

2004 No. 653

POLICE

The Ministry of Defence Police (Conduct) Regulations 2004

Made - - - - - *9th March 2004*

Laid before Parliament *10th March 2004*

Coming into force - - - *1st April 2004*

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

Citation, commencement, extent and revocation

1.—(1) These Regulations may be cited as the Ministry of Defence Police (Conduct) 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 for the purposes of paragraph (2) that the conduct began on or after the date mentioned in paragraph (2) unless he shows that it began or occurred before that date.

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

(5) The Ministry of Defence Police (Representation at Disciplinary Proceedings) Regulations 1988(b) are hereby revoked.

Interpretation

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

“the appropriate officer” means the deputy chief constable or an assistant chief constable of the force;

“appropriate standard” means the standard set out in the Code of Conduct;

“chief constable” means the chief constable of the force;

“the Code of Conduct” means the code of conduct set out in Schedule 1;

“the Commission” means the Independent Police Complaints Commission”

“complaint” means—

(a) in relation to England and Wales a matter that would, in accordance with section 12 of the Police Reform Act 2002(c), constitute a complaint for the purposes of Part 2 of that Act, and

(a) 1987 c. 4; Sections 3A and 6A were inserted section 79 of the Police Reform Act 2002.

(b) S.I. 1988/1099.

(c) 2002 c. 30.

- (b) in relation to Scotland, a complaint about the conduct of an officer of the force which is submitted by a member of the public or on behalf of a member of the public and with his written consent;

“counsel” means—

- (a) in England and Wales, a barrister, and
- (b) in Scotland, an advocate;

“the force” means the Ministry of Defence Police;

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

“investigating officer”, in relation to a case, means the officer appointed under regulation 7 to investigate it;

“member concerned” means the officer in relation to whose conduct there has been a report, complaint or allegation;

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

“presiding officer” is to be construed in accordance with regulations 16 and 27;

“reviewing officer” means the officer who conducts the review by virtue of regulation 33;

“supervising officer”, in relation to a case, means—

- (a) the officer who is supervising the investigation of the case as a result of regulation 6(1) or,
- (b) where regulation 6(3) applies—
 - (i) as respects England and Wales, the Independent Police Complaints Commission where it has determined that it will supervise or manage an investigation that has been referred to it under regulation 6(4) or,
 - (ii) as respects Scotland, the chief constable.

Application of Regulations

3.—(1) These Regulations apply only in relation to the conduct, or alleged conduct, of a member of the force who at the time the conduct occurred or is alleged to have occurred—

- (a) does not hold the rank of chief constable or any other rank above that of chief superintendent, and
- (b) is serving in Great Britain or outside the United Kingdom whilst on detached duty from a station in Great Britain.

(2) It does not matter for the purposes of this regulation whether or not the member of the force is on duty at the time of the conduct.

Suspension

4.—(1) Where there has been a report, complaint or allegation which indicates that the conduct of a member of the force does not meet, or may not have met, the appropriate standard, the chief constable may suspend the member concerned from duty, whether or not the matter has been investigated.

(2) The chief constable may exercise the power to suspend the member concerned under this regulation at any time from the time of the receipt of the report, complaint or allegation until—

- (a) the supervising officer decides not to refer the case to a hearing,
- (b) the notification of a finding that the conduct of the member concerned did not fail to meet the appropriate standard that is required to be given under regulation 31,
- (c) the time limit under regulation 32 for requesting a review has expired without a request for a review having been made, or
- (d) any review under regulation 33 has been completed.

(3) Where the member concerned is suspended under this regulation, he must be suspended until—

- (a) Any of the events mentioned in paragraph (2) (a) to (d) occurs, or
- (b) the chief constable decides he is to cease to be suspended,

whichever occurs first.

(4) Where the member concerned who is suspended is required to resign under regulation 29, he is to remain suspended during the period of his notice.

(5) The chief constable may delegate his power under this regulation to an officer of the force of at least the rank of assistant chief constable.

Conduct of investigations where criminal proceedings are outstanding

5.—(1) Where there are criminal proceedings outstanding against the member concerned, proceedings under these Regulations may only take place if the appropriate officer believes that in the exceptional circumstances of the case it is appropriate for them to do so.

(2) Paragraph (1) does not apply to the exercise of the power to suspend under regulation 4.

Appointment of supervising officer

6.—(1) Where a report, complaint or allegation is received by the chief constable which indicates that the conduct of a member of the force did not meet the appropriate standard, then unless paragraph (3) applies, the chief constable may supervise the investigation of the case himself or refer the matter to an officer meeting the conditions specified in paragraph (2) to supervise the investigation of the case.

(2) The conditions are that the officer—

- (a) is at least one rank above that of the member concerned,
- (b) is of at least the rank of superintendent,
- (c) is a member of the force, and
- (d) is not an interested party.

(3) This paragraph applies if it is alleged that the conduct that is the subject of the report, complaint or allegation resulted in the death or serious injury of any person.

(4) Where paragraph (3) applies—

- (a) in England and Wales, the case must be referred to the Commission, and
- (b) in Scotland, the case must be referred to the Area Procurator Fiscal.

Appointment of investigating officer

7.—(1) An officer meeting the conditions specified in paragraph (2) may be appointed to investigate the case by the appropriate officer or the supervising officer.

This is subject to paragraph (3).

