
- 4.7 Part IV sets out the procedure to be followed by the Tribunal in making its determination and the legal effect of the Tribunal's orders. It also deals with the provision of notices and defines special terms and expressions used throughout these Regulations. Finally, it requires the Guernsey Police Association LBG and the Senior Officers' Staff Association to be consulted before these Regulations are amended or revoked.

5. Commencement Date

- 5.1 The Department proposes the Law and both sets of Regulations - the Police Complaints (Conduct Proceedings and Investigations) (Guernsey) Regulations, 2011 and the Police (Appeals Tribunal) (Guernsey) Regulations, 2011 (hereafter both sets referred to as "the Regulations") - come into force on the 1st of July, 2011.

6. Consultation

- 6.1 The Department has worked closely with the Chief of Police and the Law Officers Chambers in the development of these Regulations and has consulted with the Guernsey Police Association, which is fully supportive of the proposals.

7. Good Governance

- 7.1 The proposals made in this States Report are in accordance with the Principles of Good Governance as outlined in Billet D'État IV 2011, particularly Principle 2 "performing effectively in clearly defined functions and role" and 4 "taking informed, transparent decisions and managing risk".

8. Recommendations

The Department recommends that the States approve:

- (a) The Police Complaints (Conduct Proceedings and Investigations) (Guernsey) Regulations, 2011.
- (b) The Police Complaints (Appeals Tribunal) (Guernsey) Regulations, 2011.
- (c) That 1 July 2011 shall be the date for implementation of the

above Regulations.

Yours faithfully

G H Mahy
Minister

GUERNSEY STATUTORY INSTRUMENT
2011 No.15

The Police Complaints (Appeal Tribunal) (Guernsey) Regulations 2011

Made

3 May 2011

Coming into operation

1 July 2011

Approved by resolution of the States

2011

ARRANGEMENT OF REGULATIONS

PART I THE TRIBUNAL AND ITS JURISDICTION

1. Membership of the Tribunal.
2. Remuneration and expenses.
3. Prescribed disciplinary proceedings.
4. Decisions that may be appealed.

PART II PRELIMINARY PROCEDURES

5. Who can appeal.
6. The respondent.
7. Grounds of appeal.
8. Procedure on notice of appeal.
9. Further procedures following notice of appeal.
10. Extension of time limits.
11. Review of appeal.
12. Method of determining an appeal.

PART III PROCEDURE FOR HEARING APPEALS

13. Power to request disclosure of documents.
14. Notice of the hearing.
15. Legal and other representation.
16. Procedure and oral evidence at hearing.
17. Statements in lieu of oral evidence.

18. Power of Tribunal as to summoning witnesses, etc.
19. Attendance of observer.
20. Attendance of complainants and interested persons at hearing.
21. Attendance of Commission at hearing.
22. Attendance of appropriate authority at hearing.
23. Exclusion from hearing.

PART IV APPEAL DETERMINATION AND GENERAL MATTERS

24. Statement of Tribunal's determination.
25. Effect of orders.
26. Provision of notices or documents.
27. Interpretation.
28. Application.
29. Consultation required before amending regulations.
30. Citation.
31. Commencement.

GUERNSEY STATUTORY INSTRUMENT2011 No.15

The Police Complaints (Appeal Tribunal) (Guernsey) Regulations 2011

THE HOME DEPARTMENT, in pursuance of the powers conferred upon it by sections 12(1), 13(1)(h) and 21 of the Police Complaints (Guernsey) Law, 2008¹, makes the following regulations:-

PART I

THE TRIBUNAL AND ITS JURISDICTION

Membership of the Tribunal.

1. (1) The Police Appeal Tribunal shall consist of three members appointed by the States from persons nominated by the Department, being –

- (a) a qualified lawyer, as Chairman of the Tribunal,
- (b) a serving or retired senior-ranking officer of another police force, and
- (c) a qualified person.

(2) A member of the Tribunal –

- (a) subject to paragraphs (b) and (c), must be appointed for a term of three years (or any shorter period that the States may specify by resolution),

¹

Order in Council No. XIX of 2009, as amended by the Police Complaints (Guernsey) Law, 2008 (Commencement and Amendment) Ordinance, 2011.

- (b) must retire on attaining the age of 70, and
 - (c) may be re-appointed in accordance with this regulation.
- (3) None of the following persons may be appointed a member of the Tribunal –
- (a) a member of the States of Deliberation or the States of Election of Guernsey,
 - (b) a member of the States of Alderney or the Chief Pleas of Sark, or
 - (c) an employee of the States of Guernsey.

Remuneration and expenses.

2. Members of the Tribunal must be paid remuneration, and reimbursed expenses, as determined by the Department.

Prescribed disciplinary proceedings.

3. The following disciplinary proceedings are prescribed for the purposes of section 12(1) of the Law (in addition to disciplinary proceedings under section 11 of the Law) –

- (a) any misconduct meeting in respect of senior-ranking officers,
- (b) any misconduct hearing, and
- (c) any special case hearing.

Decisions that may be appealed.

4. (1) Subject to paragraph (2), in relation to the proceedings prescribed or referred to in regulation 3 (prescribed disciplinary proceedings), an appeal may be made against any one or more of the following decisions –

- (a) a finding of misconduct or gross misconduct against an officer other than a senior-ranking officer at any misconduct hearing,
- (b) a finding of misconduct or gross misconduct against a senior-ranking officer at any misconduct hearing,
- (c) a finding of misconduct against a senior-ranking officer at any misconduct meeting,
- (d) a finding of gross misconduct against an officer at any special case hearing, or
- (e) a decision to impose any disciplinary action as a result of a finding referred to in subparagraph (a), (b), (c) or (d).

(2) No appeal may be made against a finding referred to in paragraph (1)(a), (b), (c) or (d) if the finding was made following acceptance by the officer concerned that his conduct amounted to misconduct or (as the case may be) gross misconduct.

PART II
PRELIMINARY PROCEDURES

Who can appeal.

5. An appeal may be made by the officer against whom the finding referred to in regulation 4(1)(a), (b), (c) or (d) (decisions that may be appealed) was made.

The respondent.

6. The respondent to an appeal –

- (a) where the appeal is against a decision of the Complaints Tribunal, is the Commission, and
- (b) in any other case, is the appropriate authority.

Grounds of appeal.

7. The grounds of appeal are –

- (a) the finding or disciplinary action was ultra vires or unreasonable,
- (b) there is evidence that could not reasonably have been considered at the misconduct meeting which could have materially affected the finding or decision on disciplinary action, or
- (c) there was a serious breach of the procedures set out in the Conduct Regulations or other unfairness which could have materially affected the finding or decision on disciplinary action.

Procedure on notice of appeal.

8. (1) An officer who serves notice of appeal under section 12(6) of the Law may include in his notice of appeal a request for a transcript of the original proceedings (or a specified part of the original proceedings).

(2) The respondent must provide the Chairman and the appellant with a copy of any transcript requested under paragraph (1) –

- (a) as soon as reasonably practicable, and
- (b) in any event, within 15 working days of receipt of the request.

(3) Within 20 working days of service of the notice of appeal, or of receipt of a copy of the transcript if requested under paragraph (1), the appellant must supply the following documents to the Chairman and to the respondent –

- (a) a statement of the relevant decision and his grounds of appeal,
- (b) any supporting documents,
- (c) where the appellant is permitted to adduce witness evidence, a list of any proposed witnesses and a witness statement from each proposed witness, and
- (d) if he consents to the appeal being determined without a hearing, notice in writing that he so consents.

(4) For the purposes of paragraph (3)(c) –

- (a) an appellant is only permitted to adduce witness evidence where he is relying on the ground of appeal set out in regulation 7(b) (grounds of appeal), and

- (b) a "**proposed witness**" is a person whom the appellant wishes to call to give evidence at the hearing, whose evidence was not and could not reasonably have been considered at the original proceedings, and whose evidence could have materially affected the relevant decision.

Further procedures following notice of appeal.

9. (1) Within 20 working days of receipt of the documents specified in regulation 8(3) (procedure on notice of appeal), the respondent must supply the following documents to the Chairman and the appellant –

- (a) a statement of the respondent's response to the appeal,
- (b) any supporting documents,
- (c) where the respondent is permitted to adduce witness evidence, a list of any proposed witnesses and a witness statement from each proposed witness, and
- (d) if the respondent consents to the appeal being determined without a hearing, notice in writing that the respondent so consents.

(2) For the purposes of paragraph (1)(c) –

- (a) a respondent is only permitted to adduce witness evidence where the appellant is relying on the ground of appeal set out in regulation 7(b) (grounds of appeal),
- (b) a "**proposed witness**" is a person whom the respondent wishes to call to give evidence at the hearing, whose

evidence is relevant to all or part of the evidence on which the appellant is relying for the purposes of regulation 7(b) (grounds of appeal).

Extensions of time limits.

10. (1) The appellant or the respondent may apply to the Chairman for an extension of a relevant period.

(2) An application must set out the period of the required extension and the reasons for the application.

(3) As soon as practicable after receipt of an application, the Chairman must –

- (a) give a copy of the application to the other party (being the appellant or the respondent as the case may be), and
- (b) ask that other party if it consents to the application.

(4) If that other party consents to the application, the relevant period is extended in accordance with the application and regulations 8 (procedure on notice of appeal) and 9 (further procedures following notice of appeal) have effect as if for that period there were substituted the extended period.

(5) If the other party does not consent to the application, the Chairman must determine whether the relevant period should be extended and if so by how long; and if he extends the relevant period, regulations 8 (procedure on notice of appeal) and 9 (further procedures following notice of appeal) have effect as if for that period there were substituted the extended period.

(6) In this regulation , "**relevant period**" means –

- (a) in relation to an application by the appellant, the period specified in regulation 8(3) (procedure on notice of appeal), and
- (b) in relation to an application by the respondent, the period specified in regulation 8(2)(b) (procedure on notice of appeal) or regulation 9(1) (further procedures following notice of appeal).

Review of appeal.

11. (1) Upon receipt of the documents specified in regulation 8(3) (procedure on notice of appeal) and regulation 9(1) (further procedures following notice of appeal), the Chairman must determine whether the appeal should be dismissed under paragraph (2).

(2) An appeal must be dismissed under this paragraph if the Chairman considers that –

- (a) the appeal has no real prospect of success, and
- (b) there is no other compelling reason why the appeal should proceed.

(3) If the Chairman considers that the appeal must be dismissed under paragraph (2), before making his determination, he must give the appellant and the respondent written notification of his view together with the reasons for that view.

(4) The appellant and the respondent may make written representations in response to the Chairman within 10 working days of receipt of the notification; and the Chairman must consider any such representations before making his determination.

(5) The Chairman must give the appellant and the respondent written notice of his determination.

(6) Where the Chairman determines that the appeal must be dismissed under paragraph (2) –

- (a) the notice under paragraph (5) must include the reasons for the determination, and
- (b) the Chairman must dismiss that appeal.

Method of determining an appeal.

12. (1) Where an appeal has not been dismissed under regulation 11 (review of appeal), the Chairman must determine whether the appeal should be dealt with at a hearing or without a hearing.

(2) The Chairman may determine that the appeal should be dealt with without a hearing only if the appellant has so consented.

(3) Where the appeal is to be dealt with at a hearing, the provisions of Part III (Procedure for Hearing Appeals) apply and the Chairman must give the appellant and the respondent his name and contact address.

PART III

PROCEDURE FOR HEARING APPEALS

Power to request disclosure of documents.

13. (1) At any time following the provision of the documents specified in regulation 8(3) (procedure on notice of appeal) and regulation 9(1) (further procedures following notice of appeal), the appellant or the respondent (the "**requesting party**") may apply to the Chairman for disclosure of any document by the other party which is relevant to the appeal.

(2) The Chairman may request the disclosure of any such document by the other party and where it is disclosed, a copy must be given to the Chairman and to the requesting party.

(3) Where a party does not comply with a request to disclose under paragraph (2), it must give the Chairman and the requesting party its reasons for non-disclosure in writing.

Notice of the hearing.

14. (1) The Chairman must give the appellant and the respondent written notice of the date, time and place of the hearing at least 20 working days, or any shorter period agreed with the parties, before the date of the hearing.

(2) Where –

- (a) the appellant is relying on the ground of appeal set out in regulation 7(b) (grounds of appeal), and
- (b) either the appellant or the respondent (or both) have proposed witnesses under regulation 8(3)(c) (procedure on notice of appeal) or regulation 9(1)(c) (further procedures following notice of appeal) (as the case may be),

the Chairman must determine which, if any, witnesses shall give evidence at the hearing.

(3) No witness may give evidence at the hearing unless the Chairman reasonably believes that it is necessary for the witness to do so, in which case the Chairman must –

- (a) cause the witness to be given notice that his attendance is necessary and of the date, time and place of the hearing, and
- (b) if the Chairman considers this necessary, issue a summons for the attendance of that witness under regulation 18.

Legal and other representation.

15. (1) The appellant has the right to conduct his appeal in person or to be represented by a lawyer or police friend.

(2) Where the appellant is represented at the hearing by a lawyer, he may also be accompanied at the hearing by a police friend.

(3) If an appellant chooses not to be represented, the hearing may take place and the appeal may be determined without him being represented.

(4) The respondent has the right to be represented at a hearing by a lawyer or –

- (a) where the respondent is the Commission, by any member of the Commission,
- (b) where the respondent is the Chief Officer, by another officer, and
- (c) where the respondent is the Department, by any member of the Department.

(5) The Chief Officer must permit the police friend to use a reasonable amount of duty time for the purposes referred to in this regulation.

Procedure and oral evidence at hearing.

16. (1) Subject to these Regulations and to section 12 of the Law, the Tribunal must determine the procedure at a hearing.

(2) The Tribunal may proceed with the hearing in the absence of either party, whether represented or not, if it appears to be just and proper to do so, and may adjourn it from time to time if it appears necessary to do so.

(3) Unless the Tribunal determines otherwise, the evidence adduced by the appellant must be given first.

(4) Witnesses giving evidence at the hearing may be subject to questioning and cross-questioning.

(5) Any question as to whether any evidence is admissible, or whether any question should or should not be put to a witness, must be determined by the Tribunal.

(6) A verbatim record of the evidence given at the hearing must be taken; and the Tribunal must keep such record for a period of not less than two years from the date of the end of the hearing.

Statements in lieu of oral evidence.

17. (1) Subject to this regulation, the Tribunal may admit as evidence a witness statement of a proposed witness supplied under regulation 8(3)(c) (procedure on notice of appeal) or regulation 9(1)(c) (further procedures following notice of appeal), notwithstanding that he is not to be called as a witness at the hearing.

(2) Evidence is not admissible under this regulation if it would not have been admissible had it been given orally.

(3) For the purposes of this regulation, a written statement purporting to be made and signed by a person and witnessed by another person is presumed to have been made by that person unless the contrary be shown.

(4) Nothing in this regulation prejudices the admission of written evidence which would be admissible apart from the provisions of this regulation.

Powers of Tribunal as to summoning witnesses, etc.

18. For the purposes of hearing and determining an appeal, the Tribunal has the same powers as the Royal Court in respect of –

- (a) the attendance and examination of witnesses,
- (b) the administration of oaths or affirmations to witnesses,
- (c) the production of documents and exhibits,

and a summons in relation to any of these matters signed by the Chairman is equivalent to a formal process issued in that behalf in an action before the Royal Court.

Attendance of observer.

19. The Tribunal may allow a person to attend all or part of the hearing as an observer for the purposes of training.

Attendance of complainants and interested persons at hearing.

20. (1) The Chairman must cause notice of the date, time and place of the hearing to be given to the complainant (if any) and any interested person at the same time as such notice is given to the appellant and the respondent under regulation 14(1) (notice of the hearing).

(2) Subject to paragraph (4), the complainant (if any) and any interested person may attend the hearing as observers.

(3) Subject to paragraph (4), the complainant (if any) or interested person may be accompanied by one other person, and if the complainant (if any) or interested person has a special need, by one further person to accommodate that need.

(4) Where –

- (a) a complainant,
- (b) an interested person, or
- (c) any person accompanying a complainant or an interested person,

is a proposed witness (of either party) and is to give evidence at the hearing, none of the persons mentioned in subparagraphs (a) to (c) may attend the hearing before that evidence is given.

(5) The Chairman may, at his discretion, put any questions to the appellant that the complainant (if any) or an interested person request be put to him.

Attendance of Commission at hearing.

21. (1) This regulation applies to an appeal –

- (a) in relation to proceedings arising from a supervised investigation, and
- (b) where the Commission is not the respondent.

(2) The Chairman must cause notice of the date, time and place of the hearing to be given to the Commission at the same time as such notice is given to the appellant and the respondent under regulation 14(1) (notice of the hearing).

(3) Members of the Commission may attend the hearing as observers.

Attendance of appropriate authority at hearing.

22. (1) Where the appropriate authority is not the respondent, the Chairman must cause notice of the date, time and place of the hearing to be given to the appropriate authority at the same time as such notice is given to the appellant and the respondent under regulation 14(1) (notice of the hearing).

(2) The appropriate authority or its nominee may attend the hearing as an observer.

Exclusion from hearing.

23. (1) On the application of the appellant or the respondent or otherwise, the Chairman may require any observer to withdraw from all or any part of the hearing.

(2) The Chairman may impose such conditions as he sees fit relating to the attendance of an observer (or any person accompanying a complainant or interested person) at the hearing in order to facilitate the proper conduct of the hearing.

