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STATUTORY INSTRUMENTS

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**1998 No. 640**

**POLICE**

**The NCIS (Senior Police Members) (Appeals) Order 1998**

*Made* - - - - *9th March 1998*  
*Laid before Parliament* *11th March 1998*  
*Coming into force* - - *1st April 1998*

In exercise of the powers conferred on him by section 38 of the Police Act 1997<sup>(1)</sup>, the Secretary of State hereby makes the following Order:

**Citation and commencement**

1. This Order may be cited as the NCIS (Senior Police Members) (Appeals) Order 1998 and shall come into force on 1st April 1998.

**Interpretation**

2. In this Order:

“the 1997 Act” means the Police Act 1997;

“disciplinary hearing” means a hearing pursuant to provisions made in regulations under section 37 of the 1997 Act;

“NCIS” means the National Criminal Intelligence Service established under section 2 of the 1997 Act;

“NCIS appeals tribunal” means a tribunal established under article 6 of this Order;

“NCIS Service Authority” means the Service Authority established under section 1 of the 1997 Act;

“NCIS service fund” means the fund maintained by the NCIS Service Authority under section 16 of the 1997 Act;

“National Crime Squad” means the National Crime Squad established under section 48 of the 1997 Act;

“police force” means a force maintained under section 2 of the Police Act 1996<sup>(2)</sup>, and

“member of a police force” shall be construed accordingly;

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(1) 1997 c. 50.

(2) 1996 c. 16.

“referred matter” means a matter referred to the Police Complaints Authority pursuant to regulations made under section 39 of the 1997 Act;

“senior police member” means the Director General and persons appointed under section 9(2) (a) of the 1997 Act as police members of NCIS.

## **PART I—**

### **APPEALS AGAINST DISMISSAL, ETC.**

#### **Appeals against dismissal etc.**

3.—(1) A senior police member of NCIS who is dismissed or required to resign by a decision taken in proceedings under regulations made in accordance with section 37 of the 1997 Act may appeal to an NCIS appeals tribunal against the decision except where he has a right of appeal to some other person; and in that case, he may appeal to an NCIS appeals tribunal from any decision of that other person as a result of which he is dismissed or required to resign.

(2) Where an NCIS appeals tribunal allow an appeal it may, if it considers it appropriate to do so, make an order dealing with the appellant in a way—

- (a) which appears to the tribunal to be less severe than the way in which he was dealt with by the decision appealed against, and
- (b) in which he could have been dealt with by the person who made that decision.

#### **Effect of orders**

4.—(1) Where an appeal is allowed, the order shall take effect by way of substitution for the decision appealed against, and as from the date of that decision or, where that decision was itself a decision on appeal, the date of the original decision appealed against.

(2) Where the effect of the order made by the NCIS appeals tribunal is to reinstate the appellant as a senior police member of NCIS, he shall, for the purpose of reckoning service for pension and, to such extent (if any) as may be determined by the order, for the purpose of pay, be deemed to have served in NCIS continuously from the date of the original decision to the date of his reinstatement.

(3) Where the effect of the order made by the NCIS appeals tribunal is to reinstate the appellant as a senior police member of NCIS and he was suspended for a period immediately preceding the date of the original decision or any subsequent decision, the order shall deal with the suspension.

#### **Costs**

5.—(1) An appellant shall pay the whole of his own costs unless the NCIS appeals tribunal directs that the whole or any part of his costs are to be defrayed out of the NCIS service fund.

(2) Subject to sub-paragraph (1), all the costs and expenses of an appeal under this Order, including the costs of the respondent and any remuneration or expenses paid by virtue of article 7, shall be defrayed out of the NCIS service fund.

