

# STATES OF JERSEY



## **DRAFT STATES OF JERSEY POLICE FORCE (CHIEF OFFICER AND DEPUTY CHIEF OFFICER) (JERSEY) REGULATIONS 201-**

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**Lodged au Greffe on 30th December 2016  
by the Minister for Home Affairs**

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**STATES GREFFE**





Jersey

# **DRAFT STATES OF JERSEY POLICE FORCE (CHIEF OFFICER AND DEPUTY CHIEF OFFICER) (JERSEY) REGULATIONS 201-**

## **REPORT**

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These draft Regulations make provision for the appointment, suspension and removal of the Chief Officer and Deputy Chief Officer of the States of Jersey Police, and also establish procedures for dealing with complaints and conduct which may give rise to criminal or disciplinary proceedings, as detailed below.

### **1. Background**

The [Draft States of Jersey Police Force Law 201- \(P.182/2011\)](#) was lodged *au Greffe* on 16th November 2011 by the then Minister for Home Affairs. The covering Report noted that –

“The 1974 Law provided that the Chief Officer of the States of Jersey Police was appointed by the States. However, it is felt that the States involvement in the process of appointing and disciplining the Chief Officer of the States of Jersey Police may overly politicise that post. The draft Law enables the States to make Regulations in relation to the appointment of the Chief Officer and Deputy Chief Officer of the States of Jersey Police (Article 9). The Regulations may include who may make the appointments, who may determine the periods of the appointments, who may determine terms and conditions, issues relating to suspension or dismissal from office and disciplinary arrangements.”

The draft Law was adopted by the States Assembly on 15th May 2012.

The [States of Jersey Police Force Law 2012](#) (“the Law”) provides, in Article 8, that the States Police Force shall have a Chief Officer and a Deputy Chief Officer. Article 9 of the Law provides that the Assembly may make Regulations prescribing the manner in which persons may be appointed to the offices of Chief Officer and Deputy Chief Officer, the circumstances in which and the manner in which a person may be suspended or dismissed from office, and by whom, and disciplinary arrangements generally and matters relating to the handling of complaints.

### **2. The draft Regulations**

These draft Regulations make provision for the Minister to appoint a Chief Officer or Deputy Chief Officer (“CO/DCO”) after consultation with the Police Authority and giving at least 2 weeks’ notice to the Assembly. This is intended to be consistent with the decision made by the Assembly on 2nd February 2010 regarding revised procedures for appointments made by the Assembly ([P.205/2009](#)), when it was decided that rather than certain appointments being made by the Assembly, the

Minister would be required to present a Report to the Assembly in relation to the proposed appointment, which could not then be confirmed for at least 2 weeks. The draft Regulations also set out the procedures for suspending or removing the CO/DCO from post.

The draft Regulations make the CO/DCO subject to the same Discipline Code as applies to all other police officers, as set out in Schedule 1 to the [Police \(Complaints and Discipline Procedure\) \(Jersey\) Order 2000](#). As a result, the CO/DCO would commit a disciplinary offence if the standard set out in the Discipline Code is not met. As noted in the answer provided on 29th November 2016 to Written Question 1240/5(9726), the [Police \(Complaints and Discipline\) \(Jersey\) Law 1999](#) is now under review and it is anticipated that, as part of this work, the Discipline Code will be updated in order to align with best practice elsewhere in the British Isles.

There is a procedure for dealing with complaints. Such complaints can be brought by any member of the Public and can concern the way in which the CO/DCO carries out his or her functions under the Law, or an allegation of a criminal or disciplinary offence.

There are also procedures for dealing with conduct matters which have not been the subject of a complaint, which may be matters which indicate that a CO/DCO may have committed a criminal offence or behaved in a way which would justify the bringing of disciplinary proceedings. Whilst a police officer who has concerns about the conduct of the CO/DCO cannot make a complaint as defined in Regulation 3, the provisions relating to conduct matters allow for concerns which have been raised by a police officer to be investigated.

The draft Regulations include procedures for dealing with a complaint or conduct matter regarding the CO/DCO, including the appointment of an investigating panel, referrals to the Jersey Police Complaints Authority, disciplinary charges, hearings by a tribunal, punishments and appeals to the Royal Court.

The Regulations would come into force 7 days after they are made

The draft Regulations have been subject to consultation with the Jersey Police Authority, Jersey Police Complaints Authority, States of Jersey Police Association, States of Jersey Human Resources Department and Her Majesty's Inspectorate of Constabulary.

#### **Financial and manpower implications**

There are no financial or manpower implications for the States arising from the adoption of these draft Regulations.

## Explanatory Note

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These Regulations make provision for the appointment, suspension and removal of the Chief Officer and Deputy Chief Officer (each referred to as “Officer”) and sets out procedures for dealing with complaints and conduct which may give rise to criminal or disciplinary proceedings.

### **Part 1 – Preliminary**

*Regulations 1 to 5* deal with preliminary matters.

*Regulation 1* is an interpretation provision.

*Regulation 2* sets out the composition of the investigating panel appointed by the Minister for Home Affairs (“Minister”). The purpose of an investigating panel is (a) to investigate and make a recommendation where the Minister is minded to suspend or remove an Officer in exercise of the Minister’s discretion under **Part 2** or (b) to conduct a preliminary investigation under **Part 3** into conduct which may lead to disciplinary or criminal proceedings. *Regulation 2* also sets out the composition of the tribunal appointed by the Jersey Police Authority to hear disciplinary proceedings under **Part 3**.

