
STATUTORY INSTRUMENTS

2015 No. 25

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

PART 5

Fast Track Procedure for Special Cases

Referral of case to special case hearing

45.—(1) On receipt of—

- (a) a statement made under regulation 22(3) (investigator’s belief that special conditions satisfied), or
- (b) a statement from the Commission or Ombudsman to the effect that—
 - (i) a case is being, or has been, investigated under external procedures; and
 - (ii) in the view of the Commission or Ombudsman (as the case may be), the special conditions are satisfied,

the relevant authority must determine whether the special conditions are satisfied.

(2) In any case where special case proceedings have been delayed by virtue of regulation 13(3), the relevant authority must, as soon as practicable after it considers that such proceedings would no longer prejudice any criminal proceedings, make a further determination as to whether the special conditions are satisfied.

(3) In any case where disciplinary proceedings have been delayed by virtue of regulation 13(3), the relevant authority may, as soon as practicable after it considers that such proceedings would no longer prejudice any criminal proceedings, determine whether the special conditions are satisfied.

(4) Where the relevant authority determines that the special conditions are satisfied, unless it considers that the circumstances are such as to make it inappropriate to do so, it must certify the case as a special case and refer it to a special case hearing.

(5) This paragraph applies where the relevant authority determines—

- (a) that the special conditions are not satisfied; or
- (b) that, although those conditions are satisfied, the circumstances are such that it is inappropriate to certify the case as a special case.

(6) Where paragraph (5) applies, the relevant authority must—

- (a) if the determination was made on receipt of a statement made under regulation 22(3)(a), return the case to the investigator to complete the investigation;
- (b) if the determination was made on receipt of a statement made under paragraph (1)(b), and the investigation has not been completed, return the case to the Commission or the Ombudsman (as the case may be) for the investigation to be completed;
- (c) in any other case, proceed in accordance with Part 4.

(7) Where the relevant authority is to proceed in accordance with Part 4, regulation 23 shall be read as if for paragraph (1) there were substituted—

“(1) Subject to paragraph (7), the relevant authority must, as soon as practicable, determine whether the officer concerned has a case to answer in respect of misconduct or gross misconduct or whether there is no case to answer.”.

(8) All referrals to a special case hearing under this regulation are subject to regulation 13(3) (outstanding or possible criminal proceedings).

Notice of referral to special case hearing

46.—(1) Where a case is certified as a special case (regulation 45(4)), the relevant authority must before the end of 3 working days beginning with the first working day after the case is so certified give the officer concerned written notice of that fact.

(2) The notice given under paragraph (1) must describe the conduct that is the subject matter of the case and how that conduct is alleged to amount to gross misconduct.

Remission of case

47.—(1) Subject to paragraphs (4) and (5), at any time after the case has been referred to a special case hearing but before the beginning of that hearing the relevant authority may direct that the case be dealt with under Part 4 if it considers that the special conditions are no longer satisfied.

(2) Where a direction is made under paragraph (1), the relevant authority must—

- (a) proceed in accordance with Part 4;
- (b) notify the officer concerned in writing before the end of 3 working days beginning with the first working day after that direction is made.

(3) Where the relevant authority is to proceed in accordance with Part 4, regulation 23 shall be read as if for paragraph (1) there were substituted—

“(1) Subject to paragraph (7), the relevant authority must, as soon as practicable, determine whether the officer concerned has a case to answer in respect of misconduct or gross misconduct or whether there is no case to answer.”

(4) In any case where a statement under regulation 45(1)(b) has been made by the Commission, the relevant authority must consult with the Commission before making a direction under paragraph (1).

(5) In any case where a statement under regulation 45(1)(b) has been made by the Ombudsman, the relevant authority must consult with the Ombudsman before making a direction under paragraph (1).

Notice of special case hearing

48.—(1) The relevant authority must specify a date for the special case hearing to commence, which must be not fewer than 10 and not more than 15 working days beginning with the first working day after the date on which notice was given under regulation 46.

