

**2015 No. 25**

**POLICE**

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

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

## PART 1

### Preliminary

#### **Citation and commencement**

1. These Regulations may be cited as the Ministry of Defence Police (Conduct etc.) Regulations 2015 and shall come into force on 23rd February 2015.

#### **Revocation and transitional provisions**

2.—(1) Subject to paragraph (2), the 2009 Regulations are revoked.

(2) Where any steps have been taken under the 2009 Regulations before 23rd February 2015 in relation to an allegation in respect of conduct of an MDP officer, nothing in Parts 1 to 7 of these Regulations applies in relation to that allegation and the 2009 Regulations continue to have effect.

(3) The amendments in Schedule 2 to these Regulations (amendments of the Appeal Regulations) do not apply to an appeal against a decision made under the 2009 Regulations.

(4) The amendments in Schedule 3 to these Regulations (amendments of the Performance Regulations) do not apply in any case where any steps have been taken in relation to unsatisfactory performance or attendance by a police officer before 23rd February 2015.

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(a) 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) 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; section 4A was substituted by paragraphs 12 and 15 of Schedule 22 to the Criminal Justice and Immigration Act 2008 and amended by paragraphs 20(1) and (6) of Part 1 of Schedule 2 to the Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013 (S.I. 2013/602).

## Interpretation

### 3.—(1) In these Regulations—

“the 1998 Act” means the Police (Northern Ireland) Act 1998(a);

“the 2002 Act” means the Police Reform Act 2002(b);

“the 2009 Regulations” means the Ministry of Defence Police (Conduct) Regulations 2009(c);

“the 2013 Order” means the Independent Police Complaints Commission (Forces Maintained Otherwise than by Local Policing Bodies) Order 2013(d);

“allegation” means an allegation relating to a complaint or conduct matter;

“alternative police force” means—

(a) any force maintained under section 2 of the Police Act 1996(e);

(b) the metropolitan police force;

(c) the City of London police force;

(d) the British Transport Police Force;

(e) the Civil Nuclear Constabulary;

(f) the Police Service of Scotland; or

(g) the Police Service for Northern Ireland;

“appeal hearing” means an appeal to the police appeals tribunal in accordance with the Ministry of Defence Police Appeals Tribunals Regulations 2009(f);

“appeal meeting” means a meeting held in accordance with regulation 43 following a misconduct meeting;

“the assessment date” means—

(a) if Part 3 applies to the case, the date of the assessment of the conduct of the officer concerned under regulation 16(1); or

(b) if the case has been investigated under external procedures, the date that the case was referred for such investigation;

“the Commission” means the Independent Police Complaints Commission established under section 9 of the 2002 Act;

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

“complainant” has the meaning given to it at section 12(1)(a) to (c) of the 2002 Act;

“complaint” has the meaning given to it by section 12(1) of the 2002 Act;

“conduct matter” has the meaning given to it by regulation 5;

“criminal proceedings” means—

(a) any prospective criminal proceedings;

(b) all criminal proceedings brought which have not been brought to a conclusion (apart from the bringing and determinations of any appeal other than an appeal against conviction);

“disciplinary action” has the meaning given to it by regulation 6;

“disciplinary proceedings” means any proceedings under these Regulations and any appeal from misconduct proceedings or a special case hearing dealt with under the Ministry of Defence Police Appeals Tribunals Regulations 2009;

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(a) 1998 c. 32.

(b) 2002 c. 30.

(c) S.I. 2009/3069 as amended by S.I. 2012/808.

(d) S.I. 2013/1779.

(e) 1996 c. 16.

(f) S.I. 2009/3070.

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

“external procedures” means—

- (a) procedures established with the Commission in accordance with article 3 of the 2013 Order; or
- (b) procedures established with the Ombudsman in accordance with an agreement made under section 60(1) of the 1998 Act;

“gross misconduct” means a breach of the Standards of Professional Behaviour so serious that dismissal would be justified;

“the harm test” has the meaning given to it by regulation 4;

“the Inspector of Constabulary” means;

- (a) in relation to England and Wales and Northern Ireland, Her Majesty’s Chief Inspector of Constabulary appointed under section 54(1) of the Police Act 1996 (appointment and functions of inspectors of constabulary) or an inspector of constabulary nominated by the Chief Inspector of Constabulary; and
- (b) in relation to Scotland, one of Her Majesty’s Inspectors of Constabulary appointed under section 71 of the Police and Fire Reform (Scotland) Act 2012<sup>(a)</sup> (inspectors of constabulary);

“informant” means a person who provides information to an investigation on the basis that the person’s identity is not disclosed during the course of the disciplinary proceedings;

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

“interested person” has the meaning given to it by section 21 of the 2002 Act;

“investigator” means a person—

- (a) appointed under regulation 17; or
- (b) appointed as an investigator under external procedures;

“management action” means action intended to improve the conduct of the officer concerned;

“management advice” means disciplinary action imposed following misconduct proceedings or an appeal meeting;

“MDP” means Ministry of Defence Police;

“MDP officer” means a member of the MDP;

“MOD Police Committee” means the committee appointed by the Secretary of State under section 1(5) of the Ministry of Defence Police Act 1987;

“misconduct” means a breach of the Standards of Professional Behaviour, but which does not amount to gross misconduct;

“misconduct hearing” means a hearing to which the officer concerned is referred under regulation 23 and at which the officer may be dealt with by disciplinary action up to and including dismissal;

“misconduct meeting” means a meeting to which the officer concerned is referred under regulation 23 and at which the officer may be dealt with by disciplinary action up to and including a final written warning;

“misconduct proceedings” means a misconduct meeting or misconduct hearing;

“the officer concerned” has the meaning given in regulation 9(1);

“the Ombudsman” means the Police Ombudsman for Northern Ireland established under section 51 of the 1998 Act;

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(a) 2012 asp. 8.

“the Performance Regulations” means the Ministry of Defence Police (Performance) Regulations 2012<sup>(a)</sup>;

“police friend” means a person chosen by the officer concerned in accordance with regulation 10;

“proposed witness” means a witness whose attendance at the misconduct proceedings the officer concerned or the relevant authority wishes to request of the person conducting or chairing those proceedings;

“special case hearing” means a hearing to which the officer concerned is referred under regulation 45 after the case has been certified as a special case;

“special case proceedings” means the referral of a case to a special case hearing and any proceedings at or in connection with such a referral;

“the special conditions” has the meaning given to it by regulation 22(4);

“staff association” means—

(a) in relation to an MDP officer other than a senior officer, the Defence Police Federation; and

(b) in relation to a senior officer, the Chief Police Officers’ Staff Association;

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

“Standards of Professional Behaviour” means the standards of professional behaviour contained in Schedule 1;

“working day” means any day other than—

(a) a Saturday or Sunday;

(b) a day which is a bank holiday in accordance with section 1 of the Banking and Financial Dealings Act 1971<sup>(b)</sup> in England and Wales, Scotland or Northern Ireland; or

(c) a day which is a public holiday in England, Wales, Scotland or in Northern Ireland.

(2) In these Regulations a reference to a copy of a statement shall, where the statement was not made in writing, be construed as a reference to a copy of an account of that statement.

### **The harm test**

**4.**—(1) Information in documents which are stated to be subject to the harm test may not be supplied to the officer concerned in so far as the relevant authority considers that preventing disclosure is—

(a) necessary for the purpose of preventing the premature or inappropriate disclosure of information that is relevant to, or may be used in, any criminal proceedings;

(b) necessary in the interests of national security;

(c) necessary for the purpose of the prevention or detection of misconduct by other MDP officers or staff members or their apprehension for such matters;

(d) necessary for the purpose of the prevention or detection of misconduct by police officers from alternative police forces or their apprehension for such matters;

(e) justified on the grounds that providing the information would involve disproportionate effort in comparison to the seriousness of the allegations against the officer concerned;

(f) necessary and proportionate for the protection of the welfare and safety of any informant or witness; or

(g) otherwise in the public interest.

(2) Where the harm test is satisfied in relation to any information, the relevant authority—

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<sup>(a)</sup> S.I. 2012/808.

<sup>(b)</sup> 1971 c. 80.

- (a) may not supply that information to the officer concerned; and
- (b) must inform the person conducting or chairing misconduct proceedings that the harm test is satisfied in relation to that information.

### **Conduct matters**

**5.**—(1) A conduct matter is any matter which is not and has not been the subject of a complaint but in the case of which there is an indication that an MDP officer may have—

- (a) committed a criminal offence;
- (b) behaved in a manner which would justify the bringing of disciplinary proceedings;
- (c) failed to attend an interview when given written notice to do so under regulation 21(5) (or any equivalent notice given under external procedures); or
- (d) failed to attend misconduct proceedings (regulation 32(1)) or a special case hearing (regulation 53(1)).

(2) In this regulation, “conduct” includes acts, omissions, statements and decisions (whether actual, alleged or inferred).

### **Disciplinary action**

**6.** Disciplinary action means, in order of seriousness starting with the least serious action—

- (a) management advice;
- (b) a written warning;
- (c) a final written warning;
- (d) an extension to a final written warning;
- (e) dismissal with notice; or
- (f) dismissal without notice.

### **Written warnings**

**7.**—(1) For the purposes of these Regulations—

- (a) a written warning remains in force for a period of 12 months beginning on the day after it was given; and
- (b) subject to regulations 39(7)(b) and 59(3)(b), a final written warning remains in force for a period of 18 months beginning on the on the day after it was given.

(2) The reference to the period of—

- (a) 12 months in paragraph (1)(a), and
- (b) 18 months in paragraph (1)(b) and regulations 39(8) and 59(4),

does not include any time when the officer concerned is taking “Extended Special Unpaid Leave” under the Ministry of Defence Police Statement of Civilian Personnel Policy Extended Special Unpaid Leave issued on 31st October 2011(a).