*Regulations 3 and 4* set out the meaning of “complaint” and “complainant”. A complaint can concern the way in which an Officer carries out his or her functions under the States of Jersey Police Force Law 2012 (“Law”) or an allegation of a criminal or disciplinary offence and can be brought by any member of the public other than a police officer acting in the course of his or her duty. The procedure for dealing with complaints is set out in **Part 3**. **Part 3** also sets out procedures for dealing with “conduct matters” which have not been the subject of a complaint. As defined in *Regulation 1*, a “conduct matter” means a matter which indicates that an Officer may have committed a criminal offence or behaved in a way which would justify the bringing of disciplinary proceedings. Although a police officer who has concerns about the conduct of an Officer cannot make a “complaint” as defined in *Regulation 3* and does not have the rights of a statutory complainant under that Part, the provisions relating to conduct matters allow for concerns which have been raised by a police officer to be investigated.

*Regulation 5* makes each Officer subject to the Discipline Code set out in Schedule 1 to the Police (Complaints and Discipline Procedure) (Jersey) Order 2000. Accordingly an Officer commits a “disciplinary offence” if he or she does not meet the standard set out in the Discipline Code.

### **Part 2 – Appointment, Suspension and Removal of Chief Officer or Deputy Chief Officer**

*Regulation 6* makes provision for the Minister to appoint an Officer after consultation with the Police Authority and giving at least 2 weeks’ notice to the States.

*Regulations 7, 8 and 9* set out the procedures for suspending or removing an Officer from his or her post.

*Regulation 7* provides that procedures for removal do not apply where proceedings are taking place under **Part 3**, that is, where possible disciplinary or criminal offences or complaints about the carrying out of an Officer’s functions are being dealt with under that Part.

*Regulation 8* allows the Minister to suspend an Officer if the Minister thinks it necessary in order to maintain public confidence or to avoid prejudicing an

investigation under **Part 3**. Except in urgent cases, suspension can take place only after an investigating panel (as defined in *Regulation 2*) has reported to the Minister on whether it considers that suspension should take place and the Minister may require an Officer to retire or resign only after an investigating panel has made a recommendation to that effect.

*Regulation 9* sets out the procedures that must be followed before the Minister can require an Officer to resign or retire.

### **Part 3 – Procedures for Complaints and Conduct Matters**

*Regulations 10, 11 and 12* set out the initial procedures for dealing with a complaint or conduct matter. The Minister must appoint an investigating panel to conduct an initial investigation. Any investigation which shows that a criminal or disciplinary offence may have been committed must be referred to the Police Complaints Authority, otherwise the Minister may deal with the matter as he or she thinks fit.

*Regulations 13 and 14* make provision for an investigation to be carried out under the supervision of the Police Complaints Authority following a referral to it as described above and for the investigation to be carried out by an investigating officer appointed by the Police Complaints Authority after consultation with the Minister.

*Regulations 15 and 16* require the Police Complaints Authority to make an assessment of the investigating officer's report. On the basis of the assessment, the Minister must decide whether to bring disciplinary charges and the Attorney General must decide whether to bring criminal charges.

*Regulation 17* makes provision for the Police Complaints Authority to direct the Minister to prefer disciplinary charges if the Minister is not willing to do so.

*Regulation 18* makes provision for the withdrawal of a disciplinary charge unless disciplinary proceedings are required under *Regulation 17*.

*Regulations 19 to 33* set out the procedures for hearing a disciplinary charge by a tribunal (the composition of which is set out in *Regulation 2*).

*Regulation 19* requires the Minister to notify the Chairman of the Police Authority ("Chairman") once the decision is taken to hold a disciplinary hearing and the Chairman must ensure that the Officer concerned is supplied with a notice specifying the alleged disciplinary offence with copies of statements and other relevant documents.

*Regulation 20* requires the Chairman to give the Officer concerned at least 21 days' notice of the disciplinary hearing.

*Regulation 21* requires the Officer concerned to state whether he or she admits the offence, wishes to be legally represented at the hearing and whether he or she wishes to call witnesses.

*Regulation 22* allows for a disciplinary hearing to take place before the period of 21 days referred to in *Regulation 20* has elapsed if the Officer concerned is in prison and does not wish to be legally represented at the hearing.

*Regulation 23* requires a summary of the facts to be prepared if the Officer concerned admits the offence and for the summary to be given to him or her.

*Regulation 24* requires the Chairman to give the tribunal a copy of the notice referred to in *Regulation 19* specifying the alleged disciplinary offence and any summary prepared under *Regulation 23*.

*Regulation 25* sets out who may present a case for and against the Officer concerned, depending on whether or not he or she has chosen to be legally represented. If the Officer has so chosen, the case against the Officer may be presented by a legal

representative (which includes an advocate or a solicitor). Otherwise the case against the Officer may be presented by the Minister or by a police officer from another force in the British Islands and the case for the Officer may be presented by a police officer or retired police officer from another force in the British Islands, or a person who does not have an interest in the case or by the Officer personally.

*Regulation 26* allows the tribunal to adjourn the hearing from time to time.

*Regulation 27* makes provision for the disciplinary hearing to proceed if the Officer concerned is unable or unwilling to attend.

*Regulation 28* makes provision for the attendance of a complainant where the disciplinary hearing concerns a complaint. At the discretion of the tribunal, the complainant may attend and be accompanied by a personal friend or relative.

*Regulation 29* sets out the general rule that disciplinary hearings are held in private and makes provision for when other persons may attend.

*Regulation 30* allows the tribunal to exclude any member of the public from the disciplinary hearing whilst any information is being given the disclosure of which is not in the public interest.

*Regulation 31* gives the tribunal a general discretion to allow any evidence to be presented at the hearing.

*Regulation 32* requires the tribunal to ensure that a verbatim record is taken of all proceedings of the disciplinary hearing.

*Regulation 33* requires the tribunal to report to the Minister whether it finds that the Officer concerned has committed a disciplinary offence and, if so, recommend what punishment should be imposed. The punishment may be dismissal, a requirement to resign, reduction in rate of pay, a fine or a reprimand. The Minister may impose any punishment provided that it is not more severe than that recommended by the tribunal. The Officer must be notified of the Minister's decision within 3 days of the Minister receiving the tribunal's report.