(2) The relevant authority must immediately—

- (a) notify the officer concerned of—
 - (i) the date, time and place of that hearing; and
 - (ii) the effect of regulation 10 (police friend and legal representation); and
- (b) give the officer concerned—
 - (i) a copy of any written statement, or transcript or note of any oral statement, the officer may have made to the investigator during the course of the investigation; and

- (ii) subject to the harm test, a copy of the investigator's report or such parts of that report which relate to the officer (together with any document attached to or referred to in that report which relates to the officer), and any other relevant document gathered during the course of the investigation.

(3) Where the Commission or the Ombudsman is entitled to attend the special case hearing to make representations (regulation 54), or to nominate a person to attend the hearing as an observer (regulation 56(2) or (3)), the relevant authority must notify the Commission or the Ombudsman of the date, time and place of the hearing.

Procedure on receipt of notice of special case hearing

49.—(1) Before the end of 7 working days beginning with the first working day after the written notice given to the officer concerned under regulation 48(2), the officer concerned must provide to the relevant authority—

- (a) written notice of whether or not the officer accepts that the conduct amounts to gross misconduct;
- (b) where the officer accepts that the conduct amounts to gross misconduct, any written submission the officer wishes to make in mitigation;
- (c) where the officer does not accept that the conduct amounts to gross misconduct, or the officer disputes part of the case, written notice of—
 - (i) the allegations the officer disputes 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 person or persons conducting the special case hearing.

(2) Within the same time period, the officer concerned must give the relevant authority and the person conducting or chairing the special case hearing a copy of any document the officer intends to rely on at the hearing.

Person conducting special case hearing: officers other than senior officers

50.—(1) This regulation applies where the officer concerned is an officer other than a senior officer.

(2) Subject to paragraph 3, the special case hearing must be conducted by the chief constable.

(3) Where the chief constable is an interested party or is unavailable, the special case hearing must be conducted by the chief officer of police of an alternative police force.

Persons conducting special case hearing: senior officers

51.—(1) Where the officer concerned is a senior officer, the special case hearing shall be conducted by a panel of persons specified in paragraph (2), appointed by the relevant authority.

(2) Those persons are—

- (a) a chair selected by the relevant authority from a list of persons who satisfy the judicial-appointment eligibility criterion⁽¹⁾ on a 5-year basis and have been nominated by the Secretary of State for the Home Department for the purposes of these Regulations;
- (b) the Inspector of Constabulary; and
- (c) a person selected by the relevant authority from a list of candidates maintained by MOD Police Committee.

(1) See section 50 of the Tribunals, Courts and Enforcement Act 2007 (c. 15).

Documents to be supplied

52.—(1) Prior to the special case hearing the relevant authority must give the person or persons conducting the special case hearing a copy of—

- (a) the notice given to the officer concerned under regulation 46 (notice of referral to special case hearing);
- (b) the other documents given to the officer concerned under regulation 48(2) (notice of special case hearing);
- (c) the documents provided by the officer concerned under—
 - (i) regulation 49 (procedure on receipt of notice of special case hearing); and
 - (ii) where paragraph (2) applies, regulation 26(3) and (4) (procedure on receipt of notice);
- (d) where the officer concerned does not accept that the conduct amounts to gross misconduct, any other document that, in the opinion of the relevant authority, should be considered at the hearing.

(2) This paragraph applies where the case was certified as a special case following a determination made under regulation 45(3) (delayed disciplinary proceedings).

(3) Prior to the hearing the relevant authority must give the officer concerned a list of the documents given under paragraph (1) and a copy of any document given under paragraph (1)(d).

Attendance of officer concerned at special case hearing

53.—(1) Subject to paragraph (2), the officer concerned must attend the special case hearing.

(2) Where the officer concerned informs the person conducting or chairing the special case hearing in advance that the officer concerned is unable to attend, on grounds which the person conducting or chairing the hearing considers reasonable, that person may allow the officer concerned to participate in the hearing by video link or other means.

(3) Where the officer concerned participates in the special case hearing by video link or other means, or fails to attend the special case hearing—

- (a) the officer may nonetheless be represented at that hearing by the—
 - (i) police friend; or
 - (ii) relevant lawyer (in which case the police friend may also attend); and
 - (b) the hearing may be proceeded with and concluded in the absence of the officer concerned whether or not the officer is so represented.
- (4) Where the officer concerned—
- (a) attends the proceedings by video link or other means, and
 - (b) is represented in accordance with paragraph (3)(a),

the relevant lawyer or the police friend, or both, may participate using the video link or other means as are used by the officer concerned.