(2) The conditions are that the officer—

- (a) is a member of the force or, if at the request of the supervising officer the chief officer of some other police force agrees to provide an investigating officer, a member of that force,
- (b) is of at least the rank of inspector or, if the member concerned is a chief superintendent or a superintendent, at least the rank of assistant chief constable (or, if he is a member of some other police force, of a rank equivalent to that of assistant chief constable),
- (c) is of at least the same rank as the member concerned, and
- (d) is not an interested party.

(3) In England and Wales, the provisions of this regulation are without prejudice to the powers of the Commission with regard to the approval of the investigating officer under paragraph 17 or

18 of Schedule 3 to the Police Reform Act 2002 in a case where the Commission has determined to supervise or manage the investigation of a complaint that has been referred to it under regulation 6(4).

Notice of investigation

8. The investigating officer must, as soon as is reasonably practicable (but without prejudicing his or any other investigation of the matter), cause the member concerned to be given written notice, stating—

- (a) that there is to be an investigation into the case,
- (b) the nature of the report, complaint or allegation,
- (c) that he is not obliged to say anything concerning the matter, but that if he wishes to do so he may make a written or oral statement concerning the matter to the investigating officer or the appropriate officer,
- (d) that if he makes such a statement it may be used in any subsequent proceedings under these Regulations,
- (e) that he has the right to seek advice from the Defence Police Federation, and
- (f) that he has the right to be accompanied by a member of the force who is not an interested party to any meeting, interview or hearing.

Investigating officer's report

9.—(1) At the end of his investigation the investigating officer must submit a written report on the case to the supervising officer.

(2) If at any time during his investigation it appears to the investigating officer that the case is one in respect of which the conditions specified in regulation 38(2) and (3) are likely to be met he must immediately submit to the supervising officer—

- (a) a statement that he believes that to be the case and his grounds for doing so, and
- (b) a written report on the case so far as it has then been investigated.

Procedure on receipt of investigating officer's report

10.—(1) On receiving a report submitted by the investigating officer under regulation 9, the supervising officer—

- (a) must refer the case to a hearing if paragraph (2) applies, and
- (b) otherwise may refer the case to a hearing, unless paragraph (3) applies,

(2) This paragraph applies if —

- (a) the chief constable—
 - (i) has submitted a memorandum to the Commission stating that he proposes to prefer or has preferred disciplinary charges, or
 - (ii) has preferred such charges in accordance with a recommendation made to him by the Commission, or
 - (iii) has been directed to prefer such charges by the Commission following his failure to comply with such a recommendation, or
- (b) the member concerned—
 - (i) has received two written warnings about his conduct within the period of 12 months ending with the date on which the report, complaint or allegation is received by the chief constable, and
 - (ii) has admitted in a statement made in pursuance of the notice given under regulation 8 that his conduct failed to meet the appropriate standard.

(3) If—

- (a) the report by the investigating officer was made under regulation 9(2), and
 - (b) the supervising officer is of the opinion that the case is one in respect of which the conditions specified in regulation 38(2) and (3) are likely to be met, he must refer the case to the appropriate officer.
- (4) If on a reference under paragraph (3) the appropriate officer considers that those conditions are not met, he must return the case to the supervising officer.
- (5) If on such a reference the appropriate officer considers that those conditions are met, he must—
- (a) certify the case as a special case and refer it to a hearing, or
 - (b) if in his opinion the circumstances make such certification inappropriate, return the case to the supervising officer.
- (6) Where a case is returned to the supervising officer under paragraph (4) or (5), he must deal with the case in the way he would have done had he not formed the opinion that the case was one in respect of which those conditions were likely to be met.
- (7) Where a case is not referred to a hearing, no reference to it is to be made on the personal record of the member concerned.

Withdrawal of case

11.—(1) At any time after a case has been referred to a hearing but before the beginning of the hearing, the supervising officer may direct that the case be withdrawn unless regulation 10(2) (a)(i), (ii) or (iii) applies.

(2) Where a case is withdrawn it is to be treated as if the supervising officer had decided not to refer it to a hearing.

Notice of decision to refer case to a hearing etc.

12.—(1) Where it is decided to refer a case to a hearing, the supervising officer must ensure that, not less than 28 days before the date on which the hearing is to be held, the member concerned is given written notice of that decision and is supplied with copies of—

- (a) any statement he has made to the investigating officer or the appropriate officer, and
- (b) any relevant statement, document or other material obtained during the course of the investigation.

(2) The notice given under paragraph (1) must specify—

- (a) the conduct of the member concerned which it is alleged failed to meet the appropriate standard,
- (b) the paragraph of the Code of Conduct in respect of which the appropriate standard is alleged not to have been met.

(3) If the supervising officer is of the opinion that the officers conducting the hearing should have available the sanctions of dismissal, requirement to resign or reduction in rank, he must ensure that at the same time as notice is given under paragraph (1) the member concerned is given notice in writing stating—

- (a) that he may elect to be legally represented at the hearing, and
- (b) the effect of section 4(1) to (3) of the Ministry of Defence Police Act 1987.

(4) In this regulation any reference to a copy of a statement is to be construed in any case where the statement was not made in writing as a reference to a copy of an account of it.

Limitation on sanctions

13. No sanction may be imposed under regulation 29 unless the case has been referred to a hearing.

Notice of hearing

14.—(1) The supervising officer must ensure that the member concerned is notified in writing of the time, date and place of the hearing at least 28 days before it is to be held.

