

2000 No. 317

POLICE

Royal Ulster Constabulary (Appeals) Regulations 2000

Made 23rd October 2000

Coming into operation 6th November 2000

To be laid before Parliament

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The Secretary of State, in pursuance of Sections 25 and 26 of the Police Act (Northern Ireland) 1998(a) and after consulting, in accordance with section 64(4) of the Act, the Police Authority, the Police Association and the Police Ombudsman, hereby makes the following regulations:—

PART I

GENERAL

Citation and commencement

1. These Regulations may be cited as the Royal Ulster Constabulary (Appeals) Regulations 2000 and shall come into operation on 6th November 2000.

Revocation and transitional provisions

2.—(1) Subject to the following provisions of this regulation the Royal Ulster Constabulary (Discipline and Disciplinary Appeals) Regulations 1988 Part IV and Schedule 5(b) (hereinafter referred to as the Regulations of 1988) are hereby revoked.

(2) In relation to an appeal against a decision made in accordance with the Royal Ulster Constabulary (Discipline and Disciplinary Appeals) Regulations 1988—

- (a) nothing in these regulations shall apply, and
- (b) the Regulations of 1988 shall, so far as applicable, continue to have effect.

Interpretation and application

3.—(1) In these Regulations, the following expressions have the meanings hereby respectively assigned to them, that is to say:—

“appeal tribunal” means the person or persons appointed under regulation 8(1) or (3);

“appellant” means any member who has been dealt with by way of a conduct or unsatisfactory performance hearing and who wishes to appeal the decision, where that decision has been dismissal, a requirement to resign or a reduction in rank;

“Chief Constable” shall be construed as including a reference to a person discharging the functions of the Chief Constable;

“chief officer” means a chief constable of a police force other than the Royal Ulster Constabulary or a commissioner of the police of the Metropolis;

“Code of Conduct” means the code of conduct contained in Schedule 4 of the Royal Ulster Constabulary (Conduct) Regulations 2000;

(a) 1998 c. 32 (N.I.)
(b) S.R. & O. (N.I.) 1988 No. 9

“complaint” means a complaint to which section 50 of the Act of 1998 applies;

“force” means the Royal Ulster Constabulary and the Royal Ulster Constabulary Reserve;

“hearing” has the meaning assigned thereto by regulation 12;

“inspector” includes chief inspector;

“inspector of constabulary” means one of Her Majesty’s Inspectors of Constabulary;

“member” means a member of the Royal Ulster Constabulary; or a member of the Royal Ulster Constabulary Reserve appointed on a full-time basis in accordance with regulations made under section 26 of the Act of 1998;

“original hearing” means the conduct or unsatisfactory performance hearing at the conclusion of which the appellant was found to have failed to meet the appropriate standard or, as the case may be, the appellant’s performance was found to have been unsatisfactory;

“police force in the United Kingdom” has the meaning assigned to a police force in the Police Act 1996(a) or a police force in the Police (Scotland) Act 1967(b) as the case may be;

“Regulations of 1988” has the meaning assigned thereto by regulation 2(1);

“respondent” has the same meaning as in regulation 4;

“senior officer” means a police officer of the rank of chief constable, deputy chief constable or assistant chief constable;

“supporting documents” has the meaning assigned thereto by regulation 6(3)(b);

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

“tribunal” means such a tribunal as is mentioned in regulation 8(1) and (3).

(2) In these Regulations, any expression which appears also in the Royal Ulster Constabulary (Conduct) Regulations 2000, the Royal Ulster Constabulary (Conduct) (Senior Officer) Regulations 2000 and the Royal Ulster Constabulary (Unsatisfactory Performance) Regulations 2000 shall, unless the contrary intention appears, have the same meaning as in those regulations.

PART II

APPEALS TO AN APPEALS TRIBUNAL

Respondent

4.—(1) On any appeal by a senior officer under these regulations against the decision of the Police Authority, the respondent shall be the Authority.

(a) 1996 c. 16

(b) 1967 c. 77

(2) On an appeal by a member of the force who is not a senior officer the respondent shall be the Chief Constable.

Notice of appeal

5.—(1) An appeal under these regulations shall be instituted by the appellant giving the Police Authority written notice of appeal.

(2) Subject to regulation 7, the time within which the notice of appeal under Regulation 36(4) of the Royal Ulster Constabulary (Conduct) Regulations 2000, Regulation 15(6) of the Royal Ulster Constabulary (Conduct) (Senior Officer) Regulations 2000 or regulation 21(4) of the Royal Ulster Constabulary (Unsatisfactory performance) Regulations 2000 shall be given is 21 days. This period begins from the date on which the appellant was notified in writing of the decision appealed against in pursuance of regulations made in accordance with Sections 25(3) or 26(3) of the Act of 1998.

