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STATUTORY INSTRUMENTS

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**2017 No. 84**

**The Ministry of Defence Police (Conduct, Performance and Appeals Tribunals) (Amendment) Regulations 2017**

**PART 4**

**Amendment of the Ministry of Defence Police Appeals Tribunals Regulations 2009**

**Introductory**

**37.** The Ministry of Defence Police Appeals Tribunals Regulations 2009<sup>(1)</sup> are amended in accordance with this Part.

**Amendment of regulation 3**

**38.**—(1) Regulation 3(1) (interpretation)<sup>(2)</sup> is amended as follows.

(2) Omit the definition of “the 1998 Act”.

(3) Omit the definition of “the 2013 Order”.

(4) In the definition of “chair”—

(a) for “5(3)” substitute “5(2)”;

(b) for “22” substitute “22A”.

(5) Move the definition of “head of HR” to the appropriate place in the alphabetical order.

(6) In the definition of “head of HR” (as so moved to the appropriate place), for “Ministry of Defence” substitute “MOD”.

(7) Move the definition of “relevant decision” to the appropriate place in the alphabetical order.

(8) In the definition of “specified appeal”, in sub-paragraph (a), for “article 3 of the 2013 Order” substitute “an agreement made under section 26(1) of the 2002 Act”.

**Amendment of regulation 5**

**39.**—(1) Regulation 5 (appointment and composition of police appeals tribunal)<sup>(3)</sup> is amended as follows.

(2) For paragraph (2)(a), substitute—

“(a) a chair selected from a list of persons who satisfy the judicial-appointment eligibility condition on a 7-year basis and have been nominated by the Secretary of State for the purposes of these Regulations;”.

(3) In paragraph (4)(b)(i), for “an alternative police force” substitute “a relevant force”.

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<sup>(1)</sup> [S.I. 2009/3070](#).

<sup>(2)</sup> Regulation 3 was amended by [S.I. 2012/808](#), [2013/602](#) and [2015/25](#).

<sup>(3)</sup> Regulation 5 was amended by [S.I. 2015/25](#).

- (4) In paragraph (4)(c)(ii), for “an alternative police force” substitute “a relevant force”.

#### **Amendment of regulation 8**

- 40.** In regulation 8(1) (the respondent), for “Ministry of Defence” substitute “MOD”.

#### **Insertion of regulation 12A**

- 41.** After regulation 12 (determination of an appeal), insert—

**“National security: power to give directions in relation to appeals**

**12A.**—(1) If the Secretary of State considers it expedient in the interests of national security, the Secretary of State may give a direction (“the direction”), in writing, in relation to an appeal hearing, relating to one or more of the following matters—

- (a) that all or part of the hearing must be conducted in private;
- (b) that a specified person must be excluded from all or part of the hearing;
- (c) that steps must be taken to conceal the identity of a witness;
- (d) that specified information must be excluded from any notice published under regulation 14(6) (notice of the hearing) or 22A (publication of information in relation to tribunal’s determination of appeals under regulation 4).

(2) The Secretary of State must provide the direction (or a copy of it) to the relevant authority and the head of HR as soon as possible.

(3) Following receipt of the direction, the head of HR must supply a copy of it to the chair as soon as possible.

(4) The chair must comply with the direction.”.

#### **Amendment of regulation 14**

- 42.**—(1) Regulation 14 (notice of the hearing)(4) is amended as follows.

- (2) After paragraph (4), insert—

“(5) Paragraphs (6) to (12) apply only to hearings of appeals under regulation 4.

(6) The chair may require notice of the hearing to be published which contains information relating to one or more of the matters in paragraph (11).

(7) Before requiring notice to be published under paragraph (6), the chair must—

- (a) specify the date (“the specified date”) by which written representations under paragraph (9) must be provided;
- (b) inform the head of HR of the specified date; and
- (c) consider any representations made under paragraph (9).

(8) The head of HR, having been informed of the specified date, must without delay inform the persons in paragraph (10)(a) and (c) to (f) of the specified date in writing.