## **PART II— CONSTITUTION OF TRIBUNAL ETC.**

### **Membership of an NCIS appeals tribunal**

6.—(1) In any appeal under article 3, the NCIS appeals tribunal shall consist of three members appointed by the Secretary of State, of whom—

- (a) one shall be a person chosen from a list of persons who have a seven year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990<sup>(3)</sup> and have been nominated by the Lord Chancellor for the purpose of this Order;
- (b) one shall be a member of a police authority who is not a member of the NCIS Service Authority; and
- (c) one shall be a person who—
  - (i) is (or has within the previous five years been) an inspector of constabulary, or
  - (ii) has within the previous five years been (and is no longer) the Commissioner of Police of the Metropolis.

(2) The Member of the NCIS appeals tribunal to whom sub-paragraph (1)(a) applies shall be the Chairman.

### **Remuneration and expenses**

7. Members of the NCIS appeals tribunal shall be—

- (a) paid such remuneration, and
- (b) reimbursed for such expenses,

as the Secretary of State may determine.

## **PART III— PROCEDURE**

### **Respondent**

8. On any appeal under article 3 the respondent shall be the NCIS Service Authority.

### **The Registrar**

9.—(1) For the purposes of this Order, the Registrar means an officer or member (not being a police member) of the NCIS Service Authority who is appointed by the Authority to perform the functions of the Registrar specified in this Order in relation to any appeal brought by a senior police member of NCIS under article 3.

(2) Subject to article 10(3), on receipt of a notice of appeal by a senior police member of NCIS the Registrar shall forthwith request the Secretary of State to appoint the members of the NCIS appeals tribunal which shall determine the appeal in accordance with this Order.

(3) The Secretary of State shall inform the Registrar, as soon as he has made the required appointments, of the names and addresses of the members of the tribunal whom he has appointed.

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(3) 1990 c. 41.

(4) The Registrar shall keep a register (“the NCIS Appeals Tribunal Register”) of all appeals brought by senior police members of NCIS under article 3.

(5) Any functions of the Registrar specified in this Order may be performed by another officer or member (not being a police member) of NCIS who is appointed by the NCIS Service Authority to act as an assistant to the Registrar.

### **Notice of Appeal**

**10.**—(1) An appeal under article 3 shall be made by the appellant giving the Registrar written notice of appeal, in the form set out in the Schedule to this Order or a form to the like effect.

(2) The notice of appeal shall be given within the period of 21 days beginning with the day on which the appellant was notified in writing of the relevant decision and in this and paragraph (5) the expression “relevant decision” means the decision as to finding or punishment or both, as the case may be, in relation to the disciplinary charge which was preferred against the appellant, except that where there is a right of appeal from such decision to some other person it means the decision of that other person.

(3) Where an application is made by the appellant to extend the period for giving notice of appeal the Registrar shall request the Secretary of State to appoint a person who satisfies the requirements of article 6(1)(a), who shall determine whether it is just and right to extend the period for giving notice of appeal and shall notify the appellant of his decision which shall be final.

(4) If the appellant does not annex to the notice of appeal all the written statements in paragraphs 5, 6 and 7 thereof (hereinafter referred to as “the supporting statements”), he shall supply the Registrar with the statements not annexed to the notice of appeal within the period of 50 days beginning with the day on which he was notified in writing of the relevant decision; and, if he fails to do so, the Registrar shall be entitled to treat the notice of appeal as withdrawn and no further action in connection with the appeal shall be taken.

(5) Where the period for giving notice of appeal is extended the period for serving the supporting statements in accordance with paragraph (4) shall be calculated as if the decision under paragraph (3) was the “relevant decision”.

(6) The appellant shall send a copy of the notice of appeal and of the supporting statements to the respondent at the same time as they are sent to the Registrar.

(7) Where the Registrar is satisfied, on the application of the appellant, that by reason of the special circumstances of the case it is just and right to do so, he may extend the period mentioned in paragraph (4) and, in such case, paragraph (4) shall have effect as if for the period in question there were substituted such extended period as he may specify.