### **Delegation**

**8.**—(1) The relevant authority may delegate any of its functions under these Regulations—

- (a) subject to paragraph (2), where it is the chief constable, to an MDP officer of at least the rank of chief inspector; or
- (b) where it is the MOD Police Committee, to a sub-committee of no fewer than three persons appointed by the MOD Police Committee.

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(a) <https://www.gov.uk/government/publications/mdp-civilian-personnel-policy-extended-special-unpaid-leave-exsul>.

(2) Where a function under regulation 14 or 45 has been delegated under paragraph (1)(a), any decision taken under those regulations shall be authorised by a senior officer.

## **PART 2**

### **General**

#### **Application**

**9.**—(1) These Regulations apply where an allegation comes to the attention of a relevant authority which indicates that the conduct of an MDP officer (“the officer concerned”) may amount to misconduct or gross misconduct.

(2) Where a relevant authority is considering more than one allegation in relation to the same MDP officer, the allegations may be taken together and treated as a single allegation for the purpose of any provision of these Regulations which requires a person to make an assessment, finding, determination or decision in connection with conduct which is the subject matter of an allegation.

#### **Police friend and legal representation**

**10.**—(1) The officer concerned may choose—

- (a) an MDP officer;
- (b) an officer from an alternative police force;
- (c) a staff member; or
- (d) a person nominated by a staff association,

who is not otherwise involved in the matter, to act as their police friend.

(2) A police friend may—

- (a) advise the officer concerned throughout the proceedings;
- (b) unless the officer concerned has the right to be legally represented and chooses to be so represented, represent the officer concerned at the misconduct proceedings or special case hearing or appeal meeting;
- (c) make representations to the relevant authority concerning any aspect of the proceedings; and
- (d) accompany, and take notes for the officer concerned at any interview, meeting or hearing which forms part of any proceedings.

(3) Where a police friend is an MDP officer or a staff member, that person may use a reasonable amount of duty time for the purposes referred to in paragraph (2).

(4) The officer concerned has the right to be legally represented, by a relevant lawyer of the officer’s choice, at a misconduct hearing or a special case hearing.

(5) If the officer concerned chooses not to be legally represented at such a hearing the officer may be dismissed or receive any other outcome under regulation 39 or 59 without being represented.

#### **Legal and other representation for the relevant authority**

**11.**—(1) The relevant authority may be represented at misconduct proceedings or a special case hearing or an appeal meeting by—

- (a) an MDP officer; or
- (b) at a misconduct hearing or a special case hearing only, a relevant lawyer (whether or not the officer concerned chooses to be legally represented).

(2) Subject to paragraph (3), the relevant authority may appoint a person to advise the person or persons conducting the misconduct proceedings or special case hearing or appeal meeting.

(3) At a misconduct meeting or an appeal meeting, the person appointed under paragraph (2) shall not be a relevant lawyer.

### **Provision of notices or documents**

**12.**—(1) Where any written notice or document is to be given or supplied to the officer concerned, it shall be—

- (a) given to the officer concerned in person;
- (b) left with any person at, or sent by recorded delivery to, the officer's last known address; or
- (c) in respect of a written notice under regulation 19(1), given to the officer concerned in person by that officer's police friend where the police friend has agreed with the relevant authority to deliver the notice.

(2) Where any written notice or document is given or supplied under paragraph (1), delivery is effective on the date on which—

- (a) it is given to the officer concerned, under paragraph (1)(a) or (c);
- (b) it is left with any person at the officer's last known address, under paragraph (1)(b);
- (c) receipt was recorded, if sent by recorded delivery to the officer's last known address under paragraph (1)(b).

### **Outstanding or possible criminal proceedings**

**13.**—(1) Subject to this regulation, proceedings under these Regulations must proceed without delay.

(2) Before referring a case to misconduct proceedings or a special case hearing, the relevant authority must decide whether misconduct proceedings or special case proceedings would prejudice any criminal proceedings.

(3) For any period during which the relevant authority considers any misconduct proceedings or special case proceedings would prejudice any such criminal proceedings—

- (a) no such misconduct or special case proceedings may take place; but
- (b) the relevant authority must preserve any relevant evidence in its possession.

(4) Where a witness who is or may be a witness in any criminal proceedings is to be or may be asked to attend misconduct proceedings, the relevant authority must consult the relevant prosecutor (and when doing so must inform the prosecutor of the names and addresses of all such witnesses) before making its decision under paragraph (2).

(5) In this regulation "relevant prosecutor" means—

- (a) in relation to England and Wales, the Director of Public Prosecutions or any other person who has or is likely to have responsibility for the criminal proceedings;
- (b) in relation to Scotland, the Lord Advocate or any other person who has or is likely to have responsibility for the criminal proceedings; or
- (c) in relation to Northern Ireland, the Director of Public Prosecutions or any other person who has or is likely to have responsibility for the criminal proceedings.

### **Suspension**

**14.**—(1) The relevant authority may suspend the officer concerned from membership of the MDP if the following conditions ("the suspension conditions") are satisfied—

- (a) having considered temporary redeployment to alternative duties or to an alternative location as an alternative to suspension, the relevant authority has determined that such deployment is not appropriate in all the circumstances of the case; and
  - (b) it appears to the relevant authority that either—
    - (i) the effective investigation of the case may be prejudiced unless the officer concerned is suspended; or
    - (ii) having regard to the nature of the allegation and any other relevant considerations, the public interest requires that the officer should be suspended.
- (2) An officer who is suspended under this regulation remains an MDP officer for the purposes of these Regulations.
- (3) The relevant authority may suspend the officer concerned at any time from the date on which these Regulations first apply to the officer concerned (regulation 9) until—
- (a) the relevant authority decides that the conduct of the officer concerned shall not be referred to misconduct proceedings or a special case hearing; or
  - (b) such proceedings have concluded.
- (4) A suspension takes effect from the date and time of notification to the officer concerned, which must be given either—
- (a) in writing with a summary of the reasons; or
  - (b) orally, in which case the relevant authority must confirm the suspension in writing with a summary of the reasons before the end of 3 working days beginning with the first working day after the suspension.
- (5) The officer concerned (or the officer's police friend) may make representations against the suspension to the relevant authority—
- (a) before the end of 7 working days beginning with the first working day after the suspension takes effect;
  - (b) at any time during the suspension if the officer reasonably believes that circumstances relevant to the suspension conditions have changed.
- (6) The relevant authority must review the suspension conditions—
- (a) on receipt of any representations under paragraph (5);
  - (b) on being notified that circumstances relevant to the suspension conditions may have changed (whether by means of representations made under paragraph (5) or otherwise);
  - (c) if there has been no previous review, before the end of 4 weeks beginning with the first working day after the suspension; and
  - (d) if there has been no review in the intervening period, before the end of 4 weeks beginning with the day after the previous review.
- (7) Following any review under paragraph (6), the relevant authority must—
- (a) decide whether the suspension conditions remain satisfied and whether the suspension should continue;
  - (b) before the end of 3 working days beginning with the day after the review, notify the officer concerned in writing of the decision made and a summary of the reasons.
- (8) An officer who is suspended remains so suspended until the earlier of the following—
- (a) the suspension conditions are no longer satisfied;
  - (b) the events mentioned in paragraph (3)(a) or (subject to paragraph (10)) (3)(b).
- (9) Where an officer who is suspended is dismissed with notice under regulation 39(3)(b)(iv) the officer remains suspended until the end of the notice period.
- (10) In a case which will be investigated under external procedures, the relevant authority must consult with the Commission or the Ombudsman (as the case may be)—
- (a) in deciding whether or not to suspend the officer concerned; and

- (b) before a suspension under this regulation is brought to an end by virtue of paragraph (7)(a).

## **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.

## PART 4

### Misconduct Proceedings

#### **Referral of case to misconduct proceedings**

**23.—**(1) Subject to regulation 45 (referral of case to special case hearing) and paragraph (7), on receipt of—

- (a) a written report which is made under regulation 22(2) (report of investigation), or
- (b) an equivalent report made under external procedures,

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.

(2) All referrals to misconduct proceedings under this regulation are subject to regulation 13(3) (outstanding or possible criminal proceedings).

(3) Subject to regulation 45(3) and paragraph (7), in a case where the disciplinary proceedings have been delayed by virtue of regulation 13(3), as soon as practicable after the relevant authority considers that such proceedings would no longer prejudice any criminal proceedings, it must make a further determination as to 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) Where the relevant authority determines there is no case to answer, it may—

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

(5) Where the relevant authority determines that there is a case to answer in respect of gross misconduct, it must refer the case to a misconduct hearing.

(6) Where the relevant authority determines that there is a case to answer in respect of misconduct—

- (a) if the officer concerned had a final written warning in force at the assessment date, it must refer the case to a misconduct hearing;
- (b) in all other cases, it may either—
  - (i) refer the case to a misconduct meeting; or
  - (ii) take management action against the officer concerned.

- (7) Where the relevant authority—
- (a) accepts a recommendation made under external procedures that proceedings should be brought at a misconduct meeting or a misconduct hearing, or
  - (b) is directed under such procedures to give effect to such a recommendation,
- it must refer the case to such a meeting or hearing.
- (8) If the relevant authority fails to—
- (a) make the determination referred to in paragraph (1), and
  - (b) where appropriate, decide what action to take under paragraph (6),
- before the end of 15 working days beginning with the first working day after receipt of the written report, it must notify the officer concerned in writing of the reason for this.
- (9) Where under paragraph (6) the relevant authority determines to take management action, it must give the officer concerned written notice of this as soon as practicable.