(2) The hearing may, if the supervising officer considers it appropriate in the circumstances, take place less than 28 days after the member is notified under paragraph (1) if—

- (a) when the member concerned receives written notice of the decision to refer his case to a hearing under regulation 12(1)—
 - (i) he is detained in pursuance of the sentence of a court in a prison or another institution, or
 - (ii) he has received a suspended sentence of imprisonment which has not expired, and
- (b) having been supplied under regulation 12(1) with the documents mentioned there and under regulation 12(3) with the notice mentioned there, he does not elect to be legally represented at the hearing.

Procedure on receipt of notice

15.—(1) The member concerned must be invited to state in writing, within 21 days of the date on which he is notified that every document required to be supplied to him under regulation 12(1) and (3) has been so supplied—

- (a) whether or not he accepts that his conduct did not meet the appropriate standard,
- (b) whether or not he wishes to be legally represented at the hearing, and
- (c) whether or not he proposes to call any witnesses to relevant facts at the hearing and, if he does, the names and addresses of any such witnesses whose attendance he wishes the supervising officer to take steps to secure.

(2) If any witness whose attendance the member concerned wishes the supervising officer to take steps to secure is a member of the force, he must be ordered to attend at the hearing of the case.

(3) The supervising officer must cause any other witness whose attendance the member concerned wishes the supervising officer to take steps to secure to be given due notice that his attendance is desired and of the time and place of the hearing.

(4) Nothing in this regulation requires a hearing to be adjourned where a witness is unable or unwilling to attend it.

Officers conducting the hearing

16.—(1) Where a case is referred to a hearing, the chief constable must appoint three police officers to hear the case, none of whom is an interested party, and one of whom must be appointed to act as the presiding officer.

(2) The officer appointed to act as the presiding officer must be of the rank of deputy chief constable or assistant chief constable or, if he is a member of some other police force, of a rank equivalent to that of deputy chief constable or assistant chief constable in the force.

- (3) Each of the officers assisting the presiding officer must be—
 - (a) an officer of the force of the rank of chief superintendent or superintendent, or
 - (b) if the member concerned is a chief superintendent or superintendent, a member of some other police force of the rank of assistant chief constable or a rank equivalent to that of assistant chief constable.

Documents to be supplied to the member concerned

17.—(1) If, and only if, in response to the invitation under regulation 15(1) the member concerned accepts that his conduct fell short of the appropriate standard—

- (a) a summary of the facts of the case must be prepared, and
- (b) a copy of the summary must be supplied to the member concerned at least 14 days before the hearing.

(2) If the member concerned does not agree with the summary of facts he may submit a response within 7 days of receiving the summary.

Documents to be supplied to the officers conducting the hearing

18. There must be supplied to the officers conducting the hearing—

- (a) a copy of the notice given under regulation 12(1), and
- (b) if a summary of facts has been prepared under regulation 17(1), a copy of that summary and any response from the member concerned.

Representation

19.—(1) The supervising officer must appoint the investigating officer or some other member of the force, who is an officer of at least the rank of inspector, or counsel or a solicitor to present the case against the member concerned.

(2) The member concerned may conduct his case in person or be represented by a member of the force selected by him or, if he has given notice in accordance with regulation 15 that he wishes to be legally represented, by counsel or a solicitor.

Conduct of hearing

20.—(1) The officers conducting the hearing may from time to time adjourn the hearing if it appears to them to be necessary or expedient to do so for the due hearing of the case.

(2) Any decision of the officers conducting the hearing is to be based on a simple majority, but is not to indicate whether it was taken unanimously or by a majority.

Procedure at hearing

21.—(1) Subject to the provisions of these Regulations, the officers conducting the hearing may determine their own procedure.

(2) The officers conducting the hearing must review the facts of the case and decide—

- (a) whether or not the conduct of the member concerned met the appropriate standard, and
- (b) if it did not—
 - (i) whether in all the circumstances it would be reasonable to impose any sanction, and
 - (ii) if it would, which sanction should be imposed.

(3) The officers conducting the hearing may not find that the conduct of the member concerned failed to meet the appropriate standard unless the conduct—

- (a) is admitted by the member concerned to have failed to meet that standard, or
- (b) is proved on the balance of probabilities to have done so.

Attendance of member concerned at hearing

22.—(1) The member concerned must be ordered to attend the hearing.

(2) Where the member concerned fails to attend the hearing (or any adjournment of it), if it appears to the presiding officer just and proper the hearing (or adjournment) may be proceeded with and concluded in the member's absence.

(3) If the member concerned informs the presiding officer in advance that he is unable to attend owing to ill-health or for some other unavoidable reason, the hearing may be adjourned.

(4) If, owing to the absence of the member concerned, it is impossible to comply with any procedure set out in these Regulations, that procedure must be dispensed with.

Attendance of complainant at hearing

23.—(1) This regulation applies where there has been a complaint against the member concerned.

(2) Notwithstanding anything in regulation 24(1), but subject to paragraphs (3), (4) and (7) and regulation 25—

- (a) the complainant may attend the hearing while witnesses, (including the member concerned), are being examined, or cross-examined, and
- (b) the complainant may at the discretion of the presiding officer be accompanied by a friend or relative.

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

(4) 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.