(3) This regulation has effect notwithstanding any provision to the contrary in regulation 19 (attendance of observer), 20 (attendance of complainants and interested persons at hearing), 21 (attendance of Commission at hearing) or 22 (attendance of appropriate authority at hearing).

PART IV

APPEAL DETERMINATION AND GENERAL MATTERS

Statement of Tribunal's determination.

24. (1) The Tribunal must determine whether the grounds of appeal on which the appellant relies have been made out.

(2) The determination of the Tribunal must be made by a majority but must not indicate whether it was taken unanimously or by a majority.

(3) The Chairman must prepare a written statement of the Tribunal's determination of the appeal and of the reasons for the decision.

(4) As soon as reasonably practicable after the determination of the appeal the Chairman must give the appellant and the respondent a copy of the statement; but, in any event, the appellant must be given written notice of the decision of the Tribunal within 3 working days of the determination of the appeal.

(5) The Chairman must give the complainant (if any), any interested person, the Commission (if it is not the respondent) and the appropriate authority (if it is not the respondent), notification of the decision of the Tribunal in such form as he considers appropriate.

(6) Paragraphs (3) to (5) are subject to any direction of the Tribunal under section 12(13) of the Law.

Effect of orders.

25. (1) Where on the determination of an appeal the Tribunal makes an order to effect any action specified in section 12(9)(a), (c) or (d) of the Law, the order takes effect –

(a) by way of substitution for the relevant decision, and

(b) as from the date of that decision.

(2) An order of the kind specified in paragraph (1) may include a direction that the appellant be reinstated in the Island Police Force; and the appropriate authority and any other person concerned shall comply with that direction.

(3) Where an order includes a direction under paragraph (2), the appellant is deemed to have served in the Island Police Force continuously from the date of the relevant decision to the date of his reinstatement –

- (a) for the purposes of reckoning service for pension, and
- (b) to such extent (if any) as may be determined by the order, for the purposes of pay.

(4) Where an order includes a direction under paragraph (2), and the appellant was suspended for a period immediately preceding the date of the relevant decision or any subsequent decision, the order shall deal with the suspension.

Provision of notices or documents.

26. (1) Where any document is to be given or supplied under these Regulations, the document may be given or supplied to –

- (a) **an individual, by being delivered to him, or by being left at, or sent by post or transmitted to, his usual or last known place of abode,**
- (b) **a body corporate with a registered office in Guernsey or Alderney, by being left at, or sent by post or transmitted to, that office,**
- (c) **a body corporate without a registered office in Guernsey or Alderney, by being left at, or sent by post or transmitted to, its principal or last known principal**

place of business in Guernsey or Alderney or, if there is no such place, its registered office or principal or last known principal place of business elsewhere,

- (d) an unincorporated body -**
 - (i) by being given or supplied to any partner, member of the committee or other similar governing body, manager, director or other similar officer thereof in accordance with paragraph (a), or**
 - (ii) by being left at, or sent by post or transmitted to, the body's principal or last known principal place of business in Guernsey or Alderney or, if there is no such place, its principal or last known principal place of business elsewhere, and**
- (e) a department or committee of the States, a committee of the States of Alderney or a committee of the Chief Pleas of Sark by being left at, or sent by post or transmitted to, the principal offices of that department, or committee, in Guernsey, Alderney or Sark, as the case may be.**

(2) If a person ("**Person A**") notifies the appropriate authority, the Commission, the Tribunal, the Complaints Tribunal or any other person of an address for service within the Bailiwick, any document to be given or supplied to Person A under these Regulations may be given or supplied by being left at, or sent by post to, that address.

(3) Where any document is to be given or supplied under these Regulations to a person who is -

(a) a minor, or

(b) a person under legal disability,

the document may be given or supplied to his guardian; and if there is no guardian, the party wishing to give or supply the document may apply to a court of competent jurisdiction for the appointment of a person to act as guardian for the purposes of these Regulations.

(4) If a document cannot, after reasonable enquiry, be given or supplied to a person in accordance with this regulation, the document may be given or supplied to the person by being published on two occasions in La Gazette Officielle or, in the case of a document to be given or supplied in Alderney, the Alderney Official Gazette.

(5) Paragraphs (1) to (4) are without prejudice to any other lawful method of giving or supplying a document (for example, under the Electronic Transactions (Guernsey) Law, 2000²).

(6) Unless the contrary is shown, where a document is sent by post, it is deemed for the purposes of these Regulations to have been received –

(a) in the case of a document sent to an address in the United Kingdom, the Channel Islands or the Isle of Man, on the third working day after the day of posting,

(b) in the case of a document sent elsewhere, on the seventh working day after the day of posting.

² Ordres en Conseil Vol. XL, p. 263; as amended by Recueil d'Ordonnances Tome XXIX, p. 406; see also G.S.I. No. 13 of 2001.

(7) **For the purposes of this regulation, the sending of any document by post is proved by showing the date of posting, the address thereon and the fact of prepayment.**

(8) In this regulation –

"by post" means by registered post, recorded delivery service or ordinary letter post,

"document" includes written notice, and

"transmitted" means transmitted by electronic communication, facsimile transmission or other similar means which produce or enable the production of a document containing the text of the communication (in which event the document shall be regarded as given or supplied when it is received).

Interpretation.

27. (1) In these Regulations, unless the context requires otherwise –

"appeal" means an appeal made under section 12 of the Law,

"appellant" means an officer who makes an appeal,

"appropriate authority", in relation to any complaint or proceedings –

(a) in any case where the complaint or those proceedings concern the conduct of a senior-ranking officer, means the Department, and

(b) in any other case, means the Chief Officer,

"Chairman" means Chairman of the Tribunal,

"Commission" means the Police Complaints Commission established under section 1 of the Law,

"complaint" means a complaint about the conduct of an officer submitted to the appropriate authority under Part II of the Law,

"complainant", in relation to an appeal arising from original proceedings that result from a complaint, means the person who made the complaint,

"Complaints Tribunal" means the Police Complaints Tribunal constituted under section 11 of the Law,

"Conduct Regulations" means Police Complaints (Conduct Proceedings and Investigations) (Guernsey) Regulations, 2011,

"disciplinary action" has the meaning given by regulation 68(1) (interpretation) of the Conduct Regulations,

"gross misconduct" has the meaning given by regulation 68(1) (interpretation) of the Conduct Regulations,

"interested person" –

(a) has the meaning given by regulation 67 (meaning of "interested person") of the Conduct Regulations, but

(b) a reference in that regulation to "the person

chairing the proceedings" must be read as if it were a reference to the Chairman of the Police Appeal Tribunal constituted under section 12 of the Law,

"the Law" means the Police Complaints (Guernsey) Law 2008³,

"lawyer" means –

- (a) an Advocate of the Royal Court of Guernsey,
- (b) a member of the Bar of England and Wales, the Bar of Northern Ireland or the Faculty of Advocates in Scotland, who is engaged in the practise of law,
- (c) a solicitor of the Senior Courts of England and Wales, a solicitor in Scotland or a solicitor of the Court of Judicature of Northern Ireland, or
- (d) a person entitled to practise law as a member of the legal profession in any other Commonwealth jurisdiction,

"misconduct" has the meaning given by regulation 68(1) (interpretation) of the Conduct Regulations,

"misconduct hearing" has the meaning given by regulation 68(1) (interpretation) of the Conduct Regulations,

³ Order in Council No. XIX of 2009, as amended by the Police Complaints (Guernsey) Law, 2008 (Commencement and Amendment) Ordinance, 2011.

"misconduct meeting" has the meaning given by regulation 68(1) (interpretation) of the Conduct Regulations,

"officer" has the meaning given by regulation 68(1) (interpretation) of the Conduct Regulations,

"officer concerned" has the meaning given by regulation 68(1) (interpretation) of the Conduct Regulations,

"original proceedings", in relation to an appeal, means –

- (a) the proceedings under section 11 of the Law, or
- (b) the prescribed disciplinary proceedings,

at or following which the relevant decision being appealed was made,

"police friend" has the meaning given by regulation 68(1) (interpretation) of the Conduct Regulations,

"qualified lawyer" means a person who meets the requirements of paragraphs (a) and (b) –

- (a) the person is –
 - (i) an Advocate of the Royal Court of Guernsey,
 - (ii) a member of the Bar of England and Wales, the Bar of Northern Ireland or the Faculty of Advocates in Scotland, who is engaged in the practise of law,

- (iii) a solicitor of the Senior Courts of England and Wales, a solicitor in Scotland or a solicitor of the Court of Judicature of Northern Ireland, or
- (iv) a person entitled to practise law as a member of the legal profession in any other Commonwealth jurisdiction,

of not less than five years standing, and

- (b) the person's name is on a list of persons approved by the Department and Her Majesty's Procureur as qualified to conduct regulated proceedings for the purposes of the Law by reason of their relevant experience in or knowledge of employment-related proceedings or proceedings concerning discipline,

"qualified person" means a person whose name is on a list of persons approved by the Department as persons qualified to conduct regulated proceedings for the purposes of the Law by reason of their relevant experience in or knowledge of human resources or employment or disciplinary matters,

"regulated proceedings" has the meaning given by regulation 68(1) (interpretation) of the Conduct Regulations,

"relevant decision" means the decision appealed to the Tribunal under section 12 of the Law and regulation 4,

"respondent" has the meaning given by regulation 6 (the respondent),

"senior-ranking officer" means a member of the Island Police Force holding the rank of Superintendent or above,

"serving or retired senior-ranking officer of another police force" –

(a) means any police officer who holds the rank of, or any person who has retired from service as, Chief Constable, Deputy Chief Constable, Assistant Chief Constable or its equivalent in –

(i) any police force in England, Wales, Northern Ireland or Jersey, or

(ii) the Isle of Man constabulary, but

(b) excludes any person who has at any time been a member of the Island Police Force,

"special case hearing" has the meaning given by regulation 68(1) (interpretation) of the Conduct Regulations,

"supervised investigation" has the meaning given by regulation 68(1) (interpretation) of the Conduct Regulations,

"the Tribunal" means the Police Appeal Tribunal constituted under section 12 of the Law, and

"working day" means any day other than –

- (a) a Saturday, a Sunday, Christmas Day or Good Friday, or
- (b) a day appointed as a public holiday by Ordinance of the States of Deliberation, or (as the case may be) the States of Alderney or the Chief Pleas of Sark, under section 1(1) of the Bills of Exchange (Guernsey) Law, 1958⁴.

(2) Unless the context requires otherwise, references in these Regulations to any enactment are references to it as amended, varied, re-enacted (with or without modification), extended or applied.

(3) The provisions of the Interpretation (Guernsey) Law, 1948⁵ apply to these Regulations as they apply to an enactment.

(4) For the avoidance of doubt, unless the context requires otherwise, an expression used in these Regulations has the same meaning as in the Law.

Application.

28. For the avoidance of doubt, nothing in these Regulations applies in relation to any complaint, matter or proceedings excluded from the application of the Law by section 4 of the Police Complaints (Guernsey) Law, 2008 (Commencement and Amendment) Ordinance, 2011.

Consultation required before amending regulations.

29. The Department must consult the association known as the Guernsey Police Association LBG, and the body of persons known as the Senior Officers' Staff

⁴ Ordres en Conseil Vol. XVII, p. 384; Vol. XXIV, p. 84; Vol. XXXIV, p. 507; and Vol. XXXV (1), p. 370.

⁵ Ordres en Conseil Vol. XIII, p. 355.

Association, before it amends or revokes any of these Regulations, except in relation to amendments or revocations with minor or insignificant effect, for example, those made in order –

- (a) to shorten or simplify the phraseology of any provision,
- (b) to correct grammatical or typographical errors, or any clerical or printing errors,
- (c) to correct cross-references, or
- (d) to alter or replace names, offices, titles, descriptions, definitions and terms to bring these into conformity with the circumstances for the time being.

Citation.

30. These regulations may be cited as the Police Complaints (Appeal Tribunal) (Guernsey) Regulations, 2011.

Commencement.

31. These regulations come into force on the 1st July, 2011.

Dated this 3rd day of May 2011

DEPUTY G H MAHY
Minister of the States Home Department
For and on behalf of the Department

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set out the composition, jurisdiction and procedures of the Appeal Tribunal established by the Police Complaints (Guernsey) Law, 2008. These Regulations should be read together with section 12 of that Law as well as the Police Complaints (Conduct Proceedings and Investigations) (Guernsey) Regulations, 2011.

Part I of these Regulations deal with the appointment of members of the Tribunal and their remuneration and expenses. It specifies disciplinary proceedings and findings which may be appealed.

Part II gives the right of appeal to the officer against whom the finding was made. It also specifies the respondent in the event of an appeal, grounds of appeal, and procedures on and following notice of appeal. It requires the Tribunal chairman to review each appeal and dismiss it if there is no real prospect of success or if there are compelling reasons not to proceed with it. If the appeal is not dismissed, the Chairman must decide whether to proceed with it by way of a hearing or (with the appellant's consent) otherwise.

Part III sets out the procedure for appeals dealt with by way of a hearing, including disclosure of documents, notice of hearing, legal or other representation, evidence, the Tribunal's power to summon witnesses, and the attendance and participation of the complainant and interested persons, the Police Complaints Commission and the appropriate authority.

Part IV sets out the procedure to be followed by the Tribunal in making its determination and the legal effect of the Tribunal's orders. It also deals with the provision of notices and defines special terms and expressions used throughout these Regulations. Finally, it requires the Guernsey Police Association LBG and the Senior Officers' Staff Association to be consulted before these Regulations are amended or revoked.

These regulations come into force on the 1st of July, 2011.

GUERNSEY STATUTORY INSTRUMENT

2011 No. 16

**The Police Complaints (Conduct Proceedings and
Investigations) (Guernsey) Regulations, 2011**

Made

3 May 2011

Coming into operation

1 July 2011

Approved by resolution of the States

2011

ARRANGEMENT OF REGULATIONS

PART I
GENERAL

1. Application.
2. Police friend.
3. Legal and other representation.
4. Provision of notices or documents.
5. Outstanding or possible criminal proceedings.
6. Suspension.

PART II
INVESTIGATIONS

7. Assessment of conduct following complaint.
8. Commission must supervise investigation of complaints against senior-ranking officers.
9. Application of regulations 10 to 15.
10. Appointment of investigating officer.
11. Investigation.
12. Written notices.
13. Representations to the investigating officer.
14. Interviews during investigation.
15. Report of investigation.

PART III MISCONDUCT PROCEEDINGS

16. Referral of case to misconduct proceedings.
17. Withdrawal of case.
18. Notice of referral to misconduct proceedings and panel membership.
19. Procedure on receipt of notice.
20. Witnesses.
21. Timing and notice of misconduct proceedings.
22. Persons conducting misconduct meetings or misconduct hearings: officers other than senior-ranking officers.
23. Persons conducting misconduct meetings or misconduct hearings: senior-ranking officers.
24. Misconduct hearing preferred at direction of Commission.
25. Documents to be supplied.
26. Attendance of officer concerned at misconduct proceedings.
27. Participation of Commission and investigating officer at misconduct proceedings.
28. Attendance of complainant and interested person at misconduct proceedings.
29. Attendance of others at misconduct proceedings.
30. Exclusion from misconduct proceedings.
31. Procedure at misconduct proceedings.
32. Outcome of misconduct proceedings.
33. Notification of outcome.
34. Record of misconduct proceedings.
35. Appeal from misconduct meeting: officers other than senior-ranking officers.
36. Appeal meeting.
37. Procedure and finding of the appeal.

PART IV FAST TRACK PROCEDURE FOR SPECIAL CASES

38. Referral of case to special case hearing.
39. Remission of case.
40. Notice of referral to special case hearing.
41. Notice of special case hearing.
42. Procedure on receipt of notice.
43. Person conducting special case hearing: officers other than senior-ranking officers.
44. Persons conducting special case hearing: senior-ranking officers.
45. Special case hearing preferred at direction of Commission.
46. Documents to be supplied.
47. Attendance of officer concerned at special case hearing.
48. Participation of Commission and investigating officer at special case hearing.
49. Attendance of complainant and interested persons at special case hearing.
50. Attendance of others at special case hearing.
51. Procedure at special case hearing.
52. Outcome of special case hearing.

- 53. Notification of outcome.
- 54. Record of special case hearing.

PART V INFORMATION AND APPEAL RIGHTS

- 55. Rights following assessment of conduct.
- 56. Appeals with respect to assessment of conduct.
- 57. Appeals relating to informal resolution.
- 58. Information rights following investigation.
- 59. Information rights following Commission recommendations.
- 60. Appeals with respect to an investigation.
- 61. Reviews following appeal.
- 62. Investigations and re-investigations following appeal.

PART VI GENERAL

- 63. Commission may make public statements.
- 64. The harm test.
- 65. Division B special constables prescribed as part of Island Police Force.
- 66. Satisfaction of special conditions.
- 67. Meaning of "interested person".
- 68. Interpretation.
- 69. Consultation required before amending regulations.
- 70. Citation.
- 71. Commencement.

GUERNSEY STATUTORY INSTRUMENT2011 No 16.

The Police Complaints (Conduct Proceedings and Investigations) (Guernsey) Regulations, 2011

THE HOME DEPARTMENT, in exercise of the powers conferred on it by sections 13 and 21 of the Police Complaints (Guernsey) Law, 2008⁶, and all other powers enabling it in that behalf, makes the following regulations:-

PART I GENERAL

Application.

1. (1) Unless the context requires otherwise, these Regulations apply to —

- (a) a complaint,
- (b) a supervised investigation of a referred matter, and
- (c) any proceedings arising from the complaint or supervised investigation.

