

## 1989 No. 471

## POLICE

**Royal Ulster Constabulary (Discipline and Disciplinary Appeals) (Amendment) Regulations 1989**

*Made* . . . . . 6th December 1989

*Coming into operation* . . . . . 1st January 1990

*To be laid before Parliament*

The Secretary of State, in pursuance of sections 25 and 26 of the Police Act (Northern Ireland) 1970(a) and Article 14(6) of the Police (Northern Ireland) Order 1987(b), and after consulting the Police Authority and the Police Association in accordance with section 34(2) of the said Act of 1970, hereby makes the following regulations:—

*Citation and commencement*

1. These regulations may be cited as the Royal Ulster Constabulary (Discipline and Disciplinary Appeals) (Amendment) Regulations 1989 and shall come into operation on 1st January 1990.

*Interpretation*

2. In these regulations any reference to the principal regulations is a reference to the Royal Ulster Constabulary (Discipline and Disciplinary Appeals) Regulations 1988(c).

*Personal explanation*

3. In the principal regulations the following provision shall be substituted for regulation 6:—

“6. The investigating officer shall, as soon as is practicable (without prejudicing his or any other investigation of the matter), in writing inform the member subject to investigation of the report, allegation or complaint and shall:—

- (a) in all cases give him in writing the caution set out in paragraph 1 of Schedule 1A,
- (b) where he reasonably believes that the presence of any object, substance or mark found on the person of the member subject to investigation or in or on his clothing, footwear or otherwise in his possession or in any place in which the member was present at a time material to the subject-matter of the report, allegation

(a) 1970 c. 9 (N.I.) as amended by S.I. 1977/53 (N.I. 2) and S.I. 1987/938 (N.I. 10) and modified by S.I. 1973/2163 and S.I. 1981/1670

(b) S.I. 1987/938 (N.I. 10)

(c) S.R. 1988 No. 10

or complaint may be attributable to the participation of the member in the commission of a disciplinary offence specified by him, inform the member that he so believes and give him in writing the caution set out in paragraph 2 of Schedule 1A,

- (c) where he reasonably believes that the presence of the member subject to investigation at a place at or about the time the disciplinary offence was alleged to have been committed may be attributable to his participation in the commission of the offence, inform the member that he so believes and give him in writing the caution set out in paragraph 3 of Schedule 1A.”.

#### *Procedure at hearing*

4. In regulation 17 of the principal regulations after paragraph (11) there shall be inserted the following provision:—

“(12) Where evidence is given that the accused, while subject to investigation—

- (a) after having been given in writing the caution set out in paragraph 1 of Schedule 1A failed to mention any fact relied on in his defence at the hearing, being a fact which in the circumstances existing at the time he could reasonably have been expected to mention during the investigation, or
- (b) after having been given in writing the caution set out in paragraph 2 of Schedule 1A failed or refused to account for any object, substance or mark or any mark on any such object, or
- (c) after having been given in writing the caution set out in paragraph 3 of Schedule 1A failed or refused to account for his presence at a particular place,

the officer conducting the hearing may draw such inferences from the failure or refusal as appear proper:

Provided that no such inferences may be drawn if the failure or refusal occurred before 1st January 1990.”.

#### *Initial personal explanation*

5. In the principal regulations the following provision shall be substituted for regulation 30:—

“30. The investigating officer shall, as soon as is practicable (without prejudicing his or any other investigation of the matter), in writing inform the senior officer subject to investigation of the report, allegation or complaint and shall:—

- (a) in all cases give him in writing the caution set out in paragraph 1 of Schedule 1A,
- (b) where he reasonably believes that the presence of any object, substance or mark found on the person of the senior officer subject to investigation or in or on his clothing, footwear or otherwise in his possession or in any place in which the senior officer was present at a time material to the subject-matter of the report, allegation or complaint may be attributable to the participation of the senior officer in the commission of a

disciplinary offence specified by him, inform the senior officer that he so believes and give him in writing the caution set out in paragraph 2 of Schedule 1A,

- (c) where he reasonably believes that the presence of the senior officer subject to investigation at a place at or about the time the disciplinary offence was alleged to have been committed may be attributable to his participation in the commission of the offence, inform the senior officer that he so believes and give him in writing the caution set out in paragraph 3 of Schedule 1A.”

*Personal explanation following investigation*

6. In the principal regulations for regulation 31 there shall be substituted the following provision:—

“31.—(1) Where, following the investigation of a report, allegation or complaint, it appears that a senior officer may have committed an offence, the Police Authority shall consider whether disciplinary proceedings need be taken.

(2) Unless the Police Authority decide that no disciplinary proceedings need be taken, the Police Authority shall inform the senior officer in writing of the report, allegation or complaint and give him a written notice asking him whether or not he admits that he has committed an offence.