Participation of Commission or the Ombudsman and investigator at special case hearing

54.—(1) In any case where the Commission has made a statement under regulation 45(1)(b) (view that special conditions satisfied), the Commission may attend the special case hearing to make representations.

(2) In any case where the Ombudsman has made a statement under regulation 45(1)(b) (view that special conditions satisfied), the Ombudsman may attend the special case hearing to make representations.

(3) Where the Commission or Ombudsman intends to attend the special case hearing—

(a) it must notify—

(i) the complainant or any interested person, and

(ii) the person conducting or chairing the hearing,

prior to the hearing; and

(b) the person conducting or chairing the hearing must notify the officer concerned prior to the hearing.

(4) Where the Commission or Ombudsman attends a misconduct hearing, it may instruct a relevant lawyer to represent it.

(5) The investigator or a nominated person must attend the special case hearing on the request of the person conducting or chairing the hearing to answer questions.

(6) In this regulation, a “nominated person” means a person who, in the opinion of—

(a) the relevant authority,

(b) in a case where the Commission has made a statement under regulation 45(1)(b), the Commission, or

(c) in a case where the Ombudsman has made a statement under regulation 45(1)(b), the Ombudsman investigated the case, the Ombudsman,

has sufficient knowledge of the investigation of the case to be able to assist the person or persons conducting the misconduct proceedings.

Attendance of complainant and interested persons at special case hearing

55.—(1) This regulation applies in any special case hearing arising from a case which has been investigated under external procedures.

(2) The relevant authority must notify the complainant or any interested person of the date, time and place of the special case hearing.

(3) Subject to the provisions of this regulation and any conditions imposed under regulation 56(4), the complainant or any interested person may—

(a) attend the special case hearing as an observer; and

(b) be accompanied by one other person, and if the complainant or interested person has a special need, by one further person to accommodate that need.

(4) Where the officer concerned objects to the complainant or interested person, or any person accompanying them, being present while a submission is made in mitigation on the officer’s behalf, the person conducting or chairing the special case hearing may require the complainant or interested person, or any person accompanying them, to withdraw while the submission is made.

(5) For the purposes of this regulation, a person has a special need who, in the opinion of the person conducting or chairing the special case hearing, has a disability or learning difficulty, or does not have sufficient knowledge of English to participate in or understand the special case hearing.

Attendance of others at special case hearing

56.—(1) Subject to the attendance of—

(a) any nominated person (regulation 54(6)),

- (b) any person entitled to attend under regulation 55 (attendance of complainant and interested person),
- (c) any person entitled to attend under this regulation,

the special case hearing shall be in private.

(2) A person nominated by the Commission may attend a special case hearing in any case in which the Commission has made a statement under regulation 45(1)(b) (view that special conditions satisfied).

(3) A person nominated by the Ombudsman may attend a special case hearing in any case in which the Ombudsman has made a statement under regulation 45(1)(b) (view that special conditions satisfied).

(4) The person conducting or chairing the special case hearing may impose such conditions as they see fit relating to the attendance of persons under regulation 55 or this regulation at the special case hearing (including circumstances in which they may be excluded) in order to facilitate the proper conduct of the hearing.

Procedure at special case hearing

57.—(1) Subject to these Regulations, the person conducting or chairing a special case hearing may determine the procedure at that hearing.

(2) A special case hearing may not proceed unless the officer concerned has been notified of the effect of regulation 10 (police friend and legal representation).

(3) Subject to paragraph (4), the person conducting or chairing a special case hearing may from time to time adjourn the hearing if it appears to be necessary or expedient to do so.

(4) A special case hearing may not, except in exceptional circumstances, be adjourned solely to allow the complainant or any interested person to attend.

(5) No witnesses other than the officer concerned may give evidence at a special case hearing.

(6) The person representing the officer concerned may—

(a) address the hearing 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 proceedings; and
- (iv) make representations concerning any aspect of the proceedings; and

(b) confer with the officer concerned.

