
STATUTORY INSTRUMENTS

2015 No. 25

The Ministry of Defence Police (Conduct etc.) Regulations 2015

PART 3

Investigations

Application of this Part

15. This Part does not apply to a case which is being or will be investigated under external procedures.

Assessment of conduct

16.—(1) The relevant authority must assess whether the conduct of the officer concerned which is the subject matter of the allegation, if proved, would amount to misconduct or gross misconduct or neither.

(2) Where the relevant authority assesses that the conduct, if proved, would amount to neither misconduct nor gross misconduct, it may—

- (a) take no action;
- (b) take management action against the officer concerned; or
- (c) refer the matter to be dealt with under the Performance Regulations.

(3) Where the relevant authority assesses that the conduct, if proved, would amount to misconduct, it must determine whether or not it is necessary for the matter to be investigated and—

- (a) if so, the matter must be investigated and the relevant authority shall further assess whether, if the matter were to be referred to misconduct proceedings, those would be likely to be a misconduct meeting or a misconduct hearing;
- (b) if not, the relevant authority may—
 - (i) take no action; or
 - (ii) take management action against the officer concerned.

(4) Where the relevant authority assesses that the conduct, if proved, would amount to gross misconduct, the matter must be investigated.

(5) At any time before the start of any misconduct proceedings, the relevant authority may revise its assessment of the conduct under paragraph (1) if it considers it appropriate to do so.

(6) Where the relevant authority decides to take no action, take management action or to refer the matter to be dealt with under the Performance Regulations, it must notify the officer concerned in writing of that decision as soon as practicable.

Appointment of investigator

17.—(1) This regulation applies where a matter is to be investigated in accordance with regulation 16.

- (2) The relevant authority must appoint a person to investigate the matter.
- (3) If the officer concerned is the chief constable, the relevant authority must notify the Secretary of State.
- (4) No person shall be appointed to investigate the matter who—
 - (a) does not have an appropriate level of knowledge, skills and experience to plan and manage the investigation;
 - (b) is an interested party;
 - (c) works, directly or indirectly, under the management of the officer concerned;
 - (d) in a case where the officer concerned is a senior officer, is—
 - (i) the chief constable;
 - (ii) another MDP officer.

Investigation

- 18.** The purpose of an investigation under this Part is to—
- (a) gather evidence to establish the facts and circumstances of the alleged misconduct or gross misconduct; and
 - (b) assist the relevant authority to establish whether there is a case to answer in respect of misconduct or gross misconduct or whether there is no case to answer.

Written notice of investigation

- 19.**—(1) Subject to paragraph (3), the investigator shall as soon as is reasonably practicable after being appointed cause the officer concerned to be given written notice—
- (a) describing the conduct that is the subject matter of the allegation and how that conduct is alleged to fall below the Standards of Professional Behaviour;
 - (b) of the relevant authority’s assessment of—
 - (i) whether that conduct, if proved, would amount to misconduct or gross misconduct; and
 - (ii) whether, if the matter were to be referred to misconduct proceedings, these would be likely to be a misconduct meeting or a misconduct hearing and the reason for this;
 - (c) that if the likely form of any misconduct proceedings to be held changes, further notice (with reasons) will be given;
 - (d) that there is to be an investigation into the matter and the identity of the investigator;
 - (e) informing the officer of the right to seek advice from the officer’s staff association or any other body and of the effect of regulation 10(1) to (3) (police friend);
 - (f) of the effect of regulations 10(4) and (5) (legal representation) and 20 (representations to the investigator);
 - (g) informing the officer that, although the officer does not have to say anything, adverse inferences may be drawn in the circumstances described in regulation 37(10) and (11).
- (2) If after notice is given under paragraph (1), the relevant authority revises its assessment of the conduct or its determination of the likely form of any misconduct proceedings to be taken, the relevant authority must, as soon as practicable, give the officer concerned further written notice of—
- (a) its revised assessment of whether the conduct, if proved, would amount to misconduct or gross misconduct and the reason for that assessment;

- (b) its revised determination as to whether, if the case were to be referred to misconduct proceedings, these would be likely to be a misconduct meeting or a misconduct hearing and the reason for this.
- (3) The requirement to give notice to the officer concerned under paragraph (1) does not apply for so long as the investigator considers that giving such a notice might prejudice the investigation or any other investigation (including, in particular, a criminal investigation).
- (4) Once notice has been given under paragraph (1), the investigator must notify the officer concerned of the progress of the investigation—
 - (a) if there has been no previous notification following the giving of notice under paragraph (1), before the end of 4 weeks beginning with the first working day after the start of the investigation; and
 - (b) in any other case, before the end of 4 weeks beginning with the first working day after the previous notification.

Representations to the investigator

- 20.**—(1) Before the end of 10 working days starting with the first working day after the notice is given under regulation 19(1) (unless this period is extended by the investigator)—
- (a) the officer concerned may provide a written or oral statement relating to any matter under investigation to the investigator; and
 - (b) the officer concerned or the police friend may provide any relevant documents or other evidence to the investigator.
- (2) The investigator must—
- (a) as part of the investigation, consider any such statement, document or other evidence; and
 - (b) make a record of having received it.
- (3) In this regulation “relevant document”—
- (a) means a document relating to any matter under investigation; and
 - (b) includes such a document containing suggestions as to lines of inquiry to be pursued or witnesses to be interviewed.

Interviews during investigation

- 21.**—(1) Where an investigator wishes to interview the officer concerned as part of the investigation, the investigator must, if reasonably practicable, agree a date and time for the interview with the officer concerned.
- (2) Where no date and time can be agreed under paragraph (1), the investigator may specify a date and time for the interview.
- (3) Where a date and time is specified under paragraph (2) and—
- (a) the officer concerned or the police friend will not be available at that date and time; and
 - (b) the officer concerned proposes an alternative date and time which satisfies paragraph (4),
- the interview must be postponed to the time proposed by the officer concerned.
- (4) An alternative time must—
- (a) be reasonable; and
 - (b) fall before the end of the period of 5 working days beginning with the first working day after the day specified by the investigator.

(5) The investigator must give the officer concerned written notice of the date, time and place of the interview.

(6) The investigator must, in advance of the interview, provide the officer concerned with such information as the investigator considers appropriate in the circumstances of the case to enable the officer concerned to prepare for the interview.

(7) A police friend may not answer any questions asked of the officer concerned during the interview.

Report of investigation

22.—(1) On completion of an investigation the investigator must as soon as practicable submit a written report on the investigation to the relevant authority.

(2) The written report must—

- (a) provide a summary of the evidence;
- (b) attach or refer to any relevant documents; and
- (c) indicate the investigator’s opinion as to whether there is a case to answer in respect of misconduct or gross misconduct or whether there is no case to answer.

(3) If at any time during the investigation the investigator believes that the relevant authority would, on consideration of the matter, be likely to determine that the special conditions are satisfied, the investigator must either—

- (a) if the investigation is not yet complete, submit to the relevant authority—
 - (i) a statement of the belief and the grounds for it; and
 - (ii) a written report on the investigation to that point; or
- (b) if the investigation is complete, include in the written report required by paragraph (2) a statement of the belief and the grounds for it.

(4) In this regulation, “the special conditions” means—

- (a) there is sufficient evidence, in the form of written statements or other documents, without the need for further evidence, whether written or oral, to establish on the balance of probabilities that the conduct of the officer concerned constitutes gross misconduct; and
- (b) it is in the public interest for the officer concerned to cease to be a police officer without delay.