

## **Annex F**

### **Consent to notice of intention to resign or retire under the Police (Conduct) (Amendment) Regulations 2014**

1. Annex F applies to the handling of misconduct cases that have come to the notice of the appropriate authority on or after 12 January 2015.
2. The conduct regulations (as amended) provide that, as soon as an allegation that the conduct of a police officer may amount to misconduct or gross misconduct has come to the attention of an appropriate authority, the officer concerned may not give notice to resign or retire without obtaining the consent of the appropriate authority. This is the case unless it is determined that the matter is not likely to result in a misconduct hearing. A misconduct hearing will normally be the likely form of proceedings in cases of gross misconduct or cases of misconduct where the officer concerned has a live final written warning, as determined by the severity assessment.
3. This applies as soon as a matter comes to the attention of the appropriate authority. In practice this means that, where a matter has come to the attention of the appropriate authority, and where a severity assessment has yet to be completed, the consent of the appropriate authority must be obtained before notice to resign or retire can be given.
4. Where a severity assessment determines that the conduct of the police officer concerned, if proven, would amount to misconduct and that the form that any disciplinary proceedings would be likely to take would be a misconduct meeting, then the police officer can give notice to resign or retire without the consent of the appropriate authority.
5. Where the severity assessment determines that:
  - a. the conduct of the police officer concerned, if proven, would amount to misconduct; and
  - b. that the form that disciplinary proceedings would be likely to take would be a misconduct hearing; or
  - c. the conduct of the police officer concerned, if proven, would amount to gross misconduct;then the officer concerned may not give notice to resign or retire without the consent of the appropriate authority until it is determined that the matter shall not be referred to a misconduct hearing or a special case hearing, or such proceedings have concluded.
6. In cases where a severity assessment initially determines that the conduct, if proven, would amount to gross misconduct but is subsequently revised

downwards from gross misconduct to misconduct, provided that the revised assessment determines that the likely form of any misconduct proceedings would be a misconduct meeting, then the police officer can give notice to resign or retire without the consent of the appropriate authority.

7. In cases where the severity assessment initially determines that the conduct, if proven, would amount to misconduct but is subsequently revised upwards from misconduct to gross misconduct, the officer will need to obtain consent to give notice to resign or retire from the point where the revised assessment is made.
8. The appropriate authority can consent to a notice to resign or retire being given by the officer concerned only if it is satisfied that:
  - a. The officer concerned is medically unfit to continue to be the subject of any proceedings brought under the regulations; or
  - b. There are other exceptional circumstances that would justify the appropriate authority giving consent to the notice of intention to resign or retire.
9. As the amendment is to regulation 10, where the appropriate authority delegates its functions in relation to any determination on whether consent should be granted, this will need to be authorised by a senior officer in accordance with regulation 3(6).
10. It is for the officer concerned to make out his or her case that they are medically unfit or that there are other exceptional circumstances. This includes obtaining independent evidence of their being medically unfit to continue to be the subject of any proceedings brought under the regulations. The appropriate authority should assess the evidence presented to them by the officer concerned or their representative and should apply a balance of probabilities test in determining whether the officer concerned is medically unfit or whether exceptional circumstances apply. Where the officer has not demonstrated beyond this threshold and the appropriate authority is not convinced on the basis of any other evidence available to it that one of the conditions is met, the appropriate authority should continue to withhold its consent to the officer giving notice to resign or retire.
11. The Secretary of State considers it to be in the public interest that misconduct investigations and proceedings against police officers that could lead to dismissal are taken to their conclusion. Any exceptional circumstances should, in the opinion of the appropriate authority, be of sufficient severity that they outweigh the public interest in a case being taken to its conclusion. Exceptional circumstances need not be limited to medical fitness or to the officer concerned. Such circumstances may involve a third party that would be adversely affected were consent to be withheld, provided that the level of severity is met. In such

cases the appropriate authority should weigh any exceptional circumstances against the public interest.

12. In cases where a covert investigation is being undertaken into the conduct of an officer, especially in the case of a criminal investigation, and no investigation notice has been served on the officer in accordance with the harm test, then the appropriate authority may consider that it is necessary to allow the officer to resign or retire as if they were not under investigation if, in its opinion, the appropriate authority considers that to do otherwise would prejudice the investigation.
13. There may be certain circumstances where the interests of a victim or complainant may be considered to outweigh the broader public interest in a case being taken to a conclusion. This may apply, for example, where there is an allegation that would require an examination of sensitive personal information in relation to a victim or complainant, such as an allegation of an officer having an inappropriate relationship with a vulnerable person or an allegation of sexual assault.
14. Where it is the expressed wish of a victim or a complainant that the officer should be able to resign or retire, and where the case could not proceed without the victim giving evidence at a hearing, the appropriate authority may consider that the harm which the victim or complainant is likely to suffer as a result of participating in the hearing process outweighs the broader public interest in taking the case to a conclusion. In such a case, the appropriate authority may consent to the officer resigning or retiring on the basis of these exceptional circumstances. If the appropriate authority considers that in such a case there is enough evidence for a hearing to proceed without the involvement of the victim or complainant, it should take the case to a conclusion at a hearing and not consent to an officer's resignation or retirement unless other exceptional circumstances apply.
15. It is of the utmost importance that no pressure or undue influence be placed on a victim or complainant in such cases by any person serving with the police or otherwise. The victim or complainant should be given time to consider the decision away from any police force premises or persons serving with the police. The victim or complainant should be asked to submit their view on whether or not they would prefer an officer to be able to resign or retire in writing, giving their reasons for the appropriate authority to consider.
16. The appropriate authority should in most circumstances:
  - a. Seek the view of any complainant or interested person; and

- b. where paragraph 16, 17, 18 or 19 of Schedule 3 to the 2002 Act applies<sup>1</sup>,  
consult with the Commission

before making a determination as to whether to consent to the officer concerned giving notice to resign or retire. It is especially important that the Commission is consulted in cases where paragraph 19 of Schedule 3 to the 2002 Act applies.

17. In seeking the view of any complainant or interested person, it is important that the appropriate authority does not disclose any personal information relating to the officer or a third party that it would not be appropriate to disclose.
18. There may be circumstances where it would not be appropriate to discuss the particular considerations in respect of the medical fitness of the officer concerned or exceptional circumstances with a complainant or interested person, or to consult the Commission, prior to a determination being made by the appropriate authority. This might apply, for example, where there is an immediate concern for the safety or welfare of the officer or a third party. Where the appropriate authority considers that these circumstances apply, it is sufficient for it to inform any complainant or interested party and/or the Commission of its decision after it has been made.
19. The appropriate authority, having determined whether to consent to the officer concerned giving notice to resign or retire, should notify the officer concerned of this determination as soon as practicable.
20. The officer concerned, his or her 'police friend' (or where appropriate legal representative) may make representations, that the officer is medically unfit to be subject to misconduct proceedings, or that exceptional circumstances apply, no later than the end of twenty working days beginning with the first working day after a notice of the determination has been given by the appropriate authority.
21. On receipt of any such representations, the appropriate authority must review its determination and notify the officer concerned of the outcome of its review no later than the end of twenty working days beginning with the first working day after such representations are made.

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<sup>1</sup> Paragraph 16 provides for investigations by the appropriate authority on its own behalf where such an investigation is undertaken under the 2002 Act rather than under Part 3 of the Police (Conduct) Regulations 2012. Paragraph 17 provides for investigations supervised by the Commission, paragraph 18 provides for investigations managed by the Commission and paragraph 19 provides for investigations carried out by the Commission itself.