(7) 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.

(8) The police friend or relevant lawyer of the officer concerned may not answer any questions asked of the officer concerned during the special case hearing.

(9) This paragraph applies where evidence is given at the special case hearing that the officer concerned—

- (a) was given written notice to attend an interview with an investigator (whether under regulation 21(5) or any equivalent notice given under external procedures) but failed to attend that interview;
- (b) on being questioned by an investigator at any time after the officer was given written notice of investigation (whether under regulation 19(1) or any equivalent notice given under external procedures) failed to mention any fact relied on at the misconduct proceedings,

being a fact which in the circumstances existing at the time, the officer concerned could reasonably have been expected to mention when so questioned; or

- (c) in submitting any information or by not submitting any information at all under—
 - (i) regulation 20(1) (representations to the investigator),
 - (ii) regulation 49 (procedure on receipt of notice of special hearing),
 - (iii) any equivalent opportunities to submit information under external procedures,

failed to mention any fact relied on at the special case hearing, being a fact which in the circumstances existing at the time, the officer concerned could reasonably have been expected to mention when providing such information.

(10) Where paragraph (9) applies, the person or persons conducting the special case hearing may draw such inferences from the failure as appear proper.

(11) The person or persons conducting the special case hearing must review the facts of the case and decide whether or not the conduct of the officer concerned amounts to gross misconduct.

(12) The person or persons conducting the special case hearing must not find that the conduct of the officer concerned amounts to gross misconduct unless—

- (a) they are satisfied on the balance of probabilities that this is the case; or
- (b) the officer concerned admits it is the case.

(13) At a special case hearing conducted by a panel, the decision of the panel may be based on a majority (with the chair having the casting vote if necessary).

Senior officers: meeting of MOD Police Committee to consider disciplinary action

58.—(1) Where the officer concerned is a senior officer, the persons conducting the special case hearing must, as soon as reasonably practicable after the hearing, submit a report to the MOD Police Committee setting out—

- (a) the finding of the persons conducting the hearing (regulation 57(11));
- (b) the reasons for that finding;
- (c) if the finding was that the conduct of the officer concerned amounted to gross misconduct, a recommendation as to any disciplinary action which in their opinion should be imposed; and
- (d) any other matter arising out of the hearing which they desire to bring to the notice of the relevant authority.

(2) Where a report is submitted under paragraph (1), the persons conducting the special case hearing must send a copy to—

- (a) the officer concerned; and
- (b) if the Commission or Ombudsman was entitled to attend to make representations (regulation 54(1) or (2)), to the Commission or Ombudsman.

(3) On receiving a report under paragraph (1) the MOD Police Committee must meet for the purpose of considering what disciplinary action (if any) should be imposed.

(4) The provisions of these Regulations specified in paragraph (5) apply, with the modifications specified in paragraph (6), to a meeting under paragraph (3) as if it was a special case hearing.

(5) The provisions are—

- (a) regulation 10 (police friend and legal representation);
- (b) regulation 12 (provision of notices or documents);
- (c) regulation 13 (outstanding or possible criminal proceedings);

- (d) regulation 48(1), (2)(a) and (3) (notice of special case hearing);
 - (e) regulation 53 (attendance of officer concerned at special case hearing);
 - (f) regulation 54 (participation of Commission or Ombudsman and investigator at special case hearing);
 - (g) regulation 55 (attendance of complainant and interested persons at special case hearing);
 - (h) regulation 56 (attendance of others at special case hearing);
 - (i) regulation 57(1) to (10) (procedure at special case hearing); and
 - (j) regulation 61 (record of special case hearing).
- (6) The modifications are that—
- (a) each reference to the person conducting or chairing the special case hearing has effect as a reference to the Chair of the MOD Police Committee; and
 - (b) in regulation 48(1) the reference to the date on which notice was given under regulation 46 has effect as a reference to the date on which the report is submitted under paragraph (1) of this Regulation.

Outcome of special case hearing

59.—(1) Where the person or persons conducting a special case hearing in the case of an officer other than a senior officer find that the conduct of that officer amounts to gross misconduct, they must impose disciplinary action, which may be—

- (a) subject to paragraphs (3) and (4), a final written warning;
- (b) extension of a final written warning in accordance with paragraph (3); or
- (c) dismissal without notice.

