
STATUTORY INSTRUMENTS

2012 No. 808

POLICE

The Ministry of Defence Police (Performance) Regulations 2012

<i>Made</i>	- - - -	<i>13th March 2012</i>
<i>Laid before Parliament</i>		<i>15th March 2012</i>
<i>Coming into force</i>	- -	<i>6th April 2012</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 3A and 4 of the Ministry of Defence Police Act 1987⁽¹⁾.

PART 1

Preliminary

Citation and commencement

1. These Regulations may be cited as the Ministry of Defence Police (Performance) Regulations 2012 and come into force on 6th April 2012.

Application

2.—(1) Subject to paragraph (2), these Regulations apply to all members of the force who are serving in the United Kingdom or outside the United Kingdom whilst on detached duty from a station in the United Kingdom.

(2) These Regulations do not apply to—

- (a) senior officers; and
- (b) officers of the rank of constable who have not completed the first year of probation.

(1) 1987 c. 4; section 3A was inserted by section 79(1) of the Police Reform Act 2002 (c. 30) and amended by section 126(2) of, and paragraphs 12 and 14 of Schedule 22 to, the Criminal Justice and Immigration Act 2008 (c. 4) and section 6 of the Armed Forces Act 2011 (c. 18); section 4 was substituted by paragraphs 12 and 15 of Schedule 22 to the Criminal Justice and Immigration Act 2008.

Transitional provision

3.—(1) Where unsatisfactory performance or attendance by a police officer came to the attention of the officer’s line manager before 6th April 2012, nothing in these Regulations apply and the restoring efficiency procedures continue to have effect.

(2) In paragraph (1) the “restoring efficiency procedures” means—

- (a) the Ministry of Defence Restoring Efficiency Work Performance procedures and related processes⁽²⁾; and
- (b) the Ministry of Defence Restoring Efficiency Attendance procedures and related processes⁽³⁾.

Interpretation and delegation

4.—(1) In these Regulations—

“the 1987 Act” means the Ministry of Defence Police Act 1987;

“alternative police force” means—

- (a) any force maintained under section 2 of the Police Act 1996⁽⁴⁾;
- (b) the metropolitan police force;
- (c) the City of London police force;
- (d) the British Transport Police Force;
- (e) the Civil Nuclear Constabulary;
- (f) any force maintained under section 1 of the Police (Scotland) Act 1967 Act⁽⁵⁾; or
- (g) the Police Service of Northern Ireland;

“appropriate authority” means the chief officer of police of the force;

“bank holiday” means a day which is a bank holiday under the Banking and Financial Dealings Act 1971⁽⁶⁾ in England and Wales, in Scotland or in Northern Ireland (as the case may be);

“document” means anything in which information of any description is recorded and includes any recording of a visual image or images;

“first stage appeal meeting” has the meaning assigned to it by regulation 16⁽⁸⁾;

“first stage meeting” has the meaning assigned to it by regulation 12;

“the force” means the Ministry of Defence Police;

“gross incompetence” and cognate expressions mean a serious inability or serious failure of a police officer to perform the duties of the rank or the role that officer is currently undertaking to a satisfactory standard or level, to the extent that dismissal would be justified, except that no account is to be taken of the attendance of a police officer when considering whether that officer has been grossly incompetent;

“human resources professional” means a person who has specific responsibility for personnel matters relating to members of the force;

“interested party” means a person whose appointment could reasonably give rise to a concern as to whether they could act impartially under these Regulations;

(2) The current procedures and related processes were issued on 4 July 2011.

(3) The current procedures and related processes were issued on 4 July 2011.

(4) 1996 c. 16.

(5) 1967 c. 77.

(6) 1971 c. 80. Relevant amending instruments are the Northern Ireland Constitutions Act 1973 (c. 36) and the St Andrew’s Day Bank Holiday (Scotland) Act 2007 (2007 asp 2).

“line manager” means the person who has immediate supervisory responsibility for the officer concerned;

“nominated person” means a person appointed by the senior manager in accordance with regulation 9;

“officer concerned” means the police officer in respect of whom proceedings under these Regulations are, or are proposed to be, taken;

“panel” means a panel appointed by the appropriate authority in accordance with regulation 30 subject to any change to the membership of that panel in accordance with regulation 31 and, where applicable, regulations 40 and 41;

“panel chair” means the chair of the panel;

“police friend” means a person chosen by the officer concerned in accordance with regulation 5;

“police officer” means a member of the force;

“relevant lawyer” has the same meaning as in section 4(4) of the 1987 Act;

“relevant terms of the final written improvement notice” has the meaning assigned to it by regulation 23;

“relevant terms of the written improvement notice” has the meaning assigned to it by regulation 16;

“second line manager” means the person appointed by the appropriate authority to act as the second line manager for the purposes of these Regulations in relation to the officer concerned and who is a member of the force or staff member having supervisory responsibility for the line manager and who (in a case where the line manager is a member of the force) is senior in rank to the line manager;

“second stage appeal meeting” has the meaning assigned to it by regulation 23(8);

“second stage meeting” has the meaning assigned to it by regulation 19(5)(b);

“senior manager” means—

- (h) the police officer or staff member who is for the time being the supervisor of the person who is, in relation to the officer concerned, the second line manager; or
- (i) in the absence of such supervisor, the police officer or staff member nominated by the appropriate authority to carry out any of the functions of such supervisor under these Regulations, being of at least the same rank (or equivalent) as the person who is, in relation to the officer concerned, the second line manager;

“senior officer” means a member of the force holding a rank above that of chief superintendent;

“senior officer of an alternative police force” means a member of that force holding a rank above that of chief superintendent;

“staff association” means the Defence Police Federation;

“staff member” means any person other than a police officer who is employed by the Secretary of State for Defence;

“third stage meeting” has the meaning assigned to it by regulations 26(2) and 28(3);

“unsatisfactory performance procedures” means the procedures set out in these Regulations; and

“working day” means any day other than a Saturday or Sunday or a day which is a bank holiday or a public holiday in England and Wales, in Scotland or in Northern Ireland (as the case may be).

(2) In these Regulations—

- (a) references to—
 - (i) unsatisfactory performance or attendance;
 - (ii) the performance or attendance of an officer being unsatisfactory, mean an inability or failure of a police officer to perform the duties of the role or rank that officer is currently undertaking to a satisfactory standard or level;
 - (b) “unsatisfactory performance or attendance” may be construed as a reference to unsatisfactory performance and attendance;
 - (c) “performance or attendance” may be construed as a reference to performance and attendance;
 - (d) references to “validity period” mean the period during which a written improvement notice or final written improvement notice issued or extended under these Regulations remains valid in accordance with these Regulations.
- (3) The appropriate authority may, subject to paragraph (4), delegate any of its functions under these Regulations to—
- (a) a member of the force of at least the rank of chief inspector; or
 - (b) a staff member who, in the opinion of the appropriate authority is of at least a similar level of seniority to a chief inspector.
- (4) Where the appropriate authority delegates functions under regulation 28, the decision must be authorised by a senior officer.

PART 2

General

Police friend

- 5.—(1) The officer concerned may choose—
- (a) a police officer;
 - (b) an officer from an alternative police force;
 - (c) a staff member; or
 - (d) a person nominated by the staff association,
- who is not otherwise involved in the matter, to act as a police friend.
- (2) A police friend may—
- (a) advise the officer concerned throughout the proceedings under these Regulations;
 - (b) unless the officer concerned has the right to be legally represented under regulation 6 and chooses to be so represented, represent the officer concerned at a meeting under these Regulations;
 - (c) make representations to the appropriate authority concerning any aspect of the proceedings under these Regulations; and
 - (d) accompany the officer concerned to any meeting which that officer is required to attend under these Regulations.
- (3) Where a police friend is a police officer, the chief constable must permit that person to use a reasonable amount of duty time for the purposes referred to in paragraph (2).
- (4) Where a police friend is a staff member, the Secretary of State for Defence must permit that person to use a reasonable amount of duty time for the purposes referred to in paragraph (2).

Legal representation

6.—(1) Where a police officer is required to attend a third stage meeting under regulation 28, they have the right to be legally represented at such meeting by a relevant lawyer of their choice.

(2) If such an officer chooses not to be legally represented —

(a) such meeting may take place and any outcome may be ordered under regulation 38(2) or (5) without the officer concerned being legally represented; and

(b) the panel conducting such meeting may nevertheless be advised by a relevant lawyer at the meeting in accordance with regulation 36(4).

(3) Except in a case where the officer concerned has the right to be legally represented and chooses to be so represented, the officer may be represented at a meeting under these Regulations only by a police friend.

(4) A third stage meeting under regulation 28 is not to take place unless the officer concerned has been notified in writing of the effect of this regulation.