(3) In a case to which regulation 39 of the Royal Ulster Constabulary (Conduct) Regulations 2000 or regulation 25 of the Royal Ulster Constabulary (Conduct) (Senior Officer) Regulations 2000 applies where the decision appealed against was given in pursuance of those Regulations as modified by Part II of Schedule 3 or, as the case may be, by Part II of Schedule 2 to those Regulations, the time within which the notice of appeal under regulation 36(4) or 15(6) of those regulations, respectively, shall be given is 28 days from—

- (a) the conclusion of any criminal proceeding in which the appellant is charged with an offence in respect of the conduct to which the decision appealed against related; or
- (b) a decision that no such criminal proceedings will be instituted or taken by the Director of Public Prosecutions has been communicated to the appellant.

(4) The notice of appeal shall be given in writing to the Police Authority and a copy of the notice shall be sent to the respondent.

Procedure on notice of appeal

6.—(1) As soon as practicable after receipt of a copy of the notice of appeal, the respondent shall provide to the Police Authority—

- (a) a copy of the report of the person who made the decision appealed against;
- (b) the transcript of the proceedings at the original hearing; and
- (c) any documents which were made available to the person conducting the original hearing.

(2) A copy of the transcript mentioned in paragraph (1)(b) shall at the same time be sent to the appellant.

(3) Subject to regulation 7(1), the appellant shall, within 28 days of the date on which he receives a copy of the transcript mentioned in paragraph (1)(b), submit to the Police Authority—

- (a) a statement of the grounds of appeal;

(b) any supporting documents; and

(c) either—

(i) any written representations which the appellant wishes to make under regulation 9 or, as the case may be, any request to make oral representations under that regulation, or

(ii) a statement that he does not wish to make any such representations as are mentioned in sub-paragraph (3)(c)(i):

Provided that, in a case where the appellant submits a statement under sub-paragraph (3)(c)(ii), nothing in paragraph (3)(c) shall prevent representations under regulation 9 being made by him to the chairman of the tribunal.

(4) The documents submitted to the Police Authority under paragraph (3) shall, as soon as practicable, be copied to the members of the tribunal and to the respondent.

(5) The respondent shall, not later than 21 days from the date on which he receives the copy documents sent to him under paragraph (4), submit to the Police Authority—

(a) a statement of his response to the appeal;

(b) any supporting documents; and

(c) either—

(i) any written representations which the respondent wishes to make under regulation 9 or, as the case may be, any request to make oral representations under that regulation; or

(ii) a statement that he does not wish to make any such representations as are mentioned in sub-paragraph (5)(c)(i):

Provided that, in a case where the respondent submits a statement under sub-paragraph (5)(c)(ii), nothing in paragraph (5)(c) shall prevent representations under regulation 9 being made by him to the chairman of the tribunal.

(6) The respondent shall at the same time send a copy of the documents referred to in paragraph (5)(a) and (c) to the appellant, together with a list of the documents (if any) referred to in (5)(b).

(7) The documents submitted to the Police Authority under paragraph (5) shall, as soon as practicable, be copied to members of the tribunal.

(8) So far as applicable, regulations 14 and 15 shall apply in relation to the hearing of any oral representations under regulation 9, and the appellant and the respondent shall be entitled to be represented at the hearing of such oral representations as if it were the hearing of such an appeal.

Extension of time limits

7.—(1) The Police Authority may extend the period referred to in regulation 5(2) or (3) or 6(3) in any case where they are satisfied, on the application of the appellant, that by reason of special circumstances of the case it is just and proper to do so; and in such a case regulations 5 and 6 shall

have effect as if for that period there were substituted such extended period as the authority may specify.

(2) Where the Police Authority refuses an application by the appellant under paragraph (1), it shall give the appellant notice in writing of the reasons for the decision and of the right of appeal conferred by paragraph (3).

(3) An appellant whose application under paragraph (1) is refused may, not later than 14 days after receiving notice under paragraph (2), appeal in writing to the chairman of the tribunal against the decision of the Police Authority.

(4) The chairman may, on such an appeal, make any decision which the Police Authority had power to make under paragraph (1); and, where he extends the period referred to in regulation 5(2) or (3) or 6(3), regulations 5 and 6 shall have effect as if for that period there were substituted such extended period as the chairman may specify.

Appeals tribunal

8.—(1) In the case of an appeal by a senior officer, the police appeals tribunal shall consist of three members appointed by the Secretary of State, of whom—

(a) one shall be a person chosen from a list of persons who have a seven year general qualification within the meaning of Section 71 of the Courts and Legal Services Act 1990(a) and have been nominated by the Lord Chief Justice in accordance with section 6(9) of the Tribunals and Inquiries Act 1992(b), Appointment of chairmen of certain tribunals, for the purposes of this regulation.