(3) At the same time the senior officer shall also be given in writing:—

(a) in all cases, the caution set out in Schedule 1A,

(b) where the Police Authority reasonably believes that the presence of any object, substance or mark found on the person of the senior officer subject to investigation or in or on his clothing, footwear or otherwise in his possession or in any place in which the senior officer was present at a time material to the subject-matter of the report, allegation or complaint may be attributable to the participation of the senior officer in the commission of a disciplinary offence specified by it, the caution set out in paragraph 2 of Schedule 1A,

(c) where the Police Authority reasonably believes that the presence of the senior officer subject to investigation at a place at or about the time the disciplinary offence was alleged to have been committed may be attributable to his participation in the commission of the offence, the caution set out in paragraph 3 of Schedule 1A.”

(4) If the Police Authority decide that no disciplinary proceedings need be taken, they shall so inform the senior officer in writing forthwith.”

*Procedure at hearing*

7. In regulation 37 of the principal regulations after paragraph (8) there shall be inserted the following provision:—

“(9) Where evidence is given that the accused, while subject to investigation—

- (a) after having been given in writing the caution set out in paragraph 1 of Schedule 1A failed to mention any fact relied on in his defence at the hearing, being a fact which in the circumstances existing at the time he could reasonably have been expected to mention during the investigation, or
- (b) after having been given in writing the caution set out in paragraph 2 of Schedule 1A failed or refused to account for any object, substance or mark or any mark on any such object, or
- (c) after having been given in writing the caution set out in paragraph 3 of Schedule 1A failed or refused to account for his presence at a particular place,

the tribunal may draw such inferences from the failure or refusal as appear proper:

Provided that no such inferences may be drawn if the failure or refusal occurred before 1st January 1990.”

#### *Codes of practice*

8. In the principal regulations after paragraph 3(b) of Schedule 1 there shall be inserted:—

“; or

- (c) fails to comply with any requirement of a code of practice for the time being in force under Article 65 of the Police and Criminal Evidence (Northern Ireland) Order 1989(a), unless such proceedings are precluded by Article 22 of the Order of 1987.”

#### *Interpretation and application*

9. In regulation 3 of the principal regulations for the words “ ‘offence or disciplinary offence’ ” there shall be substituted “ ‘offence’ or ‘disciplinary offence’ ”.

#### *Remission of cases*

10. In regulation 14(1) of the principal regulations for the word “who” there shall be substituted:— “as”.

#### *Notice of appeal*

11. In regulation 50(3) of the principal regulations for the words “decision; and, if he fails to do so ... shall be taken.” there shall be substituted:—

“decision. If he fails to do so, the Secretary of State shall be entitled to treat the notice of appeal as having been withdrawn; and, if the Secretary of State does so, no further action in connection with the appeal shall be taken.”

*Inquiries*

**12.** In regulation 53(4)(a) of the principal regulations for the words “was either of those ranks;” there shall be substituted “was of either of those ranks;”.

*P. L. Brooke*

One of Her Majesty's Principal  
Secretaries of State

Northern Ireland Office  
6th December 1989

In the principal regulations after Schedule 1 there shall be inserted the following Schedule:—

“SCHEDULE 1A

Regulations 6, 30  
and 31

### CAUTIONS

1. You do not have to say anything unless you wish to do so but I must warn you that if you fail to mention any fact which you rely on in your defence in any subsequent disciplinary proceedings, your failure to take the opportunity to mention it at this time may be treated at the disciplinary proceedings as supporting any relevant evidence against you. You may, if you so desire, make a written or oral statement to the investigating officer or the chief constable or the Police Authority, as appropriate. Any such statement may be used in subsequent disciplinary proceedings.

2. You do not have to say anything unless you wish to do so but what you say may be given in evidence in any subsequent disciplinary proceedings.

On ..... at ..... a ..... was found on your person/in or on your clothing or footwear/in your possession/in ..... where you were at the time/a mark was found on such object, that is ...../and I have reason to believe that this was attributable to your participation in a disciplinary offence of .....

I therefore request you to account for this .....

I must warn you that if you fail or refuse to do so such inferences may be drawn at any subsequent disciplinary proceedings from your failure or refusal as appear proper.

3. You do not have to say anything unless you wish to do so but what you say may be given in evidence.

On ..... at ..... about the time the disciplinary offence of ..... is alleged to have been committed I have reason to believe your presence at that time may be attributable to your participation in the commission of that offence.

I therefore request you to account for your presence at ..... at that time.

I must warn you that if you fail or refuse to do so, such inferences may be drawn at any subsequent disciplinary proceedings from your failure or refusal as appear proper.”

EXPLANATORY NOTE

*(This note is not part of the Regulations.)*

1. Regulations 3 to 7 introduce changes made necessary by virtue of the Criminal Evidence (Northern Ireland) Order 1988.
2. Regulations 3, 5 and 6 make provision for notification of an officer against whom a complaint has been made and set out the appropriate caution or cautions to be given to him.
3. Regulations 4 and 7 amend, respectively, regulations 17 and 37 of the principal regulations to permit inferences to be drawn from the accused's failure, while subject to investigation, to mention any fact relied on in his defence at the hearing.
4. Regulation 8 introduces to the Code of Discipline a new offence of failure to comply with a code of practice issued under Article 65 of the Police and Criminal Evidence (Northern Ireland) Order 1989.
5. Regulations 9, 10, 11 and 12 make minor amendments to the principal regulations to correct printing or drafting errors.