(8) Following receipt of the notice of appeal and supporting statements, the Registrar shall—

- (a) enter particulars of the appeal in the NCIS Appeals Tribunal Register;
- (b) when he has been notified of the names and addresses of the members of the tribunal, provide each member with a copy of the notice of appeal and the supporting statements.

### **Statement by respondent**

**11.**—(1) The respondent shall, not later than 21 days after the date on which a copy of the notice of appeal and supporting statements are sent to it under article 10(6), send to the Registrar a statement as to whether or not the respondent intends to oppose the appeal and, where it desires to oppose it, as to—

- (a) the facts and contentions on which it relies and the documentary or other evidence, if any, which it desires to submit;
- (b) whether it desires to appear at any hearing by a legal or other representative; and

- (c) whether (unless the appeal is against punishment only), in any such event, the hearing would be one to which article 19 applies and, if so, the name and address of the complainant within the meaning of that article.
- (2) The respondent shall also send to the Registrar—
  - (a) a copy of the report of the disciplinary hearing; and
  - (b) a copy of the discipline form prepared in connection with the disciplinary hearing.
- (3) The respondent, if so required by the Registrar on behalf of the Chairman of the tribunal, shall also send him such number of copies as he may require of such papers, reports, records and other documents as the Chairman may specify, by such date as may have been specified in the requirement.
- (4) The respondent shall send to the appellant—
  - (a) a copy of the statement sent to the Registrar under paragraph (1); and
  - (b) a list of the documents copies of which have been sent to the Chairman in accordance with paragraph (3) together with copies of all such documents save in so far as they have previously been given to the appellant.
- (5) On receipt of the statement of the respondent and any documents sent under paragraphs (2) and (3) the Registrar shall provide each member of the NCIS appeals tribunal with a copy of the statement and those documents.
- (6) Where, as respects a particular charge, the appeal is against both finding and punishment the Registrar shall, so far as is practicable, withhold so much of the statement in paragraph (1) and documents mentioned in paragraph (3) as appear to him to relate to the appellant's general character and record of NCIS and police service until the NCIS appeals tribunal has reached a decision as to the finding and is about to consider the question of punishment.
- (7) Where the Registrar is satisfied, on the application of the respondent, that by reason of the special circumstances of the case it is just and right to do so, he may extend the period mentioned in paragraph (1) and, in such case, paragraph (1) shall have effect as if for the period in question there were substituted such extended period as he may specify.

**Withdrawal and amendment of notice of appeal, etc.**

- 12.**—(1) At any time before an appeal is decided by the NCIS appeals tribunal it may, on written application in that behalf, allow the appellant to withdraw his notice of appeal and, accordingly, where it so allows, no further action in relation to the appeal shall be taken.
- (2) The appellant shall send a copy of his written application under paragraph (1) to the respondent.
  - (3) The tribunal shall send a copy of its decision on the application under paragraph (1) to the appellant and the respondent.
  - (4) At any time before an appeal is decided the Chairman of the tribunal may, in his discretion and subject to such conditions, if any, as he thinks fit, allow—
    - (a) the appellant to amend his notice of appeal or any of the supporting statements;
    - (b) the respondent to amend his statement under article 11(1) or the documentary material sent to the Registrar in accordance with article 11(3).
  - (5) Any amendments made pursuant to paragraph (4) shall be copied by the amending party to the other party and to the NCIS appeals tribunal.

**Preliminary consideration by the tribunal**

- 13.** Not later than 3 months after the date on which the Registrar received the notice of appeal under article 10, the NCIS appeals tribunal shall—

- (a) consider the parties' statements and any other documents which they have submitted in support of their case; and
- (b) decide whether—
  - (i) a hearing of the appeal should be held; or
  - (ii) the parties should be notified that the NCIS appeals tribunal is minded to determine the appeal without a hearing.

### **Hearing**

**14.**—(1) An NCIS appeals tribunal may determine a case without a hearing but shall not decide to do so unless both the appellant and the respondent have been afforded an opportunity to make written or, if either so requests, oral representations and any such representations have been considered.