(b) one shall be a member of a police authority of the United Kingdom other than the Police Authority for Northern Ireland, and

(c) one shall be a person who—

(i) is (or has within the previous five years been) an Inspector of Constabulary, or

(ii) has within the previous five years been (and is no longer) the chief officer of police of a force other than the Royal Ulster Constabulary.

(2) The member of the police appeals tribunal to whom paragraph (1)(a) applies shall be the chairman.

(3) In the case of an appeal by a member of the police who is not a senior officer, the police appeals tribunal shall consist of four members appointed by the Police Authority, of whom—

(a) one shall be a person chosen from the list referred to in paragraph (1)(a),

(b) one shall be a member of the Police Authority,

(c) one shall be a person chosen from a list maintained by the Secretary of State of persons who are (or have within the last five years been)

(a) 1990 c. 41

(b) 1992 c. 35

chief officers of police, other than a person who is (or has at any time been) the Chief Constable, and

(d) one shall be a retired officer of appropriate rank.

(4) The member of the police appeals tribunal to whom paragraph (1)(a) applies shall be the chairman.

Decision of the Appeals Tribunal

9.—(1) On an appeal the Appeals Tribunal may make an order allowing or dismissing the appeal.

(2) Where an Appeals Tribunal allows an appeal it may if it considers it appropriate to do so, make an order dealing with the appellant in a way—

(a) which appears to the tribunal to be less severe than the way in which it was dealt with by the decision appealed against, and

(b) in which he could have been dealt with by the person who made that decision.

(3) An appeals tribunal may determine a case without a hearing provided both the appellant and respondent have had the opportunity to make written or, if either requests, oral representations and any such representations have been considered.

Effect of orders

10.—(1) Where an appeal is allowed, the order shall take effect by way of substitution for the decision appealed against, and as from the date of that decision or, where the decision was itself a decision on appeal, the date of the original decision appealed against.

(2) Where the effect of the order made by the police appeals tribunal is to reinstate the appellant in the force or in his rank, he shall, for the purpose of reckoning service for pension, and, to such extent (if any) as may be determined by the order, for the purpose of pay, be deemed to have served in the force or in his rank continuously from the date of the original decision to the date of his reinstatement.

(3) Where the effect of the order made by the police appeals tribunal is to reinstate the appellant in the force and he was suspended for a period immediately preceding the date of the original or any subsequent decision, the order shall deal with the suspension.

Representation at hearing

11. Where a hearing is held—

(a) the appellant shall have the right to appear at the hearing in person, and be represented by a serving member or a serving member of a police force in the United Kingdom or by counsel or a solicitor; and

(b) the respondent shall have the right to appear at the hearing and be represented by a serving member or by counsel or a solicitor or by the secretary or other officer of the Police Authority.

Procedure at hearing

12.—(1) Where a case is to be determined at a hearing, the chairman of the tribunal shall cause the appellant and respondent to be given notice of the date of the hearing not less than 28 days, or such shorter period as may with the agreement of both parties be determined, before the hearing begins.

(2) It shall be within the discretion of the tribunal to proceed with the hearing in the absence of either party, whether represented or not, if it appears proper to do so, and may adjourn it from time to time as may appear necessary for the due hearing of the case.

(3) Any decision of the Tribunal shall be based on a simple majority and where the Tribunal finds itself equally divided the Chairman shall have a second or casting vote, but the Tribunal shall not indicate whether it was taken unanimously or by a majority.

(4) Subject to the regulations, the procedure at a hearing shall be determined by the tribunal.

Hearing to be in private

13.—(1) Subject to regulation 16 paragraph (3), the hearing shall be held in private: provided that it shall be within the discretion of the tribunal to allow such person or persons as it considers desirable to attend the whole or such part of the hearing as it may think fit.

(2) Notwithstanding that the tribunal has allowed a person to attend the hearing, where it appears to the tribunal that a witness may in giving evidence disclose information which, in the public interest, ought not to be disclosed publicly, the tribunal shall require any member of the public present to withdraw while the evidence is given.

(3) A member of the Council of Tribunals shall be entitled to attend the hearing.

Evidence at hearing

14.—(1) Unless the tribunal otherwise determines, the evidence adduced by the respondent shall be given first.

(2) All oral evidence given at the hearing shall be given on oath.

(3) All witnesses giving evidence at the hearing shall be subject to examination and cross-examination.

(4) Any question as to whether any evidence is admissible, or whether any question should or should not be put to a witness, shall be determined by the tribunal.