Provision of notices or documents

7. Where any written notice or document is to be given or supplied to the officer concerned under these Regulations, it is to be—

(a) given to the officer in person; or

(b) left with some person at, or sent by recorded delivery to, the officer's last known address.

Procedure at meetings under these Regulations

8.—(1) Where the officer concerned does not attend a meeting under these Regulations or where the officer concerned participates in a third stage meeting by video link or other means under regulation 34(9), the officer may nonetheless be represented at that meeting by the officer's—

(a) police friend; or

(b) where the officer is required to attend the third stage meeting under regulation 28, relevant lawyer.

(2) Where the officer concerned does not attend a meeting under these Regulations or participate in a third stage meeting by video link or other means under regulation 34(9), the meeting may be proceeded with and concluded in the absence of the officer concerned whether or not the officer is so represented.

(3) During any meeting under these Regulations, the person representing the officer concerned may—

(a) address the meeting in order to do any or all of the following—

(i) put the case of the officer concerned;

(ii) sum up that case;

(iii) respond on behalf of the officer concerned to any view expressed at the meeting;

(iv) make representations concerning any aspect of proceedings under these Regulations; and

(v) in the case of a third stage meeting only, subject to paragraph (7), ask questions of any witnesses;

(b) confer with the officer concerned.

(4) Where the person representing the officer concerned is a relevant lawyer, the police friend of the officer concerned may also confer with the officer concerned.

(5) Where the officer concerned is participating in a third stage meeting by video link or other means in accordance with regulation 34(9), the person representing the officer or (if different) a police friend (or both) may also participate in the third stage meeting by such means together with the officer concerned.

(6) The police friend or relevant lawyer of the officer concerned must not answer any questions asked of the officer concerned during a meeting.

(7) Whether any question should or should not be put to a witness at a third stage meeting is to be determined by the panel chair.

(8) At any meeting under these Regulations, the person or the panel conducting the meeting must not make a finding of unsatisfactory performance or attendance or gross incompetence unless—

- (a) they are satisfied on the balance of probabilities that there has been unsatisfactory performance or attendance or gross incompetence; or
- (b) the officer concerned consents to such a finding.

(9) The person conducting or chairing a meeting under these Regulations may allow any document to be considered at that meeting notwithstanding that a copy of it has not been—

- (a) supplied by the officer concerned in accordance with regulation 13(8), 16(6)(b), 20(8), 23(6)(b) or 32(3);
- (b) supplied to the officer concerned in accordance with regulation 13(2), 20(2), 27(2) or 29(2); or
- (c) made available to each panel member or given to the officer concerned under regulation 30(7).

Nominated Persons

9.—(1) A senior manager may appoint another person (a “nominated person”) to carry out any of the functions of the line manager or the second line manager in these Regulations.

(2) Where a person is appointed to carry out any of the functions of the line manager under paragraph (1) that person must not also be appointed to carry out any of the functions of the second line manager under that paragraph.

(3) Where a person is appointed to carry out any of the functions of the second line manager under paragraph (1) that person must not also be appointed to carry out any of the functions of the line manager under that paragraph.

(4) A nominated person must be a member of the force or a staff member and must be, in the opinion of the appropriate authority, of at least the same or equivalent rank or grade as the person whose functions they are carrying out.

(5) Where a nominated person is appointed by the senior manager, references in these Regulations to a line manager or a second line manager, as the case may be, are to be construed as references to the nominated person, in relation to the functions which they have been appointed to carry out.

References to certain periods

10.—(1) The appropriate authority may, on the application of the officer concerned or otherwise, extend the period specified in accordance with any of the regulations mentioned in paragraph (2) if it is satisfied that it is appropriate to do so.

- (2) The regulations mentioned in this paragraph are—
 - (a) regulation 14(6)(c);
 - (b) regulation 21(6)(c); and

(c) regulation 38(6)(c) and (7)(a).

(3) Unless the appropriate authority is satisfied that there are exceptional circumstances making it appropriate, any such period must not be extended if the extension would result in the total length of that period exceeding 12 months.

(4) Where an extension is granted under paragraph (1) to a period specified under a regulation mentioned in paragraph (2), any reference in these Regulations to such period is to be construed as a reference to that period as so extended.

Suspension of certain periods

11.—(1) Any reference in these Regulations to a period mentioned in paragraph (2) does not include any time the officer concerned is taking leave under the Ministry of Defence Statement of Civilian Personnel Policy Extended Special Unpaid Leave(7).

(2) The periods mentioned in this paragraph are—

- (a) a period specified in accordance with regulation 14(6)(c);
- (b) the validity period of a written improvement notice;
- (c) a period specified in accordance with regulation 21(6)(c);
- (d) the validity period of a final written improvement notice;
- (e) a period specified under regulation 38(6)(c) or (7)(a);
- (f) the validity period of a final written improvement notice extended under regulation 38.

PART 3

First Stage

Circumstances in which a first stage meeting may be required

12. Where the line manager for a police officer considers that the performance or attendance of that officer is unsatisfactory, the manager may require the officer concerned to attend a meeting (in these Regulations referred to as a first stage meeting) to discuss the performance or attendance of the officer concerned.

Arrangement of first stage meeting

13.—(1) If the line manager wishes to require a police officer to attend a first stage meeting, the manager must give a notice in writing to the officer concerned—

- (a) requiring the officer to attend a first stage meeting with the line manager;
- (b) informing the officer of the procedures for determining the date and time of the meeting under paragraphs (3) to (6);
- (c) summarising the reasons why the officer's performance or attendance is considered unsatisfactory;
- (d) informing the officer of the possible outcomes of a first stage meeting, a second stage meeting and a third stage meeting;
- (e) informing the officer that a human resources professional or a police officer may attend the meeting to advise the line manager on the proceedings;

(7) The current Statement was issued on 31 October 2011.

- (f) informing the officer that, if the officer consents, any other person specified in the notice may attend the meeting;
 - (g) informing the officer that the officer may seek advice from a representative of the staff association;
 - (h) informing the officer that the officer may be accompanied and represented by a police friend at the meeting; and
 - (i) informing the officer that a copy of any document the officer intends to rely on at the meeting must provide to the line manager in advance of the meeting.
- (2) A notice given under paragraph (1) is to be accompanied by a copy of any document relied upon by the line manager when coming to the view mentioned in regulation 12 that the performance or attendance of the officer concerned is unsatisfactory.
- (3) The line manager must, if reasonably practicable, agree a date and time for the meeting with the officer concerned.
- (4) Where no date and time is agreed under paragraph (3), the line manager must specify a date and time for the meeting.
- (5) Where a date and time is specified under paragraph (4) and—
- (a) the officer concerned or their police friend will not be available at that time; and
 - (b) the officer concerned proposes an alternative time which satisfies paragraph (6),
- the meeting must be postponed to the time proposed by the officer concerned.
- (6) An alternative time is to be—
- (a) reasonable; and
 - (b) fall before the end of 5 working days beginning with the first working day after the day specified by the line manager under paragraph (4).
- (7) The line manager must give the officer concerned a notice in writing of the date and time of the first stage meeting determined in accordance with paragraphs (3) to (6) and of the place of the meeting.
- (8) In advance of the first stage meeting, the officer concerned must provide the line manager with a copy of any document the officer intends to rely on at the meeting.

Procedure at first stage meeting

- 14.**—(1) The following provisions of this regulation apply to the procedure to be followed at the first stage meeting.
- (2) The meeting is to be conducted by the line manager.
 - (3) A human resources professional or a police officer may attend the meeting to advise the line manager on the proceedings.
 - (4) Any other person specified in the notice referred to in regulation 13(1) may attend the meeting if the officer concerned consents to such attendance.
 - (5) The line manager must—
 - (a) explain to the officer concerned the reasons why the line manager considers that the performance or attendance of the officer concerned is unsatisfactory;
 - (b) provide the officer concerned with an opportunity to make representations in response;
 - (c) provide the police friend (if there is one) with an opportunity to address the meeting in accordance with regulation 8(3)(a).

(6) If, after considering any representations made in accordance with paragraph (5)(b) or (c), the line manager finds that the performance or attendance of the officer concerned has been unsatisfactory, the manager must—

- (a) inform the officer concerned in what respect their performance or attendance is considered unsatisfactory;
- (b) inform the officer concerned of the improvement that is required in their performance or attendance;
- (c) inform the officer concerned that, if a sufficient improvement is not made within such reasonable period as the line manager specifies (being a period not greater than 12 months), the officer may be required to attend a second stage meeting in accordance with regulation 19 and the line manager must specify the date on which this period ends;
- (d) inform the officer concerned that they will receive a written improvement notice; and
- (e) inform the officer concerned that if the sufficient improvement referred to in sub-paragraph (c) is not maintained during any part of the validity period of such notice remaining after the expiry of the period specified in accordance with sub-paragraph (c), the officer may be required to attend a second stage meeting in accordance with regulation 19.

