

2004 No. 652

POLICE

**The Ministry of Defence Police Appeal Tribunals Regulations
2004**

<i>Made</i> - - - -	<i>9th March 2004</i>
<i>Laid before Parliament</i>	<i>10th March 2004</i>
<i>Coming into force</i> - -	<i>1st April 2004</i>

The Secretary of State, in exercise of the powers conferred upon him by sections 1(5), 4A(3) and (4) and 6A of the Ministry of Defence Police Act 1987(a) hereby makes the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Ministry of Defence Police Appeal Tribunals Regulations 2004.

(2) These Regulations come into force on 1st April 2004, but do not apply in relation to conduct which occurred or began before that date.

(3) In any case where the date on which a person's conduct occurred or began is not apparent, it is to be assumed that it began on or after the date mentioned in paragraph (2) unless that person shows that it began or occurred before that date.

(4) These Regulations extend to England and Wales and Scotland.

Interpretation

2. In these Regulations, unless the context otherwise requires—

“the Commission” means the Independent Police Complaints Commission

“the Conduct Regulations” means the Ministry of Defence Police (Conduct) Regulations 2004(b) and the Ministry of Defence Police (Conduct) (Senior Officers) Regulations 2004(c);

“counsel” means—

(a) in England and Wales, a barrister, and

(b) in Scotland, an advocate;

“the force” means the Ministry of Defence Police;

“the Head of Civilian Management” means the Head of Civilian Management for the Ministry of Defence Police or, if there ceases to be such an office, the person who in the opinion of the

(a) 1987 c. 4; Sections 4A and 6A were inserted by section 79 of the Police Reform Act 2002.

(b) S.I. 2004/653

(c) S.I. 2004/654

Secretary of State for the time being exercises comparable functions to those exercisable by the holder of that office on the date on which these Regulations come into force;

“Ministry of Defence Police Committee” means the committee appointed by the Secretary of State under section 1(5) of the Ministry of Defence Police Act 1987 or, in relation to any function under these regulations that that committee has determined is to be exercisable by a sub-committee appointed by the committee, the sub-committee by which it is so exercisable;

“original hearing”, in relation to an appellant, means the hearing at the conclusion of which the conduct of the appellant was found to have failed to meet the appropriate standard;

“other police force” means a police force other than the force;

“police appeals tribunal”, in relation to a case, means the Ministry of Defence police appeals tribunal appointed to determine the case; and

“senior officer” means a member of the force in Great Britain other than a member holding the rank of chief superintendent or any lower rank.

Appeals to the police appeals tribunal

3.—(1) A member of the force who is dismissed, required to resign or reduced in rank by a decision taken in proceedings under the Conduct Regulations may appeal to a Ministry of Defence Police appeals tribunal appointed under regulation 4 against the decision unless he has a right to apply to some other person for a review of the decision.

(2) If he has a right to apply to some other person for a review of the decision, he may appeal to a Ministry of Defence Police appeals tribunal from any decision of that other person as a result of which he is dismissed, required to resign or reduced in rank.

(3) Where a Ministry of Defence Police appeals tribunal allows an appeal made to it under paragraph (1) or (2), it may, if it considers that it is appropriate to do so, make an order dealing with the appellant in any way which—

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

Appointment and composition of police appeals tribunal

4.—(1) The composition of the Ministry of Defence Police appeals tribunal differs according to—

- (a) whether the appellant was a senior officer immediately before the original hearing, and
- (b) whether the appellant was a member of the force serving in England and Wales or Scotland at the time the relevant conduct occurred or began.

(2) If the appellant was a senior officer immediately before the original hearing, the Ministry of Defence Police appeals tribunal is to consist of three members appointed by the Head of Civilian Management, of whom—

- (a) if the appellant was serving in England and Wales, one is 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^(a) and have been nominated by the Lord Chancellor for the purposes of this regulation,
- (b) if the appellant was serving in Scotland, one is a person chosen from a list of persons who have been nominated by the Lord President of the Court of Session for the purposes of this regulation,
- (c) one is a member of a police authority other than the Ministry of Defence Police Committee, and

^(a) 1990 c. 41.