(2) At a further hearing for a senior officer, if the report submitted under regulation 58(1) contained a finding that the conduct of the officer amounts to gross misconduct, the MOD Police Committee must impose disciplinary action, which may be—

- (a) subject to paragraphs (3) and (4), a final written warning;
- (b) extension of a final written warning in accordance with paragraph (3); or
- (c) dismissal without notice.

(3) Where, on the assessment date, the officer concerned had a final written warning in force—

- (a) a final written warning shall not be given; but
- (b) subject to paragraph (5), in exceptional circumstances, the final written warning may be extended.

(4) Where a final written warning is extended under paragraph (3), that warning remains in force for a period of 18 months from the date on which it would otherwise expire.

(5) A final written warning may be extended on one occasion only.

(6) Where the person or persons conducting the special case hearing in the case of an officer other than a senior officer find that the conduct of the officer concerned does not amount to gross misconduct, they may—

- (a) dismiss the case; or
- (b) return the case to the relevant authority to deal with in accordance with Part 4 at a misconduct meeting or, if the officer concerned had a final written warning in force at the assessment date, at a misconduct hearing.

(7) At a further hearing for a senior officer, if the report under regulation 58(1) contained a finding that the conduct of the officer concerned does not amount to gross misconduct, the MOD Police Committee may—

- (a) dismiss the case; or
- (b) deal with the case in accordance with Part 4 at a misconduct meeting or, if the officer concerned had a final written warning in force at the assessment date, at a misconduct hearing.

(8) Where the case is returned to the relevant authority under paragraph (6)(b) or dealt with by the MOD Police Committee under paragraph (7)(b), the relevant authority must proceed in accordance with Part 4, subject to regulation 23(1) being read as if the following are omitted—

- (a) the words “regulation 45 (referral of case to special hearing) and” and “on receipt of”; and
- (b) sub-paragraphs (a), (b) and (c).

(9) Except in the case of extending a final written warning, the disciplinary action has effect from the date on which it is notified to the officer concerned.

(10) Where the question of disciplinary action is being considered, the person or persons considering it—

- (a) must have regard to the record of police service of the officer concerned as shown on the officer’s personal record;
- (b) may consider such documentary evidence as would, in their opinion, assist them in determining the question; and
- (c) must give—
 - (i) the officer concerned, and
 - (ii) the officer’s police friend or the relevant lawyer, an opportunity to make oral or written representations.

Notification of outcome

60.—(1) The relevant authority must inform the officer concerned in writing of—

- (a) the finding of the person or persons conducting the special case hearing;
- (b) the reasons for that finding; and
- (c) in a case other than one to which regulation 58 (senior officers: meeting of MOD Police Committee to consider disciplinary action) applies, any disciplinary action imposed under regulation 59(1) (outcome of special case hearing) or any action taken under regulation 59(6),

as soon as reasonably practicable and in any event before the end of 5 working days beginning with the first working day after the conclusion of the special case hearing.

(2) In a case to which regulation 58 applies (senior officers: meeting of MOD Police Committee to consider disciplinary action), the relevant authority must inform the officer concerned in writing of—

- (a) any disciplinary action imposed under regulation 59(2) or any action taken under regulation 59(7),
- (b) the reasons for such action,

as soon as reasonably practicable, and in any event before the end of 5 working days beginning with the first working day after the conclusion of the further hearing.

(3) A notice under paragraph (1) or (2) must include notice of the right of the officer concerned to an appeal hearing.

- (4) The relevant authority must send a copy of any notice under paragraph (1) or (2) to—
 - (a) the Commission or the Ombudsman, in any case in which the Commission or the Ombudsman was entitled to attend the special case hearing to make representations (regulation 54); and
 - (b) to the complainant and any interested person, in any case to which regulation 55 applies.

Record of special case hearing

61.—(1) The relevant authority must ensure that a verbatim record of the proceedings at the special case hearing is taken.

(2) The relevant authority must, if the officer concerned so requests, give the officer concerned a copy of the record of the proceedings at the conclusion of the special case hearing.