(2) These Regulations and the Law set out an exclusive code for dealing with disciplinary issues arising from complaints or matters of the kind referred to in paragraph (1); and for the avoidance of doubt, no provision to the contrary in a

⁶ Order in Council No. XIX of 2009, as amended by the Police Complaints (Guernsey) Law, 2008 (Commencement and Amendment) (Guernsey) Ordinance, 2011.

contract or any other agreement (whether made or signed before or after the commencement date) has any effect.

(3) For the avoidance of doubt, nothing in these Regulations applies in relation to any complaint, matter or proceedings excluded from the application of the Law by section 4 of the Police Complaints (Guernsey) Law, 2008 (Commencement and Amendment) Ordinance, 2011.

Police friend.

2. (1) The officer concerned may choose –

- (a) any other officer,
- (b) any police staff member, or
- (c) if the officer concerned is a member of a staff association, a person nominated by his staff association,

who is not otherwise involved in the matter, to act as his police friend.

(2) A police friend may –

- (a) advise the officer concerned throughout regulated proceedings,
- (b) unless the officer concerned has the right to be legally represented and chooses to be so represented, represent the officer concerned at the misconduct proceedings or special case hearing or appeal meeting,
- (c) make representations to the appropriate authority concerning any aspect of regulated proceedings, and

- (d) accompany the officer concerned to any interview, meeting or hearing which forms part of any regulated proceedings.

(3) Where a police friend is a member of the salaried police force of the Island of Guernsey or a police staff member, the Chief Officer must permit the police friend to use a reasonable amount of duty time for the purposes specified in paragraph (2).

Legal and other representation.

3. (1) The officer concerned has the right to be legally represented, by a lawyer of his choice, at a misconduct hearing or a special case hearing.

(2) If the officer concerned chooses not to be legally represented at such a hearing, he may be dismissed or receive any other outcome under regulation 32 (outcome of misconduct proceedings) or 52 (outcome of special case hearing) without his being so represented.

(3) Except where the officer concerned has the right to be legally represented and chooses to be so represented, he may be represented only by a police friend at misconduct proceedings, a special case hearing or an appeal meeting.

(4) The appropriate authority may be represented at misconduct proceedings, a special case hearing or an appeal meeting by –

- (a) an officer,
- (b) a police staff member, or
- (c) only in the case of a misconduct hearing or a special case hearing, a lawyer (whether or not the officer concerned chooses to be legally represented).

(5) Subject to paragraph (6), the appropriate authority may appoint a person to advise the person chairing the misconduct proceedings, special case hearing or appeal meeting.

(6) At a misconduct meeting or an appeal meeting, the person appointed under paragraph (5) must not be a lawyer.

Provision of notices or documents.

4. (1) Where any document is to be given or supplied under these Regulations, the document may be given or supplied to –

- (a) an individual, by being delivered to him, or by being left at, or sent by post or transmitted to, his usual or last known place of abode,
- (b) a body corporate with a registered office in Guernsey or Alderney, by being left at, or sent by post or transmitted to, that office,
- (c) a body corporate without a registered office in Guernsey or Alderney, by being left at, or sent by post or transmitted to, its principal or last known principal place of business in Guernsey or Alderney or, if there is no such place, its registered office or principal or last known principal place of business elsewhere,
- (d) an unincorporated body -
 - (i) by being given or supplied to any partner, member of the committee or other similar governing body, manager, director or other similar officer thereof

in accordance with paragraph (a), or

(ii) by being left at, or sent by post or transmitted to, the body's principal or last known principal place of business in Guernsey or Alderney or, if there is no such place, its principal or last known principal place of business elsewhere, and

(e) a department or committee of the States, a committee of the States of Alderney or a committee of the Chief Pleas of Sark by being left at, or sent by post or transmitted to, the principal offices of that department, or committee, in Guernsey, Alderney or Sark, as the case may be.

(2) If a person ("**Person A**") notifies the appropriate authority, the Commission, the Complaints Tribunal or any other person of an address for service within the Bailiwick, any document to be given or supplied to Person A under these Regulations may be given or supplied by being left at, or sent by post to, that address.

(3) A notice under regulation 12(1) (written notices) may be given in person to the officer concerned by his police friend if the police friend has agreed with the appropriate authority to deliver the notice.

(4) Where any document is to be given or supplied under these Regulations to a person who is -

(a) a minor, or

(b) a person under legal disability,

the document may be given or supplied to his guardian; and if there is no guardian, the party wishing to give or supply the document may apply to a court of competent

jurisdiction for the appointment of a person to act as guardian for the purposes of these Regulations.

(5) If a document cannot, after reasonable enquiry, be given or supplied to a person in accordance with this regulation, the document may be given or supplied to the person by being published on two occasions in La Gazette Officielle or, in the case of a document to be given or supplied in Alderney, the Alderney Official Gazette.

(6) Paragraphs (1) to (5) are without prejudice to any other lawful method of giving or supplying a document (for example, under the Electronic Transactions (Guernsey) Law, 2000⁷).

(7) Unless the contrary is shown, where a document is sent by post, it is deemed for the purposes of these Regulations to have been received –

- (a) in the case of a document sent to an address in the United Kingdom, the Channel Islands or the Isle of Man, on the third working day after the day of posting,
- (b) in the case of a document sent elsewhere, on the seventh working day after the day of posting.

(8) For the purposes of this regulation, the sending of any document by post is proved by showing the date of posting, the address thereon and the fact of prepayment.

(9) In this regulation –

"by post" means by registered post, recorded delivery service or

⁷ Ordres en Conseil Vol. XL, p. 263; as amended by Recueil d'Ordonnances Tome XXIX, p. 406; see also G.S.I. No. 13 of 2001.

ordinary letter post,

"document" includes written notice, and

"transmitted" means transmitted by electronic communication, facsimile transmission or other similar means which produce or enable the production of a document containing the text of the communication (in which event the document shall be regarded as given or supplied when it is received).

Outstanding or possible criminal proceedings.

5. (1) Subject to this regulation, regulated proceedings must be taken without delay.

(2) Before referring a case to misconduct proceedings or a special case hearing, the appropriate authority must decide whether misconduct proceedings or special case proceedings would prejudice any criminal proceedings.

(3) For any period during which the appropriate authority considers any misconduct proceedings or special case proceedings would prejudice any criminal proceedings, no such misconduct proceedings or special case proceedings must take place.

(4) Where a witness who is or may be a witness in any criminal proceedings is to be or may be asked to attend misconduct proceedings, the appropriate authority must consult Her Majesty's Procurer (and when doing so must inform him of the names and addresses of all such witnesses) before making its decision under paragraph (2).

Suspension.

6. (1) The appropriate authority may, subject to the provisions of this regulation, suspend the officer concerned –

- (a) from his office as constable or, as the case may be, special constable, and
 - (b) in the case of a member of the salaried police force of the Island of Guernsey, from membership of the force.
- (2) Whilst an officer is suspended under this regulation –
 - (a) he remains an officer for the purposes of these Regulations, and
 - (b) in the case of a member of the salaried police force of the Island of Guernsey –
 - (i) his suspension must be with pay, but
 - (ii) he must not retire without the consent of the appropriate authority, unless he reaches the age of compulsory retirement.
- (3) The appropriate authority must not suspend an officer under this regulation unless the following conditions ("**the suspension conditions**") are satisfied –
 - (a) having considered temporary redeployment to alternative duties or an alternative location as an alternative to suspension, the appropriate authority has determined that such redeployment is not appropriate in all the circumstances of the case, and
 - (b) it appears to the appropriate authority that either-

- (i) the effective investigation of the case may be prejudiced unless the officer concerned is so suspended, or
- (ii) having regard to the nature of the allegation and any other relevant considerations, the public interest requires that the officer concerned should be so suspended.

(4) The appropriate authority may exercise the power to suspend the officer concerned under this regulation at any time from the date on which these Regulations first apply to the officer concerned in accordance with regulation 1 until—

- (a) it is decided that the conduct of the officer concerned will not be referred to misconduct proceedings or a special case hearing, or
- (b) those proceedings or the special case hearing has concluded.

(5) The appropriate authority may suspend the officer concerned with effect from the date and time of notification which must be given either –

- (a) in writing with a summary of the reasons, or
- (b) orally, in which case the appropriate authority must confirm the suspension in writing with a summary of the reasons before the end of 3 working days beginning with the first working day after the suspension.

(6) The officer concerned (or his police friend) may make representations against his suspension to the appropriate authority-

- (a) before the end of 7 working days beginning with the first working day after his being suspended, or
- (b) at any time during the suspension if he reasonably believes that circumstances relevant to the suspension conditions have changed.

(7) The appropriate authority must review the suspension conditions

- (a) on receipt of any representations under paragraph (6)(a),
- (b) if there has been no previous review, before the end of 4 weeks beginning with the first working day after the suspension,
- (c) in any other case-
 - (i) on being notified that circumstances relevant to the suspension conditions may have changed (whether by means of representations made under paragraph (6)(b) or otherwise), or
 - (ii) before the end of 4 weeks beginning with the day after the previous review.

(8) Where, following a review under paragraph (7), the suspension conditions remain satisfied and the appropriate authority decides the suspension should continue, it must, before the end of 3 working days beginning with the day after the review, so notify the officer concerned in writing with a summary of the reasons.

(9) Subject to paragraph (11), where the officer concerned is suspended under this regulation, he must remain so suspended until the earlier of the following –

- (a) the suspension conditions are no longer satisfied,
- (b) either of the events mentioned in paragraph (4)(a) and, subject to paragraph (10), paragraph (4)(b).

(10) Where an officer concerned who is suspended is dismissed with notice under regulation 32 (outcome of misconduct proceedings) he must remain suspended until the end of the notice period.

(11) In the case of a supervised investigation, the appropriate authority must consult with the Commission –

- (a) in deciding whether or not to suspend the officer concerned under this regulation, and
- (b) before a suspension under this regulation is brought to an end by virtue of paragraph (9)(a).

PART II

INVESTIGATIONS

Assessment of conduct following complaint.

7. (1) This regulation –

- (a) applies where the appropriate authority receives a complaint, and

(b) must be read together with section 5 of the Law.

(2) Upon receiving the complaint, the appropriate authority must assess whether the conduct of the officer concerned, if proved, would amount to misconduct, gross misconduct or neither.

(3) Where the appropriate authority assesses that the conduct would amount to neither misconduct nor gross misconduct, the appropriate authority may do one or more of the following –

- (a) take no action,
- (b) impose management action on the officer concerned,
- (c) refer the matter to be dealt with under any other enactment that relates to that matter, or
- (d) take any other action that it is lawfully entitled or required to take (for example, by contractual agreement).

(4) Where the appropriate authority assesses that the conduct would amount to misconduct but not gross misconduct, it must determine the following –

- (a) whether the conduct complained of, if proved, would justify a criminal charge or the bringing of misconduct proceedings, and
- (b) whether, for any other reason, it is necessary for the complaint to be investigated.

(5) If the appropriate authority determines –

- (a) that the conduct complained of, if proved, would justify a criminal charge or the bringing of misconduct proceedings, or
- (b) that, for any other reason, it is necessary for the complaint to be investigated,

the complaint is not suitable for informal resolution.

(6) Where the appropriate authority assesses that the conduct would amount to gross misconduct, the complaint is not suitable for informal resolution.

(7) For the avoidance of doubt, where a complaint is –

- (a) not suitable for informal resolution by virtue of section 5(2) of the Law or paragraph (5) or (6) of this regulation, or
- (b) unsuitable for informal resolution for any other reason,

the appropriate authority must notify the Commission of the complaint and appoint a person to investigate it formally in accordance with section 5(3) of the Law.

(8) At any time before the start of misconduct proceedings, the appropriate authority may revise its assessment of the conduct or any determination made under this regulation if it considers it appropriate to do so.

(9) If a complaint is resolved informally, the appropriate authority may do one or more of the following –

- (a) take no action,

- (b) impose management action on the officer concerned,
- (c) refer the matter to be dealt with under any other enactment that relates to that matter, or
- (d) take any other action that it is lawfully entitled or required to take (for example, by contractual agreement).

(10) The appropriate authority must notify the officer concerned in writing as soon as practicable, where the appropriate authority decides –

- (a) that the conduct of the officer concerned (which is the subject of the complaint), if proved, would amount to neither misconduct nor gross misconduct, or
- (b) to seek to resolve the complaint informally, or
- (c) to take any of the steps specified in paragraph (3) or paragraph (9).

Commission must supervise investigation of complaints against senior-ranking officers.

8. In addition to complaints of the kind referred to in section 7(1)(a) of the Law, the Commission must also supervise a formal investigation of a complaint if it relates to the conduct of a senior-ranking officer, for the purposes of section 7(1)(b) of the Law.

Application of regulations 10 to 15.

9. Regulations 10 to 15 apply to –

- (a) any supervised investigation, and

- (b) any other formal investigation.

Appointment of investigating officer.

10. (1) The appropriate authority must not appoint a person to investigate the complaint or matter concerned –

- (a) unless he has an appropriate level of knowledge, skills and experience to plan and manage the investigation,
- (b) if he is an interested party,
- (c) if he works, directly or indirectly, under the management of the officer concerned, or
- (d) in any case where the officer concerned is a senior-ranking officer, if he is an officer.

(2) Nothing in paragraph (1) limits the restrictions on the appointment of an investigating officer imposed by section 5(3)(b), (5) or (6) of the Law.

Investigation.

11. The purpose of the investigation is to –

- (a) gather evidence to establish the facts and circumstances of the alleged misconduct or gross misconduct, and
- (b) assist the appropriate authority to establish whether there is a case to answer in respect of misconduct or gross misconduct or whether there is no case to answer.

Written notices.

12. (1) Subject to paragraph (3), as soon as reasonably practicable after being appointed, the investigating officer must cause the officer concerned to be given written notice –

- (a) describing the conduct that is the subject of the allegation and (if this is the case) how that conduct is alleged to fall below the Standards of Professional Behaviour,
- (b) of the appropriate authority's assessment of whether that conduct, if proved, would amount to misconduct or gross misconduct,
- (c) that there is to be an investigation into the complaint or matter concerned and the identity of the investigating officer,
- (d) of whether, if the matter were to be referred to misconduct proceedings, those would likely be a misconduct meeting or a misconduct hearing and the reason for this,
- (e) that if the likely form of any misconduct proceedings to be held changes, further notice (with reasons) will be given,
- (f) informing him that he has the right to seek advice from his staff association or any other body and of the effect of regulation 2 (police friend),
- (g) of the effect of regulations 3(1) to (3) (legal and other representation) and 13 (representations to the investigating officer), and
- (h) informing him that he does not have to say anything.

(2) If following the giving of notice under paragraph (1), the appropriate authority revises its assessment of the conduct, under regulation 7(8) (assessment of conduct following complaint), or its determination of the likely form of any misconduct proceedings to be taken, the appropriate authority must, as soon as practicable, give the officer concerned further written notice of –

- (a) its revised assessment or determination and the reason for that assessment or determination, and
- (b) whether, if the case were to be referred to misconduct proceedings, those would likely be a misconduct meeting or a misconduct hearing and the reason for this.

(3) The requirement to give a written notice to the officer concerned under paragraph (1) does not apply for so long as the investigating officer considers that giving such a notice might prejudice the investigation or any other investigation (including, in particular, a criminal investigation).

(4) Once a written notice has been given in accordance with paragraph (1), the investigating officer must notify the officer concerned of the progress of the investigation –

- (a) if there has been no previous notification following the giving of the written notice under paragraph (1), before the end of 4 weeks beginning with the first working day after the start of the investigation, and
- (b) in any other case, before the end of 4 weeks beginning with the first working day after the previous notification.

Representations to the investigating officer.

13. (1) Before the end of 10 working days starting with the first working day after which the notice is given under regulation 12(1) (written notices), (unless this period is extended by the investigating officer) –

- (a) the officer concerned may provide a written or oral statement relating to any matter under investigation to the investigating officer, and
- (b) the officer concerned or his police friend may provide any relevant documents to the investigating officer.

(2) The investigating officer must, as part of his investigation –

- (a) consider any such statement or document, and
- (b) make a record of having received it.

(3) In this regulation "**relevant document**" –

- (a) means a document relating to any matter under investigation, and
- (b) includes such a document containing suggestions as to lines of inquiry to be pursued or witnesses to be interviewed.

Interviews during investigation.

14. (1) Where an investigating officer wishes to interview the officer concerned as part of his investigation, he must, if reasonably practicable, agree a date and time for the interview with the officer concerned.

(2) Where no date and time is agreed under paragraph (1), the investigating officer must specify a date and time for the interview.

(3) Where a date and time is specified under paragraph (2) and –

(a) the officer concerned or his police friend will not be available at that time, and

(b) the officer concerned proposes an alternative time which satisfies paragraph (4),

the interview must be postponed to the time proposed by the officer concerned.

(4) An alternative time must –

(a) be reasonable, and

(b) fall before the end of the period of 5 working days beginning with the first working day after the day specified by the investigating officer.

(5) The officer concerned must be given written notice of the date, time and place of the interview.

(6) The investigating officer must, in advance of the interview, provide the officer concerned with such information as the investigating officer considers appropriate in the circumstances of the case to enable the officer concerned to prepare for the interview.

(7) The officer concerned must attend the interview.

(8) A police friend must not answer any questions asked of the officer concerned during the interview.

Report of investigation.

15. (1) On completion of his investigation the investigating officer must as soon as practicable submit a written report on his investigation to the appropriate authority.

(2) The written report must--

- (a) provide an accurate summary of the evidence,
- (b) attach or refer to any relevant documents, and
- (c) indicate the investigating officer's opinion as to whether there is a case to answer in respect of misconduct or gross misconduct or whether there is no case to answer.