*Regulation 34* requires a tribunal to consider an Officer's personal record when considering what punishment to impose on an Officer and to give the Officer concerned an opportunity to make representations on its proposed recommendation.

*Regulation 35* requires the Minister to keep a record of all disciplinary proceedings brought against an Officer.

*Regulation 36* makes provision for an Officer who is found guilty of a disciplinary offence to appeal to the Royal Court.

*Regulation 37* makes provision, at the Officer's request, for any punishment of a fine or reprimand to be removed from an Officer's personal record once the Officer has been free of punishment for a period of 3 years and for a punishment of a reduction in pay to be so removed after 5 years.

#### **Part 4 – Closing**

*Regulation 38* sets out the title of these Regulations and provides that they will come into force 7 days after they are made.





Jersey

**DRAFT STATES OF JERSEY POLICE FORCE  
(CHIEF OFFICER AND DEPUTY CHIEF OFFICER)  
(JERSEY) REGULATIONS 201-**

**Arrangement**

**Regulation**

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Jersey

## **DRAFT STATES OF JERSEY POLICE FORCE (CHIEF OFFICER AND DEPUTY CHIEF OFFICER) (JERSEY) REGULATIONS 201-**

*Made*

*[date to be inserted]*

*Coming into force*

*[date to be inserted]*

**THE STATES**, in pursuance of Articles 9 and 33 of the States of Jersey Police Force Law 2012<sup>1</sup>, have made the following Regulations –

### **PART 1**

#### **PRELIMINARY**

##### **1 Interpretation**

In these Regulations –

“2000 Order” means the Police (Complaints and Discipline Procedure) (Jersey) Order 2000<sup>2</sup>;

“Chief Executive Officer” has the same meaning as in the Employment of States of Jersey Employees (Jersey) Law 2005<sup>3</sup>;

“complaint” has the meaning given in Regulation 3;

“complainant” has the meaning given in Regulation 4;

“conduct matter” means any matter about which there has not been a complaint (other than one which has been withdrawn), but in the case of which there is an indication, whether from the circumstances or otherwise, that an Officer may have –

- (a) committed a criminal offence; or
- (b) behaved in a manner which would justify the bringing of disciplinary proceedings;

“disciplinary charge” and “disciplinary offence” shall be construed in accordance with Regulation 5;

“disciplinary proceedings” means proceedings under these Regulations for the hearing of a disciplinary charge;

“Discipline Code” means the Discipline Code in Schedule 1 to the 2000 Order;

“human resources professional” means a States’ employee who has responsibility for any personnel matters relating to police officers;

“Law” means the States of Jersey Police Force Law 2012<sup>4</sup>;

“legal representative” includes an advocate or a solicitor;

“interested party” means a witness or any person involved in conduct which is the subject of a complaint or conduct matter or who otherwise has a direct interest in a complaint or conduct matter;

“investigating officer” shall be construed in accordance with Regulation 13(1);

“investigating panel” has the meaning in Regulation 2(1);

“Officer” without qualification, means the Chief Officer or the Deputy Chief Officer, as the case requires;

“Officer concerned” means the Officer who is the subject of the complaint or conduct matter;

“Police Authority” means the Jersey Police Authority;

“Police Complaints Authority” means the Jersey Police Complaints Authority established under Article 2 of the Police (Complaints and Discipline) (Jersey) Law 1999<sup>5</sup>;

“police officer from some other force” means a police officer from a police force in the British Islands other than Jersey;

“States’ employee” has the same meaning as in Article 2 of the Employment of States of Jersey Employees (Jersey) Law 2005<sup>6</sup>;

“tribunal” has the meaning in Regulation 2(2).

## **2 Investigating panel and tribunal**

- (1) In these Regulations, “investigating panel” means a panel appointed by the Minister comprising –
  - (a) the Chief Executive Officer;
  - (b) the Chairman of the Police Complaints Authority or a member of that Authority nominated by the Chairman; and
  - (c) one other person appointed by the Minister, such person not being a member of the Force or a States’ employee.
- (2) In these Regulations “tribunal” means a tribunal appointed by the Chairman of the Police Authority or by a member of the Police Authority nominated by the Chairman comprising –
  - (a) a Jurat acting as chair of the tribunal;
  - (b) a police officer or retired police officer from some other force; and
  - (c) a person who is not a member of the Force or a States’ employee and who is selected from a list maintained by the Police Authority for the purposes of these Regulations.

- (3) An investigating panel or tribunal must be appointed on each occasion it is required to exercise the functions as are conferred on it by these Regulations.
- (4) The investigating panel or tribunal, as the case may be, may be assisted by a human resources professional for the purpose of exercising its functions.
- (5) A person, including a legal representative, may be appointed by the Chairman of the Police Authority or by a person nominated by the Chairman of the Police Authority to advise the tribunal with regard to the exercise of the tribunal's functions.
- (6) The person appointing a police officer from some other force for the purposes of paragraph (2) may require any member of the Force to give him or her such assistance as is reasonably necessary or expedient for securing such an appointment and any member of the Force required to give such assistance shall do so.
- (7) Except as provided for in these Regulations, the panel or tribunal, as the case may be, shall determine its own procedures and may require such documents and information as it thinks necessary for the purpose of exercising its functions.

### **3 Meaning of “complaint”**

- (1) In these Regulations, “complaint” means a complaint in writing made to the Minister by a person specified in paragraph (2) about the conduct of an Officer and can include any of the following –
  - (a) a complaint about the way in which the Officer has carried out his or her functions under Article 17 of the Law including his or her functions in relation to the matters referred to in Article 18(2)(a), (b) and (c) of the Law;
  - (b) an allegation that the Officer has failed to carry out a function referred to in sub-paragraph (a);
  - (c) an allegation that the Officer has committed a disciplinary offence; and
  - (d) an allegation that the Officer has committed a criminal offence.
- (2) Those persons are any of the following –
  - (a) a member of the public;
  - (b) a person acting on behalf of, and with the written consent of, a member of the public,including a member of the Force acting otherwise than in the course of his or her duty.