(5) A verbatim record of the evidence given at the hearing shall be taken and kept for a period of not less than 7 years from the date of the end of the hearing unless the chairman of the tribunal requests that a transcription of the record be made.

Statements in lieu of oral evidence

15.—(1) Subject to the provisions of this regulation, the tribunal may admit evidence by way of a written statement made by a person,

notwithstanding that he may not be called as a witness, so, however that evidence shall not be admissible under this regulation if it would not have been admissible had it been given orally.

(2) For the purposes of this regulation, a written statement purporting to be made and signed by a person and witnessed by another person shall be presumed to have been made by that person unless the contrary be shown.

(3) Nothing in this regulation shall prejudice the admission of written evidence which would be admissible apart from the provisions of this regulation.

Attendance of complainant at hearing

16.—(1) This regulation shall apply in relation to a hearing where the decision appealed against arose from a complaint and the appeal is not against sanction only.

(2) The chairman of the tribunal shall cause notice of the date of the hearing to be sent to the complainant, at the same time as such notice is sent to the appellant and the respondent in pursuance of regulation 12(1).

(3) Notwithstanding anything in regulation 13(1) but subject to paragraph (5), the tribunal shall allow the complainant to attend the hearing while witnesses are being examined, or cross-examined, on the facts alleged and, if the tribunal considers it appropriate so to do on account of the age of the complainant, or otherwise, shall allow him to be accompanied by a personal friend or relative who is not to be called as a witness at the hearing:

Provided that—

(a) where the complainant is to be called as a witness at the hearing he and any person allowed to accompany him shall not be allowed to attend before he gives evidence; and

(b) where it appears to the tribunal that a witness may in giving evidence disclose information which, in the public interest, ought not to be disclosed to a member of the public, it shall require the complainant and any person allowed to accompany him to withdraw while that evidence is given.

(4) Where the appellant gives evidence then, after the person representing the respondent has had an opportunity of cross-examining him, the chairman of the tribunal shall put to him any questions which the complainant requests should be so put and might have been properly so put by way of cross-examination and, at his discretion, may allow the complainant himself to put such questions to the appellant.

(5) Subject as aforesaid, the complainant and any person allowed to accompany him shall neither intervene in, nor interrupt the hearing; and if he or such a person should behave in a disorderly or abusive manner, or otherwise misconduct himself, the chairman of the tribunal may exclude him from the remainder of the hearing.

Statement of tribunal's determination

17.—(1) The chairman of the tribunal shall prepare a written statement of the tribunal's determination of the appeal and the reasons for the decision.

(2) The statement prepared under paragraph (1) and a record of any order made under regulation 9(2) shall be submitted to the Police Authority and, in the case of an appeal by a senior officer, to the Secretary of State within a reasonable period after the determination of the appeal.

(3) The Police Authority shall, as soon as practicable, copy the statement and any record of an order submitted to it under paragraph (2) to the appellant and the respondent.

(4) In a case where the decision appealed against arose from a complaint, the Police Authority shall notify the complainant and Ombudsman of the outcome of the appeal.

Costs and expenses of appeal

18.—(1) An appellant shall pay the whole of his own costs unless the police appeals tribunal directs that the whole or any part of his costs are to be defrayed out of the police fund.

(2) Subject to paragraph (1), all the costs and expenses of an appeal in pursuance of these regulations, including the costs of the respondent and, as the Secretary of State determines, any remuneration or expenses paid to members of a police appeals tribunal, shall be defrayed out of the police fund.

Northern Ireland Office
23rd October 2000

Peter Mandelson
One of Her Majesty's Principal
Secretaries of State.

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These regulations make provision as to the procedure on appeals to a police appeals tribunal.

Regulation 2 revokes, with transitional provisions, Part IV and Schedule 5 of the Royal Ulster Constabulary (Discipline and Disciplinary Appeals) Regulations 1988 and regulation 3 provides for the interpretation of these regulations. Regulation 4 prescribes who shall be the respondent to an appeal and regulations 5 and 6 provide for the notice of appeal to be given in writing within the prescribed period and for the procedure on such notice being given. Regulation 7 allows for the extension of prescribed time limits.

Regulation 8 provides for the composition of an appeals tribunal depending on the rank of the officer concerned.

Regulation 9 provides for the decision of an appeals tribunal and regulation 10 provides for the effect of any decision made by that tribunal.

Regulation 11 provides for the appellant's and the respondent's rights to representation at appeals hearings.

Regulations 12 to 15 provide for the procedure to be followed, and for the evidence to be given, at a hearing held to determine an appeal and regulation 16 makes provision for the attendance of the complainant in a case arising from a complaint by a member of the public. Regulation 17 requires a written statement of the tribunal's determination to be prepared.

Regulation 18 provides for the costs and expenses of the hearing.

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