### **Withdrawal of case**

- 24.**—(1) This regulation applies to cases which have been or are being investigated under Part 3.
- (2) At any time before the beginning of misconduct proceedings, the relevant authority may direct that the case be withdrawn.
- (3) Where a direction is given under paragraph (2)—
- (a) the relevant authority may—
    - (i) take no further action against the officer concerned;
    - (ii) take management action against the officer concerned; or
    - (iii) refer the matter to be dealt with under the Performance Regulations; and
  - (b) the relevant authority must as soon as reasonably practicable give the officer concerned written notice of the direction, indicating what action will be taken under paragraph (3)(a).
- (4) Where—
- (a) a direction is given under paragraph (2),
  - (b) the investigation has been completed,
  - (c) the officer concerned so requests, and
  - (d) the harm test is not satisfied,

the relevant authority must as soon as reasonably practicable after that request give the officer concerned a copy of the investigator's report or such parts of that report as relate to the officer concerned.

### **Notice of referral to misconduct proceedings and panel membership**

- 25.**—(1) Where a case is referred to misconduct proceedings, the relevant authority must as soon as practicable give the officer concerned—
- (a) written notice of—
    - (i) the referral;
    - (ii) the conduct that is the subject matter of the case and how that conduct is alleged to amount to misconduct or gross misconduct;
    - (iii) the name of the person appointed to (in the case of a misconduct meeting for an officer other than a senior officer) conduct or (in any other case) chair the misconduct proceedings and of the effect of paragraphs (3) to (6) of this regulation; and
    - (iv) the effect of regulation 10 (police friend and legal representation);

- (b) 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
  - (c) subject to the harm test, a copy of—
    - (i) 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
    - (ii) any other relevant document gathered during the course of the investigation.
- (2) As soon as practicable after—
- (a) any person has been appointed under regulation 11(2) to advise the person or persons conducting the misconduct proceedings; and
  - (b) where the matter has been referred to misconduct proceedings conducted by a panel, the persons comprising the panel (other than the chair) have been determined,
- the relevant authority must give the officer concerned written notice of the names of such persons and of the effect of paragraphs (3) to (6) of this regulation.
- (3) The officer concerned may object to any person described in paragraph (1)(a)(iii) or (2).
- (4) Any such objection must be made in writing to the relevant authority before the end of 3 working days beginning with the first working day after the officer concerned is given notice of the person’s name and must set out the grounds of objection of the officer concerned.
- (5) The relevant authority must notify the officer concerned in writing as soon as reasonably practicable whether it upholds or rejects an objection made under paragraph (3).
- (6) If the relevant authority upholds the objection, the person to whom the officer concerned objects must be replaced (in accordance with regulations 11(2), 29 or 30 as appropriate).
- (7) As soon as reasonably practicable after any such new appointment, the relevant authority must notify in writing the officer concerned of the name of the person appointed.
- (8) The officer concerned may object to a new appointment under paragraph (6).
- (9) Any such objection must be made in accordance with paragraph (4), provided that it must be made before the end of 3 working days beginning with the first working day after receipt of the notification referred to in paragraph (7); and the relevant authority must comply with paragraphs (5) to (7) in relation to that objection, but paragraph (8) shall not apply.

### **Procedure on receipt of notice**

**26.—**(1) Subject to paragraph (2), the officer concerned must comply with paragraphs (3) and (4) before the end of 14 working days beginning with the first working day after the documents have been supplied to the officer concerned under regulation 25(1).

(2) The person conducting or chairing the misconduct proceedings may extend the period described in paragraph (1) where to do so is in the interests of justice.

(3) The officer concerned must provide to the relevant authority—

- (a) written notice of whether or not the officer accepts that the conduct amounts to misconduct or gross misconduct;
- (b) where the officer accepts that the conduct amounts to misconduct or gross misconduct, any written submission the officer wishes to make in mitigation; and
- (c) where the officer does not accept that the conduct amounts to misconduct or 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 misconduct proceedings.

(4) The officer concerned must give the relevant authority a copy of any document that the officer intends to rely on at the misconduct proceedings.

(5) 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 (3), the relevant authority and the officer concerned must each give to the other either—

- (a) a list of proposed witnesses, including brief details of the evidence that each witness is able to adduce; or
- (b) give notice that they do not have any proposed witnesses.

(6) Where there are proposed witnesses, the officer concerned and the relevant authority must, if reasonably practicable, agree a list of proposed witnesses, including brief details of the evidence that each witness is able to adduce.

## **Witnesses**

**27.—**(1) As soon as practicable after any list of proposed witnesses has been—

- (a) agreed under regulation 26(6); or
- (b) where there is no agreement under regulation 26(6), given under regulation 26(5)(a),

the relevant authority must give a copy of that list or lists to the person conducting or chairing the misconduct proceedings.

(2) The person conducting or chairing the misconduct proceedings must—

- (a) consider the list or lists of proposed witnesses; and
- (b) subject to paragraph (3), determine which, if any, witnesses should attend the misconduct proceedings.

(3) No witness may give evidence at misconduct proceedings unless the person conducting or chairing those proceedings reasonably believes that it is necessary for the witness to do so in the interests of justice, in which case the person conducting or chairing those proceedings must—

- (a) where the witness is an MDP officer, cause that person to be ordered to attend the misconduct proceedings; and
- (b) in any other case, cause the witness to be given notice that their attendance is requested and of the date, time and place of the proceedings.

## **Timing and notice of misconduct proceedings**

**28.—**(1) Subject to paragraphs (2) and (6), the misconduct proceedings must commence—

- (a) in the case of a misconduct meeting, before the end of 20 working days; or
- (b) in the case of a misconduct hearing, before the end of 30 working days,

beginning with the first working day after the documents have been given to the officer concerned under regulation 25(1).

(2) The person conducting or chairing the misconduct proceedings may extend the period specified in paragraph (1) where they consider that it would be in the interests of justice to do so.

(3) Where the person conducting or chairing the misconduct proceedings decides to extend the period under paragraph (2), or decides not to do so following representations from the officer concerned or the relevant authority, that person must provide in writing the reasons for that decision to the relevant authority and the officer concerned.

(4) The person conducting or chairing the misconduct proceedings must, if reasonably practicable, agree a date and time for the misconduct proceedings with the officer concerned.

(5) Where no date and time is agreed under paragraph (4), the person conducting or chairing the misconduct proceedings must specify a date and time for those proceedings.

(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 date and time; and
- (b) the officer concerned proposes an alternative date and time which satisfies paragraph (7),

the misconduct proceedings must be postponed to the date and time proposed by the officer concerned.

(7) An alternative date and 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 person conducting or chairing the misconduct proceedings.

(8) The person conducting or chairing the misconduct proceedings must give the officer concerned written notice of the date, time and place of the misconduct proceedings.

(9) Where the Commission or the Ombudsman is entitled to attend the misconduct proceedings to make representations (regulation 33) or to nominate a person to attend the proceedings as an observer (regulation 35), the person conducting or chairing the misconduct proceedings must give the Commission or the Ombudsman written notice of the date, time and place of the proceedings.

### **Persons conducting misconduct proceedings: officers other than senior officers**

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

(2) Where the case is referred to a misconduct meeting, that meeting must be conducted by a person appointed by the relevant authority who is not an interested party and who satisfies paragraph (3).

(3) The person must be—

- (a) an MDP officer of at least one rank higher than the officer concerned; or
- (b) unless the case substantially involves operational policing matters, a staff member who, in the opinion of the relevant authority, is more senior than the officer concerned.

(4) Where the case is referred to a misconduct hearing, that hearing must be conducted by a panel of three persons appointed by the relevant authority, comprising—

- (a) a senior officer, who shall be the chair;
- (b) an MDP officer of the rank of superintendent or above, who is of at least one rank above the officer concerned; and
- (c) a person selected by the relevant authority from a list of candidates maintained by the MOD Police Committee.

### **Persons conducting misconduct proceedings: senior officers**

**30.**—(1) This regulation applies where the officer concerned is a senior officer.

(2) Whether the case is referred to a misconduct meeting or a misconduct hearing, that meeting or hearing must be conducted by a panel of persons specified in paragraph (3), appointed by the relevant authority.

(3) Those persons are—

- (a) a chair selected by the relevant authority from a list of persons who satisfy the judicial-appointment eligibility criterion(a) 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 from a list maintained by the MOD Police Committee.

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

### **Documents to be supplied**

**31.**—(1) Prior to the misconduct proceedings the relevant authority must give the person or persons conducting the misconduct proceedings a copy of—

- (a) the documents given to the officer concerned under regulation 25(1);
- (b) the documents given by the officer concerned under—
  - (i) regulation 26(3) and (4); and
  - (ii) where paragraph (2) applies, regulation 49; and
- (c) where the officer concerned does not accept that their conduct amounts to misconduct or gross misconduct, or disputes any part of the case, any other documents that, in the opinion of the relevant authority, should be considered at the misconduct proceedings.

(2) This paragraph applies where the relevant authority has directed, in accordance with regulation 47(1), that the case be dealt with under this Part.

(3) Prior to the misconduct proceedings the relevant authority must give the officer concerned a list of the documents given under paragraph (1) and a copy of any such document if the officer has not already been supplied with a copy.

### **Attendance of officer concerned at misconduct proceedings**

**32.**—(1) Subject to paragraph (2), the officer concerned must attend the misconduct proceedings.

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

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

- (a) the officer may nonetheless be represented at those proceedings by the—
  - (i) police friend; or
  - (ii) in the case of a misconduct hearing, the relevant lawyer (in which case the police friend may also attend); and
- (b) the proceedings may proceed and be 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 Ombudsman and investigator at misconduct proceedings**

**33.**—(1) The Commission may attend the misconduct proceedings to make representations in any case where under external procedures—

- (a) the Commission has managed the investigation or itself carried out the investigation; or
- (b) the Commission has instructed the relevant authority to carry out the investigation on its own behalf or under the supervision of the Commission, and the Commission—
  - (i) recommended that misconduct proceedings should be brought; or
  - (ii) directed that the relevant authority must give effect to such a recommendation.

