

## 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(1);”;

““the Commission” means the Independent Police Complaints Commission established under section 9 of the Police Reform Act 2002(2);”;

““the Conduct Regulations” means the Ministry of Defence Police (Conduct) Regulations 2015(3);”;

““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.”](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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(1) S.I. 2013/1779.

(2) 2002 c. 30.

(3) S.I. 2015/25.

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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;

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- (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

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- (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.

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(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.”.