(7) The line manager may recommend that the officer concerned seeks assistance in relation to any matter affecting their health or welfare if the manager considers it appropriate.

(8) The line manager may postpone or adjourn the meeting to a specified later time or date if it appears to them to be necessary or expedient to do so.

Procedure following first stage meeting

15.—(1) The line manager must, as soon as reasonably practicable after the date of the conclusion of the first stage meeting—

- (a) cause to be prepared a written record of the meeting; and
- (b) where the manager found at the meeting that the performance or attendance of the officer concerned has been unsatisfactory, cause to be prepared a written improvement notice.

(2) Where the officer concerned has failed to attend a first stage meeting, if the line manager finds that the performance or attendance of the officer has been unsatisfactory, the manager must as soon as reasonably practicable—

- (a) cause to be prepared a written improvement notice; and
- (b) if the police friend of the officer concerned attended the meeting, cause to be prepared a written record of the meeting.

(3) A written improvement notice is to—

- (a) record the matters of which the officer concerned was informed (or would have been informed had the officer attended the meeting) under sub-paragraphs (a) to (c) and (e) of regulation 14(6);
- (b) state the period for which it is valid; and
- (c) be signed and dated by the line manager.

(4) A written improvement notice is to be valid for a period of 12 months from the date of the notice.

(5) The line manager must give a copy of any written record and any written improvement notice to the officer concerned as soon as reasonably practicable after they have been prepared.

(6) Where the line manager found that the performance or attendance of the officer concerned has been unsatisfactory and has caused to be prepared a written improvement notice, the manager must, at the same time as supplying the documents mentioned in paragraph (5), notify the officer

concerned in writing of the matters set out in regulation 16, of the name of the person to whom a written notice of appeal must be given under that regulation, of the officer's entitlements under paragraphs (7) and (8) and of the effect of paragraph (9).

(7) Subject to paragraphs (8) and (9), the officer concerned is entitled to submit written comments on any written record to the line manager before the end of 7 working days beginning with the first working day after the day on which the copy is received by the officer concerned.

(8) The line manager may, on the application of the officer concerned, extend the period specified in paragraph (7) if the manager is satisfied that it is appropriate to do so.

(9) The officer concerned is not entitled to submit written comments on the written record once the right to appeal under regulation 16 has been exercised.

(10) The line manager must ensure that any written record, any written improvement notice and any written comments of the officer concerned on the written record are retained together and filed.

Appeal against the finding and outcome of a first stage meeting

16.—(1) This regulation applies where, at the first stage meeting, the line manager found that the performance or attendance of the officer concerned has been unsatisfactory.

(2) Where this regulation applies, the officer concerned may appeal against—

- (a) such finding; or
- (b) any of the matters specified in paragraph (3) and recorded in the written improvement notice (in these Regulations referred to as the relevant terms of the written improvement notice),

or both.

(3) The matters specified in this paragraph are—

- (a) the respect in which the performance or attendance of the officer concerned is considered unsatisfactory;
- (b) the improvement that is required in their performance or attendance;
- (c) the length of the period specified by the line manager in accordance with regulation 14(6)(c).

(4) The only grounds of appeal under this regulation are—

- (a) that the finding of unsatisfactory performance or attendance was unreasonable;
- (b) that any of the relevant terms of the written improvement notice are unreasonable;
- (c) that there is evidence that could not reasonably have been considered at the first stage meeting which could have materially affected the finding of unsatisfactory performance or attendance or any of the relevant terms of the written improvement notice;
- (d) that there was a breach of the procedures set out in these Regulations or other unfairness which could have materially affected the finding of unsatisfactory performance or attendance or any of the relevant terms of the written improvement notice.

(5) Any appeal is to be commenced by the officer concerned giving written notice of the appeal to the second line manager before the end of 7 working days beginning with the first working day after receipt of the documents referred to in regulation 15(5) of the appeal.

(6) A notice given under paragraph (5) must—

- (a) set out the grounds of appeal of the officer concerned; and
- (b) be accompanied by any evidence on which the officer concerned relies.

(7) The second line manager may, on the application of the officer concerned, extend the period specified in paragraph (5) if the manager is satisfied that it is appropriate to do so.

(8) Subject to paragraph (9), the meeting at which the appeal is to be heard (referred to in these Regulations as the first stage appeal meeting) is to take place before the end of 7 working days beginning with the first working day after the day on which the notice under paragraph (5) is received by the second line manager.

(9) A first stage appeal meeting may take place after the period of 7 working days referred to in paragraph (8) if the second line manager considers it necessary or expedient, in which case they must notify the officer concerned of the reasons in writing.

Arrangement of first stage appeal meeting

17.—(1) As soon as reasonably practicable after receipt by the second line manager of the notice of appeal referred to in regulation 16(5), the second line manager must give a notice in writing to the officer concerned informing the officer—

- (a) of the procedures for determining the date and time of the meeting under paragraphs (2) to (5);
- (b) that a human resources professional or a police officer may attend the meeting to advise the second line manager on the proceedings;
- (c) that, if the officer consents, any other person specified in the notice may attend the meeting;
- (d) that the officer may seek advice from a representative of the staff association; and
- (e) that a police friend may accompany and represent the officer at the meeting.

(2) The second line manager must, if reasonably practicable, agree a date and time for the meeting with the officer concerned.

(3) Where no date and time is agreed under paragraph (2), the second line manager must specify a date and time for the meeting.

(4) Where a date and time is specified under paragraph (3) and—

- (a) the officer concerned or the police friend will not be available at that time; and
- (b) the officer concerned proposes an alternative time which satisfies paragraph (5),

the meeting must be postponed to the time proposed by the officer concerned.

(5) An alternative time must—

- (a) be reasonable; and
- (b) fall before the end of 5 working days beginning with the first working day after the day specified by the second line manager under paragraph (3).

(6) The second line manager must give to the officer concerned a notice in writing of the date and time of the first stage appeal meeting determined in accordance with paragraphs (2) to (5) and of the place of the meeting.

Procedure at first stage appeal meeting

18.—(1) The following provisions of this regulation apply to the procedure to be followed at a first stage appeal meeting.

(2) The meeting is to be conducted by the second line manager.

(3) A human resources professional or a police officer may attend the meeting to advise the second line manager on the proceedings.

(4) Any other person specified in the notice referred to in regulation 17(1) may attend the meeting if the officer concerned consents to such attendance.

(5) The second line manager must—

- (a) provide the officer concerned with an opportunity to make representations; and
 - (b) provide the police friend (if there is one) with an opportunity to address the meeting in accordance with regulation 8(3)(a).
- (6) After considering any representations made in accordance with paragraph (5), the second line manager may—
- (a) confirm or reverse the finding of unsatisfactory performance or attendance;
 - (b) confirm or vary the relevant terms of the written improvement notice appealed against.
- (7) Where the second line manager has reversed the finding of unsatisfactory performance or attendance, the written improvement notice is revoked.
- (8) The second line manager may postpone or adjourn the meeting to a specified later time or date if it appears to them to be necessary or expedient to do so.
- (9) As soon as reasonably practicable after the conclusion of the meeting, the officer concerned is to be given written notice of the second line manager's decision and a written summary of the reasons for that decision, but in any event, the officer concerned is to be given written notice of the decision before the end of 3 working days beginning with the first working day after the conclusion of the meeting.
- (10) Where the second line manager has—
- (a) reversed the finding of unsatisfactory performance or attendance and revoked the written improvement notice; or
 - (b) varied any of the relevant terms of the written improvement notice,
- the decision of the second line manager takes effect by way of substitution for the finding, the written improvement notice issued or the relevant terms of the written improvement notice appealed against from the date of the first stage meeting.

Part 4

Second Stage

Circumstances in which a second stage meeting may be required

- 19.**—(1) Where a police officer has received a written improvement notice, as soon as reasonably practicable after the date on which the period specified in accordance with regulation 14(6)(c) ends—
- (a) the line manager must assess the performance or attendance of the officer concerned during that period, in consultation with the second line manager or a human resources professional (or both); and
 - (b) the line manager must notify the officer concerned in writing whether the line manager considers that there has been a sufficient improvement in performance or attendance during that period.
- (2) If the line manager considers that there has not been a sufficient improvement, the manager must, at the same time as notification is given under paragraph (1)(b), also notify the officer concerned in writing that the officer is required to attend a meeting (in these Regulations referred to as a second stage meeting) to consider their performance or attendance.
- (3) Where—
- (a) the officer concerned has not been required to attend a second stage meeting under paragraph (2), or

- (b) the officer concerned has been required to attend a second stage meeting under paragraph (2) but the second line manager did not make a finding of unsatisfactory performance or attendance at that meeting,

the officer concerned may be required to attend a second stage meeting under paragraph (4).