### **4 Meaning of “complainant”**

In these Regulations, “complainant” means any person who makes a complaint.

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**5 Discipline Code and offences against discipline**

- (1) Each Officer is subject to the Discipline Code.
- (2) An Officer commits an offence against discipline if the Officer's conduct does not meet the standard set out in the Code and "disciplinary offence" shall be construed accordingly.
- (3) References in these Regulations to a "disciplinary charge" are to a charge that an Officer has committed a disciplinary offence.

**PART 2****APPOINTMENT, SUSPENSION AND REMOVAL OF CHIEF OFFICER  
OR DEPUTY CHIEF OFFICER****6 Appointment of the Chief Officer and Deputy Chief Officer**

- (1) The Minister shall appoint the Chief Officer and Deputy Chief Officer for such length of term of office in each case as the Minister shall determine.
- (2) An appointment under paragraph (1) shall not be made unless the Minister is satisfied that the person appointed to the post of Chief Officer or Deputy Chief Officer, as the case may be, is suitably qualified for the post.
- (3) Before the Minister appoints a person to the office of Chief Officer or Deputy Chief Officer, the Minister must –
  - (a) consult the Police Authority; and
  - (b) present to the States notice of his or her intention to make the appointment at least 2 weeks before the appointment is made.
- (4) An appointment under paragraph (1) shall be on such terms as to salary and conditions of service as the States Employment Board may from time to time determine.

**7 Powers of suspension or removal**

- (1) The Minister may suspend an Officer in accordance with Regulation 8.
- (2) The Minister may require the resignation or retirement of an Officer in accordance with Regulation 9 except where any of the following apply –
  - (a) an investigation or hearing is pending or proceeding under Part 3;
  - (b) the action to be taken under Part 3 following an investigation or hearing under that Part has not yet been determined; or
  - (c) the Officer is required to resign or retire following a finding under Part 3 that the Officer is guilty of a disciplinary offence.
- (3) Before an Officer –
  - (a) is suspended; or
  - (b) required to resign or retire (whether or not under Part 3),the Minister shall give prior notice to the Police Authority.

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- (4) Where an Officer –
- (a) has been suspended; or
  - (b) required to resign or retire (whether or not under Part 3),
- the Minister shall report to the States the suspension or requirement to resign or retire, as the case may be.

## **8 Grounds and procedures for suspension**

- (1) The Minister may suspend an Officer on either or both of the following grounds –
- (a) the suspension is deemed necessary by the Minister in order to maintain public confidence; or
  - (b) the effectiveness of any investigation under Part 3 may be prejudiced if the Officer is not suspended.
- (2) Before an Officer is suspended under paragraph (1), the Minister shall give the Officer a written notice informing the Officer –
- (a) of the grounds on which he or she may be suspended;
  - (b) of the Officer's right to make representations, either in writing or in person, before a decision to suspend is made;
  - (c) that the Officer's representations may be made to another person (including a legal representative) or by the Officer and that the Officer may be accompanied by that other person to any hearing; and
  - (d) of the time within which representations must be made (which shall be such period as is reasonable in all the circumstances of the case).
- (3) Before the Minister makes a decision to suspend an Officer, an investigating panel shall investigate the matter and make a written report to the Minister recommending whether or not suspension should take place.
- (4) Paragraph (3) need not be complied with where the Minister deems it necessary to suspend an Officer urgently without obtaining the report and recommendation referred to in that paragraph.
- (5) The Minister shall review an Officer's suspension at intervals of no less than a month and shall revoke the suspension if the grounds for the suspension described in paragraph (1) no longer exist.
- (6) Notwithstanding paragraph (5), the Minister may revoke an Officer's suspension at any time.
- (7) An Officer who is suspended under this Regulation may not –
- (a) give notice of resignation from his or her appointment; or
  - (b) resign under notice given prior to the suspension,
- unless he or she has the Minister's consent.
- (8) Where an Officer is suspended under this Regulation, the Officer shall not be entitled to any pay in respect of any period when –

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- (a) the Officer is detained in custody pursuant to a sentence of a court or is detained in custody between conviction and sentence; or
  - (b) the Officer has absented himself or herself from duty and the Officer's whereabouts are unknown to the Minister.

## **9 Procedures for removal**

- (1) Before an Officer is required to resign or retire, the Minister must give the Officer a written notice explaining the reasons for the Minister's proposal to require the Officer's retirement or resignation.
- (2) The Minister must give the Officer the opportunity to make written representations in response to the notice, such representations to be made on a date that is not less than 28 days after the date of the notice.
- (3) The Officer must indicate to the Minister no later than 14 days after the date of the notice whether the Officer wishes to make any such representations.
- (4) The Minister must consider any representations made by or on behalf of the Officer by another person (including a legal representative).
- (5) If, after complying with paragraphs (1) to (4), the Minister still proposes to require the Officer's retirement or resignation, the Minister must appoint an investigating panel for the purpose of it making a recommendation as to whether or not the Officer should be required to retire or resign.
- (6) The recommendation must be given to the Minister in writing before the end of the period of 6 weeks after the date of the appointment of the investigating panel.
- (7) Before making the recommendation the investigating panel must hold a meeting which the Minister and Officer may both attend for the purpose of the Minister or Officer, or both as the case may be, making representations relating to the proposal to require the Officer to retire or resign.
- (8) For the purposes of paragraph (7), the Officer's representations may be made by the Officer or by another person (including a legal representative).
- (9) If the investigating panel makes a recommendation to the effect that an Officer should be required to resign or retire, the Minister may make a decision to that effect and shall notify the Officer of that decision in writing.
- (10) An Officer must resign or retire if required to do so by the Minister in accordance with paragraph (9).
- (11) A resignation or retirement under paragraph (10) shall take effect on such date specified by the Minister in the Minister's decision.
- (12) An Officer may appeal to the Royal Court against a decision requiring the Officer to resign or retire on the grounds that in all the circumstances of the case the decision was not reasonable.