(3) If at any time during his investigation the investigating officer believes that the appropriate authority would, on consideration of the matter, be likely to determine that the special conditions under regulation 66 (satisfaction of special conditions) are satisfied, he must, whether or not the investigation is complete, submit to the appropriate authority –

- (a) a statement of his belief and the grounds for it, and
- (b) a written report on his investigation to that point.

PART III

MISCONDUCT PROCEEDINGS

Referral of case to misconduct proceedings.

16. (1) This regulation is subject to regulations 5(3) (outstanding or possible criminal proceedings) and 38 (referral of case to special case hearing), and must be read together with section 10 of the Law.

(2) This regulation applies where –

- (a) the appropriate authority receives an investigating officer's written report submitted under regulation 15 (report of investigation),
- (b) in the case of a supervised investigation, the appropriate authority receives a copy of the report sent under section 8(3)(b), and the Commission's statement submitted under section 8(6), of the Law, or
- (c) following a delay to regulated proceedings by virtue of regulation 5(3) (outstanding or possible criminal proceedings), the appropriate authority considers that such proceedings would no longer prejudice any criminal proceedings.

(3) Where this regulation applies, the appropriate authority must as soon as practicable determine (or as the case may be, further determine) whether the officer concerned has a case to answer in respect of misconduct or gross misconduct or whether there is no case to answer.

(4) If the appropriate authority determines there is no case to answer, it may do one or more of the following –

- (a) take no further disciplinary action against the officer concerned,
- (b) impose management action on the officer concerned,
- (c) refer the matter to be dealt with under any other enactment that relates to that matter, or

- (d) take any other action that it is lawfully entitled or required to take (for example, by contractual agreement).

(5) If the appropriate authority determines that there is a case to answer in respect of gross misconduct, it must refer the case to a misconduct hearing.

(6) If the appropriate authority determines that there is a case to answer in respect of misconduct but not gross misconduct, it may –

- (a) impose management action on the officer concerned, or
- (b) refer the case to misconduct proceedings.

(7) Where the appropriate authority determines under paragraph (6) to refer the case to misconduct proceedings –

- (a) those proceedings must be a misconduct hearing if the officer concerned had a final written warning in force at the relevant date, and
- (b) in any other case, those proceedings must be a misconduct meeting.

(8) Notwithstanding paragraphs (4) and (6)(b) –

- (a) if the Commission makes a recommendation under section 10(1) of the Law that the appropriate authority accepts, the appropriate authority must refer the case to a misconduct meeting or a misconduct hearing as specified in the recommendation, and

- (b) if the Commission gives a direction to bring misconduct proceedings under section 10(3) of the Law, the misconduct proceedings must be heard by the Complaints Tribunal as a misconduct hearing.

(9) If the appropriate authority fails to –

- (a) make the determination referred to in paragraph (3), or
- (b) where applicable, decide what action to take under paragraph (6),

before the end of 15 working days beginning with the first working day after receipt of the investigator's report, it must notify the officer concerned of the reason for this.

(10) If the appropriate authority determines under paragraph (6) to impose management action, it must give the officer concerned written notice of this as soon as practicable.

Withdrawal of case.

17. (1) Subject to paragraph (3), at any time before the beginning of the misconduct proceedings, the appropriate authority may direct that the case be withdrawn.

(2) Where a direction is given under paragraph (1) –

- (a) the appropriate authority may do one or more of the following –
 - (i) take no further action against the officer concerned,

- (ii) impose management action on the officer concerned,
 - (iii) refer the matter to be dealt with under any other enactment that relates to that matter, or
 - (iv) take any other action that it is lawfully entitled or required to take (for example, by contractual agreement), and
- (b) the appropriate authority must as soon as practicable give the officer concerned –
- (i) written notice of the direction, indicating whether any action will be taken under paragraph (2)(a), and
 - (ii) where the investigation has been completed, on request and subject to the harm test, a copy of the investigator's report or such parts of that report that relate to the officer concerned.

(3) This regulation does not apply in relation to misconduct proceedings arising from supervised investigations.

Notice of referral to misconduct proceedings and panel membership.

18. (1) Where a case is referred to misconduct proceedings, the appropriate authority must as soon as practicable give the officer concerned –

- (a) written notice of –
 - (i) the referral,

- (ii) the conduct that is the subject of the case and how that conduct is alleged to amount to misconduct or gross misconduct as the case may be,
 - (iii) the name of the person chairing the misconduct proceedings and of the effect of paragraphs (3) to (6), and
 - (iv) the effect of regulation 3(1) to (3) (legal and other representation) in relation to the form of misconduct proceedings to which the case is being referred,
- (b) a copy of any statement it may have made to the investigating officer during the course of the investigation, and
- (c) subject to the harm test, a copy of –
 - (i) the investigator's report or such parts of that report that relate to him (together with any document attached to or referred to in that report that relates to him), and
 - (ii) any other relevant document gathered during the course of the investigation.
- (2) As soon as practicable after –
 - (a) any person has been appointed under regulation 3(5) (legal and other representation) to advise the person chairing the misconduct proceedings, and

- (b) where the misconduct proceedings are to be conducted by a panel, the persons comprising that panel (other than the chair) have been determined,

the appropriate authority must give the officer concerned written notice of the names of such persons and of the effect of paragraphs (3) to (6).

(3) The officer concerned may object to any person whom he is notified under this regulation is to –

- (a) chair or otherwise conduct his misconduct proceedings, or
- (b) advise the person conducting those proceedings.

(4) Any such objection must be made in writing to the appropriate authority before the end of 3 working days beginning with the first working day after the officer concerned is given notice of the person's name and must set out the grounds of objection of the officer concerned.

(5) The appropriate authority must notify the officer concerned in writing whether it upholds or rejects an objection to any person who is to conduct or chair the misconduct proceedings or to any person appointed under regulation 3(5) (legal and other representation) to advise the person chairing the misconduct proceedings.

(6) If the appropriate authority upholds the objection, the person to whom the officer concerned objects must be replaced in accordance with regulation 3(5) and (6) (legal and other representation), regulation 22 (persons conducting misconduct meetings or misconduct hearings: officers other than senior-ranking officers), regulation 23 (persons conducting misconduct meetings or misconduct hearings: senior-ranking

officers) or regulation 24 (misconduct hearing preferred at direction of Commission) as appropriate.

(7) As soon as reasonably practicable after any such appointment, the appropriate authority must notify the officer concerned in writing of the name of the new person who is to chair or conduct the misconduct proceedings, or the new adviser to the person chairing the misconduct proceedings, as the case may be.

(8) The officer concerned may object to the appointment of a person appointed under paragraph (6).

(9) Any such objection must be made –

- (a) in accordance with paragraph (4), and
- (b) before the end of 3 working days beginning with the first working day after receipt of the notification referred to in paragraph (7),

and the appropriate authority must comply with paragraphs (5) to (7) in relation to that objection.

(10) In this regulation "**relevant document**" means a document which, in the opinion of the appropriate authority, is relevant to the case the officer concerned has to answer.

Procedure on receipt of notice.

19. (1) Before the end of –

- (a) 14 working days beginning with the first working day after the documents have been supplied to the officer

concerned under regulation 18(1) (notice of referral to misconduct proceedings and panel membership), or

- (b) where that period is extended by the person chairing the misconduct proceedings for exceptional circumstances, such extended period,

the officer concerned must comply with paragraphs (2) and (3).

- (2) The officer concerned must provide to the appropriate authority –

- (a) written notice of whether or not he accepts that his conduct amounts to misconduct or gross misconduct as the case may be,
- (b) where he accepts that his conduct amounts to misconduct or gross misconduct as the case may be, any written submission he wishes to make in mitigation, and
- (c) where he does not accept that his conduct amounts to misconduct or gross misconduct as the case may be, or he disputes part of the case against him, written notice of –
 - (i) the allegation he disputes and his account of the relevant events, and
 - (ii) any arguments on points of law he wishes to be considered by the person conducting the misconduct proceedings.

- (3) The officer concerned must provide the appropriate authority with a copy of any document he intends to rely on at the misconduct proceedings.

(4) Before the end of 3 working days beginning with the first working day after the date on which the officer concerned has complied with paragraph (2), the appropriate authority and the officer concerned must each supply to the other a list of proposed witnesses or give notice that they do not have any proposed witnesses; and any list of proposed witnesses must include brief details of the evidence that each witness is able to adduce and their address.

(5) Where there are proposed witnesses, the officer concerned must, if reasonably practicable, agree a list of proposed witnesses with the appropriate authority.

Witnesses.

20. (1) As soon as practicable after any list of proposed witnesses has been –

- (a) agreed under regulation 19(5) (procedure on receipt of notice), or
- (b) where there is no agreement under regulation 19(5), supplied under regulation 19(4),

the appropriate authority must supply that list to the person chairing the misconduct proceedings.

(2) The person chairing the misconduct proceedings must –

- (a) consider the list or lists of proposed witnesses, and
- (b) subject to paragraph (3), determine which, if any, witnesses should attend the misconduct proceedings.

(3) No witness must give evidence at misconduct proceedings unless the person chairing those proceedings reasonably believes that it is necessary for the witness to do so in the interests of justice, in which case he must –

- (a) where the witness is an officer, cause that witness to be ordered to attend the misconduct proceedings, and
- (b) in any other case, cause the witness to be given notice that his attendance is necessary and of the date, time and place of the proceedings.

(4) An officer or a police staff member ordered to attend the misconduct proceedings pursuant to paragraph (3)(a) must do so; and where a witness referred to in paragraph (3)(a) or (b) is a member of the salaried police force of the Island of Guernsey or a police staff member, the Chief Officer must permit him to use a reasonable amount of duty time to attend those proceedings when so required by the person chairing those proceedings.

Timing and notice of misconduct proceedings.

21. (1) Subject to paragraphs (2) and (6), the misconduct proceedings must take place –

- (a) in the case of a misconduct meeting, before the end of 20 working days, or
- (b) in the case of a misconduct hearing, before the end of 30 working days,

beginning with the first working day after the documents have been supplied to the officer concerned under regulation 18(1) (notice of referral to misconduct proceedings and panel membership).

(2) The person chairing the misconduct proceedings may extend the period specified in paragraph (1) where he considers that it would be in the interests of justice to do so.

(3) Where the person chairing the misconduct proceedings decides to extend the period under paragraph (2), or decides not to do so following representations from the appropriate authority or the officer concerned, he must provide written notification of his reasons for that decision to the appropriate authority and the officer concerned.

(4) The person chairing the misconduct proceedings must, if reasonably practicable, agree a date and time for the misconduct proceedings with the officer concerned.

(5) Where no date and time is agreed under paragraph (4), the person chairing the misconduct proceedings must specify a date and time for those proceedings.

(6) Where a date and time is specified under paragraph (5) and –

- (a) the officer concerned or his police friend will not be available at that time, and
- (b) the officer concerned proposes an alternative time which satisfies paragraph (7),

the misconduct proceedings must be postponed to the time proposed by the officer concerned.

(7) An alternative time must –

- (a) be reasonable, and

- (b) fall before the end of 5 working days beginning with the first working day after the day specified by the person conducting the misconduct proceedings.

(8) The officer concerned must be given written notice of the date, time and place of the misconduct proceedings.

Persons conducting misconduct meetings or misconduct hearings: officers other than senior-ranking officers.

22. (1) This regulation applies to misconduct proceedings –

- (a) where the officer concerned is not a senior-ranking officer, and
- (b) other than a misconduct hearing convened as the result of a Commission direction.

(2) A misconduct meeting to which this regulation applies must be conducted by a person –

- (a) who is not an interested party, and
- (b) who is appointed by the Chief Officer in circumstances that satisfy Condition A, Condition B or Condition C in paragraph (3).

(3) Conditions A, B and C are respectively satisfied in the following circumstances –

- (a) Condition A is satisfied if –

- (i) the officer concerned is a member of the salaried police force of the Island of Guernsey, and
 - (ii) the person appointed to conduct the misconduct meeting is a member of that force or another police force of at least one rank higher than the officer concerned,
- (b) Condition B is satisfied if –
 - (i) the officer concerned is a special constable, and
 - (ii) the person appointed to conduct the misconduct meeting is either –
 - (A) a member of the salaried police force of the Island of Guernsey, or another police force, of the rank of sergeant or above, or
 - (B) a senior human resources professional, and
- (c) Condition C is satisfied if –
 - (i) the case does not substantially involve operational policing matters, and
 - (ii) the person appointed to conduct the misconduct meeting is a police staff member who, in the opinion of the Chief Officer, is more senior than the officer concerned.

(4) A misconduct hearing to which this regulation applies must be conducted by a panel of 3 persons appointed by the Chief Officer, comprising one of the following six options chosen at the discretion of the Chief Officer –

- (a) **Option 1** - the Chief Officer as chair, a serving or retired senior-ranking officer of another police force and a qualified person,
- (b) **Option 2** - the Chief Officer as chair, a human resources professional and a qualified person,
- (c) **Option 3** - a serving or retired senior-ranking officer of another police force as chair, another serving or retired senior-ranking officer of another police force and a qualified person,
- (d) **Option 4** - a serving or retired senior-ranking officer of another police force as chair, a human resources professional and a qualified person,
- (e) **Option 5** – a senior human resources professional as chair, a serving or retired senior-ranking officer of another police force and a qualified person, and
- (f) **Option 6** – the Chief Officer as chair, a senior-ranking officer and a qualified person.

(5) For the purposes of this regulation, a "**senior human resources professional**" means a human resources professional who, in the opinion of the Chief Officer, has sufficient seniority, skills and experience to conduct the misconduct meeting or (as the case may be) chair the misconduct hearing.

(6) For the avoidance of doubt, the Chief Officer may delegate any of his functions under this Regulation in accordance with section 14 of the Law, including the function of chairing the panel under any of Options 1, 2 or 6 in paragraph (4).

Persons conducting misconduct meetings or misconduct hearings: senior-ranking officers.

23. (1) This regulation applies to misconduct proceedings –

- (a) where the officer concerned is a senior-ranking officer, and
- (b) other than a misconduct hearing convened as the result of a Commission direction.

(2) A misconduct meeting to which this regulation applies must be conducted by a panel comprising –

- (a) HMCIC, or an inspector of constabulary or a serving or retired senior-ranking officer of another police force, who is nominated by HMCIC, as the chair,
- (b) the Chief Executive of the States of Guernsey or his nominee.

(3) A misconduct hearing to which this regulation applies must be conducted by a panel comprising –

- (a) HMCIC, or an inspector of constabulary or a serving or retired senior-ranking officer of another police force, who is nominated by HMCIC, as the chair,

- (b) the Chief Executive of the States of Guernsey or his nominee,
- (c) a qualified lawyer appointed by the appropriate authority, and
- (d) a qualified person appointed by the appropriate authority.

Misconduct hearing convened at direction of Commission.

24. (1) A misconduct hearing convened as the result of a Commission direction must be conducted by the Complaints Tribunal in accordance with section 11 of the Law.

(2) Provisions of these Regulations relating to misconduct proceedings and misconduct hearings apply to any misconduct hearing of the kind referred to in paragraph (1) subject to any necessary modifications, and in particular—

- (a) a reference to a "**disciplinary charge**" in section 11 of the Law must be regarded as a reference to a charge of misconduct or gross misconduct at a misconduct hearing,
- (b) under section 11(4) of the Law, the chairman of the Complaints Tribunal may determine to impose any punishment on the officer concerned in accordance with regulation 32 (outcome of misconduct proceedings), and
- (c) regulations 18 (notice of referral to misconduct proceedings and panel membership) to 21 (timing and notice of misconduct proceedings), and 25 (documents to be supplied) have effect as if, in those regulations, the words "**the Commission**" were substituted for the words "**the appropriate authority**".

Documents to be supplied.

25. (1) Prior to the misconduct proceedings the appropriate authority must supply the person or panel conducting the misconduct proceedings with a copy of

—

(a) the documents given to the officer concerned under regulation 18(1) (notice of referral to misconduct proceedings and panel membership),

(b) the documents provided by the officer concerned under—

(i) regulation 19(2) and (3) (procedure on receipt of notice), and

(ii) regulation 42 (procedure on receipt of notice), where the appropriate authority has directed in accordance with regulation 39(1) (remission of case) that the case be dealt with under this Part, and

(c) where the officer concerned does not accept that his conduct amounts to misconduct or gross misconduct as the case may be or where he disputes any part of the case against him, any other documents that, in the opinion of the appropriate authority, should be considered at the misconduct proceedings.

(2) Prior to the misconduct proceedings the officer concerned must be supplied with a list of the documents supplied under paragraph (1) and a copy of any such document of which he has not already been supplied with a copy.

Attendance of officer concerned at misconduct proceedings.

26. (1) Subject to paragraph (2), the officer concerned must attend the misconduct proceedings.

(2) If the officer concerned informs the person chairing the misconduct proceedings in advance that he is unable to attend on grounds which the person chairing those proceedings considers reasonable, that person may allow the officer concerned to participate in the proceedings by video link or other means.

(3) Where the officer concerned participates in the proceedings by video link or other means by virtue of paragraph (2), or if he does not attend the misconduct proceedings –

(a) he may nonetheless be represented at those proceedings by –

(i) his police friend, or

(ii) in the case of a misconduct hearing, his lawyer (in which case his police friend may also attend), and

(b) the proceedings may be proceeded with and concluded in the absence of the officer concerned whether or not he is so represented.