(5) Where the member concerned gives evidence, then, after the person presenting the case has had an opportunity of cross-examining him—

- (a) the presiding officer must put to him any questions which the complainant requests should be so put and might have been properly so put by the person presenting the case, or
- (b) at the presiding officer's discretion, the complainant himself may put such questions to the member concerned.

(6) Subject to paragraph (5), the complainant and any person allowed to accompany him must neither intervene in, nor interrupt, the hearing.

(7) If the complainant or any person allowed to accompany him behaves in a disorderly or abusive manner, or otherwise misconducts himself, the presiding officer may exclude him from the remainder of the hearing.

(8) In this regulation references to the complainant are references to the originator of the complaint, notwithstanding that it was transmitted to the chief constable by some other person or some other body or, in England and Wales, by the Commission.

Attendance of others at hearing

24.—(1) Subject to regulation 23 and paragraphs (2) to (4), the hearing must be in private, but the presiding officer may allow any solicitor or any such other persons as he considers desirable to attend the whole or such part of the hearing as he thinks fit if all parties to the hearing consent.

(2) In England and Wales, a member of the Commission is entitled to attend the hearing if—

- (a) regulation 23 applies to the case,
- (b) the case arises from a matter where the Commission have supervised or managed the investigation, or
- (c) the alleged conduct would, if it occurred, constitute—
 - (i) an assault occasioning actual bodily harm,
 - (ii) an offence under section 1 of the Prevention of Corruption Act 1906(a), or

(a) 1906 c. 34.

(iii) a serious arrestable offence, as defined in the Police and Criminal Evidence Act 1984(a).

(3) The member concerned may be accompanied at the hearing by a member of the force.

(4) The presiding officer may allow witnesses to be accompanied at the hearing by a friend or relative.

(5) Regulation 23(6) and (7) apply to persons allowed to attend the hearing under paragraph (1), (3) or (4) in the same way as it applies to any friend or relative of the complainant who is allowed to attend the hearing under regulation 23.

Exclusion of public from hearing

25. Where it appears to the presiding officer that a witness, including the member concerned, may in giving evidence disclose information which in the public interest ought not be disclosed to any person attending the hearing by virtue of regulation 23 or 24, including the complainant, he must require that person to withdraw while the evidence is given.

Admissibility of evidence

26.—(1) Any question whether any evidence is admissible, or whether any question should or should not be put to a witness, must be determined by the presiding officer.

(2) The presiding officer may allow any document to be adduced in evidence during the hearing, notwithstanding that a copy of it has not been supplied to the member concerned in accordance with regulation 12(1) if the member concerned consents.

Remission of cases

27.—(1) If—

- (a) the presiding officer is an interested party, or
- (b) either of the officers assisting the presiding officer is an interested party, or
- (c) it appears to the presiding officer appropriate to do so for any other reason (whether before or during the hearing),

he must remit the case.

(2) Where paragraph (1)(a) or (c) applies (whether or not paragraph (1)(b) also applies), the presiding officer must remit the case to an officer who would be eligible to be appointed as the presiding officer under regulation 16 who has agreed to act as the presiding officer in the matter.

(3) Where paragraph (1)(b) applies (whether or not paragraph (1)(a) or (c) also applies) the chief constable must appoint another officer to replace the assisting officer concerned in accordance with regulation 16(3).

(4) Where the presiding officer remits a case under this regulation, he must not give any indication to the officer to whom it is remitted of his assessment of the case or of the sanction that should be imposed.

(5) Where a case is remitted under this regulation, the supervising officer must ensure that—

- (a) the member concerned is notified in writing of the time, date and place of the remitted hearing, and
- (b) the notification is given at least 21 days before the hearing is to be held unless the parties to the hearing agree otherwise.

(a) 1984 c. 60.

Record of hearing

28. A verbatim record of the proceedings at the hearing must be taken and, if the member concerned so requests within the time limit for any appeal and after he has given notice of appeal in accordance with the Ministry of Defence Police Appeal Tribunals Regulations 2004(a), the supervising officer must supply him with a transcript of the record or a copy of it.

Sanctions

29.—(1) Subject to section 4(1) of the Ministry of Defence Police Act 1987, the officers conducting the hearing may impose any of the following sanctions—

- (a) dismissal from the force,
- (b) requirement to resign from the force (whether immediately or by such date as those officers decide) as an alternative to dismissal,
- (c) reduction in rank,
- (d) fine,
- (e) reprimand,
- (f) caution.

(2) Any sanction imposed under paragraph (1) has immediate effect.

(3) A fine imposed under paragraph (1) must be such that, if it were recovered by way of deductions from the pay of the member concerned during the period of 13 weeks following the imposition of the sanction, the aggregate sum which might be so deducted in respect of any one week (whether on account of one or more fines) would not exceed one seventh of his weekly pay.

Personal record to be considered before sanction imposed

30. Where the question of the sanction to be imposed is being considered—

- (a) the officers conducting the hearing—
 - (i) must have regard to the record of police service of the member concerned as shown on his personal record, and
 - (ii) may receive evidence from any witness whose evidence would, in the opinion of the officers or the member concerned, assist in determining the question, and
- (b) the member concerned or his representative must be given the opportunity to make oral or, if appropriate, written representations as respects the question or to adduce evidence relevant to it.