- (13) The appeal must be made within 28 days of the date of the decision requiring the Officer to resign or retire.
- (14) Subject to any order of the Royal Court, an appeal under paragraph (13) shall not have the effect of suspending the decision.

### **PART 3**

#### **PROCEDURES FOR COMPLAINTS AND CONDUCT MATTERS**

##### **10 Preliminary procedure for dealing with a complaint**

- (1) Upon receipt of a complaint the Minister shall, as soon as reasonably practicable and at any rate no later than 10 working days after its receipt, appoint an investigating panel to investigate the complaint.
- (2) In paragraph (1), “working day” means a day other than –
  - (a) a Saturday, a Sunday, Christmas Day, or Good Friday; or
  - (b) a day that is a bank holiday or a public holiday under the Public Holidays and Bank Holidays (Jersey) Law 1951<sup>7</sup>.

##### **11 Preliminary procedure for dealing with a conduct matter**

The Minister shall refer a conduct matter to an investigating panel as soon as possible after that matter has come to his or her attention unless the Minister is satisfied that the conduct matter has been, or is already being dealt with, by criminal or disciplinary proceedings against the Officer concerned.

##### **12 Initial investigation by investigating panel**

- (1) The investigating panel shall, to the extent that it considers appropriate, investigate the complaint or conduct matter referred to it by the Minister under Regulation 10 or 11 and report to the Minister –
  - (a) whether it considers that the conduct under investigation would, if proved, justify a criminal or disciplinary charge; and
  - (b) the action, if any, it recommends that the Minister should take to deal with the complaint or conduct matter.
- (2) In making its report under paragraph (1) in relation to a complaint, the investigating panel may take into account whether any of the following apply –
  - (a) the subject matter of the complaint has been, or is already being, dealt with by means of criminal or disciplinary proceedings against the Officer concerned;
  - (b) the complaint has been withdrawn;
  - (c) the subject matter of the complaint is already the subject matter of a complaint made by or on behalf of the same complainant and contains no fresh allegation;

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- (d) the complaint is vexatious, oppressive or otherwise an abuse of the procedures in these Regulations for dealing with complaints; or
  - (e) the complaint is without foundation, that is, no reasonable person could lend any credence to it.
- (3) If, in the case of a complaint, the complainant fails, without reasonable excuse, to respond satisfactorily to any request by the investigating panel for information or other assistance within 21 days of receiving that request, the investigating panel may treat the complaint as having been withdrawn.
  - (4) If the investigating panel finds that the conduct under investigation would, if proved, justify a criminal or disciplinary charge, the Minister must notify the Police Complaints Authority unless any of the matters referred to in paragraph (2) apply.
  - (5) If a matter is not referred to the Police Complaints Authority under paragraph (4), the Minister may deal with the matter as he or she thinks fit, having taken into account any recommendation in the investigating panel's report.
  - (6) For the purpose of dealing with a matter under paragraph (5) the Minister may appoint a police officer or retired police officer from some other force to act on the Minister's behalf, such police officer being a person who is, or was, of at least the rank of the Officer concerned.
  - (7) The Minister may require any member of the Force to give him or her such assistance as is reasonably necessary or expedient for the purpose of securing an appointment under paragraph (6) and any member of the Force required to give such assistance shall do so.

### **13 Further investigation supervised by Police Complaints Authority**

- (1) Upon receiving a notification under Regulation 12(4), the Police Complaints Authority shall, after consultation with the Minister, appoint a person to investigate the complaint or conduct matter ("investigating officer").
- (2) The purpose of the investigation is to –
  - (a) gather evidence to establish the facts and circumstances of the complaint or conduct matter;
  - (b) assist the Minister in determining whether there is a case to answer in respect of disciplinary proceedings; and
  - (c) recommend what action the Minister should take in respect of the complaint or conduct matter.
- (3) The investigating officer shall be a police officer or retired police officer from some other force who is, or was, of at least the rank of the Officer against whom the complaint is made or whose conduct is otherwise the subject of investigation.
- (4) The Police Complaints Authority may require any member of the Force to give it such assistance as is reasonably necessary or expedient for the purpose of securing an appointment under paragraph (1) and any member of the Force required to give such assistance shall do so.

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- (5) The investigating officer shall as soon as practicable (without prejudicing the investigating officer's or any other investigation of the matter) ensure that the Officer concerned is given written notice –
    - (a) that there is to be an investigation into the case;
    - (b) of the nature of the complaint or conduct matter;
    - (c) that the Officer is not obliged to say anything concerning the matter, but that the Officer may, if the Officer wishes, make a written or oral statement to the investigating officer;
    - (d) that if the Officer makes such a statement it may be used in any subsequent proceedings under these Regulations;
    - (e) that the Officer has the right to seek advice from the association of police officers established or deemed to be established under Article 12 of the Law;
    - (f) that the Officer has the right to be accompanied by any person, other than an interested party, to any meeting, interview or hearing and that such person may make representations on the Officer's behalf.
  - (6) If, during the course of the investigation in relation to a complaint, it becomes clear to the investigating officer that the complaint is frivolous or vexatious, he or she may report that finding to the Minister and recommend that the investigation is not pursued further.
  - (7) Where the investigating officer makes a report and recommendation to the Minister under paragraph (6), the Minister may, with the concurrence of the Police Complaints Authority and, in the case of a matter which may involve the commission of a criminal offence, with the concurrence of the Attorney General, direct that the investigation shall not be pursued further.