(4) Where the officer concerned is represented in accordance with paragraph (3), a person representing the officer concerned or his police friend (if different), or both, may participate using the video link or other means where such means are also used by the officer concerned.

Participation of Commission and investigating officer at misconduct proceedings.

27. (1) This regulation applies to any misconduct proceedings brought by the appropriate authority following a supervised investigation, except a misconduct hearing convened as the result of a Commission direction.

(2) The Commission may attend the misconduct proceedings to make representations, and where the Commission so attends –

- (a) if it is a misconduct hearing it may instruct a lawyer to represent it,
- (b) it must notify the complainant and any interested person prior to those proceedings, and
- (c) the person chairing the misconduct proceedings must notify the officer concerned prior to those proceedings.

(3) The investigating officer or a nominated person must attend the misconduct proceedings on the request of the person chairing those proceedings to answer questions.

(4) For the purposes of this regulation, a "**nominated person**" is a person who, in the opinion of the Commission, has sufficient knowledge of the investigation of the case to be able to assist the person chairing the misconduct proceedings.

Attendance of complainant and interested person at misconduct proceedings.

28. (1) This regulation applies to any misconduct proceedings brought following a Commission recommendation or a Commission direction.

(2) The appropriate authority must notify the complainant and any interested person of the date, time and place of the misconduct proceedings.

(3) Subject to paragraph (4), regulation 30 (exclusion from misconduct proceedings) and any conditions imposed under regulation 29(5) (attendance of others at misconduct proceedings), the complainant and any interested person –

- (a) may attend those proceedings as an observer up to but not including the point at which the person chairing those proceedings considers the question of disciplinary action, and
- (b) may be accompanied by one other person, and if the complainant or interested person has a special need, by one further person to accommodate that need.

(4) Where a complainant or an interested person, or any person accompanying him, is to give evidence as a witness at the misconduct proceedings, he and any person allowed to accompany him must not be allowed to attend the proceedings before he gives his evidence.

(5) The person chairing the misconduct proceedings may, at his discretion, put any questions to the officer concerned that the complainant or interested person requests be put to him.

(6) For the purposes of this regulation, a person has a "**special need**" if, in the opinion of the person chairing the misconduct proceedings, he has a disability or learning difficulty, or does not have sufficient knowledge of English, to fully participate in or understand the misconduct proceedings.

Attendance of others at misconduct proceedings.

29. (1) Subject to regulation 28 (attendance of complainant and interested person at misconduct proceedings) and the provisions of this regulation, the misconduct proceedings must be in private.

(2) A person nominated by the Commission may, as an observer, attend any misconduct proceedings that arise from a supervised investigation.

(3) Subject to any contrary decision by the person chairing the misconduct proceedings, a witness other than a complainant, an interested person or the officer concerned, must attend the misconduct proceedings only for the purpose of giving his evidence.

(4) The person chairing the misconduct proceedings may, at his discretion –

- (a) permit any person to attend the misconduct proceedings as an observer, for training purposes, if the officer concerned consents to this, and
- (b) permit any witness in the misconduct proceedings to be accompanied at those proceedings by one other person.

(5) The person chairing the misconduct proceedings may impose such conditions as he sees fit relating to the attendance under regulation 28 (attendance of complainant and interested person at misconduct proceedings) or this regulation of persons at the misconduct proceedings (including circumstances in which they may be excluded) in order to facilitate the proper conduct of the proceedings.

(6) For the avoidance of doubt, nothing in this regulation limits or affects the Commission's rights or powers under regulation 27 (participation of Commission and investigating officer at misconduct proceedings).

Exclusion from misconduct proceedings.

30. Where it appears to the person chairing the misconduct proceedings that any person may, in giving evidence, disclose information which, under the harm test,

ought not to be disclosed to any person attending the proceedings, he must require such attendees to withdraw while the evidence is given.

Procedure at misconduct proceedings.

31. (1) Subject to these Regulations, the person chairing the misconduct proceedings must determine the procedure at those proceedings.

(2) The misconduct proceedings must not proceed unless the officer concerned has been notified of the effect of regulation 3(1) to (3) (legal and other representation) in relation to the form of misconduct proceedings taking place.

(3) Subject to paragraph (4), the person chairing the misconduct proceedings may from time to time adjourn the proceedings if it appears to him to be necessary or expedient to do so.

(4) The misconduct proceedings must not, except in exceptional circumstances, be adjourned solely to allow the complainant or any witness or interested person to attend.

(5) The person representing the officer concerned may –

(a) address the proceedings in order to do any or all of the following –

(i) put the case of the officer concerned,

(ii) sum up that case,

(iii) respond on behalf of the officer concerned to any view expressed at the proceedings,

(iv) make representations concerning any aspect of proceedings under these Regulations, and

(v) subject to paragraph (8), ask questions of any witnesses, and

(b) confer with the officer concerned.

(6) Where (at a misconduct hearing) the person representing the officer concerned is a lawyer, the police friend of the officer concerned may also confer with the officer concerned.

(7) The police friend or lawyer of the officer concerned must not answer any questions asked of the officer concerned during the misconduct proceedings.

(8) Whether any question should or should not be put to a witness must be determined by the person chairing the misconduct proceedings.

(9) The person chairing the misconduct proceedings may allow any document to be considered at those proceedings notwithstanding that a copy of it has not been supplied –

(a) by the officer concerned to the appropriate authority in accordance with regulation 19(3) (procedure on receipt of notice), or

(b) to the officer concerned in accordance with regulation 18(1) (notice of referral to misconduct proceedings and panel membership).

(10) The person or panel conducting the misconduct proceedings must review the facts of the case and decide whether the conduct of the officer concerned amounts –

- (a) in the case of a misconduct meeting, to misconduct or not, or
- (b) in the case of a misconduct hearing, to misconduct, gross misconduct or neither.

(11) The person or panel conducting the misconduct proceedings must not find that the conduct of the officer concerned amounts to misconduct or gross misconduct unless –

- (a) the person (or as the case may be, the panel) is satisfied on the balance of probabilities that this is the case, or
- (b) the officer concerned admits it is the case.

(12) At misconduct proceedings conducted by a panel, any decision by the panel under paragraph (10) or (11) must be based on a majority (with, where there is a panel of 2 or 4, the chair having the casting vote if necessary) but must not indicate whether it was taken unanimously or by a majority.

Outcome of misconduct proceedings.

32. (1) If the person or panel conducting a misconduct meeting finds that the conduct of the officer concerned amounts to misconduct, that person or panel may –

- (a) record a finding of misconduct but take no further action, or
- (b) impose one or more of the following disciplinary actions –

- (i) management action,
- (ii) a written warning (unless the officer concerned already had a written warning in force at the relevant date), or
- (iii) a final written warning.

(2) If the panel conducting a misconduct hearing finds that the conduct of the officer concerned amounts to misconduct but not gross misconduct, that panel may impose one or more of the following disciplinary actions –

- (a) management action,
- (b) a written warning (unless the officer concerned already had a written warning in force at the relevant date),
- (c) a final written warning (unless the officer concerned already had a final written warning in force at the relevant date), or
- (d) only in a case where the officer concerned had a final written warning in force at the relevant date –
 - (i) dismissal with or without notice, or
 - (ii) in exceptional circumstances, extension of the final written warning (unless that final written warning had been extended in the past).

(3) If the panel conducting the misconduct hearing finds that the conduct of the officer concerned amounts to gross misconduct, that panel may impose one or more of the following disciplinary actions –

- (a) management action,
- (b) a written warning (unless the officer concerned already had a written warning in force at the relevant date),
- (c) a final written warning (unless the officer concerned already had a final written warning in force at the relevant date),
- (d) dismissal without notice, or
- (e) only in a case where the officer concerned had a final written warning in force at the relevant date, and then only in exceptional circumstances, extension of the final written warning (unless that final written warning had been extended in the past).

(4) Except in the case of an extension to a final written warning, a disciplinary action imposed under paragraph (1)(b), (2) or (3) takes effect from the date on which it is notified to the officer concerned; and in the case of dismissal with notice, the panel conducting the misconduct hearing must decide the period of notice to be given, subject to a minimum period of 28 days.

(5) Where a final written warning is extended under paragraph (2)(d)(ii) or (3)(e), that warning remains in force for a period of 18 months from the date on which it would otherwise expire.

(6) Where the question of disciplinary action under paragraph (1)(b), (2) or (3) is being considered, the person or panel conducting the misconduct proceedings –

- (a) must have regard to the record of police service of the officer concerned,
- (b) may receive evidence from any witness whose evidence would, in his or its opinion, assist him or it in determining the question, and
- (c) must give –
 - (i) the officer concerned, his police friend or, at a misconduct hearing, his lawyer, and
 - (ii) the appropriate authority or person appointed to represent the appropriate authority in accordance with regulation 3(4) (legal and other representation),

an opportunity to make oral or written representations before any such question is determined.

(7) At misconduct proceedings conducted by a panel, any decision of a panel under this regulation must be based on a majority (with, where there is a panel of 2 or 4, the chair having the casting vote if necessary) but must not indicate whether it was taken unanimously or by a majority.

(8) In applying this regulation to a determination of the chairman of the Complaints Tribunal to impose a punishment under section 11(4) of the Law –

- (a) paragraphs (2) and (3) of this regulation must be read as if the words "that panel may" were substituted with the words "the chairman of the Complaints Tribunal may", and
- (b) paragraph (4) of this regulation must be read as if the words "panel conducting the misconduct hearing" were substituted with the words "chairman of the Complaints Tribunal".

Notification of outcome.

33. (1) The officer concerned must be informed of –

- (a) the finding of the person or panel conducting the misconduct proceedings, and
- (b) any disciplinary action imposed,

as soon as practicable and in any event must be provided with written notice of these matters and a summary of the reasons before the end of 5 working days beginning with the first working day after the conclusion of the misconduct proceedings.

(2) Where there was a finding of misconduct or gross misconduct a written notice under this regulation must include –

- (a) where the officer concerned is not a senior-ranking officer –
 - (i) if the case was decided at a misconduct meeting, notice of his right of appeal under regulation 35 (appeal from misconduct meeting: officers other than senior-ranking officers), or

(ii) if the case was decided at a misconduct hearing, notice of his right of appeal to the Police Appeal Tribunal under section 12 of the Law and regulations 3 and 4 of the Appeal Regulations,

(b) where the officer concerned is a senior-ranking officer, notice of his right of appeal to the Police Appeal Tribunal under section 12 of the Law and regulations 3 and 4 of the Appeal Regulations,

(3) In all cases referred to in paragraph (2) a written notice under this regulation must include the name of the person to whom an appeal should be sent.

Record of misconduct proceedings.

34. (1) A record of the misconduct proceedings must be taken and in the case of a misconduct hearing that record must be verbatim.

(2) The officer concerned must, on request, be supplied with a copy of the record of the proceedings at the misconduct proceedings.

Appeal from misconduct meeting: officers other than senior-ranking officers.

35. (1) Where a case is decided at a misconduct meeting and the officer concerned is not a senior-ranking officer, he may, subject to the provisions of this regulation, appeal –

(a) if he admitted his conduct amounted to misconduct, against any disciplinary action imposed, or

(b) if (after he denied misconduct) the person or panel conducting the misconduct meeting found that his conduct amounted to misconduct, against that finding or any disciplinary action imposed.

- (2) The only grounds of appeal under this regulation are that –
 - (a) the finding or disciplinary action was unreasonable,
 - (b) there is evidence that could not reasonably have been considered at the misconduct meeting which could have materially affected the finding or decision on disciplinary action, or
 - (c) there was a serious breach of the procedures set out in these Regulations or other unfairness which could have materially affected the finding or decision on disciplinary action.
- (3) An appeal under this regulation must be commenced by the officer concerned giving written notice of appeal to the appropriate authority –
 - (a) before the end of 7 working days beginning with the first working day after the written notice and summary of reasons is given under regulation 33 (notification of outcome) unless this period is extended by the appropriate authority under exceptional circumstances, and
 - (b) stating the grounds of appeal and whether a meeting is requested.
- (4) An appeal under this regulation must be determined –
 - (a) where the person who conducted the misconduct meeting was a member of any police force, by –

- (i) any member of a police force (whether the same police force as that of the person who conducted the misconduct meeting, or otherwise) of at least one rank higher than that person, or
 - (ii) (unless the case substantially involves operational policing matters) a police staff member who, in the opinion of the appropriate authority, is more senior than that person, and
- (b) where the person who conducted the misconduct meeting was a police staff member, by –
 - (i) a member of any police force who, in the opinion of the appropriate authority is more senior than that person, or
 - (ii) a more senior police staff member,

who is not an interested party, appointed by the appropriate authority.

(5) The appropriate authority must as soon as practicable give the officer concerned written notice of –

- (a) the name of the person appointed to determine the appeal under paragraph (4),
- (b) the name of any person appointed under regulation 3(5) (legal and other representation) to advise the person determining the appeal in the event that the matter proceeds to an appeal meeting, and

(c) the effect of paragraphs (6) to (9).

(6) The officer concerned may object to any person whom he is notified under this regulation is to –

(a) determine the appeal, or

(b) advise the person determining the appeal in the event that the matter proceeds to an appeal meeting.

(7) Any such objection must be made in writing to the appropriate authority before the end of 3 working days beginning with the first working day after the officer concerned is given notice of the person's name and must set out the grounds of objection of the officer concerned.

(8) The appropriate authority must notify the officer concerned in writing whether he upholds or rejects an objection to the person appointed to determine the appeal or to any person appointed under regulation 3(5) (legal and other representation) to advise the person determining the appeal in the event that the matter proceeds to an appeal meeting.

(9) If the appropriate authority upholds the objection, the person to whom the officer concerned objects must be replaced (in accordance with regulation 3(5) or (6) (legal and other representation) or paragraph (4) as appropriate).

(10) As soon as reasonably practicable after any such appointment, the appropriate authority must notify in writing the officer concerned of the name of the new person appointed to determine the appeal or the advisor to the person determining the appeal as the case may be.

(11) The officer concerned may object to the appointment of a person appointed under paragraph (9).

(12) Any such objection must be made in accordance with paragraph (7) and before the end of 3 working days beginning with the first working day after the officer concerned is given the notice referred to in paragraph (10); and the appropriate authority must comply with paragraphs (8) to (10) in relation to that objection.

Appeal meeting.

36. (1) This regulation applies upon the earliest occurrence of any of the following events –

- (a) the expiry of the period specified in regulation 35(7) (appeal from misconduct meeting: officers other than senior-ranking officers) for making any objection permitted by regulation 35(6), if no such objection is made within that period,
- (b) where an objection permitted by regulation 35(6) is made, the appropriate authority notifying the officer concerned that the objection has been rejected, under regulation 35(8),
- (c) where an objection permitted by regulation 35(6) is upheld, and the person to whom the officer concerned objects is replaced, the expiry of the further period specified in regulation 35(12) for making an objection to the replacement, if no such objection is made within that period, or
- (d) where an objection to such a replacement is made in accordance with regulation 35(7) and (12), the appropriate authority notifying the officer concerned that the objection has been rejected, under regulation 35(8).

(2) The person determining the appeal must determine whether the notice of appeal sets out arguable grounds of appeal and –

- (a) if he determines that it does he must hold an appeal meeting with the officer concerned, subject to paragraphs (3) and (5), before the end of 5 working days beginning with the first working day after that determination, and
- (b) if he determines that it does not, he must dismiss the appeal.

(3) The person determining the appeal may extend the time period specified in paragraph (2)(a) where he considers that it would be in the interests of justice to do so.

(4) The person determining the appeal must specify a date and time for the appeal meeting.

(5) Where –

- (a) the officer concerned or his police friend will not be available at that time, and
- (b) the officer concerned proposes an alternative time which satisfies paragraph (6),

the appeal meeting must be postponed to the time proposed by the officer concerned.

(6) An alternative time must –

- (a) be reasonable, and

- (b) fall before the end of 5 working days beginning with the first working day after the day specified by the person determining the appeal.

(7) Written notice of the date, time and place of the appeal meeting must be given to –

- (a) the officer concerned,
- (b) where the misconduct meeting arose from a supervised investigation, the complainant and any interested person.

(8) Prior to the appeal meeting the appropriate authority must supply the person determining the appeal with a copy of –

- (a) the documents given to the person who held the misconduct meeting as specified in regulation 25(1) (documents to be supplied),
- (b) the notice of appeal given by the officer concerned under regulation 35(3) (appeal from misconduct meeting: officers other than senior-ranking officers),
- (c) the record of the misconduct meeting taken under regulation 34(1) (record of misconduct proceedings), and
- (d) any evidence of a kind referred to in regulation 35(2)(b) (appeal from misconduct meeting: officers other than senior-ranking officers) that the officer concerned wishes to submit in support of his appeal.

Procedure and finding of the appeal.

37. (1) Subject to the provisions of this regulation, the person determining the appeal must determine the procedure at any appeal meeting.

(2) Subject to paragraph (3), the complainant and any interested person given notice of the appeal meeting under regulation 36(7) (appeal meeting) may attend the appeal meeting as an observer up to but not including the point at which the person determining the appeal considers the question of disciplinary action.

(3) The person determining the appeal may impose such conditions as he sees fit relating to the attendance of persons under paragraph (2) at the appeal meeting (including circumstances in which they may be excluded) in order to facilitate the proper conduct of the appeal meeting.

(4) The person determining the appeal may –

- (a) confirm or reverse the decision appealed against,
- (b) deal with the officer concerned in any manner in which the person conducting the misconduct meeting could have dealt with him under regulation 32 (outcome of misconduct proceedings).