Notification of finding

31. The member concerned—

- (a) must be informed orally at the conclusion of the hearing of—
 - (i) the finding as to whether his conduct met the appropriate standard, and
 - (ii) any sanction imposed, and
- (b) must be provided with a written notification of the finding and any sanction and a summary of the reasons as soon as reasonably practicable after, and in any case within seven working days of, the conclusion of the hearing.

Request for a review

32.—(1) Where a sanction is imposed under regulation 29, the member concerned is entitled to request a review of the finding, or the sanction, or both.

(a) S.I. 2004/652

(2) A request for a review must be made in writing to the chief constable within 14 days of receipt of the written summary of reasons given in accordance with regulation 31, unless that period is extended by the chief constable or the chief officer of some other police force who has agreed to act as the reviewing officer if there is a request for a review.

(3) The request for a review must state the grounds on which the review is requested and whether a meeting is required.

The reviewing officer

33.—(1) Subject to paragraph (2), the review must be conducted by the chief constable.

(2) If the chief constable is absent or is an interested party, the review must be conducted by the chief officer of some other police force (not being an interested party) who has agreed to act in that capacity.

Conduct of the review

34.—(1) If the member concerned has stated under regulation 32(3) that a meeting is required, the reviewing officer must hold a meeting with the member.

(2) Where such a meeting is held, the member concerned—

(a) may be accompanied by a member of the force, and

(b) in a case where the punishment of dismissal, requirement to resign or reduction in rank has been imposed, may be represented by counsel or a solicitor.

Finding of the review

35.—(1) The member concerned must be informed in writing of the finding of the reviewing officer on the review as soon as practicable after the completion of the review.

(2) The reviewing officer may—

(a) confirm the decision of the officers conducting the hearing, or

(b) impose a different sanction specified in regulation 29(1), not being more severe than that imposed by the officers conducting the hearing.

(3) The decision of the reviewing officer takes effect by way of substitution for the decision of the officers conducting the hearing and as from the date of the hearing.

(4) Where as a result of the decision of the reviewing officer the member concerned is dismissed, required to resign or reduced in rank, he must be notified in writing of his right of appeal to a Ministry of Defence Police appeals tribunal under the Ministry of Defence Police Appeal Tribunals Regulations 2004.

Discharge of the chief constable's functions by the appropriate officer

36. The functions of the chief constable under regulations 6(1), 10(2)(a), 16(1) and 27(3) may be discharged by the appropriate officer if the appropriate officer—

(a) has not acted as investigating officer in the case, or

(b) where the case is one that the chief constable considered appropriate for informal resolution, has not been appointed by the chief constable to resolve the case informally.

Record of conduct proceedings

37. The chief constable must cause a book of record to be kept in which every case brought against a member of the force, the finding in that case and a record of the decision in any further proceedings in connection with it is to be entered.

Special cases

38.—(1) This regulation applies to any case—

- (a) in which a report, complaint or allegation is made which indicates that the conduct of a member of the force did not meet the appropriate standard, and
- (b) in respect of which the conditions A and B are met and a certificate has been issued under regulation 10(5)(a).

(2) Condition A is that the report, complaint or allegation—

- (a) is supported by evidence which, in the opinion of the appropriate officer, is sufficient, without further evidence to establish on the balance of probabilities that the conduct of the member concerned did not meet the appropriate standard, and
- (b) when taken together with any such evidence, in the opinion of the appropriate officer indicates that the conduct of the member concerned—
 - (i) is of a serious nature and may constitute an offence which is punishable with imprisonment in the case of a person aged 21 or over, and
 - (ii) is such that, were the case to be referred to a hearing under regulation 10 and the officers conducting that hearing to find that the conduct failed to meet the appropriate standard, they would be likely to impose the sanction of dismissal from the force.

(3) Condition B is that the appropriate officer is satisfied that it is in the public interest for the member concerned to cease to be a member of the force as soon as possible.

(4) In the application of these Regulations to a case to which this regulation applies, these Regulations have effect subject to the modifications specified in Schedule 2 to these Regulations, except where paragraph (5) applies.

(5) Where a case to which this regulation applies has been returned to the supervising officer in pursuance of any provision of these Regulations as modified by that Schedule, the provisions of these Regulations have effect in relation to the case without modification.

(6) In Schedule 2 any reference to a provision of these Regulations is to be construed, unless the contrary intention appears, as a reference to that provision as modified by that Schedule.

9th March 2004

Ivor Caplin
Parliamentary Under Secretary of State
Ministry of Defence

SCHEDULE 1

Regulation 2.

CODE OF CONDUCT

Honesty and integrity

1. Members of the force should so conduct themselves as to uphold public faith in the honesty and integrity of the force, and accordingly they should—

- (a) be open and truthful in their dealings,
- (b) avoid being improperly beholden to any person or institution, and
- (c) discharge their duties with integrity.

Fairness and impartiality

2. Members of the force have a particular responsibility to act with fairness and impartiality in all their dealings with the public and their colleagues.

Politeness and tolerance

3. Members of the force should treat members of the public and colleagues with courtesy and respect, avoiding abusive or derisory attitudes or behaviour. In particular, they must avoid—

- (a) favouritism of an individual or group,
- (b) all forms of harassment, victimisation or unreasonable discrimination, and
- (c) overbearing conduct to a colleague, particularly to one junior in rank or service.