(4) If the line manager considers that the officer concerned has failed to maintain a sufficient improvement in their performance or attendance during any part of the validity period of the written improvement notice remaining after the expiry of the period specified in accordance with regulation 14(6)(c), the manager must notify the officer concerned in writing of the matters set out in paragraph (5).

(5) The matters referred to in paragraph (4) are—

- (a) that the manager is of the view mentioned in paragraph (4); and
- (b) that the officer concerned is required to attend a meeting (in these Regulations referred to as a second stage meeting) to consider their performance or attendance.

(6) Any second stage meeting which a police officer is required to attend must concern unsatisfactory performance or attendance which is similar to or connected with the unsatisfactory performance or attendance referred to in the written improvement notice.

Arrangement of second stage meeting

20.—(1) Where the line manager requires the officer concerned to attend a second stage meeting, the second line manager must as soon as reasonably practicable give a notice in writing to the officer concerned—

- (a) referring to the requirement on the officer concerned to attend a second stage meeting of the unsatisfactory performance procedures with the second line manager;
- (b) informing the officer of the procedures for determining the date and time of the meeting under paragraphs (3) to (6);
- (c) summarising the reasons why the officer's performance or attendance is considered unsatisfactory;
- (d) informing the officer of the possible outcomes of a second stage meeting and a third stage meeting;
- (e) informing the officer that the line manager may attend the meeting;
- (f) informing the officer that a human resources professional or a police officer may attend the meeting to advise the second line manager on the proceedings;
- (g) informing the officer that, if the officer consents, any other person specified in the notice may attend the meeting;
- (h) informing the officer that the officer may seek advice from a representative of the staff association;
- (i) informing the officer that the officer may be accompanied and represented by a police friend at the meeting; and
- (j) informing the officer that a copy of any document the officer intends to rely on at the meeting must be provided to the second line manager in advance of the meeting.

(2) A notice given under paragraph (1) is to be accompanied by a copy of any document relied upon by the line manager when the manager formed the view referred to in regulation 19(2) or (4), as the case may be.

(3) The second line manager must, if reasonably practicable, agree a date and time for the meeting with the officer concerned.

(4) Where no date and time is agreed under paragraph (3), the second line manager must specify a date and time for the meeting.

(5) Where a date and time is specified under paragraph (4) and—

- (a) the officer concerned or the police friend will not be available at that time; and
- (b) the officer concerned proposes an alternative time which satisfies paragraph (6),

the meeting must be postponed to the time proposed by the officer concerned.

(6) An alternative time must—

- (a) be reasonable; and
- (b) fall before the end of 5 working days beginning with the first working day after the day specified by the second line manager under paragraph (4).

(7) The second line manager must give to the officer concerned a notice in writing of the date and time of the second stage meeting determined in accordance with paragraphs (3) to (6) and of the place of the meeting.

(8) In advance of the second stage meeting, the officer concerned must provide the second line manager with a copy of any document the officer intends to rely on at the meeting.

Procedure at second stage meeting

21.—(1) The following provisions of this regulation apply to the procedure to be followed at the second stage meeting.

(2) The meeting is to be conducted by the second line manager and may be attended by the line manager.

(3) A human resources professional or a police officer may attend the meeting to advise the second line manager on the proceedings.

(4) Any other person specified in the notice referred to in regulation 20(1) may attend the meeting if the officer concerned consents to such attendance.

(5) The second line manager must—

- (a) explain to the officer concerned the reasons why they have been required to attend the meeting;
- (b) provide the officer concerned with an opportunity to make representations in response;
- (c) provide the police friend (if there is one) with an opportunity to address the meeting in accordance with regulation 8(3)(a).

(6) If, after considering any representations made under paragraph (5)(b) or (c), the second line manager finds that the performance or attendance of the officer concerned has been unsatisfactory during the period specified in accordance with regulation 14(6)(c) or during any part of the validity period of the written improvement notice remaining after the expiry of such period, the manager must—

- (a) inform the officer concerned in what respect the officer's performance or attendance is considered unsatisfactory;
- (b) inform the officer concerned of the improvement that is required in the officer's performance or attendance;
- (c) inform the officer concerned that, if a sufficient improvement is not made within such reasonable period as the second line manager specifies (being a period not greater than 12 months), the officer may be required to attend a third stage meeting in accordance with regulation 26 and the second line manager must specify the date on which this period ends;

- (d) inform the officer concerned that the officer will receive a final written improvement notice; and
 - (e) inform the officer concerned that if the sufficient improvement referred to in sub-paragraph (c) is not maintained during any part of the validity period of such notice remaining after the expiry of the period specified in accordance with sub-paragraph (c), the officer may be required to attend a third stage meeting in accordance with regulation 26.
- (7) The second line manager may recommend that the officer concerned seeks assistance in relation to any matter affecting their health or welfare if the manager considers it appropriate,
- (8) The second line manager may postpone or adjourn the meeting to a specified later time or date if it appears to them to be necessary or expedient to do so.

Procedure following second stage meeting

22.—(1) The second line manager must, as soon as reasonably practicable after the date of the conclusion of the second stage meeting—

- (a) cause to be prepared a written record of the meeting; and
- (b) where the manager made a finding at the meeting as set out in regulation 21(6), cause to be prepared a final written improvement notice.

(2) Where the officer concerned has failed to attend a second stage meeting, if the second line manager makes a finding as set out in regulation 21(6), the manager must as soon as reasonably practicable—

- (a) cause to be prepared a final written improvement notice; and
- (b) if the police friend of the officer concerned attended the meeting, cause to be prepared a written record of the meeting.

(3) A final written improvement notice is to—

- (a) record the matters of which the officer concerned was informed (or would have been informed had the officer attended the meeting) under sub-paragraphs (a) to (c) and (e) of regulation 21(6);
- (b) state the period for which it is valid; and
- (c) be signed and dated by the second line manager.

(4) A final written improvement notice is valid for a period of 12 months from the date of the notice.

(5) The second line manager must give a copy of any written record and any final written improvement notice to the officer concerned as soon as reasonably practicable after they have been prepared.

(6) Where the second line manager made a finding as set out in regulation 21(6) and has caused to be prepared a final written improvement notice, the manager must, at the same time as supplying the documents mentioned in paragraph (5), notify the officer concerned in writing of the matters set out in regulation 23, of the name of the person to whom a written notice of appeal is to be given under that regulation, of the officer's entitlements under paragraphs (7) and (8) and of the effect of paragraph (9).

(7) Subject to paragraphs (8) and (9), the officer concerned is entitled to submit written comments on the written record to the second line manager before the end of 7 working days beginning with the first working day after the day on which the copy is received by the officer concerned.

(8) The second line manager may, on the application of the officer concerned, extend the period specified in paragraph (7) if they are satisfied that it is appropriate to do so.

(9) The officer concerned is not entitled to submit written comments on the written record once the right to appeal under regulation 23 has been exercised.

(10) The second line manager must ensure that any written record, any final written improvement notice and any written comments of the officer concerned on the written record are retained together and filed.

Appeal against the finding and outcome of a second stage meeting

23.—(1) This regulation applies where, at the second stage meeting, the second line manager found that the performance or attendance of the officer concerned has been unsatisfactory as set out in regulation 21(6).

(2) Where this regulation applies, the officer concerned may appeal against one or more of the following—

- (a) such finding;
- (b) any of the matters specified in paragraph (3) and recorded in the final written improvement notice (in these Regulations referred to as the relevant terms of the final written improvement notice);
- (c) the decision of the line manager to require the officer concerned to attend the second stage meeting.

(3) The matters specified in this paragraph are—

- (a) the respect in which the performance or attendance of the officer concerned is considered unsatisfactory;
- (b) the improvement that is required in the officer's performance or attendance;
- (c) the length of the period specified by the second line manager in accordance with regulation 21(6)(c).

(4) The only grounds of appeal under this regulation are—

- (a) that, in relation to an appeal under paragraph (2)(c), the officer concerned should not have been required to attend the second stage meeting as the meeting did not, in accordance with regulation 19(6), concern unsatisfactory performance or attendance which is similar to or connected with the unsatisfactory performance or attendance referred to in the written improvement notice;
- (b) that the finding of unsatisfactory performance or attendance was unreasonable;
- (c) that any of the relevant terms of the final written improvement notice are unreasonable;
- (d) that there is evidence that could not reasonably have been considered at the second stage meeting which could have materially affected the finding of unsatisfactory performance or attendance or any of the relevant terms of the final written improvement notice;
- (e) that there was a breach of the procedures set out in these Regulations or other unfairness which could have materially affected the finding of unsatisfactory performance or attendance or any of the relevant terms of the final written improvement notice.

(5) An appeal is to be commenced by the officer concerned giving written notice of the appeal to the senior manager before the end of 7 working days beginning with the first working day after receipt of the documents referred to in regulation 22(5).

(6) A notice under paragraph (5) must—

- (a) set out the grounds of appeal of the officer concerned; and
- (b) be accompanied by any evidence on which the officer concerned relies.