(2) The Ombudsman may attend the misconduct proceedings to make representations in any case where under external procedures—

- (a) the case was investigated by the Ombudsman or on the Ombudsman's behalf; or
- (b) the Ombudsman—
  - (i) recommended that misconduct proceedings should be brought; or
  - (ii) directed that the relevant authority must give effect to such a recommendation.
- (3) Where the Commission or Ombudsman intends to attend the misconduct proceedings—
  - (a) it must notify—
    - (i) the complainant or any interested person, and
    - (ii) the person conducting or chairing the misconduct proceedings, prior to those proceedings; and
  - (b) the person conducting or chairing the misconduct proceedings must notify the officer concerned prior to the proceedings.
- (4) Where the Commission or Ombudsman attends a misconduct hearing, it may instruct a relevant lawyer to represent it.
- (5) The investigator or any nominated person must attend the misconduct proceedings on the request of the person conducting or chairing those proceedings to answer questions.
- (6) Where more than one allegation is considered in the same misconduct proceedings (regulation 9(2)), this regulation applies to the whole of the proceedings and accordingly the Commission or Ombudsman may make representations in respect of any allegation.
- (7) In this regulation, “nominated person” means a person who, in the opinion of—
  - (a) the relevant authority, or
  - (b) in a case where under external procedures the Commission managed the investigation or itself carried out the investigation, the Commission, or
  - (c) in a case where under external procedures 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 or interested person at misconduct proceedings**

- 34.—**(1) This regulation applies in any misconduct proceedings 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 misconduct proceedings.
  - (3) Subject to regulation 36 and any conditions imposed under regulation 35(9), a complainant or any interested person may attend the misconduct proceedings as an observer up to but not including the point at which the person or panel conducting those proceedings considers the question of disciplinary action.
  - (4) Subject to paragraph (5), regulation 36 and any conditions imposed under regulation 35(9), a complainant or interested person may 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.
  - (5) Where a complainant or interested person is to give evidence as a witness at the misconduct proceedings, that witness and any person allowed to accompany that witness may not attend the proceedings before giving evidence.
  - (6) Where the officer concerned objects to the complainant or interested person, or any person accompanying the complainant or interested person, being present while a submission is made in mitigation on the officer's behalf, the person conducting or chairing the misconduct proceedings may require the complainant or interested person, or any person accompanying them, to withdraw while the submission is made.
  - (7) The person conducting or chairing the misconduct proceedings may put any questions to the officer concerned that the complainant or interested person may request be put.

(8) For the purposes of this regulation, a person has a special need if, in the opinion of the person conducting or chairing the misconduct proceedings, they have a disability or learning difficulty, or do not have sufficient knowledge of English to fully participate in or understand the misconduct proceedings.

### **Attendance of others at misconduct proceedings**

**35.**—(1) Subject to the attendance of —

- (a) any nominated person (regulation 33(7)),
- (b) any person entitled to attend under regulation 34, and
- (c) any person entitled to attend under this regulation,

the misconduct proceedings shall be in private.

(2) A person nominated by the Commission or the Ombudsman (as appropriate) may, as an observer, attend misconduct proceedings which arise from a case which has been investigated under external procedures.

(3) Unless expressly authorised by the person conducting or chairing the misconduct proceedings, a witness other than a complainant, interested person or the officer concerned may only attend the misconduct proceedings for the purpose of giving their evidence.

(4) The person conducting or chairing the misconduct proceedings may permit a witness in the misconduct proceedings to be accompanied at those proceedings by one other person.

(5) This paragraph applies where—

- (a) a case has been investigated under external procedures established with the Commission;
- (b) the Commission has itself investigated the case;
- (c) the case has been referred to a misconduct hearing;
- (d) the Commission considers that because of the gravity of the case or other exceptional circumstances it would be in the public interest for all or part of the misconduct hearing be held in public; and
- (e) the Commission has consulted with—
  - (i) the relevant authority;
  - (ii) the officer concerned;
  - (iii) the complainant or interested person; and
  - (iv) any witnesses.

(6) Where paragraph (5) applies, the Commission may direct that the whole or part of the misconduct hearing be held in public.

(7) Where the Commission makes a direction under paragraph (6), it must as soon as reasonably practicable, and in any event no later than 5 working days beginning with the first working day after the decision was taken, notify the persons consulted under paragraph (5)(e) of the decision and the reasons for it.

(8) Subject to regulation 36 (exclusion from a third stage hearing), the persons conducting the misconduct hearing must comply with a direction given under paragraph (6).

(9) The person conducting or chairing the misconduct proceedings may impose such conditions as they see fit relating to the attendance under regulation 34 (attendance of complainant or interested person) or this regulation of persons at the misconduct proceedings (including circumstances in which they may be excluded) in order to facilitate the proper conduct of the proceedings.

### **Exclusion from misconduct proceedings**

**36.**—(1) This paragraph applies where it appears to the person conducting or chairing misconduct proceedings that any person may, in giving evidence, disclose information the

disclosure of which should be prevented for any of the reasons set out in paragraphs (1)(a) to (g) of regulation 4 (the harm test).

(2) Where paragraph (1) applies, the person conducting or chairing misconduct proceedings must require any person to withdraw while the evidence is given.

### **Procedure at misconduct proceedings**

**37.**—(1) Subject to these Regulations, the person conducting or chairing the misconduct proceedings may determine the procedure at those proceedings.

(2) The misconduct proceedings may not commence 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 the misconduct proceedings may from time to time adjourn the proceedings if it appears to be necessary or expedient to do so.

(4) The misconduct proceedings may not, except in exceptional circumstances, be adjourned solely to allow the complainant or any witness or interested person to attend.

(5) The person representing the officer concerned may—

(a) address the proceedings 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;
- (iv) make representations concerning any aspect of the proceedings; and
- (v) subject to paragraph (8), ask questions of any witnesses; and

(b) confer with the officer concerned.

(6) 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.

(7) The police friend or relevant lawyer of the officer concerned may not answer any questions asked of the officer concerned.

(8) Whether any question should or should not be put to a witness shall be determined by the person conducting or chairing the misconduct proceedings.

(9) The person conducting or chairing the misconduct proceedings may allow any document to be considered at those proceedings notwithstanding that a copy of it has not been supplied—

- (a) by the officer concerned to the relevant authority in accordance with regulation 26(3); or
- (b) to the officer concerned in accordance with regulation 25(1).

(10) This paragraph applies where evidence is given at the misconduct proceedings 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 26(3) or (4) (procedure on receipt of notice),
  - (iii) where a direction has been made under regulation 47 (remission of case), regulation 49 (procedure on receipt of notice),
  - (iv) any equivalent opportunities to submit information 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 providing such information.

(11) Where paragraph (10) applies, the person or persons conducting the misconduct proceedings may draw such inferences from the failure as appear proper.

(12) The person or persons conducting the misconduct proceedings must review the facts of the case and decide whether the conduct of the officer concerned amounts—

- (a) in the case of a misconduct meeting, to misconduct or not; or
- (b) in the case of a misconduct hearing, to misconduct, gross misconduct or neither.

(13) The person or persons conducting the misconduct proceedings may not find that the conduct of the officer concerned amounts to misconduct or 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.

(14) The decision of the panel at a misconduct hearing 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**

**38.**—(1) Where the officer concerned is a senior officer, the persons conducting the misconduct proceedings must, as soon as reasonably practicable after the meeting or hearing, submit a report to the MOD Police Committee setting out—

- (a) the finding of the persons conducting the proceedings (regulation 37(12));
- (b) the reasons for that finding;
- (c) if that finding was that the conduct of the officer concerned amounted to misconduct or 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 proceedings 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 misconduct proceedings must send a copy to—

- (a) the officer concerned; and
- (b) if the Commission or the Ombudsman was entitled to attend to make representations (regulation 33(1) or (2)), to the Commission or the 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 (6) apply, with the modifications specified in paragraph (7), to a meeting held under paragraph (3) as if it were a misconduct hearing.

(5) The MOD Police Committee may appoint a person (who may be a relevant lawyer) to advise it at the meeting.

(6) 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 26(5) and (6) (procedure on receipt of notice);
- (e) regulation 27 (witnesses);
- (f) regulation 28 (timing and notice of misconduct proceedings);
- (g) regulation 32 (attendance of officer concerned at misconduct proceedings);

- (h) regulation 33 (participation of Commission or Ombudsman and investigator at misconduct proceedings);
  - (i) regulation 34 (attendance of complainant or interested person at misconduct proceedings);
  - (j) regulation 35 (attendance of others at misconduct proceedings);
  - (k) regulation 36 (exclusion from misconduct proceedings);
  - (l) regulation 37(1) to (11) (procedure at misconduct proceedings); and
  - (m) regulation 41 (record of misconduct proceedings).
- (7) The modifications are that—
- (a) each reference to the person conducting or chairing the misconduct proceedings has effect as a reference to the Chair of the MOD Police Committee;
  - (b) in regulation 26(5), the reference to the date on which the officer concerned has complied with paragraph (3) has effect as a reference to the date on which the report is submitted under paragraph (1) of this regulation; and
  - (c) in regulation 28—
    - (i) the reference in paragraph (1) to the first working day after the documents have been supplied to the officer concerned has effect as a reference to the first working day after the report is submitted under paragraph (1) of this regulation;
    - (ii) the references in paragraph (3) to the relevant authority are omitted.