Use of force

4. Members of the force must never knowingly use more force than is reasonable.

Abuse of authority

5. Members of the force must not abuse their authority.

Performance of duties

6.—(1) Members of the force should be conscientious and diligent in the performance of their duties.

(2) Members of the force should attend work promptly when rostered for duty.

(3) If absent from duty through sickness or injury, members of the force should avoid activities likely to retard their return to duty.

Lawful orders

7.—(1) Unless there is good and sufficient cause to do otherwise, members of the force must obey all lawful orders.

(2) Members of the force should support their colleagues in the execution of their lawful duties.

(3) Members of the force should oppose any improper behaviour by their colleagues and report it where appropriate.

Confidentiality

8.—(1) Members of the force should treat information which comes into the possession of the police as confidential.

(2) Such information should not be used for personal benefit or divulged to other parties except in the proper course of police duty.

(3) Members of the force should respect as confidential information about policy and operations of the force unless authorised to disclose it in the course of their duties.

Criminal offences

9.—(1) Members of the force must report any proceedings for a criminal offence taken against them to the chief constable.

(2) Conviction of a criminal offence may of itself result in further action being taken.

Property

10. Members of the force must exercise reasonable care to prevent loss of or damage to property (including police property).

Sobriety

11.—(1) Whilst on duty members of the force must be sober.

(2) Members of the force should not consume alcohol when on duty unless they are specifically authorised to do so or it becomes necessary for the proper discharge of police duty.

Appearance

12. Unless on duties which dictate otherwise, members of the force should always be well turned out, clean and tidy whilst on duty in uniform or in plain clothes.

General conduct

13. Whether on or off duty, members of the force should not behave in a way which is likely to bring discredit upon the police service.

Notes:—

- (a) The primary duties of those who hold the office of constable in the force are the protection of life and property, the preservation of the Queen's peace, and the prevention and detection of criminal offences. To fulfil these duties they are granted extraordinary powers; the public and the police service therefore have the right to expect the highest standards of conduct from them.
- (b) This Code sets out the principles which guide the conduct of members of the force. It does not seek to restrict their discretion: rather it aims to define the parameters of conduct within which that discretion should be exercised. However, it is important to note that any breach of the principles in this Code may result in action being taken by the force, which, in serious cases, could involve dismissal.
- (c) This Code applies to the conduct of members of the force in all ranks whilst on duty, or whilst off duty if the conduct is serious enough to indicate that a member is not fit to be a member of the force. It will be applied in a reasonable and objective manner. Due regard will be paid to the degree of negligence or deliberate fault and to the nature and circumstances of a member's conduct. Where off duty conduct is in question, this will be measured against the generally accepted standards of the day.

SCHEDULE 2

Regulation 38.

SPECIAL CASES: MODIFICATIONS

1. For regulations 11 and 12 there is substituted—

“Return of case to supervising officer

11.—(1) At any time after a case has been referred to a hearing but before the beginning of the hearing, the appropriate officer may direct that the case be returned to the supervising officer.

(2) Where a case is so returned, the supervising officer must deal with it in the way he would have done if he had not formed the opinion that the case was one in respect of which the conditions specified in regulation 38(2) and (3) were likely to be met.

Notice of decision to refer case to a hearing

12.—(1) Where it is decided to refer a case to a hearing, the supervising officer must ensure that, as soon as is reasonably practicable, the member concerned is invited to an interview with the appropriate officer at which he is given written notice of that decision and is supplied with copies of—

- (a) that decision,
- (b) a notice in writing that he may elect to be legally represented at the hearing and of the effect of section 4(1) to (3) of the Ministry of Defence Police Act 1987 (representation at disciplinary hearings),
- (c) the certificate issued under regulation 10(5)(a),
- (d) any statement he has made to the investigating officer or the appropriate officer, and

- (e) any relevant statement, document or other material obtained during the course of the investigation.
- (2) The notice of the decision to refer the case to a hearing must specify—
 - (a) the conduct of the member concerned which it is alleged failed to meet the appropriate standard,
 - (b) the paragraph of the Code of Conduct in respect of which the appropriate standard is alleged not to have been met.
- (3) Where the member concerned fails or is unable to attend the interview referred to in paragraph (1), the notice and copy documents referred to in that paragraph must be—
 - (a) delivered to the member concerned personally, or
 - (b) left with some person at, or sent by recorded delivery to, the address at which he is residing.
- (4) In this regulation any reference to a copy of a statement is to be construed in any case where the statement was not made in writing as a reference to a copy of an account of it.”.

2. For regulations 14 to 16 there is substituted—

“Notice of hearing

14. The appropriate officer must fix a date for the hearing (which must be not less than 21 and not more than 28 days from the date on which notice under regulation 12(1) is given, delivered, left or sent in accordance with regulation 12) and, as soon as he has done so, he must ensure that the member concerned is notified immediately in writing of the time, date and place of the hearing.

Procedure on receipt of notice

15. The member concerned must be invited to state in writing, within 14 days of the date on which he receives the notice and copy documents referred to in regulation 12(1)—

- (a) whether or not he accepts that his conduct did not meet the appropriate standard,
- (b) whether or not he wishes to be legally represented at the hearing.

Officer conducting the hearing

16.—(1) A case which is referred to a hearing under regulation 10(5)(a) must be heard by the chief constable, unless he is an interested party.

(2) If the chief constable is an interested party, the case must be heard by the chief officer of some other police force who has agreed to act in that capacity.”.