(7) The senior manager may, on the application of the officer concerned, extend the period specified in paragraph (5) if satisfied that it is appropriate to do so.

(8) Subject to paragraph (9), the meeting at which the appeal will be heard (referred to in these Regulations as a second stage appeal meeting) is to take place before the end of 7 working days beginning with the first working day after the day on which the notice under paragraph (5) is received by the senior manager.

(9) A second stage appeal meeting may take place after the period of 7 working days referred to in paragraph (8) if the senior manager considers it necessary or expedient, in which case they must notify the officer concerned of those reasons in writing.

Arrangement of second stage appeal meeting

24.—(1) As soon as reasonably practicable after receipt by the senior manager of the notice of appeal referred to in regulation 23(5), the senior manager must give a notice in writing to the officer concerned—

- (a) informing the officer of the procedures for determining the date and time of the meeting under paragraphs (2) to (5);
- (b) informing the officer that a human resources professional or a police officer may attend the meeting to advise the senior manager on the proceedings;
- (c) informing the officer that, if the officer consents, any other person specified in the notice may attend the meeting;
- (d) informing the officer that the officer may seek advice from a representative of the staff association; and
- (e) informing the officer that the officer may be accompanied and represented by a police friend at the meeting.

(2) The senior manager must, if reasonably practicable, agree a date and time for the meeting with the officer concerned.

(3) Where no date and time is agreed under paragraph (2), the senior manager must specify a date and time for the meeting.

(4) Where a date and time is specified under paragraph (3) and—

- (a) the officer concerned or the police friend will not be available at that time; and
- (b) the officer concerned proposes an alternative time which satisfies paragraph (5),

the meeting must be postponed to the time proposed by the officer concerned.

(5) An alternative time must—

- (a) be reasonable; and
- (b) fall before the end of 5 working days beginning with the first working day after the day specified by the senior manager under paragraph (3).

(6) The senior manager must give to the officer concerned a notice in writing of the date and time of the second stage appeal meeting determined in accordance with paragraphs (2) to (5) and of the place of the meeting.

Procedure at second stage appeal meeting

25.—(1) The following provisions of this regulation apply to the procedure to be followed at a second stage appeal meeting.

(2) The meeting is to be conducted by the senior manager.

(3) A human resources professional or a police officer may attend the meeting to advise the senior manager on the proceedings.

(4) Any other person specified in the notice referred to in regulation 24(1) may attend the meeting if the officer concerned consents to such attendance.

(5) The senior manager must—

- (a) provide the officer concerned with an opportunity to make representations; and
- (b) provide the police friend (if there is one) with an opportunity to address the meeting in accordance with regulation 8(3)(a).

(6) After considering any representations made in accordance with paragraph (5), the senior manager may—

- (a) in an appeal under regulation 23(2)(c), make a finding that the officer concerned should not have been required to attend the second stage meeting and reverse the finding made at that meeting;
- (b) confirm or reverse the finding of unsatisfactory performance or attendance made at the second stage meeting;
- (c) confirm or vary the relevant terms of the final written improvement notice appealed against.

(7) Where the senior manager has reversed the finding of unsatisfactory performance or attendance made at the second stage meeting, the senior manager must also revoke the final written improvement notice.

(8) The senior manager may postpone or adjourn the meeting to a specified later time or date if it appears to them to be necessary or expedient to do so.

(9) As soon as reasonably practicable after the conclusion of the meeting, the officer concerned is to be given written notice of the senior manager's decision and a written summary of the reasons for that decision but in any event, the officer concerned is to be given written notice of the decision before the end of 3 working days beginning with the first working day after the conclusion of the meeting.

(10) Where the senior manager has—

- (a) reversed the finding made as set out in regulation 21(6) and revoked the final written improvement notice; or
- (b) varied any of the relevant terms of the final written improvement notice,

the decision of the senior manager takes effect by way of substitution for the finding, the final written improvement notice issued or the relevant terms of the final written improvement notice appealed against from the date of the second stage meeting.

Part 5

Third Stage

Assessment following second stage meeting

26.—(1) Where a police officer has received a final written improvement notice, as soon as reasonably practicable after the date on which the period specified in accordance with regulation 21(6)(c) ends—

- (a) the line manager must assess the performance or attendance of the officer concerned during that period, in consultation with the second line manager or a human resources professional (or both); and

- (b) the line manager must notify the officer concerned in writing whether the line manager considers that there has been a sufficient improvement in performance or attendance during that period.

(2) If the line manager considers that there has not been a sufficient improvement, the manager must, at the same time as notification is given under paragraph (1)(b), also notify the officer concerned in writing that the officer is required to attend a meeting (in these Regulations referred to as a third stage meeting) to consider their performance or attendance.

(3) Where the officer concerned—

- (a) has not been required to attend a third stage meeting under paragraph (2), or
- (b) has been required to attend a third stage meeting under paragraph (2) but the panel did not make a finding of unsatisfactory performance or attendance at that meeting,

the officer may be required to attend a third stage meeting under paragraph (4).

(4) If the line manager considers that the officer concerned has failed to maintain a sufficient improvement in their performance or attendance during any part of the validity period of the final written improvement notice remaining after the expiry of the period specified in accordance with regulation 21(6)(c), the manager must notify the officer concerned in writing of the matters set out in paragraph (5).

(5) Those matters are—

- (a) that the manager is of the view mentioned in paragraph (4); and
- (b) that the officer concerned is required to attend a meeting (in these Regulations referred to as a third stage meeting) to consider their performance or attendance.

(6) Subject to regulation 28, any third stage meeting which a police officer is required to attend must concern unsatisfactory performance or attendance which is similar to or connected with the unsatisfactory performance or attendance referred to in the final written improvement notice.

Arrangement of a third stage meeting

27.—(1) Where the line manager requires the officer concerned to attend a third stage meeting, the senior manager must as soon as reasonably practicable give a notice in writing to the officer concerned—

- (a) referring to the requirement on the officer concerned to attend a third stage meeting of the unsatisfactory performance procedures with a panel appointed by the appropriate authority;
- (b) informing the officer of the procedures for determining the date and time of the meeting under regulation 34;
- (c) summarising the reasons why the officer's performance or attendance is considered unsatisfactory;
- (d) informing the officer of the possible outcomes of the meeting;
- (e) informing the officer that a human resources professional and a police officer may attend the meeting to advise the panel on the proceedings;
- (f) informing the officer that a relevant lawyer may attend the meeting to advise the panel on the proceedings and on any question of law that may arise at the meeting;
- (g) informing the officer that, if the officer consents, any other person specified in the notice may attend the meeting;
- (h) informing the officer that the officer may seek advice from a representative of the staff association; and

- (i) informing the officer that a police friend may accompany and represent the officer at the meeting.
- (2) A notice given under paragraph (1) is to be accompanied by a copy of any document relied upon by the line manager when the manager formed the view referred to in regulation 26(2) or (4), as the case may be.
- (3) A third stage meeting under this regulation is not to take place unless the officer concerned has been notified of the right to representation under paragraph (1)(i).

Circumstances in which a third stage meeting may be required without a prior first or second stage meeting

- 28.**—(1) This regulation applies where the appropriate authority considers that the performance of a police officer constitutes gross incompetence.
- (2) Where this regulation applies, the appropriate authority may inform the officer concerned in writing that the officer is required to attend a meeting to consider their performance.
 - (3) Such meeting is referred to in these Regulations as a third stage meeting, notwithstanding that the officer concerned has not attended a first stage meeting or a second stage meeting in respect of such performance.

Arrangement of a third stage meeting without a prior first or second stage meeting

- 29.**—(1) Where the appropriate authority has informed the officer concerned under regulation 28(2) that the officer is required to attend a third stage meeting, that authority must as soon as reasonably practicable give to the officer concerned a notice in writing—
- (a) referring to the requirement on the officer concerned to attend a third stage meeting of the unsatisfactory performance procedures with a panel appointed by the appropriate authority;
 - (b) informing the officer of the procedures for determining the date and time of the meeting under regulation 34;
 - (c) summarising the reasons why the officer's performance is considered to constitute gross incompetence;
 - (d) informing the officer of the possible outcomes of the meeting;
 - (e) informing the officer that a human resources professional and a police officer may attend the meeting to advise the panel on the proceedings;
 - (f) informing the officer that a relevant lawyer may attend the meeting to advise the panel on the proceedings and on any question of law that may arise at the meeting;
 - (g) informing the officer that, if the officer consents, any other person specified in the notice may attend the meeting;
 - (h) informing the officer that the officer may seek advice from a representative of the staff association;
 - (i) informing the officer of the effect of regulation 6; and
 - (j) informing the officer that a police friend may accompany the officer at the meeting.
- (2) A notice given under paragraph (1) is to be accompanied by a copy of any document relied upon by the appropriate authority when it formed the view referred to in regulation 28(1).