### **Outcome of misconduct proceedings**

**39.**—(1) The person or persons conducting misconduct proceedings in the case of an officer other than a senior officer may—

- (a) impose any of the disciplinary actions in paragraph (3)(a) or (b) as appropriate; or
  - (b) where they find the conduct amounts to misconduct but not gross misconduct following a misconduct meeting or hearing, record a finding of misconduct but take no further action.
- (2) At a meeting held under regulation 38(3) the MOD Police Committee may—
- (a) impose any of the disciplinary actions in paragraph (3)(a) or (b) as appropriate; or
  - (b) where the finding set out in the report is that the conduct amounted to misconduct but not gross misconduct, record a finding of misconduct but take no further action.
- (3) The disciplinary action is—
- (a) where the report referred to in regulation 38(1) was made after a misconduct meeting—
    - (i) management advice;
    - (ii) written warning; or
    - (iii) final written warning;
  - (b) where the report referred to in regulation 38(1) was made after a misconduct hearing—
    - (i) management advice;
    - (ii) written warning;
    - (iii) final written warning;
    - (iv) dismissal with notice; or
    - (v) dismissal without notice.

(4) The disciplinary action referred to in paragraph (3) has effect from the date on which it is notified to the officer concerned and, in the case of dismissal with notice, the person or persons imposing the disciplinary action must decide the period of notice to be given, subject to a minimum period of 28 days.

(5) Where there is a finding that the conduct of the officer concerned amounts to misconduct but not gross misconduct, the officer may not be dismissed (whether with or without notice) unless a final written warning was in force on the assessment date.

(6) Where the officer concerned had a written warning in force on the assessment date, a written warning may not be given.

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

- (a) neither a written warning nor a final written warning may be given; but
- (b) subject to paragraph (9), in exceptional circumstances, the final written warning may be extended.

(8) Where a final written warning is extended under paragraph (7)(b), that warning remains in force for a period of 18 months from the date on which it would otherwise expire.

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

(10) Where there is a finding of gross misconduct and the person or persons considering the question of disciplinary action decides that the officer concerned shall be dismissed, the dismissal shall be without notice.

(11) 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 receive evidence from any witness whose evidence would, in their opinion, assist them in determining the question; and
- (c) must give—
  - (i) the officer concerned, the police friend or, at a misconduct hearing, the relevant lawyer, and
  - (ii) in the case of an officer other than a senior officer, the relevant authority or any person appointed to advise the relevant authority (regulation 11(2)),  
an opportunity to make oral or written representations before any such question is determined.

## **Notification of outcome**

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

- (a) the finding of the person or persons conducting the misconduct proceedings;
- (b) the reasons for that finding; and
- (c) in a case other than one to which regulation 38 (senior officers: meeting of MOD Police Committee to consider disciplinary action) applies, any disciplinary action imposed,

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 misconduct proceedings.

(2) In a case to which regulation 38 applies, the relevant authority must inform the officer concerned in writing of any disciplinary action imposed and the reasons for that 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 meeting held under regulation 38(3).

(3) Where there was a finding of misconduct or gross misconduct a written notice under paragraph (1) must include—

- (a) where the officer concerned is an officer other than a senior officer—
  - (i) if the case was decided at a misconduct meeting, notice of the officer's right of appeal under regulation 42; or
  - (ii) if the case was decided at a misconduct hearing, notice of the officer's right of appeal to a police appeals tribunal;

- (b) where the officer concerned is a senior officer, notice of the officer's right of appeal to a police appeals tribunal;
- (c) the name and address of the person to whom an appeal should be sent.
- (4) The relevant authority must send a copy of any written notice under this regulation to—
  - (a) the Commission or the Ombudsman, in any case in which the Commission or the Ombudsman was entitled to attend to make representations under regulation 33(1) or (2); and
  - (b) to the complainant and any interested person, in any case to which regulation 34 applies.

### **Record of misconduct proceedings**

**41.—**(1) The relevant authority must ensure that a record of the misconduct proceedings is taken, and in the case of a misconduct hearing that record must be verbatim.

(2) The relevant authority must, if the officer concerned so requests, give the officer concerned a copy of the record of the proceedings as soon as reasonably practicable after the conclusion of the misconduct proceedings.

### **Appeal from misconduct meeting: officers other than senior officers**

**42.—**(1) Where the officer concerned is an officer, other than a senior officer, whose case was decided at a misconduct meeting, the officer may, subject to the provisions of this regulation, appeal—

- (a) if the officer admitted that the conduct amounted to misconduct, against any disciplinary action imposed under regulation 39; or
- (b) if (after the officer denied misconduct) the person conducting the misconduct meeting found that the officer's conduct amounted to misconduct, against that finding or any disciplinary action imposed under regulation 39.

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

- (a) the finding or disciplinary action imposed was unreasonable;
- (b) there is evidence that could not reasonably have been considered at the misconduct meeting which could have materially affected the finding or decision on disciplinary action; or
- (c) there was a serious breach of the procedures set out in these Regulations or other unfairness which could have materially affected the finding or decision on disciplinary action.

(3) An appeal under this regulation may be commenced by the officer concerned giving written notice of appeal to the relevant authority—

- (a) subject to paragraph (4), before the end of 7 working days beginning with the first working day after the written notice and summary of reasons is given under regulation 40; and
- (b) stating the grounds of appeal and whether a meeting is requested.

(4) The relevant authority may extend the time period specified in paragraph (3)(a) where it considers that it would be in the interests of justice to do so.

(5) An appeal under this regulation shall be determined—

- (a) where the person who conducted the misconduct meeting was a member of a police force, by—
  - (i) a member of a police force of at least one rank higher than that person; or
  - (ii) unless the case substantially involves operational policing matters, a staff member who, in the opinion of the relevant authority, is more senior than that person;
- (b) where the person who conducted the misconduct meeting was a staff member, by—

- (i) a member of a police force who, in the opinion of the relevant authority is more senior than that person; or
- (ii) a more senior staff member,

who is not an interested party, appointed by the relevant authority.

(6) The relevant authority must as soon as reasonably practicable give the officer concerned written notice of—

- (a) the name of the person appointed to determine the appeal under paragraph (5);
- (b) the name of any person appointed under regulation 11(2) to advise the person determining the appeal; and
- (c) the effect of paragraphs (7) to (10) of this regulation.

(7) Once notified the officer concerned may object to any person who is to—

- (a) determine the appeal; or
- (b) advise the person determining the appeal.

(8) Any such objection must be made in writing to the relevant authority before the end of 3 working days beginning with the first working day after the officer concerned is given notice of the person's name and must set out the grounds of objection of the officer concerned.

(9) The relevant authority must notify the officer concerned in writing whether it upholds or rejects an objection made under paragraph (7).

(10) If the relevant authority upholds the objection, the person to whom the officer concerned objects shall be replaced (in accordance with regulation 11(2) or paragraph (5) as appropriate).

(11) As soon as reasonably practicable after any such new appointment, the relevant authority shall notify in writing the officer concerned of the name of the new person appointed.

(12) The officer concerned may object to the appointment of a person appointed under paragraph (10).

(13) Any such objection must be made in accordance with paragraph (8), provided that it must be made before the end of 3 working days beginning with the first working day after the officer concerned is given the notice referred to in paragraph (11); and the relevant authority must comply with paragraphs (9) to (11) in relation to that objection, but paragraph (12) shall not apply.

## **Appeal meeting**

**43.—**(1) This regulation applies where the officer concerned requests a meeting in the written notice of appeal (regulation 42(3)).

(2) The person determining the appeal must determine whether the notice of appeal sets out arguable grounds of appeal and—

- (a) if so, the person determining the appeal must hold an appeal meeting with the officer concerned, subject to paragraphs (3) and (5), before the end of 5 working days beginning with the first working day after that determination; and
- (b) if not, that person must dismiss the appeal.

(3) The person determining the appeal may extend the time period specified in paragraph (2)(a) where that person considers that it would be in the interests of justice to do so.

(4) The person determining the appeal must give written notice of the date, time and place for the appeal meeting to—

- (a) the officer concerned;
- (b) where the Commission or the Ombudsman was entitled to attend the misconduct meeting to make representations (regulation 33(1) or (2)), or to nominate a person to attend the meeting as an observer (regulation 35(2)), the Commission or the Ombudsman;
- (c) where the complainant or an interested person was entitled to attend the misconduct meeting (regulation 34), the complainant or interested person.

- (5) Where—
  - (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 appeal 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 person determining the appeal.
- (7) Prior to the appeal meeting the relevant authority must give the person determining the appeal a copy of—
  - (a) the documents given to the person who held the misconduct meeting as specified in regulation 31(1);
  - (b) the notice of appeal given by the officer concerned under regulation 42(3);
  - (c) the record of the misconduct meeting taken under regulation 41(1); and
  - (d) any evidence of a kind referred to in regulation 42(2)(b) that the officer concerned wishes to submit in support of the appeal.

### **Procedure and finding of the appeal**

**44.**—(1) Subject to the provisions of this regulation, the person determining the appeal may determine the procedure at the appeal meeting.

(2) Any interested person or complainant entitled to be given notice of the appeal meeting under regulation 43(4) may attend the appeal meeting as an observer.

(3) Where the officer concerned objects to the complainant or interested person being present while a submission is made in mitigation on the officer's behalf, the person determining the appeal may require the complainant or interested person to withdraw while the submission is made.

(4) The person determining the appeal may impose such conditions as they see fit relating to the attendance of persons under paragraph (2) at the appeal meeting (including circumstances in which they may be excluded) in order to facilitate the proper conduct of the appeal meeting.

(5) The person determining the appeal may—

- (a) confirm or reverse the decision appealed against;
- (b) deal with the officer concerned in any manner in which the person conducting the misconduct meeting could have dealt with that officer under regulation 39.

(6) Before the end of 3 working days beginning with the first working day after the determination of the appeal, the officer concerned shall be given written notice of that determination with a summary of the reasons.