- (d) one is a person who—
 - (i) is (or has within the previous five years been) an inspector of constabulary, or
 - (ii) if the appellant is serving in England and Wales, has within the previous five years been (and is no longer) the Commissioner of the Police of the Metropolis.
- (3) The member of the tribunal within paragraph (2)(a) or (b) is to be the chairman.
- (4) If the appellant was not a senior officer immediately before the original hearing, the Ministry of Defence Police appeals tribunal is to consist of four members appointed by the Head of Civilian Management, of whom—
 - (a) one is chosen from the list referred to in paragraph (2)(a) or (b),
 - (b) one is a member of the Ministry of Defence Police Committee,
 - (c) one is a person chosen from a list maintained by the Secretary of State of persons who are (or have within the previous five years been) chief officers of police, but are not and have not been the chief constable of the force, and
 - (d) one is a retired member of the force or some other police force who held an appropriate rank at the time of his retirement.
- (5) For the purposes of this regulation “original hearing” means the hearing as a result of which the decision appealed against was taken (whether the appeal relates to the decision taken by the officers conducting the hearing or by a reviewing officer who was reviewing such a decision).
- (6) In this regulation “appropriate rank” means—
 - (a) if immediately before the original hearing the appellant was a chief superintendent or superintendent, one of those ranks, and
 - (b) in any other case, the rank of chief inspector or below.
- (7) If at any time that is relevant for the purposes of this regulation, the appellant was serving outside the United Kingdom on detached duty from a station in Great Britain, the appellant is to be treated for those purposes as if he were serving at that station at that time.

Respondent

- 5.—(1) On an appeal by a senior officer the respondent is to be a person designated for the purpose by the Ministry of Defence Police Committee.
- (2) On an appeal by any other member of the force the respondent is to be the chief constable.

Notice of appeal

- 6.—(1) Subject to regulation 8, an appeal may be instituted by giving notice of appeal within 21 days from the date on which the decision appealed against was notified to the appellant in writing in pursuance of the Conduct Regulations unless the case is a relevant criminal case.
- (2) Subject to regulation 8, in a relevant criminal case an appeal is to be instituted by giving notice of appeal within 28 days from—
 - (a) the conclusion of any criminal proceedings in which the appellant is charged with an offence in respect of the conduct to which the decision appealed against is related, or
 - (b) the date on which the appellant receives notification of the decision that no criminal proceedings in respect of that conduct will be instituted by the Director of Public Prosecutions, the Procurator Fiscal or some other person who has responsibility for considering whether to institute criminal proceedings in respect of the conduct.
- (3) In this regulation “relevant criminal case” means—
 - (a) a case to which regulation 38 of the Ministry of Defence Police (Conduct) Regulations 2004 applies, where the decision appealed against was given in pursuance of those Regulations as modified by Schedule 2 to those Regulations, or
 - (b) a case to which regulation 23 of the Ministry of Defence Police (Conduct) (Senior Officers) Regulations 2004 applies, where the decision appealed against was given in

pursuance of those Regulations as modified by Part 2 of the Schedule to those Regulations.

(4) The notice of appeal must be given in writing to the Head of Civilian Management and he must cause a copy of the notice to be sent to the respondent.

Procedure on notice of appeal

7.—(1) As soon as practicable after receiving a copy of the notice of appeal, the respondent must provide the Head of Civilian Management with—

- (a) a copy of the report of the person who made the decision appealed against,
- (b) the transcript of the proceedings at the original hearing, and
- (c) any documents which were made available to the person conducting the original hearing.

(2) A copy of the transcript mentioned in paragraph (1)(b) must at the same time be sent to the appellant.

(3) Subject to regulation 8, the appellant must, within 28 days of the date on which he receives a copy of the transcript mentioned in paragraph (1)(b), submit to the Head of Civilian Management—

- (a) a statement of the grounds of appeal,
- (b) any supporting documents, and
- (c) either—
 - (i) any written representations which the appellant wishes to make under regulation 9 or any request to make oral representations under that regulation, or
 - (ii) a statement that he does not wish to make any such representations as are mentioned in paragraph (i).

(4) But in a case where the appellant submits a statement under paragraph (3)(c)(ii), nothing in paragraph (3) prevents representations under regulation 9 being made by him to the chairman of the tribunal.

(5) The documents submitted to the Head of Civilian Management under paragraph (3) must, as soon as practicable, be copied to the members of the tribunal and to the respondent.

(6) Not later than 21 days from the date on which the respondent receives the copy documents sent to him under paragraph (5), he must submit to the Head of Civilian Management—

- (a) a statement of his response to the appeal,
- (b) any supporting documents, and
- (c) either—
 - (i) any written representations which the respondent wishes to make under regulation 9 or, as the case may be, any request to make oral representations under that regulation, or
 - (ii) a statement that he does not wish to make any such representations as are mentioned in paragraph (i), and
- (d) the names and addresses of any witnesses he proposes to call to give evidence at the hearing and whose attendance he wishes the Head of Civilian Management to take steps to secure if a hearing of the appeal is to be held.