Appointment of panel members

30.—(1) The third stage meeting is to be conducted by a panel, which is to comprise a panel chair and 2 other members.

(2) The panel is to be appointed by the appropriate authority.

(3) The panel chair is to be a senior officer or a senior officer from an alternative police force.

(4) The other panel members are to be police officers or officers from an alternative police force both of the rank of superintendent or above and of at least the same rank as the officer concerned.

(5) A panel member must not be an interested party.

(6) As soon as reasonably practicable after the panel members have been appointed, the appropriate authority must notify the officer concerned in writing of their names.

(7) As soon as the appropriate authority has appointed the panel members, that authority must arrange for a copy of any document—

(a) which was available to the line manager in relation to any first stage meeting;

(b) which was available to the second line manager in relation to any second stage meeting; or

(c) which was prepared or submitted under regulation 15, 18, 22, 25, 26, 27, 28 or 29 as the case may be,

to be made available to each panel member and given to the officer concerned.

Right of officer concerned to object to panel members

31.—(1) The officer concerned may object to the appointment of any of the panel members.

(2) Any objection under paragraph (1) must be made in writing to the appropriate authority before the end of 3 working days beginning with the first working day after receipt of the notification referred to in regulation 30(6) and must set out the grounds of objection of the officer concerned.

(3) The appropriate authority must notify the officer concerned in writing whether it upholds or rejects an objection to any panel member.

(4) If the appropriate authority upholds an objection, that authority must remove that member from the panel and appoint a new member to the panel.

(5) If the appropriate authority appoints a new panel member under paragraph (4), it must ensure that the requirements for the composition of the panel in regulation 30 continue to be met.

(6) As soon as reasonably practicable after any such appointment, the appropriate authority must notify the officer concerned in writing of the name of the new panel member.

(7) The officer concerned may object to the appointment of a panel member appointed under paragraph (4).

(8) Any objection under paragraph (7) must be made in accordance with paragraph (2) save that the reference to regulation 30(6) shall be construed as a reference to paragraph (6) of this regulation.

(9) Where an objection is made under paragraph (7)—

(a) the appropriate authority must comply with paragraphs (3) to (6);

(b) paragraph (7) does not apply in relation to any new appointment.

Procedure on receipt of notice of third stage meeting

32.—(1) Before the end of—

(a) 14 working days beginning with the first working day after the date on which a notice has been given to the officer concerned under regulation 27 or 29; or

- (b) where that period is extended by the panel chair for exceptional circumstances, such extended period,
- the officer concerned must comply with paragraphs (2) and (3).
- (2) The officer concerned must provide to the appropriate authority—
- (a) written notice of whether or not the officer accepts that their performance or attendance has been unsatisfactory or that the officer has been grossly incompetent, as the case may be;
 - (b) where the officer accepts that their performance or attendance has been unsatisfactory or that the officer has been grossly incompetent, any written submission the officer wishes to make in mitigation;
 - (c) where the officer does not accept that their performance or attendance has been unsatisfactory or that the officer has been grossly incompetent, or where the officer disputes all or part of the matters referred to in the notice given under regulation 27 or 29, written notice of—
 - (i) the matters in dispute and the officer’s account of the relevant events; and
 - (ii) any arguments on points of law the officer wishes to be considered by the panel.
- (3) The officer concerned must provide the appropriate authority and the panel with a copy of any document the officer intends to rely on at the third stage meeting.
- (4) Before the end of 3 working days beginning with the first working day after the date on which the officer concerned has complied with paragraph (2), the senior manager and the officer concerned must each supply to the other a list of proposed witnesses or give notice that they do not have any proposed witnesses, and any list of proposed witnesses is to include brief details of the evidence that each witness is able to adduce and their addresses.
- (5) Where there are proposed witnesses, the officer concerned must, if reasonably practicable, agree a list of proposed witnesses with the senior manager.
- (6) Where no list of proposed witnesses is agreed under paragraph (4), the officer concerned shall supply to the appropriate authority a list of proposed witnesses.

Witnesses

- 33.—**(1) As soon as reasonably practicable after any list of proposed witnesses has been—
- (a) agreed under regulation 32(5); or
 - (b) supplied under regulation 32(6),
- the appropriate authority must supply that list to the panel chair together, in the latter case, with a list of its proposed witnesses.
- (2) The panel chair must—
- (a) consider the list or lists of proposed witnesses; and
 - (b) subject to paragraph (3), determine which, if any, witnesses should attend the third stage meeting.
- (3) The panel chair may determine that witnesses not named in any list of proposed witnesses should attend the third stage meeting.
- (4) No witness may give evidence at a third stage meeting unless the panel chair reasonably believes that it is necessary in the interests of fairness for the witness to do so, in which case the panel chair must—
- (a) where the witness is a police officer, cause that person to be ordered to attend the third stage meeting; and

(b) in any other case, cause the witness to be given notice that their attendance is necessary and of the date, time and place of the meeting.

(5) The panel chair may determine that witnesses should be reimbursed for their reasonable expenses and any such expenses are to be met out of Ministry of Defence funds.

Timing and notice of third stage meeting

34.—(1) Subject to paragraphs (2) and (6) and regulation 35, the third stage meeting is to take place before the end of 30 working days beginning with the first working day after the day on which a notice has been given to the officer concerned under regulation 27 or 29.

(2) The panel chair may extend the time period specified in paragraph (1) if satisfied that it would be in the interests of fairness to do so.

(3) Where the panel chair extends the time period under paragraph (2), written notification of the reasons for so doing must be provided to the appropriate authority and the officer concerned.

(4) The panel chair must, if reasonably practicable, agree a date and time for the third stage meeting with the officer concerned.

(5) Where no date and time is agreed under paragraph (4), the panel chair must specify a date and time for the third stage meeting.

(6) Where a date and time is specified under paragraph (5) and—

(a) the officer concerned or the police friend will not be available at that time; and

(b) the officer concerned proposes an alternative time which satisfies subsection (7),

the third stage meeting must be postponed to the time proposed by the officer concerned.

(7) An alternative time must—

(a) be reasonable; and

(b) fall before the end of 5 working days beginning with the first working day after the day specified by the panel chair.

(8) The panel chair must give to the officer concerned a notice in writing of the date and time of the third stage meeting determined in accordance with this regulation and of the place of the meeting.

(9) Where the officer concerned informs the panel chair in advance that the officer is unable to attend the third stage meeting on grounds which the panel chair considers reasonable, the panel chair may allow the officer concerned to participate in the meeting by video link or other means.

Postponement and adjournment of a third stage meeting

35.—(1) If the panel chair considers it necessary or expedient, they may direct that the third stage meeting take place at a different time to that specified in the notice given under regulation 34.

(2) A direction under paragraph (1) may specify a time which falls after the period of 30 working days referred to in regulation 34(1).

(3) Where the panel chair makes a direction under paragraph (1) the officer concerned, the other panel members and the appropriate authority must be notified in writing of the reasons and the revised time and place for the meeting.

Procedure at a third stage meeting

36.—(1) Subject to the provisions of this regulation, the procedure at the third stage meeting is to be such as the panel chair may determine.

(2) The third stage meeting is to be held in private.

(3) A human resources professional and a police officer may attend the meeting to advise the panel on the proceedings.

(4) A relevant lawyer may attend the meeting to advise the panel on the proceedings and on any question of law that may arise at the meeting.

(5) Any other person specified in the notice referred to in regulation 27(1) or 29(1) may attend the meeting if the officer concerned consents to such attendance.

(6) Where the officer concerned is required to attend a third stage meeting under regulation 26, the panel chair must—

- (a) provide the officer concerned with an opportunity to make representations in relation to the matters referred to in the notice given under regulation 27;
- (b) provide the officers' police friend (if there is one) with an opportunity to address the meeting in relation to such matters in accordance with regulation 8(3)(a).

(7) Where the officer concerned is required to attend a third stage meeting under regulation 28, the panel chair must—

- (a) provide the officer concerned with an opportunity to make representations in relation to the matters referred to in the notice given under regulation 29;
- (b) provide the person representing the officer with an opportunity to address the meeting in relation to such matters in accordance with regulation 8(3)(a).

(8) The panel chair may adjourn the meeting to a specified later time or date if it appears to them to be necessary or expedient to do so.

(9) A verbatim record of the meeting is to be taken and the officer concerned is to be supplied with a copy of such record on request.

Finding

37.—(1) Following the third stage meeting, the panel must make a finding whether—

- (a) in a case falling within regulation 26(2), the performance or attendance of the officer concerned during the period specified in accordance with regulation 21(6)(c) has been satisfactory or not;
- (b) in a case falling within regulation 26(4), the performance or attendance of the officer concerned during any part of the validity period of the final written improvement notice remaining after the expiry of the period specified in accordance with regulation 21(6)(c) has been satisfactory or not; or
- (c) in a case falling within regulation 28, the performance of the officer concerned constitutes gross incompetence, unsatisfactory performance or neither.