(7) The decision of the person determining the appeal shall take effect by way of substitution for the decision of the person conducting the misconduct meeting and as from the date of the written notice of the outcome of that meeting.

(8) In a case where the Commission or the Ombudsman was entitled to attend the misconduct meeting to make representations (regulation 33(1) or (2)), or to nominate a person to attend the meeting as an observer (regulation 35(2)), the relevant authority must give the Commission or the Ombudsman written notice of the determination of the appeal with a summary of the reasons.

## 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(a) 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.

#### **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).

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

### **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.

## **PART 6**

### **Record Keeping**

#### **Record of disciplinary proceedings**

**62.**—(1) The chief constable must cause a record to be kept for seven years of disciplinary proceedings and special case proceedings brought under these Regulations, together with the finding and decision on disciplinary action and any decision made at an appeal hearing.

(2) Where the officer concerned is the chief constable, the MOD Police Committee must cause such a record to be kept.

## **PART 7**

### **Amendments**

#### **Amendment of the Appeal Regulations**

**63.** Schedule 2 (amendment of the Appeal Regulations) has effect.

#### **Amendment of the Performance Regulations**

**64.** Schedule 3 (amendment of the Performance Regulations) has effect.

Signed on behalf of the Secretary of State

11th January 2015

*Anna Soubry*  
Minister for Defence Personnel, Welfare and Veterans  
Ministry of Defence

## SCHEDULE 1

Regulation 3(1)

### Standards of Professional Behaviour

#### **Honesty and Integrity**

MDP officers are honest, act with integrity and do not compromise or abuse their position.

#### **Authority, Respect and Courtesy**

MDP officers act with self-control and tolerance, treating members of the public and colleagues with respect and courtesy.

MDP officers do not abuse their powers or authority and they respect the rights of all individuals.

#### **Equality and Diversity**

MDP officers act with fairness and impartiality. They do not discriminate unlawfully or unfairly.

#### **Use of Force**

MDP officers only use force to the extent that it is necessary, proportionate and reasonable in all the circumstances.

#### **Orders and Instructions**

MDP officers only give and carry out lawful orders and instructions.

MDP officers abide by police regulations, force policies and lawful orders.

#### **Duties and Responsibilities**

MDP officers are diligent in the exercise of their duties and responsibilities.

#### **Confidentiality**

MDP officers treat information with respect and access or disclose it only in the proper course of police duties.

#### **Fitness for Duty**

MDP officers when on duty or presenting themselves for duty are fit to carry out their responsibilities.

#### **Discreditable Conduct**

MDP officers behave in a manner which does not discredit the police service or undermine public confidence in it, whether on or off duty.

MDP officers report any action taken against them for a criminal offence, any conditions imposed on them by a court or the receipt of any penalty notice.

#### **Challenging and Reporting Improper Conduct**

MDP officers report, challenge or take action against the conduct of colleagues which has fallen below the Standards of Professional Behaviour.

## Amendments of the Appeal Regulations

### Interpretation

1. In this Schedule, “the Appeal Regulations” means the Ministry of Defence Appeals Tribunals Regulations 2009(a).

### Amendments in relation to interpretation

2.—(1) Regulation 3 of the Appeal Regulations is amended as follows.

(2) At appropriate places, insert—

““the 1998 Act” means the Police (Northern Ireland) Act 1998(b);”;

““the 2013 Order” means the Independent Police Complaints Commission (Forces Maintained Otherwise than by Local Policing Bodies) Order 2013(c);”;

““police officer” means a member of the Ministry of Defence Police;”.

(3) For the definition of “Conduct Regulations” substitute—

““Conduct Regulations” means the Ministry of Defence Police (Conduct) Regulations 2015(d);”.

(4) For the definition of “specified appeal” substitute—

““specified appeal” means an appeal where the relevant decision was made in any case which was investigated—

(a) under procedures established with the Commission in accordance with article 3 of the 2013 Order;

(b) under procedures established with the Ombudsman in accordance with an agreement made under section 60(1) of the 1998 Act;”.

### Amendment to circumstances in which an appeal may be made to a tribunal

3. For regulation 4(4)(c) of the Appeal Regulations substitute—

“(c) that there was a breach of the Conduct Regulations, or other unfairness which could have materially affected the finding or disciplinary action imposed.”.

### Amendment in relation to appeals against a finding etc under the Performance Regulations

4. In regulation 4A(5) of the Appeal Regulations after “unsatisfactory performance” insert “or attendance”.

### Amendments in relation to appointment and composition of police appeals tribunal

5.—(1) For regulation 5(2)(a) and (b) of the Appeal Regulations substitute—

“(a) one (who shall be the chair) must be chosen from a list of persons who satisfy the judicial-appointment eligibility criterion on a 5-year basis and have been nominated by the Secretary of State for the Home Department for the purposes of these Regulations;

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(a) S.I. 2009/3070.

(b) 1998 c. 32.

(c) S.I. 2013/1779.

(d) S.I. 2015/25.

- (b) one must be Her Majesty's Chief Inspector of Constabulary appointed under section 54(1) of the Police Act 1996<sup>(a)</sup> (appointment and functions of inspectors of constabulary) or an inspector of constabulary nominated by the Chief Inspector of Constabulary; and
  - (c) one must be a person chosen from a list of candidates maintained by the MOD Police Committee.”.
- (2) Omit regulation 5(3) of the Appeal Regulations.
- (3) For regulation 5(4) of the Appeal Regulations substitute—
 

“(4) If the appellant was a police officer (other than a senior officer) serving in England and Wales or Northern Ireland immediately before the original hearing, the tribunal is to consist of three members appointed by the Head of HR, of whom—

  - (a) one must be a person chosen from the list referred to in paragraph (2)(a);
  - (b) one must be a senior officer who is—
    - (i) from an alternative police force other than the Police Service of Scotland, and
    - (ii) not based in Scotland; and
  - (c) one must be either—
    - (i) a retired member of the force, or
    - (ii) a retired member of an alternative police force other than the Police Service of Scotland,

who, at the time of retirement, was a member of an appropriate staff association and not based in Scotland.

(4A) If the appellant was a police officer (other than a senior officer) serving in Scotland immediately before the original hearing, the tribunal is to consist of three members appointed by the Head of HR, of whom—

  - (a) one must be a person chosen from a list of persons who have been nominated by the Lord President of the Court of Session for the purposes of Schedule 3 to the 2012 Act;
  - (b) one must be a senior officer from the Police Service of Scotland; and
  - (c) one must be a retired member of—
    - (i) the force,
    - (ii) the Police Service of Scotland, or
    - (iii) a police force maintained under section 1 of the 1967 Act,

who at the time of retirement was a member of an appropriate staff association.”.
- (4) In regulation 5(6) of the Appeal Regulations —
  - (a) in sub-paragraph (b) after “1996 Act” insert “, the metropolitan police force or the City of London police force”;
  - (b) in sub-paragraph (c) omit “a member of a police force maintained under section 2 of the 1996 Act”;
  - (c) after sub-paragraph (d) add—
 

“(e) the Police Federation for Scotland where the panel member was at the time of retirement a member of the Police Service of Scotland or a police force maintained under section 1 of the 1967 Act.”.
- (5) Omit regulation 5(7).

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(a) 1996 c. 16.

### **Amendment in relation to procedure on notice of appeal**

6. For regulation 9(2)(a) of the Appeal Regulations substitute—

“(a) a copy of the notification of outcome provided under regulation 40(1) or 60(1) of the Conduct Regulations or regulation 37(3) of the Performance Regulations;”.

### **Amendment in relation to notice of the hearing**

7. In regulation 14(2)(a) of the Appeal Regulations after “regulation 4(4)(b)” insert “or 4A(6)(b)”.

### **Amendment in relation to legal and other representation**

8. For regulation 15(5) of the Appeal Regulations substitute—

“(5) Where a police friend is a police officer or a staff member, that person may use a reasonable amount of duty time for the purposes referred to in this regulation.”.

### **Amendment in relation to attendance of complainant at hearing**

9. For regulation 19(1) of the Appeal Regulations substitute—

“(1) This regulation applies in relation to any hearing where the relevant decision arose from a complaint to the Commission or Ombudsman.”.

### **Amendments in relation to tribunal’s determination**

10.—(1) After regulation 22(1) of the Appeal Regulations insert—

“(1A) Where the tribunal determines that a ground of appeal under regulation 4(4)(b) or (c) or regulation 4A(6)(b) or (c) has been made out, the tribunal may set aside the relevant decision and remit the matter to be decided again in accordance with the relevant provisions of the Conduct Regulations or the Performance Regulations.

(1B) Where the tribunal remits the matter under paragraph (1A)—

- (a) any misconduct meeting for the matter must be conducted by a person other than the person who made the relevant decision;
- (b) any misconduct hearing for the matter must be conducted by a panel which does not include any person who was on the panel that made the relevant decision.”.

(2) For regulation 22(2) of the Appeal Regulations substitute—

“(2) The determination of the tribunal may be based on a majority (with the chair having the casting vote if necessary).”.

(3) Omit regulation 22(3) of the Appeal Regulations.

(4) For regulation 22(6) of the Appeal Regulations substitute—

“(6) Where regulation 19(1) applies, the Head of HR must notify the complainant and any interested party of the decision of the tribunal.”.

## SCHEDULE 3

Regulation 64

### Amendments of the Performance Regulations

#### Amendment in relation to application

1. In regulation 2(1) of the Performance Regulations omit “or outside the United Kingdom whilst on detached duty from a station in the United Kingdom.”.

#### Amendments in relation to interpretation and delegation

2.—(1) Regulation 4(1) of the Performance Regulations is amended as follows.

(2) In the definition of “alternative police force” for sub-paragraph (f) substitute—

“(f) Police Service of Scotland; or”.