(2) Where a hearing is held, the appellant shall have the right to appear by a serving member of a police force, a police member of NCIS or the National Crime Squad, by counsel or a solicitor; and the respondent shall have the right to appear by an officer of NCIS, by the clerk or other officer of the NCIS Service Authority, by counsel or a solicitor.

(3) Paragraph (2) shall apply to any hearing of oral representations under paragraph (1).

### **Notice of hearing**

**15.**—(1) Where the NCIS appeals tribunal decides that there should be a hearing of the appeal, the Registrar shall, with due regard to the convenience of the parties, fix the time and place for the hearing and, not less than 28 days before the date so fixed (or such shorter time as the parties may agree), send to each party a notice that the hearing is to be at such time and at such place.

(2) The hearing of the appeal shall be fixed so as to commence not later than 6 months after the date on which the Registrar received the notice of appeal under article 10, unless the Chairman of the tribunal is satisfied that by reason of the special circumstances of the case it is just and right to extend that period and in such case the appeal shall be fixed so as to commence within such extended period as the Chairman may specify.

(3) The Registrar shall include with the notice of hearing—

- (a) information and guidance as to attendance at the hearing of the parties and witnesses and the right to be represented as specified in article 14(2);
- (b) a statement that the parties will receive a copy of the report of the tribunal and that this will contain its decision, any directions as to costs, the reason for its decision and any direction as to costs; and
- (c) a statement explaining the possible consequences of non-attendance and of the right of a party who does not attend and is not represented to make representations in writing.

(4) Subject to paragraph (2), the NCIS appeals tribunal may alter the time and place of the hearing and the Registrar shall give the parties not less than 7 days (or such shorter time as the parties agree) notice of any such alteration; but any altered hearing date shall not (unless the parties agree) be before the date notified under paragraph (1).

### **Failure of parties to attend hearing**

**16.**—(1) If a party fails to attend or be represented at a hearing of which he has been duly notified in terms of article 15, the NCIS appeals tribunal may—

- (a) unless it is satisfied that there is sufficient reasons for such absence, hear and determine the appeal in the party's absence; or
- (b) adjourn the hearing.

(2) Before deciding to dispose of the appeal in the absence of a party, the NCIS appeals tribunal shall consider the party's statements and any other documents submitted by them in relation to the appeal.

### **Procedure at the hearing**

17.—(1) Subject to the provisions of this Order—

(a) the hearing shall be held in private:

Provided that it shall be within the discretion of the NCIS appeals tribunal to allow such person or persons as it considers desirable to attend the whole or such part of the hearing as it thinks fit;

(b) the procedure at the hearing shall be determined by the NCIS appeals tribunal who shall have the power to hear any new evidence or to re-hear the evidence given at the disciplinary hearing;

(c) unless the NCIS appeals tribunal otherwise determines, the evidence adduced by the respondent shall be given first;

(d) all oral evidence given at the hearing shall be given on oath;

(e) all witnesses giving evidence at the hearing shall be subject to examination and cross-examination.

(2) A member of the Council on Tribunals shall be entitled to attend the hearing.

(3) Any question as to whether any evidence is admissible, or whether any question should or should not be put to a witness, shall be determined by the NCIS appeals tribunal.

(4) A verbatim record of the evidence given at the hearing shall be taken and kept for a period of not less than seven years from the end of the hearing unless the Chairman of the tribunal requests that a transcription of the record be made.

### **Statements in lieu of oral evidence**

18.—(1) Subject to the provisions of this article, the NCIS appeals tribunal may admit evidence by way of a written statement made by a person, notwithstanding that he may not be called as a witness, so, however, that evidence shall not be admissible thereunder if it would not have been admissible had it been given orally.

(2) For the purposes hereof, a written statement purporting to be made and signed by a person and witnessed by another person shall be presumed to have been made by that person unless the contrary be shown.