(5) Before the end of 3 working days beginning with the first working day after the determination of the appeal, the officer concerned must be given written notice of that determination with a summary of the reasons.

(6) The decision of the person determining the appeal takes effect by way of substitution for the decision of the person conducting the misconduct meeting and as from the date of the written notice of the outcome of that meeting.

(7) Where an appeal is determined from misconduct proceedings arising from any supervised investigation, the appropriate authority must give the Commission written notice of the determination of the appeal with a summary of the reasons.

PART IV FAST TRACK PROCEDURE FOR SPECIAL CASES

Referral of case to special case hearing.

38. (1) This regulation is subject to regulation 5(3) (outstanding or possible criminal proceedings) and must be read together with section 10 of the Law.

(2) This regulation applies where –

- (a) the appropriate authority receives an investigating officer's written report submitted under regulation 15 (report of investigation),
- (b) in the case of a supervised investigation, the appropriate authority receives a copy of the report sent under section 8(3)(b), and the Commission's statement submitted under section 8(6), of the Law, or
- (c) following a delay to regulated proceedings by virtue of regulation 5(3) (outstanding or possible criminal proceedings), the appropriate authority considers that such proceedings would no longer prejudice any criminal proceedings.

(3) Where this regulation applies, the appropriate authority must determine (or as the case may be, further determine) whether the special conditions are satisfied.

(4) If the appropriate authority determines that the special conditions are satisfied, it must certify the case as a special case and refer it to a special case hearing, unless the appropriate authority considers that the circumstances are such as to make it inappropriate to do so.

(5) Paragraph (6) applies where the appropriate authority determines

—

(a) that the special conditions are not satisfied, or

(b) that, although those conditions are satisfied, the circumstances are such as to make such certification inappropriate.

(6) Where this paragraph applies, the appropriate authority must —

(a) if the investigation was incomplete, return the case to the investigating officer to complete the investigation, and

(b) in any other case, proceed in accordance with Part III, and in particular, regulation 16 (referral of case to misconduct proceedings).

(7) Notwithstanding paragraphs (1) to (6), but subject to paragraph (8), the disciplinary charges that may be recommended or directed by the Commission under section 10(1) or (3) of the Law respectively include a charge of gross misconduct at a special case hearing, and section 10 of the Law has effect accordingly.

(8) The Commission shall not recommend or direct a special case hearing unless it is of the opinion that —

(a) the special conditions are satisfied, and

- (b) there are no circumstances that make a special case hearing inappropriate in that case.

(9) In this regulation, a reference to the satisfaction of special conditions is a reference to the satisfaction of special conditions under regulation 66 (satisfaction of special conditions).

Remission of case.

39. (1) Subject to paragraph (3), at any time after the case has been referred to a special case hearing but before the beginning of that hearing the appropriate authority may direct that the case be dealt with under Part III if it considers that the special conditions under regulation 66 (satisfaction of special conditions) are no longer satisfied.

(2) Where a direction is made under paragraph (1) the officer concerned must be notified before the end of 3 working days beginning with the first working day after that direction is made and the appropriate authority must proceed in accordance with Part III, and in particular, regulation 16 (referral of case to misconduct proceedings).

(3) Paragraph (1) does not apply to a case where the Commission has given the appropriate authority a direction to prefer a special case hearing under section 10(3) of the Law, unless the Commission revokes the direction.

Notice of referral to special case hearing.

40. (1) Where a case is referred to a special case hearing, the appropriate authority must as soon as practicable give the officer concerned written notice of these matters and must supply him with a copy of –

- (a) the certificate issued under regulation 38(4) (referral of case to a special case hearing),

- (b) any statement he may have made to the investigating officer during the course of the investigation, and
- (c) subject to the harm test –
 - (i) the investigating officer's report or such parts of that report as relate to him (together with any document attached to or referred to in that report as relates to him), and
 - (ii) any other relevant document gathered during the course of the investigation.

(2) The notice given under paragraph (1) must describe the conduct that is the subject of the case and how that conduct is alleged to amount to gross misconduct.

(3) For the purposes of this regulation "**relevant document**" means a document which, in the opinion of the appropriate authority, is relevant to the case of the officer concerned.

Notice of special case hearing.

41. The appropriate authority must specify a date for the special case hearing which must be not less than 10 and not more than 15 working days after the date on which notice is given under regulation 40(1) (notice of referral to special case hearing) and must immediately notify the officer concerned of –

- (a) the date, time and place of that hearing, and
- (b) the effect of regulation 3(1) to (3) (legal and other representation) in relation to a special case hearing.

Procedure on receipt of notice.

42. (1) Before the end of 7 working days beginning with the first working day after the written notice given to the officer concerned under regulation 40(1) (notice of referral to special case hearing), the officer concerned must provide to the appropriate authority –

- (a) written notice of whether or not he accepts that his conduct amounts to gross misconduct,
- (b) where he accepts that his conduct amounts to gross misconduct, any written submission he wishes to make in mitigation,
- (c) where he does not accept that his conduct amounts to gross misconduct, written notice of –
 - (i) the allegation he disputes and his account of the relevant events, and
 - (ii) any arguments on points of law he wishes to be considered by the person or panel conducting the special case hearing.

(2) Within the same time period, the officer concerned must provide the appropriate authority with a copy of any document he intends to rely on at the hearing.

Person conducting special case hearing: officers other than senior-ranking officers.

43. (1) This regulation applies to a special case hearing (other than one preferred as the result of a Commission direction) where the officer concerned is not a senior-ranking officer.

(2) Subject to paragraph (2), the special case hearing must be conducted by the Chief Officer.

(3) Where the Chief Officer is an interested party or is unavailable, the special case hearing must be conducted by a serving or retired senior-ranking officer of another police force.

Persons conducting special case hearing: senior-ranking officers.

44. (1) This regulation applies to a special case hearing (other than one preferred as the result of a Commission direction) where the officer concerned is a senior-ranking officer.

(2) The special case hearing must be conducted by a panel of four persons, comprising –

- (a) HMCIC, or an inspector of constabulary or a serving or retired senior-ranking officer of another police force, who is nominated by HMCIC, as the chair,
- (b) the Chief Executive of the States of Guernsey or his nominee,
- (c) a qualified lawyer appointed by the appropriate authority, and
- (d) a qualified person appointed by the appropriate authority.

Special case hearing preferred at direction of Commission.

45. (1) Where a special case hearing is preferred as the result of a Commission direction, the hearing must be conducted by the Complaints Tribunal in accordance with section 11 of the Law.

(2) Provisions of these Regulations relating to a special case hearing apply to a special case hearing conducted by the Complaints Tribunal under section 11 of the Law subject to any necessary modifications, and in particular-

- (a) a reference to a "**disciplinary charge**" in section 11 of the Law must be regarded as a reference to a charge of gross misconduct at a special case hearing,
- (b) under section 11(4) of the Law, the chairman of the Complaints Tribunal may determine to impose any punishment on the officer concerned in accordance with regulation 52 (outcome of special case hearing), and
- (c) regulations 40 (notice of referral to special case hearing) to 42 (procedure on receipt of notice), and 46 (documents to be supplied) have effect as if, in those regulations, the words "**the Commission**" were substituted for the words "**the appropriate authority**".

Documents to be supplied.

46. (1) Prior to the hearing the appropriate authority must supply the person or panel conducting the special case hearing with a copy of –

- (a) the notice and other documents given to the officer concerned under regulation 40(1) (notice of referral to special case hearing),
- (b) the documents provided by the officer concerned under–
 - (i) regulation 42 (procedure on receipt of notice), and

(ii) where paragraph (2) applies, regulation 19(2) and (3) (procedure on receipt of notice), and

(c) where the officer concerned does not accept that his conduct amounts to gross misconduct, any other documents that, in the opinion of the appropriate authority, should be considered at the hearing.

(2) This paragraph applies where the case was certified as a special case following a determination made under regulation 38(3) (referral of case to special case hearing).

(3) Prior to the hearing the officer concerned must be supplied with a list of the documents supplied under paragraph (1) and a copy of any of such document of which he has not already been supplied with a copy.

Attendance of officer concerned at special case hearing.

47. (1) Subject to paragraph (2), the officer concerned must attend the special case hearing.

(2) If the officer concerned informs the person chairing the special case hearing in advance that he is unable to attend on grounds which the person chairing the hearing considers reasonable, that person may allow the officer concerned to participate in the hearing by video link or other means.

(3) Where the officer concerned participates in the hearing by video link or other means, by virtue of paragraph (2), or if he does not attend the hearing –

(a) he may nonetheless be represented at that hearing by –

(i) his police friend, or

(ii) his lawyer (in which case his police friend may also attend), and

(b) the hearing may be proceeded with and concluded in the absence of the officer concerned whether or not he is so represented.

(4) Where the officer concerned is represented in accordance with paragraph (3), the person representing the officer concerned or his police friend (if different), or both, may participate using the video link or other means where such means are also used by the officer concerned.

Participation of Commission and investigating officer at special case hearing.

48. (1) In any case where a special case hearing is preferred as the result of a Commission recommendation or Commission direction, the Commission may attend the special case hearing to make representations.

(2) Where the Commission intends to so attend a special case hearing

—

(a) it may instruct a lawyer to represent it, and

(b) it must notify the complainant and any interested person prior to the hearing, and

(c) the person chairing the special case hearing must notify the officer concerned prior to the hearing.

(3) The investigating officer or a nominated person must attend the special case hearing on the request of the person or panel conducting the hearing to answer questions.

(4) For the purposes of this regulation, a "**nominated person**" is a person who, in the opinion of the Commission has sufficient knowledge of the investigation of the case to be able to assist the person or panel conducting the special case hearing.

Attendance of complainant and interested persons at special case hearing.

49. (1) The appropriate authority must notify the complainant and any interested person of the date, time and place of any special case hearing.

(2) Subject to any conditions imposed under regulation 50(3) (attendance of others at special case hearing), the complainant and any interested person may –

- (a) attend the special case hearing as an observer up to but not including the point at which the person chairing the hearing considers the question of disciplinary action, and
- (b) be accompanied by one other person, and if the complainant or interested person has a special need, by one further person to accommodate that need.

(3) For the purposes of this regulation, a person has a "**special need**" if, in the opinion of the person chairing the special case hearing, he has a disability or learning difficulty, or does not have sufficient knowledge of English, to participate in or understand the special case hearing.

Attendance of others at special case hearing.

50. (1) Subject to regulation 49 (attendance of complainant and interested persons at special case hearing) and this regulation, the special case hearing must be in private.

(2) A person nominated by the Commission may attend any special case hearing which arises from a supervised investigation.

(3) The person chairing the special case hearing may impose such conditions as he sees fit relating to the attendance of persons under regulation 49 (attendance of complainant and interested persons at special case hearing) or this regulation at the special case hearing (including circumstances in which they may be excluded) in order to facilitate the proper conduct of the hearing.

(4) For the avoidance of doubt, nothing in this regulation limits or affects the Commission's rights or powers under regulation 48 (participation of Commission and investigating officer at special case hearing).

Procedure at special case hearing.

51. (1) Subject to these Regulations, the person chairing the special case hearing must determine the procedure.

(2) The special case hearing must not proceed unless the officer concerned has been notified of the effect of regulation 3(1) to (3) (legal and other representation) in relation to a special case hearing.

(3) Subject to paragraph (4), the person chairing the special case hearing may from time to time adjourn the hearing if it appears to him to be necessary or expedient to do so.

(4) The special case hearing must not, except in exceptional circumstances, be adjourned solely to allow the complainant or any interested person to attend.

(5) No witnesses other than the officer concerned must give evidence at the special case hearing.

- (6) The person representing the officer concerned may –
 - (a) address the hearing in order to do any or all of the following –
 - (i) put the case of the officer concerned,
 - (ii) sum up that case,
 - (iii) respond on behalf of the officer concerned to any view expressed at the proceedings, and
 - (iv) make representations concerning any aspect of proceedings under these Regulations, and
 - (b) if the officer concerned is present at the proceedings or is participating in them by video link or other means in accordance with regulation 47(2) (attendance of officer concerned at special case hearing), confer with the officer concerned.

(7) Where the person representing the officer concerned is a lawyer, the police friend of the officer concerned may also confer with the officer concerned in the circumstances mentioned in paragraph (6)(b).

(8) The police friend or lawyer of the officer concerned must not answer any questions asked of the officer concerned during the special case hearing.

(9) The person chairing the special case hearing may allow any document to be considered at the hearing notwithstanding that a copy of it has not been supplied –

- (a) by the officer concerned to the appropriate authority in accordance with regulation 42(2) (procedure on receipt of notice), or
- (b) to the officer concerned in accordance with regulation 40(1) (notice of referral to special case hearing).

(10) The person or panel conducting the special case hearing must review the facts of the case and decide whether or not the conduct of the officer concerned amounts to gross misconduct.

(11) The person or panel conducting the special case hearing must not find that the conduct of the officer concerned amounts to gross misconduct unless –

- (a) he or it is satisfied on the balance of probabilities that this is the case, or
- (b) the officer concerned admits it is the case.

(12) At a special case hearing conducted by a panel, any decision by the panel under paragraph (10) must be based on a majority (with, where there is a panel of 2 or 4, the chair having the casting vote if necessary) but must not indicate whether it was taken unanimously or by a majority.

Outcome of special case hearing.

52. (1) If the person or panel conducting the special case hearing finds that the conduct of the officer concerned amounts to gross misconduct, that person or panel must impose one of the following disciplinary actions –

- (a) a final written warning (unless the officer concerned already had a final written warning in force at the relevant date),

- (b) dismissal without notice, or
- (c) only in a case where the officer concerned had a final written warning in force at the relevant date, and even then only in exceptional circumstances, extension of the final written warning (unless that final written warning had been extended in the past).

(2) Where the person or panel conducting the special case hearing finds that the conduct of the officer concerned does not amount to gross misconduct, that person or panel may –

- (a) dismiss the case, or
- (b) return the case to the appropriate authority to deal with in accordance with Part III.

(3) Except in the case of an extension to a final written warning, a disciplinary action imposed under paragraph (1) takes effect from the date on which it is notified to the officer concerned.

(4) Where a final written warning is extended under paragraph (1)(c), that warning remains in force for a period of 18 months from the date on which it would otherwise expire.

(5) Where the case is returned to the appropriate authority under paragraph (2)(b), the appropriate authority must proceed in accordance with Part III.

(6) Where the question of disciplinary action under paragraph (1) is being considered, the person or panel conducting the special case hearing –

- (a) must have regard to the record of police service of the officer concerned,
- (b) may consider such documentary evidence as would, in his or its opinion, assist him or it in determining the question, and
- (c) must give –
 - (i) the officer concerned, and
 - (ii) his police friend or his lawyer,
 an opportunity to make oral or written representations.

(7) At a special case hearing conducted by a panel, any decision by the panel under this regulation must be based on a majority (with, where there is a panel of 2 or 4, the chair having the casting vote if necessary) but must not indicate whether it was taken unanimously or by a majority.

(8) In applying this regulation to a determination by the chairman of the Complaints Tribunal to impose a punishment under section 11(4) of the Law, paragraph (1) of this regulation must be read as if the words "that person or panel" were substituted with the words "the chairman of the Complaints Tribunal".

Notification of outcome.

53. (1) The officer concerned must be informed of –

- (a) the finding,
- (b) any disciplinary action imposed or action taken under regulation 52 (outcome of special case hearing),

as soon as practicable and in any event must be provided with written notice of these matters and a summary of the reasons before the end of 5 working days beginning with the first working day after the conclusion of the special case hearing.

(2) A written notice under this regulation must include notice of the right of the officer concerned to an appeal hearing.

Record of special case hearing.

54. (1) A verbatim record of the proceedings at the special case hearing must be taken.

(2) The officer concerned must, on request, be supplied with a copy of the record of the proceedings at the special case hearing.

PART V

INFORMATION AND APPEAL RIGHTS

Rights following assessment of conduct.

55. (1) This regulation applies when, after assessing the conduct of an officer which is the subject of a complaint, the appropriate authority determines under regulation 7 (assessment of conduct following complaint) –

- (a) that the conduct of the officer concerned, if proved, would amount to neither misconduct nor gross misconduct, or
- (b) that the complaint is suitable for informal resolution, subject to the complainant giving his consent for the purposes of section 5(2)(a) of the Law.

(2) Where this regulation applies, the appropriate authority must give notice in writing to the complainant and any interested person setting out –

- (a) its determination,
- (b) the actions taken or proposed to be taken by the appropriate authority,
- (c) where paragraph (1)(a) applies, the complainant's right of appeal under regulation 56 (appeals with respect to assessment of conduct), and
- (d) where paragraph (1)(b) applies, the complainant's right of appeal under regulation 57 (appeals relating to informal resolution).

(3) Before a complainant can give his consent to informal resolution of the complaint for the purposes of section 5(2)(a) of the Law, he must have been informed of –

- (a) the effect of paragraph (4) of this regulation, and
- (b) his rights of appeal under regulation 57 (appeals relating to informal resolution).

(4) A consent given for the purposes of section 5(2)(a) of the Law cannot be withdrawn after the procedure for informal resolution of the complaint has been commenced.

Appeals with respect to assessment of conduct.

56. (1) Where the appropriate authority has made a determination under regulation 7 (assessment of conduct following complaint) that the conduct of the officer concerned, if proved, would amount to neither misconduct nor gross misconduct, the complainant has the following rights of appeal to the Commission –

- (a) a right of appeal on the grounds that he has not been provided with adequate information as to the determination, and
- (b) a right of appeal against the determination.

(2) The Commission must notify the appropriate authority, any interested person and the officer concerned of any appeal brought under this regulation.