(3) At appropriate places, insert—

““the 2013 Order” means the Independent Police Complaints Commission (Forces Maintained Otherwise than by Local Policing Bodies) Order 2013(a);”;

““the Commission” means the Independent Police Complaints Commission established under section 9 of the Police Reform Act 2002(b);”;

““the Conduct Regulations” means the Ministry of Defence Police (Conduct) Regulations 2015(c);”;

““external procedures” means procedures established with the Commission in accordance with article 3 of the 2013 Order;”;

““the harm test” has the meaning given in regulation 4 of the Conduct Regulations;”.

#### Amendment in relation to suspension of certain periods

3. For the footnote to regulation 11(1) of the Performance Regulations, substitute—

“<https://www.gov.uk/government/publications/mdp-civilian-personnel-policy-extended-special-unpaid-leave-exsul>.”

#### New provisions in relation to the Commission

4. After regulation 11 of the Performance Regulations insert—

##### “Meeting following investigation by the Commission

11A.—(1) Where an appropriate authority—

(a) either—

(i) receives an investigator’s written report made under external procedures; and

(ii) in making the determination under regulation 23(1) of the Conduct Regulations considers that there is no case to answer but the performance or attendance of the officer concerned is unsatisfactory, or

(b) accepts a recommendation from the Commission that the performance or attendance of a police officer is unsatisfactory,

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(a) S.I. 2013/1779.

(b) 2002 c. 30.

(c) S.I. 2015/25.

the appropriate authority must direct the line manager for that officer to take the action specified in paragraph (2), (3) or (4).

(2) In a case where—

- (a) the officer concerned has received a final written improvement notice under regulation 22(3) or 38(3)(e) in relation to unsatisfactory performance or attendance which is similar to or connected with the unsatisfactory performance or attendance to which the determination mentioned in paragraph (1)(a) or the recommendation mentioned in (1)(b) relates, and
- (b) the validity period of the final written improvement notice, within the meaning of regulation 22(4) or 38(6)(d) or (7)(c) has not expired,

the specified action is that the line manager must require the officer to attend a third stage meeting.

(3) In a case where—

- (a) the officer concerned has received a written improvement notice under regulation 15(1)(b) or 38(5) in relation to unsatisfactory performance or attendance which is similar to or connected with the unsatisfactory performance or attendance to which the determination mentioned in paragraph (1)(a) or the recommendation mentioned in (1)(b) relates, and
- (b) the validity period of the written improvement notice, within the meaning of regulation 15(4) or 38(6)(d) has not expired,

the specified action is that the line manager must require the officer to attend a second stage meeting.

(4) In any other case, the specified action is that the line manager must require the officer concerned to attend a first stage meeting.

(5) The line manager must comply with a direction given under paragraph (1).

(6) Subject to paragraphs (7) and (8), where a police officer is required to attend a meeting under this regulation—

- (a) if the meeting is a first stage meeting, regulations 13 to 18 apply;
- (b) if the meeting is a second stage meeting, regulations 20 to 25 apply;
- (c) if the meeting is a third stage meeting, regulations 27, 30 to 35 and 35A to 36D apply.

(7) The duty to provide documents in regulation 13(2), 20(2) or 27(2) has effect as a duty to provide the officer concerned with a copy of—

- (a) subject to the harm test, the investigator's written report (paragraph (1)(a)); and
- (b) any recommendation of the Commission (paragraph (1)(b)).

(8) Where a police officer is required to attend a third stage meeting (paragraph (2)) because the officer is subject to a final written improvement notice issued or extended under regulation 38 –

- (a) the meeting must be conducted by the same panel as conducted the initial third stage meeting;
- (b) regulation 40(11) to (15) apply in relation to that panel.

(9) Where the appropriate authority fails to make the determination referred to in paragraph (1)(a)(ii) before the end of 15 working days beginning with the first working day after receipt of the investigator's written report, the appropriate authority must notify the officer concerned in writing of the reason for this.

### **Provision of information to the Commission**

**11B.**—(1) This regulation applies in any case which has been investigated under external procedures.

(2) Where this regulation applies, the appropriate authority must send the Commission a copy of—

- (a) any written record and written improvement notice given to the officer concerned under regulation 15(5);
- (b) any written notice and written summary given to the officer concerned under regulation 18(9);
- (c) any notification given to the officer concerned under regulation 19(1)(b);
- (d) any written record and final written improvement notice given to the officer concerned under regulation 22(5);
- (e) any written notice and written summary given to the officer concerned under regulation 25(9);
- (f) any notification given to the officer concerned under regulation 26(1)(b);
- (g) any written decision given to the officer concerned under regulation 37(3);
- (h) any final written improvement notice issued or extended under regulation 38(3);
- (i) any written improvement notice issued under regulation 38(6);
- (j) any notification given to the officer concerned under regulation 40(2)(b).

(3) Where this regulation applies, the appropriate authority must notify the Commission if it extends under regulation 10(1) any period specified in regulation 10(2).”.

#### **Amendment in relation to arrangement of first stage meeting**

5. In regulation 13(1) of the Performance Regulations, for “If the line manager wishes to require” substitute “Where a line manager requires”.

#### **Amendments in relation to requiring a third stage meeting without prior first or second stage meeting**

6.—(1) For regulation 28(1) of the Performance Regulations substitute—

“(1) This regulation applies where either—

- (a) the appropriate authority considers that the performance of a police officer constitutes gross incompetence; or
- (b) a case has been investigated under external procedures, and the Commission considers that the performance of the officer concerned constitutes gross incompetence.”.

(2) In regulation 28(2) for “may” substitute “must”.

#### **Amendments in relation to arranging a third stage meeting without prior first or second stage meeting**

7.—(1) After regulation 29(1)(f) of the Performance Regulations, insert—

- “(fa) in a case in which regulation 35A (participation of Commission and investigator at a third stage meeting) applies, informing the officer that the Commission may attend the meeting to make representations;
- (fb) in a case to which regulation 35B (attendance of complainant or interested person at a third stage meeting) applies, informing the officer that the complainant or any interested person may attend the meeting as an observer;
- (fc) in a case to which regulation 35C(4) (attendance by person nominated by the Commission applies), informing him that a person nominated by the Commission may attend the meeting as an observer;

(fd) in a case to which regulation 35C(10) (cases where Commission may direct that the meeting may be held in public) applies, informing him that the Commission may direct that the whole or any part of the meeting be held in public;”.

(2) For regulation 29(2) substitute—

“(2) A notice given under paragraph (1) is to be accompanied by a copy of—

- (a) any document relied upon by the appropriate authority when it formed the view referred to in sub-paragraph (a) of regulation 28(1); or
- (b) subject to the harm test, the investigator’s written report referred to in regulation 11A(1)(a), or the recommendation of the Commission referred to in regulation 11A(1)(b).”.

#### **Amendment in relation to timing and notice of third stage meeting**

8. After regulation 34(8) of the Performance Regulations insert—

“(8A) Where the Commission is entitled to attend the third stage meeting to make representations (regulation 35A(2)), or to nominate a person to attend the proceedings as an observer (regulation 35C(4)), the panel chair must give the Commission written notice of the date, time and place of the meeting.”.

#### **Amendment in relation to postponement and adjournment of third stage meeting**

9. After regulation 35(3) of the Performance Regulations insert—

“(4) Where the panel chair has given the Commission written notice under regulation 34(8A), and later makes a direction under paragraph (1), the panel chair must give the Commission written notice of the reasons and the revised time and place of the meeting.”.

#### **New provisions in relation to attendance and participation at third stage meetings**

10. After regulation 35 of the Performance Regulations, insert—

##### **“Participation of Commission and investigator at a third stage meeting**

**35A.**—(1) This regulation applies to any case falling within regulation 11A or regulation 28.

(2) The Commission may attend the third stage meeting to make representations.

(3) Where the Commission intends to attend the third stage meeting—

- (a) it may instruct a relevant lawyer to represent it;
- (b) it must notify—
  - (i) the complainant or any interested person, and
  - (ii) the panel chair,prior to that meeting; and

(c) the panel chair must notify the officer concerned prior to the meeting.

(4) The investigator or a nominated person must attend the third stage meeting on the request of the panel chair to answer questions.

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

- (a) in a case where the Commission has managed the investigation or itself carried out the investigation), the Commission, or
  - (b) in all other cases, the appropriate authority,
- has sufficient knowledge of the case to be able to assist the panel.

### **Attendance of complainant or interested person at a third stage meeting**

**35B.**—(1) This regulation applies to any case falling within regulation 11A or regulation 28.

(2) The appropriate authority must notify the complainant or any interested person of the date, time and place of the third stage meeting.

(3) Subject to the provisions of this regulation and any conditions imposed under regulation 35C(13)—

- (a) the complainant may attend as an observer any part of the third stage meeting relating to the subject matter of their complaint; and
- (b) an interested person may attend as an observer any part of the third stage meeting relating to the subject matter of the complaint or conduct matter in respect of which that person is an interested person.

(4) Regulation 34(4) to (8) of the Conduct Regulations apply to any complainant or interested person attending a third stage meeting, as if that meeting were a misconduct meeting and the panel chair were the person chairing the misconduct hearing.

### **Attendance of others at a third stage meeting**

**35C.**—(1) Subject to the attendance of—

- (a) the Commission, investigator or nominated person (regulation 35A),
- (b) any person entitled to attend under regulation 35B, and
- (c) any person entitled to attend under this regulation,

the third stage meeting shall be in private.

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

(3) 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.

(4) A person nominated by the Commission may, as an observer, attend a third stage meeting to which regulation 28 applies.

(5) In a case where a person nominated by the Commission is entitled under paragraph (4) to attend the third stage meeting, the appropriate authority must notify the Commission of the date, time and place of the meeting.