(2) The panel must prepare (or cause to be prepared) their decision in writing which is to record the finding and, where they have found—

- (a) in a case falling within regulation 26(2) or (4), that the performance or attendance of the officer concerned has been unsatisfactory; or
- (b) in a case falling within regulation 28, that the officer's performance constitutes gross incompetence or unsatisfactory performance,

their reasons as well as any outcome which they order under regulation 38.

(3) As soon as reasonably practicable after the conclusion of the meeting, the panel chair must give a written copy of the decision to—

- (a) the officer concerned; and
- (b) the line manager,

but in any event, the officer concerned must be given written notice of the finding before the end of 3 working days beginning with the first working day after the conclusion of the meeting.

(4) Where the panel have made a finding of unsatisfactory performance or attendance or gross incompetence, the copy of the decision given to the officer concerned must be accompanied by a notice in writing setting out the circumstances in which and the timeframe within which the officer may appeal under the Ministry of Defence Police Appeals Tribunals Regulations 2009⁽⁸⁾.

(5) Any finding or decision of the panel under this regulation or regulation 38 if not taken unanimously is to be based on a simple majority but is not to indicate whether it was taken unanimously or by a majority.

Outcomes

38.—(1) If the panel make a finding that, in a case falling within regulation 26(2) or (4), the performance or attendance of the officer concerned has been unsatisfactory they may, subject to paragraph (4), order—

- (a) one of the outcomes mentioned in paragraph (3)(a), (c) or (f); or
- (b) where the panel are satisfied that there are exceptional circumstances which justify it, the outcome mentioned in paragraph (3)(d).

(2) If the panel make a finding that, in a case falling within regulation 28, the performance of the officer concerned constitutes gross incompetence, they may order one of the outcomes mentioned in paragraph (3)(b), (c), (e) or (f).

(3) The outcomes mentioned in this paragraph are:

- (a) dismissal of the officer concerned with notice, the period of such notice to be decided by the panel, subject to a minimum period of 28 days;
- (b) dismissal of the officer concerned with immediate effect;
- (c) reduction in rank of the officer concerned with immediate effect;
- (d) an extension of the final written improvement notice;
- (e) the issue of a final written improvement notice;
- (f) redeployment to alternative duties (which may involve a reduction of rank) within the force.

(4) The panel may not order the outcome mentioned in paragraph (3)(c) where the third stage meeting relates to the attendance of the officer concerned.

(5) If the panel make a finding, in a case falling within regulation 28, of unsatisfactory performance, they must order the issue of a written improvement notice.

(6) A written improvement notice or a final written improvement notice issued under this regulation is to—

- (a) state in what respect the performance or attendance of the officer concerned (as the case may be) is considered unsatisfactory or grossly incompetent;
- (b) state the improvement that is required in their performance or attendance;
- (c) state that, if a sufficient improvement is not made within such reasonable period as the panel specifies (being a period not greater than 12 months), the officer concerned may be required to attend a second stage meeting (in the case of a written improvement notice) or another third stage meeting (in the case of a final written improvement notice) and state the date on which this period ends;
- (d) state that it is valid for a period of 12 months from the date of the notice;

⁽⁸⁾ S.I. 2009/3070.

- (e) state that, if the sufficient improvement referred to in sub-paragraph (c) is not maintained during any part of the validity period remaining after the expiry of the period specified in accordance with sub-paragraph (c), the officer may be required to attend a second stage meeting (in the case of a written improvement notice) or another third stage meeting (in the case of a final written improvement notice); and
 - (f) be signed and dated by the panel chair.
- (7) Where the panel orders an extension of a final written improvement notice—
- (a) the notice is to be amended—
 - (i) to state that if the officer concerned does not make a sufficient improvement within such reasonable period as the panel specifies (being a period not greater than 12 months) the officer may be required to attend another third stage meeting; and
 - (ii) to state the date on which this period ends;
 - (b) the panel may vary any of the other matters recorded in the notice;
 - (c) the notice is valid for a further period of 12 months from the date of the extension and is to state the date on which it expires.

Assessment of performance or attendance following third stage meeting: written improvement notice

39.—(1) This regulation applies where a written improvement notice has been issued under regulation 38.

(2) Where this regulation applies, the performance of the officer concerned is to be assessed under regulation 19 as if the officer had received a written improvement notice under regulation 15.

(3) Where, as a result of such assessment, the officer concerned is required to attend a second stage meeting, these Regulations have effect as if the officer had been required to attend that meeting under regulation 19, and references to—

- (a) the period specified in accordance with regulation 14(6)(c) are to be construed as references to the period specified under regulation 38(6)(c); and
- (b) the validity period of the written improvement notice is to be construed as a reference to the validity period of the written improvement notice issued under regulation 38.

(4) Where a police officer is required to attend such a second stage meeting, that meeting must concern unsatisfactory performance which is similar to or connected with the unsatisfactory performance referred to in the written improvement notice.

Assessment of performance or attendance following third stage meeting: final written improvement notice

40.—(1) This regulation applies where a final written improvement notice has been issued or extended under regulation 38.

(2) Where this regulation applies, as soon as reasonably practicable after the reasonable period specified by the panel under regulation 38(6)(c) or (7)(a) ends—

- (a) the panel must assess the performance or attendance of the officer concerned (as the case may be) during that period; and
- (b) the panel chair must notify the officer concerned in writing whether the panel considers that there has been a sufficient improvement in performance or attendance during that period.

(3) If the panel considers that there has not been a sufficient improvement, the panel chair must, at the same time as he gives notification under paragraph (2)(b), also notify the officer concerned in

writing that the officer is required to attend another third stage meeting to consider their performance or attendance.

(4) Where the officer concerned—

- (a) has not been required to attend a third stage meeting under paragraph (3), or
- (b) has been required to attend a third stage meeting under paragraph (3) but the panel did not make a finding of unsatisfactory performance or attendance at that meeting,

the officer concerned may be required to attend a third stage meeting under paragraph (5).

(5) If the panel considers that the officer concerned has failed to maintain a sufficient improvement in their performance or attendance during any part of the validity period of the final written improvement notice remaining after the expiry of the period specified in accordance with regulation 38(6)(c) or (7)(a), the panel chair must notify the officer concerned in writing of the matters set out in paragraph (6).

(6) Those matters are—

- (a) that the panel is of the view mentioned in paragraph (5); and
- (b) that the officer concerned is required to attend another third stage meeting to consider their performance or attendance.

(7) In a case falling within paragraph (3) or (5), the appropriate authority must give the officer concerned the notice referred to in regulation 27.

(8) Where the officer concerned is required to attend a third stage meeting under this regulation, these Regulations have effect as if the case fell within regulation 26(2) or (4) as the case may be and—

- (a) references to the period specified in accordance with regulation 21(6)(c) are to be construed as references to the period specified under regulation 38(6)(c) or (7)(a), as the case may be; and
- (b) references to the validity period of the final written improvement notice are to be construed as references to the period mentioned in regulation 38(6)(d) or (7)(c), as the case may be.

(9) Any third stage meeting which a police officer is required to attend under this regulation must concern unsatisfactory performance or attendance which is similar to or connected with the unsatisfactory performance or attendance referred to in the final written improvement notice issued or extended under regulation 38.

(10) References in this regulation to the panel are references to the panel that conducted the initial third stage meeting, subject to paragraph (11).

(11) Where any of the panel members are not able to continue to act as such, the appropriate authority must remove that member from the panel and appoint a new member to the panel.

(12) If the appropriate authority appoints a new panel member under paragraph (11), it must ensure that the requirements for the composition of the panel in regulation 30 continue to be met.

(13) As soon as reasonably practicable after any such appointment, the appropriate authority must notify the officer concerned in writing of the name of the new panel member.

(14) The officer concerned may object to the appointment of a panel member appointed under paragraph (11).

(15) Any such objection must be made in accordance with regulation 31(2), and references in that regulation to a notification is to be construed as a reference to the notification referred to in paragraph (13) of this regulation.

(16) Where an objection is made in accordance with regulation 31(2), the appropriate authority must comply with regulation 31(3) to (6) in relation to the objection but paragraph (7) of that regulation does not apply.

Procedure at another third stage meeting under regulation 40

- 41.**—(1) Where an officer is required to attend another third stage meeting under regulation 40—
- (a) that meeting is to be conducted by the same panel as conducted the initial third stage meeting (subject to any change in that panel under regulation 40);
 - (b) the officer concerned does not have the right to object to panel members under regulation 31, except in accordance with regulation 40;
 - (c) subject to paragraph (2), regulations 32 to 38 apply to, or in relation to, that meeting.
- (2) Following that third stage meeting, the panel may not order the outcome mentioned in regulation 38(3)(d).