(7) But in a case where the respondent submits a statement under paragraph (6)(c)(ii), nothing in paragraph (6) prevents representations under regulation 9 being made by him to the chairman of the tribunal.

(8) At the same time as the respondent submits the documents referred to in paragraph (6), he must send a copy of the documents referred to in paragraph (6)(a) and (c) to the appellant, together with a list of the documents referred to in paragraph (6)(b) (if any).

(9) The documents submitted to the Head of Civilian Management under paragraph (6) must be copied to the members of the tribunal as soon as practicable.

(10) So far as applicable, regulations 10, 13 and 14 apply in relation to the hearing of any oral representations under regulation 9 as they apply in relation to the hearing of an appeal under regulation 3; and the appellant and the respondent are entitled to be represented at the hearing of such oral representations as if it were the hearing of such an appeal.

Extensions of time limits

8.—(1) The Head of Civilian Management may extend the period referred to in regulation 6(1) or (2) or 7(3) in any case where, on the application of the appellant, he is satisfied that by reason of the special circumstances of the case it is just to do so.

(2) Where the Head of Civilian Management refuses an application by the appellant under paragraph (1), he must give the appellant notice in writing of the reasons for his decision and of the right of appeal conferred by paragraph (3).

(3) An appellant whose application under paragraph (1) is refused may, not later than 14 days after receiving notice under paragraph (2), appeal in writing to the chairman of the tribunal against the decision of the Head of Civilian Management.

(4) The chairman may, on such an appeal, make any decision which the Head of Civilian Management had the power to make under paragraph (1).

(5) In a case where the period referred to in regulation 6(1) or (2) or 7(3) is extended under paragraph (1) or (4), regulations 6 and 7 have effect as if for that period there were substituted such extended period as the Head of Civilian Management or, as the case may be, the chairman may specify.

Hearing

9.—(1) Subject to paragraph (2), a Ministry of Defence Police appeals tribunal may determine an appeal without a hearing.

(2) But a tribunal may not decide so to determine an appeal unless both the appellant and the respondent have been given an opportunity to make written or, if either so requests, oral representations, and any such representations have been considered.

(3) Where a hearing is held—

- (a) the respondent may present the case himself or appoint another member of the force or counsel or a solicitor to present it, and
- (b) the appellant may conduct his case in person or be represented by a member of the force selected by him or by counsel or a solicitor.

Procedure at hearing

10.—(1) Where a hearing is to be held, the Ministry of Defence Police appeals tribunal must cause the appellant and the respondent to be given notice of the date of the hearing not less than 28 days before the hearing begins or such shorter period before it as may be determined with the agreement of both parties.

(2) If the appellant or the respondent wishes any witness to attend the hearing, the tribunal must—

- (a) cause him to be given due notice that his attendance is required and, if the appellant or respondent wishes him to produce any documents at the hearing, that he is required to produce them, and
- (b) inform him of the time, date and place of the hearing.

(3) If a witness is unable or unwilling to attend the hearing, the tribunal may adjourn the hearing if it thinks fit.

(4) The tribunal may—

- (a) proceed with the hearing in the absence of either party, whether represented or not, if it appears to it be just and proper to do so, and

- (b) adjourn the hearing from time to time as may appear necessary for the due hearing of the case.
- (5) Subject to these regulations, the procedure at a hearing is to be determined by the tribunal.

Attendance of witnesses and production of documents

11.—(1) In relation to a hearing before a Ministry of Defence Police appeals tribunal at which any person is required to attend to give evidence or to produce documents in accordance with regulation 10, section 250(2) and (3) of the Local Government Act 1972^(a) apply in England and Wales and section 210(4) and (5) of the Local Government (Scotland) Act 1973^(b) apply in Scotland as if—

- (a) references to a local enquiry were references to such a hearing,
- (b) references to the person appointed to hold the enquiry, or to the person holding it, were references to the chairman of the tribunal, and
- (c) references to section 250 or, as the case may be, section 210 were references to this regulation.

Withdrawal of appeals

12. The appellant may withdraw his appeal—

- (a) by sending to the Head of Civilian Management a notice to that effect signed by him or his representative at any time before—
 - (i) in a case where the police appeals tribunal is minded to determine the appeal without a hearing, the date on which it decides so to determine it, and
 - (ii) in any other case, the hearing of the appeal, or
- (b) with the leave of the tribunal chairman, at the hearing of the appeal.

Casting vote

13. Where there is an equality of voting among the members of a police appeals tribunal, the chairman has a second or casting vote.

Hearing to be in private

14.—(1) Subject to paragraph (2) and regulation 17, the hearing must be held in private.