#### **14 Investigating officer's report**

- (1) The investigating officer shall give a written report to the Minister and send a copy to the Police Complaints Authority.
- (2) Where the report concerns a complaint or conduct matter that may involve the commission of a criminal offence, the Minister shall send a copy of the report to the Attorney General.

#### **15 Action by Police Complaints Authority and Attorney General following investigating officer's report**

- (1) After considering a report submitted to it under Regulation 14, the Police Complaints Authority shall prepare a statement –
  - (a) as to whether the investigation has or has not been conducted to its satisfaction; and
  - (b) specifying any respect in which it has not been so conducted.
- (2) The Police Complaints Authority may prepare separate statements in respect of the criminal and disciplinary aspects of an investigation.

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- (3) The Police Complaints Authority shall send the statement to –
    - (a) the Minister; and
    - (b) the Attorney General where the statement concerns a matter that may involve the commission of a criminal offence.
  - (4) Where it is practicable to do so, the Police Complaints Authority shall send a copy of the statement to –
    - (a) the Officer concerned; and
    - (b) if the investigation related to a complaint, the complainant.
  - (5) Where the Attorney General receives a report under Regulation 14(2) and a statement under paragraph (3), the Attorney General shall inform the Minister and the Police Complaints Authority whether or not criminal proceedings will be initiated.

#### **16 Action by the Minister following investigating officer's report**

- (1) After either the Attorney General has informed the Minister that criminal proceedings will not be initiated or such proceedings are concluded, the Minister shall send the Police Complaints Authority a memorandum, signed by him or her and stating whether he or she intends to prefer disciplinary charges in respect of the matter which was the subject of the investigation and, if not, his or her reasons for not doing so.
- (2) In a case where no disciplinary charge is preferred against the Officer concerned, no reference to the case shall be made on the Officer's personal record.

#### **17 Powers of Police Complaints Authority as to disciplinary charges**

- (1) Where the Minister does not propose to prefer disciplinary charges, the Police Complaints Authority may recommend the Minister to prefer such disciplinary charges as it may specify.
- (2) Subject to paragraph (6), the Minister shall not withdraw charges under Regulation 18 which he or she has preferred in accordance with a recommendation under paragraph (1).
- (3) If, after the Police Complaints Authority has made a recommendation under paragraph (1) and consulted the Minister, he or she is still unwilling to prefer such charges as the Police Complaints Authority considers appropriate, it may direct him or her to prefer such charges as it may specify.
- (4) Where the Police Complaints Authority gives the Minister a direction under paragraph (3), it shall furnish the Minister with a written statement of its reasons for doing so.
- (5) Subject to paragraph (6), it shall be the duty of the Minister to prefer and proceed with charges specified in a direction given under paragraph (3).
- (6) The Police Complaints Authority may give the Minister leave not to prefer or proceed with charges which otherwise the Minister would be obliged to prefer or proceed with under this Regulation.

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- (7) The Police Complaints Authority may request the Minister to furnish it with such information as it may reasonably require for the purpose of discharging its functions under this Regulation and the Minister shall comply with any such request.

**18 Withdrawal of disciplinary charge**

- (1) At any time before the beginning of a disciplinary hearing, the Minister may direct that any disciplinary charge preferred be withdrawn, unless the Minister has a duty to proceed with it under Regulation 17(2) or (5).
- (2) The Minister shall give the Officer concerned written notice of the withdrawal of a disciplinary charge.
- (3) In a case where all disciplinary charges are withdrawn, no reference to the case shall be made on the personal record of the Officer concerned.

**19 Notice of decision to prefer disciplinary charge and appointment of tribunal**

- (1) Where the Minister decides or is required to prefer a disciplinary charge against an Officer concerned the Minister shall notify the Chairman of the Police Authority who shall appoint a tribunal to hear the disciplinary charge or nominate a member of the Police Authority make such an appointment.
- (2) The Chairman of the Police Authority shall ensure that, as soon as is reasonably practicable, the Officer concerned is given written notice specifying the conduct which it is alleged constituted an offence against discipline and the paragraph of the Discipline Code in respect of which that offence is alleged to have been committed.
- (3) Not less than 21 days before the date of the disciplinary hearing, the Chairman of the Police Authority shall ensure that the Officer concerned is supplied with copies of the documents specified in paragraph (4).
- (4) Those documents are –
- (a) any written statement that the Officer concerned may have made to the investigating officer;
  - (b) an account of any verbal statement the Officer concerned may have made to the investigating officer; and
  - (c) any other relevant statement, document or other material obtained during the course of the investigation, other than the report of the investigating officer prepared pursuant to Regulation 14.

**20 Notice of disciplinary hearing**

- (1) Subject to Regulation 22, the Chairman of the Police Authority shall give the Officer concerned not less than 21 days' written notice of the time, date and place of the disciplinary hearing.

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- (2) The Chairman of the Police Authority shall, at the same time as giving written notice under paragraph (1), give the Officer concerned written notice of –
    - (a) the opportunity to elect to be legally represented at the hearing; and
    - (b) the effect of Regulations 25 and 33(7).

## **21 Procedure on receipt of notice**

- (1) The Officer concerned shall be invited to state in writing, within 14 days of the date on which the last of the documents to be supplied to the Officer pursuant to Regulation 19(3) has been so supplied –
  - (a) whether the Officer accepts that he or she has committed an offence against discipline;
  - (b) whether the Officer wishes to be legally represented at the disciplinary hearing; and
  - (c) whether the Officer proposes to call any witnesses at the hearing and the names and addresses of any such witnesses whose attendance the Officer concerned wishes the Chairman of the Police Authority to secure.
- (2) Where, pursuant to paragraph (1)(c), the Officer concerned states that the Officer wishes the Chairman of the Police Authority to secure the attendance of witnesses the Chairman of the Police Authority shall –
  - (a) order any witness who is a member of the Force to attend the disciplinary hearing; and
  - (b) cause any other witness to be given due notice that their attendance is desired and of the time and place of the hearing.
- (3) Nothing in this Regulation shall require a disciplinary hearing to be adjourned where a witness is unable or unwilling to attend the hearing.