(9) A person mentioned in paragraph (10) may make written representations to the chair in relation to—

- (a) whether, and (if so) the extent to which, the chair should exclude any person from the whole or part of the hearing under regulation 21(1);
- (b) whether the chair should impose any conditions under regulation 21(2); and

- (c) whether the chair should require notice to be published under paragraph (6) and, if so, which information relating to the matters in paragraph (11) should be included in any such notice.
- (10) The persons are—
  - (a) the appellant;
  - (b) the respondent;
  - (c) the complainant;
  - (d) any interested person;
  - (e) any witness;
  - (f) if the case was investigated under external procedures, the Commission or the Ombudsman.
- (11) The matters referred to in paragraphs (6) and (9)(c) are—
  - (a) the name of the officer concerned;
  - (b) the date of the hearing;
  - (c) the time of the hearing;
  - (d) the place at which the hearing will take place;
  - (e) the finding made under the Conduct Regulations or the disciplinary action, if any, imposed under the Conduct Regulations in consequence of a finding in relation to which the appeal has been brought.
- (12) If the chair requires notice to be published under paragraph (6), the relevant authority must publish the notice on its website at least 5 working days before the day on which the hearing is to begin and, once published, it must remain there until the conclusion of the hearing.”.

### **Substitution of regulation 18**

**43.** For regulation 18 (hearing to be in private), substitute—

#### **“Attendance at hearing**

**18.**—(1) Subject to regulations 12A and 21, the hearing of an appeal under regulation 4 must be held in public.

(2) Subject to paragraph (3) and regulations 19 and 20, the hearing of an appeal under regulation 4A must be held in private.

(3) The tribunal may allow a person to attend all or part of the hearing of an appeal under regulation 4A as an observer for the purposes of training.”.

### **Amendment of regulation 19**

**44.**—(1) Regulation 19 (attendance of complainant at hearing)(5) is amended as follows.

(2) In paragraph (3), after “hearing” insert “of an appeal under regulation 4A”.

(3) In paragraph (4), after “21,” insert “in the hearing of an appeal under regulation 4A”.

(4) Omit paragraph (5).

### **Amendment of regulation 20**

45. In regulation 20(3) (attendance of the Commission or Ombudsman (as the case may be) at hearing), after “hearing” insert “of an appeal under regulation 4A”.

### **Amendment of regulation 21**

46. In regulation 21 (exclusion from hearing), after paragraph (2) insert—

“(3) If a person is to give evidence as a witness in the hearing, the witness, and any person accompanying the witness, must not attend the hearing before the witness is called to give evidence.”.

### **Amendment of regulation 22**

47. In regulation 22 (Tribunal’s determination)(6), after paragraph (7), insert—

“(8) If the disciplinary action imposed under the Conduct Regulations was dismissal (whether with or without notice), and on determination of the appeal the tribunal’s decision results in the appellant no longer being dismissed, the relevant authority must notify the College of Policing of the tribunal’s decision.”.

### **Insertion of regulation 22A**

48. After regulation 22, insert—

#### **“Publication of information in relation to tribunal’s determination of appeals under regulation 4**

**22A.**—(1) This regulation applies to appeals under regulation 4.

(2) The chair may, having taken into account any representations made under regulation 14 or during the appeal hearing, require the relevant authority to publish a notice containing information relating to one or more of the matters in paragraph (3), and the relevant authority must comply with any such requirement.

(3) The matters referred to in paragraph (2) are—

- (a) the name of the appellant;
- (b) the finding made under the Conduct Regulations or the disciplinary action, if any, imposed under the Conduct Regulations in consequence of a finding in relation to which the appeal had been brought;
- (c) the tribunal’s determination of the appeal;
- (d) the reasons for that determination.

(4) A notice under paragraph (2) must be published on the relevant authority’s website during the notification period and, once published, it must remain there for a period of at least 28 days.

(5) In paragraph (4), “the notification period” is the period from the beginning of the 5th working day after the date on which the hearing concluded, until the end of the 10th working day after that date.”.