(3) On the bringing of an appeal under this regulation, the Commission may require the appropriate authority to submit a memorandum to the Commission which sets out all or any of the following –

- (a) whether the appropriate authority has made a determination that the conduct of the officer concerned, if proved, would amount to neither misconduct nor gross misconduct,
- (b) whether the appropriate authority has provided the complainant with adequate information as to the determination, and
- (c) its reasons for making the determination.

(4) On an appeal under this regulation, the Commission must determine such of the following as it considers appropriate in the circumstances –

- (a) whether the complainant has been provided with adequate information as to the determination, and
- (b) whether the appropriate authority has made a determination that the Commission considers appropriate.

(5) If, on an appeal, the Commission determines that the complainant has not been provided with adequate information about any matter, the Commission must give the appropriate authority all such directions as the Commission considers appropriate for securing that the complainant is properly informed.

(6) Nothing in paragraph (5) authorises the Commission to require the disclosure of any information the disclosure to the appellant of which has been or is capable of being withheld under the Law or these Regulations.

(7) If, on an appeal, the Commission determines that the appropriate authority has not made a determination that the Commission considers appropriate, the Commission must either –

- (a) direct the appropriate authority to review the complaint and its determination, or
- (b) direct that the complaint be investigated under regulation 62 (investigations and re-investigations following appeal),

and may give any other directions it thinks fit.

(8) The Commission must give written notice of any determination, requirement or direction made or given by it under this regulation –

- (a) to the appropriate authority,
- (b) to the complainant,
- (c) to any interested person, and

- (d) except in a case where it appears to the Commission that to do so might prejudice any proposed investigation of the complaint, to the officer concerned.

(9) The appropriate authority must comply with any requirement made of it, or directions given to it, under this regulation.

(10) An appeal under this regulation must be brought –

- (a) in a form and manner specified by the Commission for this purpose, and
- (b) within 28 days of the complainant being given notice in writing under regulation 55(2) (rights following assessment of conduct).

Appeals relating to informal resolution.

57. (1) Subject to paragraph (2), a complainant whose complaint has been subjected to informal resolution under section 5 of the Law has a right of appeal to the Commission against the conduct of that informal resolution.

(2) The only matter to be determined by the Commission on an appeal under this regulation is whether there have been any contraventions of the procedural requirements relating to the informal resolution of the complaint.

(3) Where an appeal is brought under this regulation, the Commission must give both –

- (a) the officer concerned, and
- (b) the appropriate authority,

an opportunity to make representations about the matters to which the appeal relates.

(4) Where the Commission finds in the complainant's favour on an appeal under this regulation –

- (a) it must give directions that the Commission considers appropriate to the appropriate authority as to the future handling of the complaint, and
- (b) the appropriate authority must comply with any directions given to it under subparagraph (a).

(5) Where the Commission determines for the purposes of paragraph (4) that the future handling of the complaint should include an investigation, regulation 62 (investigations and re-investigations following appeal), with any necessary modifications, applies to directions given under that paragraph.

(6) The Commission –

- (a) must give written notice to the appropriate authority, the complainant and the officer concerned of any determination made by it under this regulation, and
- (b) must give written notice to the complainant and the officer concerned of any direction given by it under paragraph (4) to the appropriate authority.

(7) Subject to these Regulations and the Law, the Commission may determine the procedure to be followed by it when dealing with or disposing of an appeal under this regulation.

(8) In this regulation, "**procedural requirements**" means requirements of procedure in regulation 7 (assessment of conduct following complaint) or regulation 55(3) (rights following assessment of conduct) or in section 5 of the Law.

Information rights following investigation.

58. (1) This regulation applies when, following receipt of an investigator's report, the appropriate authority determines –

- (a) in accordance with regulation 16 (referral of case to misconduct proceedings), whether the officer concerned has a case to answer in respect of misconduct or gross misconduct or no case to answer,
- (b) in accordance with regulation 38 (referral of case to special case hearing), whether the special conditions under regulation 66 (satisfaction of special conditions) are satisfied, or
- (c) in accordance with regulation 16 (referral of case to misconduct proceedings) or regulation 38 (referral of case to special case hearing), what action (if any) the appropriate authority is required to, or will in its discretion, take in respect of the matters dealt with in the report.

(2) Where this regulation applies, the appropriate authority must give notice in writing to the complainant (if any) and any interested person setting out –

- (a) the findings of the investigator's report,
- (b) the determination referred to in paragraph (1),

- (c) the actions taken or proposed to be taken by the appropriate authority, and
- (d) the complainant's right of appeal under regulation 60 (appeals with respect to an investigation).

(3) The appropriate authority may (notwithstanding any obligation of secrecy imposed by any rule of law or otherwise) discharge the duty under paragraph (2)(a) by sending the complainant (if any) or (as the case may be) the interested person a copy of the investigator's report.

Information rights following Commission recommendations.

59. (1) This regulation applies where the Commission makes a recommendation under section 10(1) of the Law.

(2) If the appropriate authority notifies the Commission that the recommendation has been accepted, the Commission must notify the complainant (if any) and any interested person of that fact and of the steps that have been, or are to be taken, by the appropriate authority to give effect to that recommendation.

(3) If the appropriate authority –

- (a) notifies the Commission that it does not (either in whole or in part) accept the recommendation, or
- (b) fails to take steps to give full effect to the recommendation,

the Commission must determine whether to make a direction under section 10(3) of the Law.

(4) The Commission must notify the complainant (if any) and any interested person of any determination under paragraph (3) to make, or (as the case may be) not to make, a direction under section 10(3) of the Law.

Appeals with respect to an investigation.

60. (1) This regulation applies where a complaint has been subjected to a formal investigation (whether supervised or otherwise) under the Law and these Regulations.

(2) The complainant has the following rights of appeal to the Commission –

- (a) a right to appeal on the grounds that he has not been provided with adequate information –
 - (i) about the findings of the investigator's report,
 - (ii) as to the determination of the appropriate authority whether the officer concerned has a case to answer in respect of misconduct or gross misconduct or has no case to answer,
 - (iii) as to the determination of the appropriate authority whether the special conditions are satisfied, or
 - (iv) about any determination of the appropriate authority relating to the taking (or not taking) of any action in respect of any matters dealt with in the investigator's report,
- (b) a right to appeal against the findings of the investigator's report,

- (c) a right of appeal against any determination by the appropriate authority that the officer concerned has a case to answer in respect of misconduct or gross misconduct or has no case to answer,
- (d) a right of appeal against any determination by the appropriate authority that the special conditions are or are not satisfied, and
- (e) a right of appeal against any determination by the appropriate authority relating to the taking (or not taking) of any other action in respect of any matters dealt with in the investigator's report,

and the Commission must notify the appropriate authority, any interested person and the officer concerned of any appeal brought under this paragraph.

(3) On the bringing of an appeal under this regulation, the Commission may require the appropriate authority to submit a memorandum to the Commission which sets out all or any of the following –

- (a) whether the appropriate authority has determined that the officer concerned has a case to answer in respect of misconduct or gross misconduct or has no case to answer,
- (b) whether the appropriate authority has determined that the special conditions are or are not satisfied,
- (c) what action (if any) the appropriate authority has determined that it is required to or will, in its discretion, take in respect of the matters dealt with in the investigator's report, and

- (d) if the appropriate authority has decided not to bring regulated proceedings against that person, its reasons for so deciding.

(4) If the appeal concerns a formal investigation that is not a supervised investigation, the Commission may require the appropriate authority to provide the Commission with a copy of the investigator's report.

(5) On an appeal under this regulation, the Commission must determine such of the following as it considers appropriate in the circumstances –

- (a) whether the complainant has been provided with adequate information about the matters mentioned in paragraph (2)(a),
- (b) whether the findings of the investigation need to be reconsidered, or
- (c) whether the appropriate authority –
 - (i) has made a determination of the kind mentioned in paragraph (2)(c) or (d) that the Commission considers appropriate in respect of the matters dealt with in the investigator's report, or
 - (ii) has determined that it is required to, or will in its discretion, take the action (if any) that the Commission considers appropriate.

(6) If, on an appeal under this regulation, the Commission determines that the complainant has not been provided with adequate information about any matter,

the Commission must give the appropriate authority all such directions as the Commission considers appropriate for securing that the complainant is properly informed.

(7) Nothing in paragraph (6) authorises the Commission to require the disclosure of any information the disclosure to the appellant of which has been or is capable of being withheld under the Law or these Regulations.

(8) If, on an appeal, the Commission determines that the findings of the investigation need to be reconsidered, it shall either –

- (a) review those findings without an immediate further investigation, or
- (b) direct that the complaint be re-investigated under regulation 62 (investigations and re-investigations following appeal).

(9) Paragraph (10) applies if, on an appeal, the Commission determines that the appropriate authority has not –

- (a) made a determination as to whether there is a case for the officer concerned to answer that the Commission considers appropriate,
- (b) made a determination as to whether the special conditions are satisfied that the Commission considers appropriate, or
- (c) determined that it is required to or will, in its discretion, take the action in respect of the matters dealt with in the investigator's report that the Commission considers appropriate.

(10) Where this paragraph applies, the Commission must –

- (a) determine, in the light of that determination, whether or not to direct that the complaint be re-investigated under regulation 62 (investigations and re-investigations following appeal), and
- (b) make such directions (if any) under that regulation as it thinks fit.

(11) The Commission must give written notice of any determination, requirement or direction made or given by it under this regulation –

- (a) to the appropriate authority,
- (b) to the complainant,
- (c) to any interested person, and
- (d) except in a case where it appears to the Commission that to do so might prejudice any proposed review or re-investigation of the complaint, to the officer concerned.

(12) The appropriate authority must comply with any requirement made of it, or directions given to it, under this regulation.

(13) An appeal under this regulation must be brought –

- (a) in a form and manner specified by the Commission for this purpose, and

- (b) within 28 days of the complainant being given notice in writing under regulation 58(2) (information rights following investigation).

(14) In this regulation, a reference to the satisfaction of special conditions is a reference to the satisfaction of special conditions under regulation 66 (satisfaction of special conditions).

Reviews following appeal.

61. (1) On a review under regulation 60(8)(a) (appeals with respect to an investigation), the Commission may, according to its determination on that review, do one or more of the following—

- (a) uphold the findings of the investigator's report in whole or in part,
- (b) give the appropriate authority such directions –
 - (i) as to the carrying out by the appropriate authority of its own review of the findings,
 - (ii) as to the information to be provided to the complainant, and
 - (iii) generally as to the handling of the matter in future,
 as the Commission thinks fit, or
- (c) direct that the complaint be re-investigated under regulation 62 (investigations and re-investigations following appeal).

(2) The Commission must give notification of any determination or direction made or given by it under this regulation –

- (a) to the appropriate authority,
- (b) to the complainant,
- (c) to any interested person, and
- (d) except in a case where it appears to the Commission that to do so might prejudice any proposed review or re-investigation of the complaint, to the officer concerned.

(3) The appropriate authority must comply with any directions given to it under this regulation.

Investigations and re-investigations following appeal.

62. (1) A direction given under this regulation –

- (a) must include a direction for the investigation or (as the case may be) re-investigation to take the form of an investigation supervised by the Commission, and
- (b) may include any other directions the Commission considers appropriate for the purpose of giving effect to any determination made by it under regulation 56 (appeals with respect to assessment of conduct), regulation 60 (appeals with respect to an investigation) or regulation 61 (reviews following appeal).

(2) A direction –

- (a) must be given to the appropriate authority, and
 - (b) may be given to any person previously appointed to carry out the investigation (if any).
- (3) An authority or a person given a direction must comply with it.
- (4) Subject to any necessary modifications, provisions of the Law and these Regulations relating to supervised investigations apply to a supervised investigation directed under this regulation.
- (5) In this regulation, "**direction**" means any direction given under this regulation pursuant to—
- (a) regulation 56(7)(b) (appeals with respect to assessment of conduct),
 - (b) regulation 60(8)(b) or (10)(b) (appeals with respect to an investigation), or
 - (b) regulation 61(1)(c) (reviews following appeal).

PART VI

GENERAL

Commission may make public statements.

- 63.** (1) This regulation applies to the following proceedings –
- (a) an appeal under Part V,
 - (b) a supervised investigation, and

- (c) any regulated proceedings arising from an appeal under Part V or a supervised investigation.

(2) Subject to paragraph (4), where the Commission considers that because of the gravity of the case or other exceptional circumstances it would be in the public interest to do so, the Commission may issue a public statement about any aspect of proceedings to which this regulation applies.

(3) Without limiting the generality of paragraph (2), a public statement issued under that paragraph may, at the discretion of the Commission, include details about –

- (a) the identity of the officer concerned,
- (b) the nature of the complaint or allegation concerned,
- (c) the nature and the progress of those proceedings, and
- (d) the outcome of those proceedings.

(4) Before issuing a statement under paragraph (2), the Commission must –

- (a) consult the appropriate authority, and
- (b) give written notice of the contents of the statement to –
 - (i) the appropriate authority,
 - (ii) the officer concerned, and

- (iii) the complainant and any interested person.

The harm test.

64. (1) Information in documents which are stated to be subject to the harm test under these Regulations must not be supplied to the officer concerned in so far as the appropriate authority considers that preventing disclosure to that officer is –

- (a) necessary for the purpose of preventing the premature or inappropriate disclosure of information that is relevant to, or may be used in, any criminal proceedings,
- (b) necessary in the interests of national security,
- (c) necessary for the purpose of the prevention or detection of crime, or the apprehension or prosecution of offenders,
- (d) necessary for the purpose of the prevention or detection of misconduct by other officers or police staff members or their apprehension for such matters,
- (e) justified on the grounds that providing the information would involve disproportionate effort in comparison to the seriousness of the allegation against the officer concerned,
- (f) necessary and proportionate for the protection of the welfare and safety of any informant or witness, or
- (g) otherwise in the public interest.

(2) In paragraph (1)(f), "**informant**" means a person who provides information to an investigation on the basis that his identity is not disclosed during the course of any investigation or other proceedings.

Division B special constables prescribed as part of Island Police Force.

65. For the purposes of paragraph (b) of the definition of "**Island Police Force**" in section 19(1) of the Law, all members of Division B of the Guernsey Special Constabulary constituted by the Special Constabulary Ordinances, 1950 to 1985⁸ are prescribed to be part of the Island Police Force.

Satisfaction of special conditions.

66. The "**special conditions**" are satisfied, in relation to an officer concerned, when the following conditions are met –

- (a) there is sufficient evidence, in the form of written statements or other documents, without the need for further evidence, whether written or oral, to establish on the balance of probabilities that the conduct of the officer concerned constitutes gross misconduct, and
- (b) it is in the public interest for the officer concerned to cease to be a member of the Island Police Force without delay.

Meaning of "interested person".

67. (1) A person is an interested person in relation to regulated proceedings if, and only if, he satisfies Condition A and Condition B.

- (2) Condition A is that the person satisfies one of the following conditions –

⁸ Recueil d'Ordonnances, Tome X, p. 78; Tome XIX, p.103; Tome XXIII, pp. 81 and 303; amended by Tome XXVI, pp. 169 and 292.

- (a) he is a relative of a person whose death is the alleged result of the conduct of the officer concerned from which those proceedings arise,
- (b) he is a relative of a person whose serious injury is the alleged result of that conduct and that person is incapable of making a complaint,
- (c) he himself has suffered serious injury as the alleged result of that conduct, or
- (d) the Commission, the appropriate authority or (as the case may be) the person chairing the proceedings considers that he has an interest in the proceedings which is sufficient to make it appropriate for information to be provided to him, and for him to be involved in those proceedings, in accordance with these Regulations.

(3) Condition B is that the person has given the Commission, the appropriate authority or (as the case may be) the person chairing the proceedings written consent to –

- (a) the provision of information to him, and
- (b) his involvement in those proceedings, in accordance with these Regulations.

Interpretation.