(2) The police appeals tribunal may at its discretion allow such person or persons as it considers desirable to attend the whole or such part of the hearing as it may think fit.

(3) Notwithstanding that the police appeals tribunal has allowed a person to attend the hearing, if it appears to the tribunal that in giving evidence a witness may disclose information which in the public interest ought not to be disclosed to a member of the public, the police appeals tribunal must require any member of the public present to withdraw while that evidence is given.

Evidence at hearing

15.—(1) Unless the police appeals tribunal determines otherwise, the evidence adduced by the respondent must be given first.

(2) All oral evidence given at the hearing must be given on oath.

(3) All witnesses giving evidence at the hearing are subject to examination and cross-examination.

(4) Any question as to—

^(a) 1972 c. 70.
^(b) 1973 c. 65.

- (a) whether any evidence is admissible, or
 - (b) whether any question should or should not be put to a witness,
- is to be determined by the police appeals tribunal.

(5) A verbatim record of the evidence given at the hearing must be taken and kept for a period of not less than seven years from the date of the end of the hearing, unless the chairman of the police appeals tribunal requests that a transcription of the record be made.

Statements in lieu of oral evidence

16.—(1) Subject to the provisions of this regulation, the police 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, except that evidence is not admissible under this regulation if it would not have been admissible had it been given orally.

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

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

Attendance of complainant at hearing

17.—(1) This regulation applies in relation to a hearing where—

- (a) the decision appealed against arose from a complaint, and
- (b) the appeal is not against sanction only.

(2) The chairman of the police appeals tribunal must cause notice of the date of the hearing to be sent to the complainant at the same time as notice of it is sent to the appellant and the respondent under regulation 10(1).

(3) Notwithstanding anything in regulation 14(1), but subject to paragraphs (4) to (6) and (9)—

- (a) the police appeals tribunal must allow the complainant to attend the hearing while witnesses are being examined or cross-examined on the facts alleged, and
- (b) the complainant may at the discretion of the chairman of the tribunal be accompanied by a friend or relative.

(4) Where the complainant is to be called as a witness at the hearing, he may not attend before he gives his evidence.

(5) Where any person allowed to accompany the complainant is to be called as a witness at the hearing, he may not attend—

- (a) if he is to be called as a witness at the hearing, before he has given evidence, and
- (b) if the complainant is to be called as a witness at the hearing, before the complainant has given evidence.

(6) Where it appears to the police appeals 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, it must require the complainant and any person allowed to accompany him to withdraw while that evidence is given.

(7) Where the appellant gives evidence, then, after the person representing the respondent has had an opportunity of cross-examining him, the chairman of the police appeals tribunal—

- (a) must put to him any questions which the complainant requests should be so put by way of cross-examination, and
- (b) may, if he thinks fit, allow the complainant himself to put such questions to the appellant.

(8) Subject to the previous provisions of this regulation, the complainant and any person allowed to accompany him must not intervene in or interrupt the hearing.

(9) If the complainant or such a person behaves in a disorderly or abusive manner, or otherwise misconducts himself, the chairman of the police appeals tribunal may exclude him from the remainder of the hearing.

Effect of orders

18.—(1) Where an appeal is allowed, the order made by the police appeals tribunal takes effect—

- (a) by way of substitution for the decision appealed against, and
- (b) as from the date of that decision or, if that decision was itself a decision on review, the date of the original decision appealed against.

(2) Where the effect of the order made by the police appeals tribunal is to reinstate the appellant in the force or in his rank—

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

he is deemed to have served in the force or in his rank continuously from the date of the original decision to the date of his reinstatement.

(3) Where—

- (a) the effect of the order made by the police appeals tribunal is to reinstate the appellant in the force, and
- (b) he was suspended for a period immediately preceding the date of the original decision or any subsequent decision,

the determination or order must deal with the suspension.

Statement of tribunal's determination

19.—(1) The chairman of the police appeals tribunal must prepare a written statement of the tribunal's determination of the appeal and of the reasons for the decision.

(2) That statement and a record of any order made under regulation 3(3) must be submitted—

- (a) to the Ministry of Defence Police Committee, and
- (b) in the case of an appeal by a senior officer, to the Secretary of State for Defence,

within a reasonable period after the determination of the appeal.

(3) The Ministry of Defence Police Committee must as soon as practicable send a copy of the statement and any record of an order submitted to it under paragraph (2) to the appellant and the respondent.

(4) In a case where the decision appealed against arose from a complaint, the Ministry of Defence Police Committee must notify—

- (a) the complainant, and
- (b) in England and Wales, the Commission,

of the outcome of the appeal.