(3) If either of the parties proposes to adduce written evidence in pursuance of this article at a hearing, he shall give the other party a copy of the statement at least 21 days before the date of that hearing and invite that party to agree or object, in writing, to the admission of the statement in evidence without the maker thereof being called as a witness and being available for cross-examination and, if that party, within 14 days from the receipt by him of the copy of the statement has so objected, the statement shall only be admitted in evidence if the maker is called and is available as aforesaid:

Provided that if the parties in writing agree in the case of a particular statement, this paragraph shall have effect in relation to that statement as though—

(a) the reference to a period of 21 days were a reference to such shorter period as they may agree;

(b) the reference to a period of 14 days were a reference to such shorter period, expiring before the date of the hearing, as they may agree.

(4) Where, notwithstanding that the other party has not so objected and a written statement has been admitted in evidence without the maker thereof being called and being available as aforesaid, the NCIS appeals tribunal is of the opinion that oral evidence should be given, it may request that the maker be called as a witness and, in such cases, unless the maker gives oral evidence, the tribunal shall be entitled to disregard the written evidence.

(5) Nothing in this article shall prejudice the admission of written evidence which would be admissible apart from the provisions thereof.

### **Attendance of complainant at hearing**

**19.**—(1) This article shall apply in relation to a hearing where the charge as respects which the appeal is brought is in respect of a complaint or referred matter and the appeal is not against punishment only.

(2) The Registrar shall cause notice of the date of the hearing to be sent to the complainant, at the same time as such notice is sent to the parties under article 15.

(3) Notwithstanding anything in article 17 but subject to paragraph (5), the NCIS appeals tribunal shall allow the complainant to attend the hearing while witnesses are being examined, or cross-examined, on the facts alleged in the charge and, if the tribunal considers it appropriate to do so on account of the age of the complainant, or otherwise, it shall allow him to be accompanied by a personal friend or relative who is not to be called as a witness at the hearing;

Provided that—

- (a) where the complainant is to be called as a witness at the hearing he and any person accompanying him shall not be allowed to attend before he gives his evidence; and
- (b) where it appears to the NCIS appeals tribunal that a witness may in giving evidence disclose information which, in the public interest might not to be disclosed to a member of the public, it shall require the complainant and any person allowed to accompany him to withdraw while that evidence is given.

(4) Where the appellant gives evidence, then, after the person representing the NCIS Service Authority has had an opportunity of cross-examining him, the Chairman of the tribunal shall put to him any questions which the complainant requests should be so put and might have been properly so put by way of cross-examination and, at his discretion, may allow the complainant himself to put such questions.

(5) Subject as aforesaid, the complainant and any person allowed to accompany him shall neither intervene in, nor interrupt the hearing; and if he or such a person should behave in a disorderly or abusive manner, or otherwise misconduct himself, the Chairman of the tribunal may exclude him from the remainder of the hearing.

### **Report of the tribunal**

**20.**—(1) Subject to paragraphs (3) and (4), the NCIS appeals tribunal shall determine the appeal—

- (a) where no hearing has been held, after consideration of any representations made by virtue of article 14(1); or
- (b) where a hearing has been held, either at the end of the hearing or, where the NCIS appeals tribunal reserves its decision, at a later date.

(2) The decision of the NCIS appeal tribunal may be taken by a majority and the Chairman shall record whether the decision was unanimous or taken by a majority.

(3) The decision of the NCIS appeals tribunal shall be made—

- (a) where no hearing has been held pursuant to article 14(1), not later than 6 months after the date on which the Registrar received the notice of appeal under article 10; or