68. (1) In these Regulations, unless the context requires otherwise –

"allegation" means an allegation relating to –

- (a) a complaint, or
- (b) a referred matter that is the subject of a supervised investigation,

"another police force" means

- (a) any police force in England, Wales, Northern Ireland or Jersey, or
- (b) the Isle of Man constabulary,

"appeal hearing" means an appeal to the Appeal Tribunal in accordance with section 12 of the Law and the Appeal Regulations,

"appeal meeting" means a meeting held in accordance with regulation 36 (appeal meeting) following a misconduct meeting,

"Appeal Tribunal" means the Police Appeal Tribunal constituted under section 12 of the Law and the Appeal Regulations,

"Appeal Regulations" means the Police Complaints (Appeal Tribunal) (Guernsey) Regulations, 2011,

"appropriate authority", in relation to any complaint or proceedings, –

- (a) in any case where the complaint or those proceedings concern the conduct of a senior-ranking officer, means the Department, and
- (b) in any other case, means the Chief Officer,

"commencement date" means the date specified in section 1 of the Police Complaints (Guernsey) Law, 2008 (Commencement and Amendment) Ordinance, 2011 for the commencement of the Law,

"Commission" means the Police Complaints Commission established under section 1 of the Law,

"Commission direction" means a direction given by the Commission under section 10(3) of the Law,

"Commission recommendation" means a recommendation made by the Commission under section 10(1) of the Law,

"complaint" means a complaint about the conduct of an officer submitted to the appropriate authority under Part II of the Law,

"complainant", in relation to –

- (a) a complaint, or
- (b) any regulated proceedings arising from a complaint,

means the person who made the complaint,

"Complaints Tribunal" means the Police Complaints Tribunal constituted under section 11 of the Law,

"criminal proceedings" means –

- (a) any prospective criminal proceedings, or

- (b) all criminal proceedings brought which have not been brought to a conclusion (apart from the bringing and determination of any appeal other than an appeal against conviction),

"disciplinary action" means an action authorised by any of regulations 32(1)(b), (2) or (3) (outcome of misconduct proceedings) or 52(1) (outcome of special case hearing),

"final written warning in force" or **"written warning in force"** means a final written warning or (as the case may be) a written warning issued or given at or following any form of disciplinary proceedings, whether those proceedings were conducted or concluded before, on, or after the commencement date,

"formal investigation" means an investigation commenced in accordance with section 5(3) of the Law,

"gross misconduct" means a breach of the Standards of Professional Behaviour so serious that dismissal would be justified,

"harm test" has the meaning given by regulation 64 (the harm test),

"HMCIC" means Her Majesty's Chief Inspector of Constabulary appointed under section 54(1) of the Police Act 1996⁹,

"human resources professional" means –

- (a) a member of the salaried police force of the Island

of Guernsey who has specific responsibility for personnel matters relating to members of that force,

- (b) an employee of the States of Guernsey who has specific responsibility for personnel matters relating to employees of the States of Guernsey, or
- (c) a person who has specific responsibility for personnel matters relating to members of another police force,

"interested party", in relation to any complaint or regulated proceedings –

- (a) means a person whose appointment could reasonably give rise to a concern as to whether he could act impartially in relation to the complaint or those proceedings under these Regulations, and
- (b) includes any officer or other person involved in the informal resolution of that complaint or (as the case may be) the complaint giving rise to the proceedings concerned,

"interested person" has the meaning given by regulation 67 (meaning of "interested person"),

"investigator's report", in relation to any proceedings under these Regulations, means –

- (a) the written report referred to in regulation 16(2)(a)

(referral of case to misconduct proceedings), or

- (b) the copy of the report and the statement referred to in regulation 16(2)(b) (referral of case to misconduct proceedings),

giving rise to those proceedings,

"the Law" means the Police Complaints Law, 2008,

"lawyer" means –

- (a) an Advocate of the Royal Court of Guernsey,
- (b) a member of the Bar of England and Wales, the Bar of Northern Ireland or the Faculty of Advocates in Scotland, who is engaged in the practise of law,
- (c) a solicitor of the Senior Courts of England and Wales, a solicitor in Scotland or a solicitor of the Court of Judicature of Northern Ireland, or
- (d) a person entitled to practise law as a member of the legal profession in any other Commonwealth jurisdiction,

"management action" means action or advice intended to improve the conduct of the officer concerned,

"misconduct" means a breach of the Standards of Professional Behaviour,

"misconduct hearing" means a hearing to which the officer concerned is referred under regulation 16 (referral of case to misconduct proceedings) and at which he may be dealt with by disciplinary action up to and including dismissal,

"misconduct meeting" means a meeting to which the officer concerned is referred under regulation 16 (referral of case to misconduct proceedings) and at which he may be dealt with by disciplinary action up to and including a final written warning,

"misconduct proceedings" means a misconduct meeting or misconduct hearing,

"officer" –

- (a) means a member of the Island Police Force as defined in section 19(1) of the Law in light of regulation 65 (Division B special constables prescribed as part of Island Police Force), and
- (b) for the avoidance of doubt, includes a senior-ranking officer,

"officer concerned", in relation to any complaint, supervised investigation or regulated proceedings, means the officer whose conduct is the subject of the complaint, supervised investigation or regulated proceedings concerned,

"panel" –

- (a) in relation to misconduct proceedings, means, as

the case may require –

- (i) the panel appointed under regulation 22(4) to conduct a misconduct hearing involving an officer other than a senior-ranking officer,
 - (ii) the panel constituted under regulation 23(2) to conduct a misconduct meeting involving a senior-ranking officer,
 - (iii) the panel constituted under regulation 23(3) to conduct a misconduct hearing involving a senior-ranking officer, or
 - (iv) the Complaints Tribunal conducting a misconduct hearing convened as the result of a Commission direction, and
- (b) in relation to a special case hearing, means, as the case may require –
- (i) the panel comprised under regulation 44(2) to conduct a special case hearing involving a senior-ranking officer, or
 - (ii) the Complaints Tribunal conducting a special case hearing convened as the result of a Commission direction,

"the person chairing" any misconduct proceedings or special case proceedings means –

- (a) in the case of proceedings conducted by an individual, that individual, and
- (b) in the case of proceedings conducted by a panel, the chair of that panel,

"police friend" means a person chosen by the officer concerned in accordance with regulation 2 (police friend),

"police staff member" means any employee of the States of Guernsey who is under the direction and control of the Chief Officer, other than an officer,

"proposed witness" means a witness whose attendance at the misconduct proceedings the officer concerned or the appropriate authority wishes to request of the person conducting those proceedings,

"qualified lawyer" means a person who meets the requirements of paragraphs (a) and (b) –

- (a) the person is –
 - (i) an Advocate of the Royal Court of Guernsey,
 - (ii) a member of the Bar of England and Wales, the Bar of Northern Ireland or the Faculty of Advocates in Scotland, who is engaged in the practise of law,
 - (iii) a solicitor of the Senior Courts of England

and Wales, a solicitor in Scotland or a solicitor of the Court of Judicature of Northern Ireland, or

- (iv) a person entitled to practise law as a member of the legal profession in any other Commonwealth jurisdiction,

of not less than five years standing, and

- (b) the person's name is on a list of persons approved by the Department and Her Majesty's Procureur as qualified to conduct regulated proceedings for the purposes of the Law by reason of their relevant experience in or knowledge of employment-related proceedings or proceedings concerning discipline,

"qualified person" means a person whose name is on a list of persons approved by the Department as persons qualified to conduct regulated proceedings for the purposes of the Law by reason of their relevant experience in or knowledge of human resources or employment or disciplinary matters,

"referred matter" means any matter referred by the appropriate authority to the Commission under section 6 of the Law,

"regulated proceedings" means –

- (a) any proceedings under these Regulations, or
- (b) any proceedings under section 12 of the Law and the Appeal Regulations,

"the relevant date" –

- (a) in the case of a misconduct meeting, misconduct hearing or special case hearing that arises from a complaint, means the date of assessment of the conduct under regulation 7(2) (assessment of conduct following complaint), and
- (b) in the case of a misconduct meeting, misconduct hearing or special case hearing that arises from a referred matter, means the date on which the matter was referred by the appropriate authority to the Commission under section 6 of the Law,

"senior-ranking officer" means a member of the Island Police Force holding the rank of Superintendent or above,

"serving or retired senior-ranking officer of another police force" –

- (a) means any police officer who holds the rank of, or any person who has retired from service as, Chief Constable, Deputy Chief Constable, Assistant Chief Constable or its equivalent in –
 - (i) any police force in England, Wales, Northern Ireland or Jersey, or
 - (ii) the Isle of Man constabulary, but
- (b) excludes any person who has at any time been a member of the Island Police Force,

"special case hearing" means a hearing to which the officer concerned is referred under regulation 38 (referral of case to special case hearing) after the case has been certified as a special case,

"special case proceedings" means the referral of a case to a special case hearing and any proceedings at or in connection with such a hearing,

"special conditions" has the meaning given by regulation 66 (satisfaction of special conditions),

"special constable" means a special constable prescribed by regulation 65 to be part of the Island Police Force (Division B special constables prescribed as part of Island Police Force),

"staff association" includes –

- (a) any trade union or employee association, whether incorporated or unincorporated,
- (b) in relation to an officer of the salaried police force of the Island of Guernsey of the rank of Inspector or below, the Guernsey Police Association LBG, and
- (c) in relation to an officer of the salaried police force of the Island of Guernsey of the rank of Chief Inspector or above, the body of persons known as the Senior Officers' Staff Association,

"Standards of Professional Behaviour" means the standards of professional behaviour set out in the Schedule,

"supervised investigation" means an investigation supervised by the Commission under section 7 of the Law,

"working day" means any day other than –

- (a) a Saturday, a Sunday, Christmas Day or Good Friday, or
- (b) a day appointed as a public holiday by Ordinance of the States of Deliberation, or (as the case may be) the States of Alderney or the Chief Pleas of Sark, under section 1(1) of the Bills of Exchange (Guernsey) Law, 1958¹⁰,

"written warning" means a written reprimand or written caution, and

"a written warning in force", for the avoidance of doubt, excludes a final written warning in force.

(2) In these Regulations, a reference to a copy of a statement, where the statement was not made in writing, must be construed as a reference to a copy of an account of that statement.

(3) For the purposes of these Regulations –

¹⁰ Ordres en Conseil Vol. XVII, p. 384; Vol. XXIV, p. 84; Vol. XXXIV, p. 507; and Vol. XXXV (1), p. 370.

- (a) a written warning remains in force for a period of 12 months from the date on which it takes effect, and
 - (b) subject to regulations 32(2)(d)(ii) and (3)(e) (outcome of misconduct proceedings) and 52(1)(c) (outcome of special case hearing), a final written warning remains in force for a period of 18 months from the date on which it takes effect.
- (4) The reference to the period of –
- (a) 12 months in paragraph (3)(a), and
 - (b) 18 months in paragraph (3)(b) and regulations 32(5) (outcome of misconduct proceedings) and 52(4) (outcome of special case hearing),

does not include any time when the officer concerned is taking leave approved in accordance with normal applicable procedures.

(5) Unless the context requires otherwise, references in these Regulations to any enactment are references thereto as amended, varied, re-enacted (with or without modification), extended or applied.

(6) The provisions of the Interpretation (Guernsey) Law, 1948¹¹ apply to these Regulations as they apply to an enactment.

(7) For the avoidance of doubt, unless paragraph (1) or the context requires otherwise, an expression used in these Regulations has the same meaning as in the Law.

¹¹ Ordres en Conseil Vol. XIII, p. 355.

Consultation required before amending regulations.

69. The Department must consult the association known as the Guernsey Police Association LBG, and the body of persons known as the Senior Officers' Staff Association, before it amends or revokes any of these Regulations, except in relation to amendments or revocations with minor or insignificant effect, for example, those made in order –

- (a) to shorten or simplify the phraseology of any provision,
- (b) to correct grammatical or typographical errors, or any clerical or printing errors,
- (c) to correct cross-references, or
- (d) to alter or replace names, offices, titles, descriptions, definitions and terms to bring these into conformity with the circumstances for the time being.

Citation.

70. These Regulations may be cited as the Police Complaints (Conduct Proceedings and Investigations) (Guernsey) Regulations, 2011.

Commencement.

71. These Regulations come into force on the 1st July, 2011.

Dated this 3rd day of May 2011.

DEPUTY G H MAHY
Minister of the States Home Department
For and on behalf of the Department

SCHEDULE

Regulation 19(1)

STANDARDS OF PROFESSIONAL BEHAVIOUR

In these Standards, "**police officer**" has the meaning given to the expression "**officer**" by regulation 68(1)

1. Honesty and Integrity

Police officers are honest, act with integrity and do not compromise or abuse their position.

2. Authority, Respect and Courtesy

- (a) Police officers act with self-control and tolerance, treating members of the public and colleagues with respect and courtesy.
- (b) Police officers do not abuse their powers or authority and respect the rights of all individuals.

3. Equality and Diversity

Police officers act with fairness and impartiality. They do not discriminate unlawfully or unfairly.

4. Use of Force

Police officers only use force to the extent that it is necessary, proportionate and reasonable in all the circumstances.

5. Orders and Instructions

- (a) Police officers only give and carry out lawful orders and instructions.
- (b) Police officers abide by legislation governing the police, force policies and lawful orders.

6. Duties and Responsibilities

Police officers are diligent in the exercise of their duties and responsibilities.

7. Confidentiality

Police officers treat information with respect and access or disclose it only in the proper course of police duties.

8. Fitness for Duty

Police officers when on duty or presenting themselves for duty are fit to carry out their responsibilities.

9. Discharge of lawful debts

Police officers do not wilfully refuse or wilfully neglect to discharge their lawful debts.

10. Residence to be approved by appropriate authority

Police officers do not reside at any place without the approval of the appropriate authority.

11. Involvement in inappropriate activities

- (a) Police officers do not take an active part in politics.
- (b) Except with the approval of the appropriate authority, police officers do not –
 - (i) carry on any business activities, or
 - (ii) hold any other office or employment for hire, gain, reward or any other valuable consideration.
- (c) Police officers abstain from any activity –
 - (i) that is likely to interfere with the impartial discharge of their duties, or
 - (ii) that is likely to give rise to the impression amongst members of the public that it may interfere with the impartial discharge of their duties.

12. Discreditable Conduct

- (a) Police officers behave in a manner which does not discredit the police service or undermine public confidence in it, whether on or off duty.
- (b) Police officers report any action taken against them for a criminal offence, any conditions imposed on them by a court or the receipt of any penalty notice.

13. Challenging and Reporting Improper Conduct

Police officers report, challenge or take action against the conduct of colleagues which has fallen below the Standards of Professional Behaviour.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set out the procedures to be followed in proceedings arising from a complaint made under the Police Complaints (Guernsey) Law, 2008 or a supervised investigation of any matter referred to the Police Complaints Commission ("**the Commission**") under that Law. These regulations should be read together with the provisions of the Law.

Part I allows an officer who is the subject of such a complaint or supervised investigation to choose another officer or someone else as a police friend to advise the officer concerned throughout the proceedings. This Part also sets out when the officer concerned, and the appropriate authority, may be legally or otherwise represented, and provides for the giving of notices. It sets out the effect of outstanding or possible criminal proceedings against the officer concerned, and allows the appropriate authority to suspend that officer in certain circumstances.

Part II sets out procedures to be followed upon receipt of a complaint. Before an investigation is initiated, a preliminary assessment must be made as to whether the conduct that is the subject of the complaint would amount to misconduct, gross misconduct or neither. The complaint also needs to be considered for informal resolution. Any investigation of complaints against senior-ranking officers must be supervised by the Commission. Part II then sets out the procedures to be followed in the event of a formal investigation, including the appointment of the investigator, giving of notices, representations to the investigator, interviews, and the necessary report upon completion of the investigation.

Part III provides for the referral of the case to a misconduct meeting or misconduct hearing, depending on the circumstances. It sets out procedures to be followed in either proceedings, including: notices to be given; witnesses; the persons conducting those proceedings; the attendance and participation of the officer concerned, as well as the Commission and the investigator; procedures at the misconduct meeting or misconduct hearing; possible outcomes; and appeals from misconduct meetings for officers other than senior-ranking officers. Appeals from misconduct meetings involving senior-ranking officers and from misconduct hearings must be conducted according to the provisions of the Law and the Police Complaints (Appeal Tribunal) (Guernsey) Regulations, 2011.

Part IV sets out the fast track procedures to be followed in the event of a special case hearing, which is held where there appear to be sufficient documentary evidence to establish gross misconduct and it is in the public interest for the officer concerned to be dismissed from the Force without delay.

Part V sets out the rights of interested persons and complainants to be kept informed at each stage of the proceedings. Before a complainant can give consent to informal resolution of his complaint, he must be informed that his consent cannot be withdrawn once the procedure for informal resolution has been commenced, and that he has appeal rights relating to informal resolution.

Part V also gives the complainant a right to appeal to the Commission against non-provision of adequate information to him, against the findings of the investigator's report and against determinations made by the appropriate authority. The Commission can require the appropriate authority to provide an explanatory memorandum and, upon determining an appeal, can review the findings of the investigator's report itself or alternatively, can issue directions to the appropriate authority (including a direction to re-investigate the complaint as a supervised investigation). Where the Commission finds that the appropriate authority has not made an appropriate determination, the Commission can direct a supervised re-investigation of the complaint or give the appropriate authority any other direction it thinks fit.

Part VI authorises the Commission to make public statements in exceptional cases involving an appeal under Part V or any supervised investigation. It sets out the harm test for the release of information in documents used in proceedings, prescribes Division B special constables to be part of the Island Police Force (so that they are subject to these regulations, just like any officer of the salaried police force), and sets out the meaning of special terms and expressions used throughout these Regulations. Finally, it requires the Guernsey Police Association LBG and the Senior Officers' Staff Association to be consulted before these Regulations are amended or revoked.

These regulations come into force on the 1st of July, 2011.

(NB The Policy Council has no comment on the proposals.)

(NB The Treasury and Resources Department has no comment on the proposals.)

The States are asked to decide:-

Whether, after consideration of the Report dated 5th May, 2011, of the Home Department, they are of the opinion:-

1. To approve The Police Complaints (Conduct Proceedings and Investigations) (Guernsey) Regulations, 2011.
2. To approve The Police Complaints (Appeals Tribunal) (Guernsey) Regulations, 2011.
3. That 1 July 2011 shall be the date for implementation of the Regulations to give effect to the Law.
4. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

**IN THE STATES OF THE ISLAND OF GUERNSEY
ON THE 29TH DAY OF JUNE, 2011**

**The States resolved as follows concerning Billet d'État No XII
dated 3rd June 2011**

HOME DEPARTMENT

POLICE COMPLAINTS COMMISSION

After consideration of the Report dated 5th May, 2011, of the Home Department:-

1. To approve the Police Complaints (Conduct Proceedings and Investigations) (Guernsey) Regulations, 2011.
2. To approve the Police Complaints (Appeal Tribunal) (Guernsey) Regulations, 2011.
3. That 1 July 2011 shall be the date for implementation of the Regulations to give effect to the Law.
4. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

**S M D ROSS
HER MAJESTY'S DEPUTY GREFFIER**