3. Regulation 17 is omitted.

4. For regulation 18 there is substituted—

“Documents to be supplied to the officer conducting the hearing

18. There must be supplied to the officer conducting the hearing a copy of the notice and copy documents referred to in regulation 12(1).”.

5. In regulation 19(1) (representation) for “supervising” there is substituted “appropriate”.

6. For regulation 20 there is substituted—

“Conduct of hearing

20.—(1) The officer conducting the hearing may adjourn the hearing if it appears to him to be necessary or expedient to do so for the due hearing of the case.

- (2) But that officer must not—
 - (a) exercise the power to adjourn more than once, or
 - (b) adjourn for longer than a period of one week or, on an application by the member concerned, 4 weeks,unless it appears to him to be necessary to do so.”.

7. In regulation 21—

- (a) for the word “officers”, in each place it occurs, there is substituted the word “officer”, and
- (b) in paragraph (1) for the word “their” there is substituted the word “his”.

8. For regulation 23 there is substituted—

“Attendance of complainant at hearing

23.—(1) This regulation applies where there has been a complaint against the member concerned.

- (2) Notwithstanding anything in regulation 24(1), but subject to paragraphs (3) and (4)—
 - (a) the complainant may attend the hearing, and
 - (b) the complainant may at the discretion of the officer conducting the hearing be accompanied by a friend or relative.
- (3) The complainant and any person allowed to accompany him must neither intervene in, nor interrupt, the hearing.
- (4) If the complainant or any person allowed to accompany him behaves in a disorderly or abusive manner, or otherwise misconducts himself, the officer conducting the hearing may exclude him from the remainder of the hearing.
- (5) In this regulation references to the complainant are references to the originator of the complaint, notwithstanding that it was transmitted to the chief constable by some other person or by the Authority or some other body.”.

9. In regulation 24—

- (a) in paragraph (1) for the words “paragraphs (2) to (4)” there are substituted the words “paragraphs (2) and (3)”,
- (b) paragraph (4) is omitted, and
- (c) in paragraph (5) for the words “paragraph (1), (3) or (4)” there are substituted the words “paragraph (1) or (3)”.

10. Regulation 25 is omitted.

11. For regulations 26 and 27 there is substituted—

“Admissibility of evidence

26.—(1) Subject to paragraph (3), any question whether any evidence is admissible must be determined by the officer conducting the hearing.

(2) That officer may allow any document to be adduced in evidence during the hearing, notwithstanding that a copy of it has not been supplied to the member concerned in accordance with regulation 12, if the member concerned consents.

(3) No witness may be called by either party to the case.

Remission of cases

27.—(1) If the chief constable is an interested party, the case must be remitted to the chief officer of some other police force (not being an interested party) who has agreed to act in that capacity.

(2) Where, either before or during the hearing, the officer conducting the hearing considers it appropriate to do so, he may return the case to the supervising officer, who must deal with it in the way he would have done had he not formed the opinion that the case was one in respect of which the conditions specified in regulation 38(2) and (3) were likely to be met.

(3) Where the officer conducting the hearing remits a case under this regulation, he must not give any indication to the supervising officer to whom it is remitted of his assessment of the case or of the sanction that should be imposed.”.

12. In regulation 29(1)—

- (a) for the words “officers”, in the first place it occurs, there is substituted the word “officer”, and
- (b) for the words “those officers decide” there are substituted the words “that officer decides”.

13. In regulation 30—

- (a) in paragraph (a) for the word “officers”, in each place it occurs, and the words “may receive evidence from any witness whose evidence would” there are substituted respectively the words “officer” and “may admit such documentary evidence as would”, and
- (b) in paragraph (b) after the word “adduce” there is inserted the word “documentary”.

14. In regulation 31 for the words “seven working days” there are substituted the words “three working days”.

15. For regulation 33, there is substituted—

“The reviewing officer

33. The review must be conducted by the chief officer of some other police force (not being an interested party) who has agreed to act in that capacity.”.

16. At the end of regulation 35 there is added—

“(5) Where the reviewing officer considers that the officer conducting the hearing should have returned the case to the supervising officer under regulation 27, he must so return the case and the case is deemed to have been returned under that regulation.”.

17. Regulation 36 is omitted.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision about the procedure to be followed where there is a report, complaint or allegation about the conduct of a member of the Ministry of Defence Police force (“the force”) of the rank of chief superintendent or below. Two related sets of regulations, the Ministry of Defence Police (Conduct) (Senior Officers) Regulations 2004 and the Ministry of Defence Police Appeal Tribunals Regulations 2004, are made at the same time. The Ministry of Defence Police (Conduct) (Senior Officers) Regulations provide for the investigation and hearing of complaints about the conduct of more senior officers, and the Ministry of Defence Police Appeal Tribunals Regulations make provision about appeals to be made to the Ministry of Defence Police appeal tribunals from a review of decisions under these Regulations and decisions under the Ministry of Defence Police (Conduct) (Senior Officers) Regulations.

Regulations 1 and 2 provide for citation, commencement, extent and interpretation. The regulations only apply where the conduct in question occurred and began on or after the commencement date.

Regulation 3 restricts the application of the regulations to conduct or alleged conduct of officers other than senior officers, who are serving in Great Britain or outside the United Kingdom whilst on detached duty from a station in Great Britain.