Part 6

Consequential Amendments

Amendment of the Ministry of Defence Police (Conduct) Regulations 2009

- 42.**—(1) The Ministry of Defence Police (Conduct) Regulations 2009(9) are amended as follows.
- (2) In regulation 3(1) insert in the appropriate place—
 - ““the Performance Regulations” means the Ministry of Defence Police (Performance) Regulations 2012;”.
 - (3) In regulation 12(2) after paragraph (c) insert—
 - “(d) except where paragraph (c) applies, if the officer is not a senior officer and the allegation in respect of conduct came to the attention of the appropriate authority on or after 6 April 2012, refer the matter to be dealt with under the Performance Regulations.”.
 - (4) In regulation 12(6) after “Restoring Efficiency Procedures” insert “or the Performance Regulations”.
 - (a) In regulation 19(3) after paragraph (c) insert—
 - “(d) except where paragraph (c) applies, if the officer is not a senior officer and the allegation in respect of conduct came to the attention of the appropriate authority on or after 6 April 2012, refer the matter to be dealt with under the Performance Regulations.”.
 - (5) In regulation 19(9)(b) after “Restoring Efficiency Procedures” insert “or the Performance Regulations”.
 - (6) In regulation 20(2)(a)(iii) after “Restoring Efficiency Procedures” insert “or the Performance Regulations”.

Amendment of the Ministry of Defence Police Appeals Tribunals Regulations 2009

- 43.**—(1) The Ministry of Defence Police Appeals Tribunals Regulations 2009(10) are amended as follows.
- (2) In regulation 3—
 - (a) In paragraph (1)—
 - (i) for the definition of “original hearing” substitute—

(9) S.I. 2009/3069.

(10) S.I. 2009/3070.

““original hearing” means—

- (a) the misconduct meeting, misconduct hearing or special case hearing under the Conduct Regulations, or
- (b) the third stage meeting under the Performance Regulations,

at or following which the relevant decision was made;”;

(ii) insert in the appropriate place ““Performance Regulations” means the Ministry of Defence Police (Performance) Regulations 2012”;

(iii) in the definition of “relevant decision” after “regulation 4” insert “or 4A”

(b) For paragraph (2) substitute—

“(2) In these Regulations, any expression which is also used in the Conduct Regulations has the same meaning as in those Regulations in relation to an appeal from a finding or disciplinary action imposed under those Regulations.”

(c) After paragraph (2) insert—

“(2A) In these Regulations, any expression which is also used in the Performance Regulations has the same meaning as in those Regulations in relation to an appeal from a finding or outcome imposed under those Regulations.”.

(3) After regulation 4 insert—

“Circumstances in which a police officer may appeal to a tribunal against a finding or disciplinary action under the Performance Regulations

4A.—(1) Subject to paragraph (3), a police officer to whom paragraph (2) applies may appeal to a tribunal in reliance on one or more of the grounds of appeal referred to in paragraph (6) against—

- (a) a finding referred to in paragraph (2) made under the Performance Regulations, or
- (b) an outcome which is imposed under the Performance Regulations as a consequence of a finding that is mentioned in paragraph (4) or (5),

or both.

(2) This paragraph applies to a police officer against whom a finding of unsatisfactory performance or attendance or gross incompetence has been made at a third stage meeting.

(3) A police officer may not appeal to a tribunal against the finding referred to in paragraph (2) where that finding was made following acceptance by the officer that the conduct amounted to unsatisfactory performance or attendance or gross incompetence (as the case may be).

(4) Where there has been a finding of unsatisfactory performance or attendance following a third stage meeting which the police officer was required to attend under regulation 26 of the Performance Regulations, that officer may appeal against the following outcomes—

- (a) dismissal with notice;
- (b) reduction in rank.

(5) Where there has been a finding of gross incompetence or unsatisfactory performance following a third stage meeting which the police officer was required to attend under regulation 28 of the Performance Regulations, that officer may appeal against the following outcomes—

- (a) dismissal without notice;
- (b) reduction in rank;

- (c) redeployment to alternative duties;
 - (d) the issue of a final written improvement notice;
 - (e) the issue of a written improvement notice.
- (6) The grounds of appeal under this regulation are—
- (a) that the finding or outcome imposed was unreasonable; or
 - (b) that there is evidence that could not have reasonably have been considered at the original hearing which could have materially affected the finding or decision on the outcome; or
 - (c) that there was a breach of the procedures set out in the Performance Regulations or other unfairness which could have materially affected the finding or decision on the outcome; or
 - (d) that, where the police officer was required to attend the third stage meeting under regulation 26 of the Performance Regulations, that officer should not have been required to attend that meeting as it did not, in accordance with regulation 26(6) or 40(9) of those Regulations, concern unsatisfactory performance or attendance similar or connected with the unsatisfactory performance or attendance referred to in the final written improvement notice.”
- (4) In paragraph (2) of regulation 9 add at the end of subparagraph (a) “or regulation 37(3) of the Performance Regulations”.

Signed on behalf of the Secretary of State

13th March 2012

Andrew Robathan
Parliamentary Under Secretary of State
Ministry of Defence

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations establish procedures in respect of unsatisfactory performance or attendance of members of the Ministry of Defence Police force of the rank of chief superintendent or below (excluding probationers in the first year). They apply in relation to unsatisfactory performance or attendance that comes to the attention of the officer's line manager on or after 6th April 2012.

Part 1 deals with preliminary matters. Regulation 3 deals with transitional matters. The Restoring Efficiency Procedures will continue to have effect in respect of unsatisfactory performance or attendance which came to the attention of a line manager before the coming into force of these Regulations. Regulation 4 provides definitions of terms used in these Regulations and makes provision in relation to the delegation of functions of the appropriate authority under these Regulations.

Part 2 deals with general matters. Regulations 5 and 6 make provision about the role of a police friend under these Regulations and the right to legal representation. Regulation 7 provides for the manner in which a written notice or document is to be given to or supplied to a police officer. Regulation 8 contains general provision about the procedure for meetings held in accordance with the Regulations. Regulation 9 makes provision for a senior manager to appoint someone to carry out functions of a line manager or a second line manager under the Regulations. Regulations 10 and 11 make provision about extensions and suspensions of certain periods specified in the Regulations.

Part 3 deals with the first stage of the procedures under the Regulations. It makes provision about the circumstances in which a first stage meeting may be required, the arrangement of such a meeting and the procedures to be followed at and subsequent to the meeting. If the outcome of the meeting is a finding of unsatisfactory performance or attendance, the police officer will be issued with a written improvement notice under regulation 15. Regulations 16 to 18 make provision for the officer to appeal against such a finding and/or particular terms of the notice.

Part 4 makes similar provision in respect of the second stage of the procedures. A police officer can be required to attend a second stage meeting following a first stage meeting if, during specified periods, the officer has failed to improve their performance or attendance, or failed to maintain such an improvement. If the outcome of the second stage meeting is a finding of unsatisfactory performance or attendance, the police officer will be issued with a final written improvement notice under regulation 22. Regulations 23 to 25 make provision for the officer to appeal against such a finding and/or particular terms of the notice.

Part 5 makes provision in respect of the third stage of the procedures. A police officer can be required to attend a third stage meeting following a second stage meeting if, during specified periods, the officer has failed to improve their performance or attendance, or failed to maintain such an improvement. A police officer can also be required to attend a third stage meeting, even where that officer has not attended a first or second stage meeting, if the appropriate authority considers that the performance of the officer constitutes gross incompetence. A third stage meeting is conducted by a panel of three persons appointed by the appropriate authority in accordance with regulation 30. Regulation 31 gives the police officer the right to object to any of the panel members. Regulations 32 to 36 deal with procedural matters relating to the third stage meeting, witnesses and the timing of the meeting. Regulation 37 makes provision for the decision of the panel following the third stage meeting, which must set out the panel's finding, its reasons and any outcome ordered under regulation 38. Regulations 39 to 41 make provision for the performance or attendance of the officer to be assessed following the third stage meeting where the panel have ordered the issue of a written

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improvement notice, or the issue or extension of a final written improvement notice. In such a case, the officer concerned may be required to attend a further meeting under these Regulations in connection with their performance or attendance.

Part 6 makes consequential changes to the Ministry of Defence Police (Conduct) Regulations 2009 and to the Ministry of Defence Police Appeals Tribunal Regulations 2009 (“the Appeals Regulations”). An appeal lies from these Regulations to the Appeals Regulations.

Copies of the Restoring Efficiency Procedures and the Ministry of Defence Police Statements of Civilian Personnel Policy Extended Special Unpaid Leave referred to in these Regulations may be obtained from the People, Pay and Pensions Agency (PPPA) at People Service Centre PPPA, Foxhill, Bath BA1 5AB (telephone: 0800 345 7772).