## **22 Advancement of disciplinary hearing date**

Notwithstanding Regulation 20(1), a disciplinary hearing may take place less than 21 days after notice is given if the Chairman of the Police Authority considers it appropriate in the circumstances, where –

- (a) at the time the Officer concerned receives notice pursuant to Regulation 19(2), the Officer is detained pursuant to a sentence of a court in a prison; and
- (b) having been supplied with the documents required by Regulation 19(3), the Officer concerned does not elect to be legally represented at the hearing.

## **23 Documents to be given to the Officer concerned**

- (1) Where the Officer concerned accepts, in accordance with Regulation 21(1), that he or she has committed an offence against discipline, the Chairman of the Police Authority shall cause a summary of

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the facts of the case to be prepared and a copy of it given to the Officer concerned at least 14 days before the disciplinary hearing.

- (2) If the Officer concerned does not agree the summary of facts, the Officer may give a response within 7 days of receipt of the copy of the summary.
- (3) Where the Officer concerned does not accept that he or she has committed an offence against discipline, no summary of facts shall be prepared.

## **24 Documents to be supplied to tribunal**

The Chairman of the Police Authority shall supply the tribunal with –

- (a) a copy of the notice given under Regulation 19(2); and
- (b) where a summary of facts has been prepared under Regulation 23, a copy of that summary and of any response from the Officer concerned.

## **25 Representation at disciplinary hearing**

- (1) Where the Officer concerned has chosen not to be legally represented, the case against the Officer shall be presented by the Minister or by a police officer from some other force provided by the chief officer of that force for the purpose or by a retired police officer from some other force.
- (2) Where the Officer concerned has given notice in accordance with Regulation 21 that he or she wishes to be legally represented, the case against the Officer may be presented in accordance with paragraph (1) or by a legal representative.
- (3) The Officer concerned may conduct his or her case in person.
- (4) Where the Officer concerned has chosen to be legally represented the Officer may be represented at the disciplinary hearing by his or her legal representative.
- (5) Where the Officer concerned has chosen not to be legally represented the Officer may be represented at the disciplinary hearing by a police officer or retired police officer from some other force or, with the agreement of the Chairman of the Police Authority, another person who is not an interested party.
- (6) The Minister or Officer concerned may require any member of the Force to give him or her such assistance as is reasonably necessary or expedient for the purpose of enabling a police officer or retired police officer from some other force to present the case under paragraph (1) or make representations under paragraph (5), as the case may be, and any member of the Force required to give such assistance shall do so.

## **26 Adjournments**

The tribunal may from time to time adjourn a disciplinary hearing if it appears to be necessary or expedient to do so for the due hearing of the case.

**27 Attendance of Officer concerned at disciplinary hearing**

- (1) The Minister shall order the Officer concerned to attend the disciplinary hearing.
- (2) If the Officer concerned fails to attend the disciplinary hearing, it may be proceeded with and concluded in the Officer's absence.
- (3) Where the Officer concerned informs the tribunal in advance that the Officer is unable to attend due to ill-health or some other unavoidable reason, the disciplinary hearing may be adjourned.
- (4) Where, owing to the absence of the Officer concerned, it is impossible to comply with any of the procedures set out in these Regulations, that procedure shall be dispensed with.

**28 Attendance of complainant at disciplinary hearing**

- (1) This Regulation applies where the disciplinary charge being heard arises from a complaint.
- (2) Subject to paragraph (3), the complainant shall be allowed to attend the disciplinary hearing and may, at the discretion of the tribunal, be accompanied by a personal friend or relative.
- (3) Where the complainant or any person allowed to accompany the complainant is called as a witness at the disciplinary hearing, the complainant and any accompanying person shall not be allowed to attend before he or she gives his or her evidence.
- (4) Where the Officer concerned gives evidence then, after the person presenting the case has had an opportunity of cross-examining the Officer, the tribunal shall put to the Officer concerned any questions which the complainant requests should be so put and might have been properly so put by the person presenting the case, or at the tribunal's discretion, may allow the complainant to put such questions to the Officer concerned.
- (5) Except as provided in paragraph (4), the complainant and any person allowed to accompany the complainant shall neither intervene in, nor interrupt, the disciplinary hearing and, if the complainant or such person behaves in a disorderly or abusive manner or otherwise misconducts himself or herself, the tribunal may exclude the complainant or such person from the remainder of the hearing.

**29 Attendance of others at disciplinary hearing**

- (1) Except as provided in Regulation 28 and this Regulation, a disciplinary hearing shall be in private.
- (2) The following persons shall be entitled to attend the hearing of a disciplinary charge –
  - (a) a person appointed under Regulation 2(5) for the purpose of exercising his or her functions of advising the tribunal; and
  - (b) a member of the Police Complaints Authority.

- (3) The Officer concerned may be accompanied at the hearing by any person other than an interested party.
- (4) The tribunal may allow witnesses to be accompanied at the hearing by a personal friend or relative.
- (5) In addition to any other person mentioned in this Regulation, the tribunal may allow such persons as the tribunal considers desirable to attend the whole or such part of the disciplinary hearing as the tribunal may think fit, subject to the consent of the Officer concerned and the person presenting the case against the Officer.

### **30 Exclusion of public from disciplinary hearing**

Where it appears to the tribunal that a witness may, in giving evidence, disclose information which, in the public interest, ought not to be disclosed to a member of the public, the tribunal shall require any member of the public, including the complainant and any person allowed to accompany the complainant or any witness, to withdraw whilst the evidence is given.

### **31 Evidence at disciplinary hearing**

- (1) The tribunal shall determine any question as to whether any evidence is admissible and as to whether any question should or should not be put to a witness.
- (2) With the consent of the Officer concerned, the tribunal may allow any document to be adduced in evidence during the disciplinary hearing notwithstanding that a copy of it has not been supplied to the Officer concerned in accordance with Regulation 19(3).