(6) Any other person may attend the third stage meeting if—

- (a) that person is specified in the notice given to the officer concerned under regulation 27(1)(g) or 29(1)(g); and
- (b) the officer concerned consents to that person attending.

(7) Unless expressly authorised by the panel chair, a witness other than the complainant, interested person or the officer concerned may only attend the misconduct proceedings for the purpose of giving their evidence.

(8) The panel chair may permit a witness at the third stage hearing to be accompanied by one other person.

(9) This paragraph applies where—

- (a) a third stage meeting is held to which regulation 28 applies;
- (b) the Commission has itself investigated the case under external procedures;
- (c) the Commission considers that because of the gravity of the case or other exceptional circumstances it would be in the public interest for all or part of the third stage meeting to be held in public; and
- (d) the Commission has consulted with—
  - (i) the appropriate authority;

- (ii) the officer concerned;
- (iii) the complainant or interested person; and
- (iv) any witnesses.

(10) Where paragraph (9) applies, the Commission may direct that the whole or part of the third stage meeting be held in public.

(11) Where the Commission makes a direction under paragraph (10), it must as soon as reasonably practicable, and in any event no later than 5 working days beginning with the first working day after the decision was taken, notify the persons consulted under paragraph (9)(d) of the decision and the reasons for it.

(12) Subject to regulation 35D (exclusion from a third stage hearing), the panel must comply with a direction given under paragraph (10).

(13) The panel chair may impose such conditions as the chair thinks fit relating to the attendance under regulation 35B (attendance of complainant or interested person) or this regulation at the third stage meeting (including circumstances in which they may be excluded) in order to facilitate the proper conduct of the meeting.

### **Exclusion from third stage meeting**

**35D.**—(1) Where it appears to the panel chair that any person may, in giving evidence, disclose information which ought not to be disclosed to any person attending a third stage meeting because it is information to which paragraph (2) applies, the chair must require such attendees to withdraw while the evidence is given.

(2) This paragraph applies to information in so far as the panel chair considers that preventing disclosure of it is—

- (a) necessary for the purpose of preventing the premature or inappropriate disclosure of information that is relevant to, or may be used in, any criminal proceedings;
- (b) necessary in the interests of national security;
- (c) necessary for the purpose of the prevention or detection of crime, or the apprehension or prosecution of offenders;
- (d) necessary for the purposes of the prevention or detection of misconduct by other police officers or staff members or their apprehension for such matters;
- (e) necessary and proportionate for the protection of the welfare and safety of any informant or witness; or
- (f) otherwise in the public interest.”.

### **Procedure at third stage meeting**

**11.** In regulation 36 omit paragraphs (2) to (5).

### **Amendment in relation to outcomes**

**12.** After regulation 38(4) of the Performance Regulations insert—

“(4A) Where the question of ordering any of the outcomes mentioned in paragraph (3) is being considered, the panel—

- (a) must have regard to the record of police service of the officer concerned as shown on the officer’s police record;
- (b) may receive evidence from any witness whose evidence would, in their opinion, assist them in determining the question; and
- (c) must give—
  - (i) the officer concerned, the police friend or, in a case falling within regulation 28, the relevant lawyer, and

(ii) the appropriate authority,  
an opportunity to make oral or written representations before any such question is  
determined.”.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations revoke and re-enact with modifications the Ministry of Defence Police (Conduct) Regulations 2009, and also make amendments to the Ministry of Defence Appeals Tribunals Regulations 2009 (“the Appeal Regulations”) (see Schedule 2), and to the Ministry of Defence (Performance) Regulations 2012 (“the Performance Regulations”) (see Schedule 3). The purpose of the modifications and amendments is to reflect, to the extent possible, changes made to equivalent legislation which governs police forces in England and Wales. That equivalent legislation is the Police Appeals Tribunals Rules 2012(a), the Police (Performance) Regulations 2012(b), and the Police (Conduct) Regulations 2012(c). In particular, the amendments make further provision for the role of the Independent Police Complaints Commission (“the Commission”).

These Regulations establish procedures for the taking of disciplinary proceedings in respect of the conduct of members of the Ministry of Defence Police (“MDP officers”). They apply to all MDP officers, although for senior officers (an MDP officer above the rank of chief superintendent), the persons dealing with some of the proceedings differ. These Regulations apply (see regulation 9) where an allegation comes to the attention of a relevant authority which indicates that the conduct of an MDP officer may amount to misconduct or gross misconduct.

Serious cases of misconduct may be investigated either by the Commission, under procedures established between the Commission and the Secretary of State in accordance with article 3 of the Independent Police Complaints Commission (Forces Maintained Otherwise than by Local Policing Bodies) Order 2013(d), or by the Police Ombudsman for Northern Ireland (“the Ombudsman”) under procedures established between the Secretary of State and the Ombudsman under section 60(1) of the Police (Northern Ireland) Act 2013. These Regulations apply to cases made under these external procedures, but specific provision is made with regard to them.

Part 1 deals with preliminary matters, including transitional provisions and the definition of terms used in the Regulations. Regulation 8 also makes provision in relation to the delegation of the functions of the chief constable for the Ministry of Defence Police and the Ministry of Defence Police Committee under these Regulations.

Part 2 deals with general matters. Regulation 10 makes provision about the role of the police friend and the right to legal representation. Regulation 12 deals with the provision of notices or documents. Regulation 13 provides that disciplinary or special case proceedings should proceed notwithstanding any criminal proceedings unless the relevant authority considers they would prejudice such criminal proceedings. Regulation 14 makes provision in relation to the suspension of an MDP officer.

Part 3 deals with the investigation of conduct allegations. It does not apply to those cases which are investigated under procedures established with the Commission or the Ombudsman. Regulation 16 provides that the relevant authority must make a preliminary assessment as to whether the conduct, if proved, would amount to misconduct, gross misconduct or neither, and sets out what action must or may be taken as a consequence of that assessment. Regulation 17 deals with the appointment of an investigator who, subject to conditions, may be an MDP officer, another person employed in the Ministry of Defence Police or any other person. Regulation 18 sets out the purpose of the investigation. Regulation 19 provides for notice to be given to the officer concerned that there is to be an investigation and describes what must be set out in that notice. Regulation 20 provides that the investigator must consider any suggestions as to lines of inquiry made by the officer concerned within the given time limit. Regulation 21 deals with interviews and regulation 22 with the investigation report.

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(a) S.I. 2012/2630.

(b) S.I. 2012/2631.

(c) S.I. 2012/2632.

(d) S.I. 2013/1779.

Part 4 deals with the conduct of proceedings. Regulation 23 provides that on receipt of the investigator's report (made under regulation 22) or a report of an investigation made under procedures established with the Commission or the Ombudsman, the relevant authority must determine whether or not there is a case to answer in respect of misconduct or gross misconduct, and makes provision about the referral of a case to a misconduct meeting or misconduct hearing. Where there is no case to answer, the relevant authority may take no further action, may take management action or may refer the matter to be dealt with under the Performance Regulations. Where there is a case to answer for gross misconduct, the relevant authority must refer the case to a misconduct hearing. Where there is a case to answer for misconduct, the relevant authority may refer the case to misconduct proceedings (either a hearing or, more normally, a meeting) or take management action.

Regulation 24 deals with when and how cases may be withdrawn before the start of misconduct meetings; and what action may be taken. Regulation 25 provides that notice must be given to the officer concerned of the referral of their case to misconduct proceedings and provides that the officer may object to the persons appointed to deal with the case. Regulation 26 sets out the information to be provided by the officer concerned on receipt of a notice under regulation 25. Regulation 27 provides that the person conducting or chairing the misconduct proceedings will decide whether any witnesses will attend the proceedings, and that a witness may only attend where it is reasonably believed to be necessary. Regulation 28 deals with the timing and notice of the misconduct proceedings. Regulations 29 and 30 set out the person(s) who will conduct the misconduct proceedings. Regulations 32 to 36 deal with who must and who may attend those proceedings. Regulation 37 covers the procedure at the proceedings.

Regulation 39 deals with the outcomes following misconduct proceedings. At a misconduct meeting the disciplinary action that may be imposed is management advice, a written warning or a final written warning. Such action is also available at a misconduct hearing, along with dismissal with or without notice or, in exceptional circumstances, the extension of a final written warning. Regulation 40 deals with the notice to be provided to the officer of the outcome of the misconduct proceedings. Regulation 41 makes provision for the record of the proceedings, which the officer must on request be supplied with. Regulations 42 to 44 deal with an appeal by a non senior officer from a misconduct meeting.

Part 5 deals with the procedures for special case hearings for those cases where there is written or documentary evidence to establish gross misconduct on the balance of probabilities and it is in the public interest for the officer concerned to cease to be an MDP officer without delay if the case is proven. Procedures for these cases are fast tracked and there are no witnesses at the hearing.

Part 6 requires that a record be kept for seven years of all proceedings under these Regulations and related appeals.

Part 7 gives effect to the amendments in Schedule 2 and 3.

Schedule 1 sets out the standards of professional behaviour expected of MDP officers, breach of which constitutes misconduct and a breach of which so serious that dismissal would be justified, constitutes gross misconduct.

Schedule 2 makes amendments to the Ministry of Defence Appeal Tribunals Regulations 2009.

Schedule 3 makes amendments to the Ministry of Defence Police (Performance) Regulations 2012.

The Ministry of Defence Police Statement of Civilian Personnel Policy Extended Special Unpaid Leave may be viewed or downloaded from: <https://www.gov.uk/government/publications/mdp-civilian-personnel-policy-extended-special-unpaid-leave-exsul> or obtained by writing to HR Department, MOD Police HQ, Wethersfield, Braintree, Essex CM7 2AZ.

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