Regulation 4 sets out the normal procedure enabling a member of the force to be suspended by the chief constable of the force where a report, complaint or allegation about his conduct is made indicating that his conduct does not meet the appropriate standard. (This is the standard set out in the Code of Conduct in Schedule 1 to these regulations.) The regulation sets out the procedure to be followed for suspension and its duration.

Regulation 5 provides that the power of suspension in regulation 4 is not affected by the fact that there are criminal proceedings outstanding against a member of the force. It also sets out that proceedings under these regulations may only take place where criminal proceedings against a member of the force are outstanding if the chief constable considers that there are exceptional circumstances that make it appropriate to do so.

Regulation 6 provides for the supervision of the investigation of cases where the chief constable receives a report, complaint or allegation indicating that the conduct of a member of the force does not meet the appropriate standard. The chief constable may supervise the investigation himself or appoint another supervising officer unless the conduct resulted in death or serious injury. In that case, in England and Wales the case must be referred to the Commission and in Scotland the case must be referred to the Area Procurator Fiscal.

Regulation 7 enables an investigating officer to be appointed.

Regulation 8 obliges the investigating officer to give a member of the force notice of the investigation, to inform him of what will happen if he makes a statement, to inform of his right to seek advice from the Defence Police Federation and of his right to be accompanied by a member of the force who is not an interested party to any meeting, hearing or interview.

Regulation 9 requires the investigating officer to report on the case to the supervising officer. If it appears to the investigating officer that the conditions set out in regulation 38(2) and (3) are likely to be met (these cases are called “special cases”) the investigating officer must report so immediately.

Regulation 10 sets out the procedure to be followed on receipt of the investigating officer’s report by the supervising officer, and when cases are to be referred to a hearing. The procedure and the requirement for such a reference depend on whether or not the case is thought to be a special case and whether or not the chief constable has preferred disciplinary charges or is proposing to do so.

Regulation 11 provides for the supervising officer to direct that a case that has been referred to a hearing is to be withdrawn.

Regulation 12 provides for notice to be given to a member of the force about the decision to refer his case to a hearing and what documents he is to be supplied with. The supervising officer must ensure that members given notice of the decision to refer the case to a hearing are given notice of the right to elect to be legally represented at the hearing.

Regulation 13 provides that none of the sanctions in regulation 29 may be imposed on a member of the force unless the case has been referred to a hearing.

Regulation 14 provides for notice of the hearing to be given to the member of the force concerned about details of the hearing.

Regulation 15 sets out the procedure for inviting the member to make a statement about his conduct, about his wishes as to legal representation and about witnesses.

Regulation 16 makes provision with regard to the officers who are to conduct the hearing.

Regulation 17 applies where a member of the force accepts that his conduct fell short of the appropriate standard and sets out the documents that are required to be supplied to such a member.

Regulation 18 sets out the documents that are to be supplied to the officers conducting the hearing.

Regulation 19 concerns representation at the hearing.

Regulation 20 concerns the conduct of the hearing, when it may be adjourned and how decisions made by the officers conducting the hearing are to be made.

Regulation 21 sets out the procedure to be followed at hearings.

Regulation 22 concerns the attendance at the hearing of the member of the force concerned and provides for how the hearing is to proceed if that member fails or is unable to attend.

Regulation 23 applies where the case originated in a complaint. It provides for the attendance of the complainant at the hearing together with a friend or relative and entitles the complainant to have questions put to the officer concerned.

Regulation 24 provides for the attendance of others at the hearing.

Regulation 25 sets out when the presiding officer is required to exclude members of the public from the hearing.

Regulation 26 enables statements to be adduced in evidence if a member of the force consents despite no copy having been supplied to him.

Regulation 27 sets out when and to whom a case must be remitted and provides for notices to be given to a member of the force where a case is remitted.

Regulation 28 makes provision about records of the hearing and copies.

Regulation 29 sets out the sanctions the officers conducting the hearing may impose.

Regulation 30 requires the personal record of a member of the force to be taken into account before a sanction is imposed and provides that a member of the force or his representative may make written or oral representations or adduce evidence with regard to the question of the sanction to be imposed.

Regulation 31 requires a member of the force to be provided with oral and written notification of the finding of the hearing and any sanction imposed.

Regulation 32 entitles a member of the force to request a review of the finding or sanction or both and sets out how such a request is to be made and to whom.

Regulation 33 requires a review normally to be conducted by the chief constable and otherwise by the chief officer of some other force.

Regulation 34 sets out the procedure for the conduct of the review.

Regulation 35 requires the member of the force to be informed in writing of the finding of the reviewing officer and enables the reviewing officer to impose a less onerous sanction.

Regulation 36 provides that the functions of the chief constable under regulations 6(1) and 16(1) may be discharged by the appropriate officer.

Regulation 37 requires the chief constable to keep a record of the conduct of proceedings.

Regulation 38 sets out conditions, the meeting of which will result in the case being a special case for the purposes of regulation 10.

Schedule 1 sets out the Code of Conduct that members of the force are required to adhere to and sets the standard of conduct expected of members of the force.

Schedule 2 sets out modifications that are to be made to the normal procedure that are applicable where the conditions in regulation 38 are met.

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

£3.50

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Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of Her Majesty's
Stationery Office and Queen's Printer of Acts of Parliament.

E0373 3/2004 140373T 19585

ISBN 0-11-048856-3



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