### **32 Record of disciplinary hearing**

The tribunal at a disciplinary hearing shall –

- (a) ensure that a verbatim record of the proceedings at the hearing is taken; and
- (b) if the Officer concerned so requests within the time limit for any appeal specified in Regulation 36(2) give the member a transcript of the record or a copy of it.

### **33 Finding of disciplinary hearing and subsequent action if disciplinary offence proven**

- (1) The tribunal shall review the facts of the case and decide whether or not the Officer concerned is guilty of the disciplinary offence with which he or she is charged, but shall not find the Officer guilty unless –
  - (a) the Officer has admitted the offence; or
  - (b) the case is proved by the person presenting it on the balance of probabilities.

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- (2) The tribunal shall report to the Minister and, at the same time, notify the Officer whether it finds the Officer concerned has committed a disciplinary offence and, if so, which, if any, of the following punishments it recommends should be imposed on the Officer –
    - (a) dismissal from the Force;
    - (b) requirement to resign from the Force as an alternative to dismissal, taking effect either forthwith or on such date as may be specified in the recommendation;
    - (c) reduction in rate of pay;
    - (d) fine;
    - (e) reprimand.
  - (3) The Minister shall consider what punishment to impose, if any, following consideration of the tribunal's report and may decide to impose on the Officer concerned any punishment specified in paragraph (2) provided that punishment is not more severe than the punishment recommended by the tribunal.
  - (4) Within 3 days of receiving the tribunal's report under paragraph (2), the Minister shall notify the Officer concerned in writing of his or her decision under paragraph (3) and shall include, with that notice –
    - (a) a summary of the reasons for the decision; and
    - (b) a copy of the tribunal's report and recommendation.
  - (5) Any punishment imposed by the Minister described in paragraph (2)(a), (c), (d) or (e) shall have immediate effect from the date of the Minister's notice under paragraph (4).
  - (6) If the Minister imposes a punishment requiring the Officer to resign with effect from a date that is later than the date of the Minister's notice, the Officer shall be suspended until the date that the resignation takes effect.
  - (7) An Officer may not be dismissed or required to resign upon a finding that the Officer has committed a disciplinary offence unless the Officer has been given an opportunity to elect to be legally represented at the disciplinary hearing.
  - (8) The Officer concerned may be dismissed or required to resign under this Regulation without the Officer having been legally represented if the Officer –
    - (a) fails without reasonable cause to give notice in accordance with these Regulations that the Officer wishes to be legally represented;
    - (b) gives notice in accordance with these Regulations that the Officer does not wish to be legally represented; or
    - (c) gives notice in accordance with these Regulations that the Officer wishes to be legally represented but, at any time, withdraws such notice.
  - (9) Any decision of a tribunal taken under this Regulation shall not indicate whether it was taken unanimously or by a majority.

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**34 Personal record to be considered before punishment imposed**

Where the tribunal is considering the question of what, if any, punishment it recommends should be imposed on the Officer, the tribunal –

- (a) shall have regard to the record of service in the Force of the Officer concerned, as shown on the Officer's personal record;
- (b) may receive evidence from any person whose evidence, in the opinion of the tribunal or, in the opinion of the Officer concerned, would assist in determining the question; and
- (c) shall give the Officer concerned or his or her representative an opportunity to make oral or, if appropriate, written representations concerning the question or to adduce evidence relevant to it.

**35 Records of disciplinary proceedings**

- (1) The Minister shall maintain a record of disciplinary proceedings brought against each Officer.
- (2) The Minister shall enter every case brought against an Officer in the record, together with the finding on the case and a record of the decision in any further proceedings in connection with the case.

**36 Appeals**

- (1) An Officer who is found guilty of a disciplinary charge may appeal against either or both of the following –
  - (a) the decision on the disciplinary charge; and
  - (b) the punishment imposed,on the ground that that the decision or punishment, as the case may be, is unreasonable in all the circumstances of the case.
- (2) An appeal may be made to the Royal Court within the period of 21 days beginning with the date of the Minister's notice of decision under Regulation 33(4).
- (3) The Royal Court may, where it is satisfied on the application of the Officer that by reason of the special circumstances of the case it is just and right so to do, extend the period within which an appeal may be made.
- (4) The Royal Court may –
  - (a) allow the appeal;
  - (b) dismiss the appeal; or
  - (c) subject to paragraph (5), substitute some other punishment.
- (5) The Royal Court may not substitute another punishment unless it appears that –
  - (a) the Minister could have imposed it; and
  - (b) it is less severe than the punishment imposed by the Minister.

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- (6) Subject to paragraph (7), all the costs and expenses of an appeal under this Regulation, including the costs of the parties, shall be defrayed out of the annual income of the States.
  - (7) The Royal Court may direct the Officer concerned to pay the whole or any part of the Officer's own costs.

### **37 Personal record of the Officer**

If the Officer concerned so requests –

- (a) a punishment of a fine or reprimand shall be expunged from the Officer's personal record after 3 years have elapsed free from any punishment imposed after disciplinary proceedings; or
- (b) a punishment of reduction in the rate of pay shall be expunged from the Officer's person record after 5 years have elapsed free from any punishment imposed after disciplinary proceedings.

## **PART 4**

### **CLOSING**

### **38 Citation and commencement**

These Regulations may be cited as the States of Jersey Police Force (Chief Officer and Deputy Chief Officer) (Jersey) Regulations 201- and shall come into force 7 days after the day they are made.

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- 1 *chapter 23.820*
  - 2 *chapter 23.325.50*
  - 3 *chapter 16.325*
  - 4 *chapter 23.820*
  - 5 *chapter 23.325*
  - 6 *chapter 16.325*
  - 7 *chapter 15.560*