Remuneration and expenses

20. Members of a police appeal tribunal are to be—

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

as the Secretary of State may determine.

Costs

21.—(1) An appellant must pay the whole of his own costs unless the police appeals tribunal directs that the whole or any part of them are to be met out of Ministry of Defence funds.

(2) Subject to paragraph (1), all the costs and expenses of an appeal under these regulations, including the costs of the respondent and any remuneration or expenses paid by virtue of regulation 20, are to be met out of Ministry of Defence funds.

9th March 2004

Ivor Caplin
Parliamentary Under Secretary of State
Ministry of Defence

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for appeals to be made to Ministry of Defence Police appeal tribunals by members of the Ministry of Defence Police force (“the force”), for the appointment and composition of the tribunals and their procedure. Two related sets of regulations, the Ministry of Defence Police (Conduct) Regulations 2004 and the Ministry of Defence Police (Conduct) (Senior Officers) Regulations 2004, (“the Conduct Regulations”) are made at the same time. The Conduct Regulations provide for the investigation and hearing of complaints about the conduct of members of the force and require members of the force about whom decisions are made under the Conduct Regulations to be notified of their rights under these Regulations.

Regulations 1 and 2 provide for citation, commencement, extent and interpretation. The regulations only apply where the conduct that is the subject of the appeal occurred and began on or after the commencement date.

Regulation 3 entitles members of the force who are dismissed, required to resign or reduced in rank by a decision taken in proceedings under the Conduct Regulations to appeal to a Ministry of Defence Police appeal tribunal once any right to review has been exercised. It enables the tribunal to make orders dealing with cases.

Regulation 4 sets out the composition of Ministry of Defence Police appeal tribunals.

Regulation 5 makes provision about who is the respondent in cases before the tribunals.

Regulation 6 provides for notice of appeal to a Ministry of Defence Police appeal tribunal normally to be given within 21 days of the decision appealed against. Special provisions apply where the case is a relevant criminal case as defined in paragraph (3).

Regulation 7 sets out the procedure on notice of appeal. In particular, it provides for the documents that must be prepared and given to the appellant, the Head of Civilian management and members of the tribunal. These include the appellant’s statement of grounds of appeal and the respondent’s response to the appeal.

Regulation 8 provides for the time limits applicable to the giving notice of appeal and the submission of grounds of appeal etc. to be extended by the Head of Civilian Management on application by the appellant and for appeal against a refusal of extension to be made to the chairman of the tribunal.

Regulation 9 enables a Ministry of Defence Police appeal tribunal to determine a case without a hearing if the appellant and respondent have had the opportunity to make representations. It also provides for the appellant and respondent to be represented at the hearing.

Regulation 10 provides for procedure at a hearing by a Ministry of Defence Police appeal tribunal, including the giving of notice of the hearing, hearings in the absence of parties and adjournments.

Regulation 11 provides for provisions of the Local Government Act 1972 and the Local Government (Scotland) Act 1973 relating to the attendance of witnesses and the production of witnesses to apply to Ministry of Defence Police appeal tribunals’ hearings.

Regulation 12 allows the appellant to withdraw his appeal and prescribes how this may be done.

Regulation 13 provides for the chairman of the tribunal to have a casting vote.

Regulation 14 provides for the hearings of Ministry of Defence Police appeal tribunals to be in private, but allows the tribunal to permit persons to attend.

Regulation 15 sets out who may give evidence at the hearings of Ministry of Defence Police appeal tribunals and the procedure relating to the giving of evidence, examination of witnesses and recording of proceedings.

Regulation 16 enables the Ministry of Defence Police appeal tribunals to admit written evidence.

Regulation 17 applies where the decision appealed against originated in a complaint and the appeal is not only against the sanction imposed on the appellant. It provides for the attendance of complainants at the hearings together with persons accompanying them and entitles complainants to have questions put to the appellants.

Regulation 18 provides for the orders of the Ministry of Defence Police appeal tribunals allowing appeals to have effect instead of the decisions appealed against and makes further provision about suspension and reinstatement.

Regulation 19 requires the chairman of the Ministry of Defence Police appeal tribunals to prepare a statement of the tribunal's determination and the reasons for it and provides for copies of it to be given to parties.

Regulation 20 provides for members of Ministry of Defence Police appeal tribunals to be paid remuneration and expenses.

Regulation 21 provides for the appellant to pay his own costs except where the Ministry of Defence Police appeal tribunal directs payment from Ministry of Defence funds. Other costs are met from those funds.

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business.

STATUTORY INSTRUMENTS

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