- (b) where a hearing has been so held, not later than one month after the end of the hearing.
- (4) Where a decision cannot be made within the relevant period mentioned in paragraph (3) by reason of any member of the tribunal being incapable of carrying out his duties—
  - (a) the time limit specified in paragraph (3) shall not apply; and
  - (b) in such a case the decision of the tribunal shall be made as soon as reasonably practicable.
- (5) The decision of the NCIS appeals tribunal shall be recorded not later than 7 days after the date on which it is made in a document which shall contain—
  - (a) the terms of the order made by the tribunal in determining the appeal including any direction as to costs; and
  - (b) a statement of the reasons for the decision, including the reasons for any direction as to costs,and shall be signed and dated by the Chairman of the tribunal who shall send it to the Registrar.
- (6) The Registrar shall forthwith send a copy of the document to each party.
- (7) The Registrar shall send a copy of the document to the Secretary of State.
- (8) The Registrar shall enter particulars of the decision in the NCIS Appeals Tribunal Register.
- (9) Where the decision appealed against arose from a complaint, the Registrar shall inform the complainant of the finding of the tribunal.

### **Irregularities**

- 21.**—(1) Any irregularity resulting from a failure to comply with any provision of this Part of the Order or of any direction of the NCIS appeals tribunal shall not of itself render the proceedings void.
- (2) Where any irregularity comes to the attention of the NCIS appeals tribunal, it may, and shall if it considers that a party may have been prejudiced by that irregularity, give such directions to cure or waive the irregularity as it thinks just before reaching its decision.
- (3) Clerical mistakes in any document regarding a direction or decision of the Chairman or of the tribunal or errors arising in such a document from an accidental slip or omission may be corrected by the Chairman by certificate under his hand.

Home Office  
9th March 1998

*Alun Michael*  
Minister of State

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

SCHEDULE

FORM OF NOTICE OF APPEAL TO THE NCIS APPEALS TRIBUNAL

1. I, (name and number) was, on (insert date) and while holding the rank of in NCIS, found to have committed the disciplinary offence(s) mentioned in the first column below with which I had been charged and was punished therefor as mentioned in the second column below, [such punishment(s) being varied on appeal to the punishment(s) mentioned in the third column below]:

Offence proved	Punishment therefor	Varied on appeal to
<b>1</b>	<b>1</b>	<b>1</b>
<b>2</b>	<b>2</b>	<b>2</b>
<b>3</b>	<b>3</b>	<b>3</b>

(a) (a) I was notified in writing of the said punishment(s) on (insert date).

(b) The hearing of the charge(s) was conducted and the finding(s) reached by [a tribunal established under regulation 12(1) of the NCIS (Discipline) (Senior Police Members) Regulations 1998].

3. I desire to appeal against [the finding(s) and punishment(s) on charges numbered above] [the punishment(s) on charges numbered above but not against the relevant finding(s)].

4. I [desire] [do not desire] to submit additional evidence not taken into consideration at the original hearing of the charge(s) against me.

5. I [annex] [do not annex] a concise statement (marked A) of the grounds on which I desire to appeal.

6. I [annex] [do not annex] a statement (marked B) comprising either a list of the documents which I desire to submit in support of the appeal (other than documents produced at the original hearing) or a statement that I do not wish to submit any such documents.

7. I [annex] [do not annex] a statement (marked C) comprising either a list of the names and addresses of the witnesses I desire to call in support of my appeal and a concise statement of the facts which each witness will prove or a statement that I do not desire to call any witnesses.

8. I understand that any such statement as is referred to in paragraphs 5, 6 or 7 which is not annexed must be supplied to the Registrar within the period of 50 days beginning with the date mentioned in paragraph 2(a).

9. [I was suspended on (insert date) and was still suspended immediately before punishment was imposed.]

10. I declare that a copy of this notice of appeal and of any statement annexed thereto has been sent to the NCIS Service Authority.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order makes provision about appeals by senior police members of the National Criminal Intelligence Service who are dismissed or required to resign by a decision taken in proceedings under Regulations made in accordance with section 37 of the Police Act 1997 (c. 50). The provisions generally mirror those of Schedule 6 to the Police Act 1996 (c. 16) and the Police (Appeals) Rules 1985 (S.I.1985/576). They also make provision for the appointment of a Registrar to the tribunal and confer functions upon him.