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DRAFT STATUTORY INSTRUMENTS

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**2023 No.**

**The Service Police (Complaints etc.) Regulations 2023**

**PART 1**

Introductory

**Interpretation**

2.—(1) In these Regulations—

“the 1996 Act” means the Police Act 1996<sup>(1)</sup>;

“the 2006 Act” means the Armed Forces Act 2006;

“administrative action procedures” means the procedures and processes under which the conduct of a member of a service police force<sup>(2)</sup> is considered in order to determine whether it is misconduct or gross misconduct, and if so whether as a result any administrative action is to be taken in relation to it;

“appropriate authority” has the meaning given by paragraph (2);

“the appropriate prosecutor” means the person that a service policeman would have been under a duty to refer the case to under section 116 of the 2006 Act<sup>(3)</sup> had it been investigated by a service police force;

“Board” means—

(a) the Admiralty Board in relation to the Royal Navy Police;

(b) the Army Board in relation to the Royal Military Police;

(c) the Royal Air Force Board in relation to the Royal Air Force Police;

and reference to “the Boards” are to be construed accordingly;

“the Chief Inspector” means His Majesty’s Chief Inspector of Constabulary<sup>(4)</sup>;

“the Commissioner” means the Service Police Complaints Commissioner<sup>(5)</sup>;

“complainant” is to be construed in accordance with regulation 9;

“complaint” has the meaning given by regulation 9;

“conduct” includes acts, omissions, statements and decisions (whether actual, alleged or inferred);

“conduct matter” has the meaning given by regulation 9;

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<sup>(1)</sup> 1996 c. 16.

<sup>(2)</sup> See section 375(1) of the 2006 Act for the meaning of “service police force”.

<sup>(3)</sup> Section 116 has been amended by paragraph 5(1) of Schedule 3 to the Armed Forces Act 2011 (c. 18), section 3 of the Armed Forces Act 2016 (c. 21) and paragraph 29 of Schedule 5 to the 2021 Act.

<sup>(4)</sup> Section 54(1) of the Police Act 1996 Act (“1996 Act”) makes provision for one of the inspectors of constabulary to be appointed as chief inspector of constabulary.

<sup>(5)</sup> The Service Police Complaints Commissioner is established by section 365BA of the 2006 Act.

“criminal intelligence” includes intelligence produced for purposes connected with the prevention, detection or investigation of service offences;

“death or serious injury matter” and “DSI matter” have the meaning given by regulation 9;

“disciplinary proceedings” means proceedings in relation to a service offence<sup>(6)</sup>;

“document” means anything in which information of any description is recorded;

“gross misconduct” means a breach of the professional standards that is so serious as to justify termination of a person’s membership of the relevant service police force;

“information” includes estimates and projections, and statistical analyses;

“interested person” means a person who has an interest in being kept properly informed about the handling of a complaint, conduct matter or DSI matter;

“misconduct” means a breach of the professional standards;

“person complained against”, in relation to a complaint that relates to conduct of a member of a service police force, means the person whose conduct is the subject-matter of the complaint;

“the person concerned”—

- (a) in relation to an investigation of a complaint, means—
  - (i) the member of a service police force in respect of whom it appears to the person investigating or, in the case of an investigation by a designated person under regulation 36, the Commissioner, that there is the indication mentioned in regulation 46(3)(b); or
  - (ii) the member of a service police force in respect of whom the Commissioner determines that there is the indication mentioned in regulation 46(3)(b);
- (b) in relation to an investigation of a recordable conduct matter, means the member of a service police force to whose conduct the investigation relates;

“the person investigating”, in relation to a complaint, recordable conduct matter or DSI matter, means the person appointed or designated to investigate that complaint or matter;

“the professional standards” means the values and standards that a member of a service police force is required to comply with under the policies that apply to members of the service police force of which that person is a member;

“recordable conduct matter” means a conduct matter that is required to be recorded by the appropriate authority under regulation 21, 22 or 25 or has been so recorded;

“the relevant officer” is to be construed in accordance with paragraphs (3) and (4);

“relevant service offence” means an offence under section 42 of the 2006 Act for which—

- (a) the sentence is fixed by law; or
- (b) a person of 18 years or over (not previously convicted) may be sentenced to imprisonment for a term of seven years or more or might be so sentenced;

“relevant review body” is to be construed in accordance with paragraph (5);

“senior officer” means a member of a service police force holding a rank of, or above that of—

- (a) Lieutenant Commander in relation to the Royal Navy Police;
- (b) Major in relation to the Royal Military Police; or
- (c) Squadron Leader in relation to the Royal Air Force Police;

“serious injury” means a fracture, a deep cut, a deep laceration or an injury causing damage to an internal organ or the impairment of any bodily function;

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<sup>(6)</sup> See section 50(2) of the 2006 Act for the meaning of “service offence”.

“severity assessment” means, in relation to conduct, an assessment as to whether the conduct, if proven, would amount to misconduct that is so serious as to justify the initiation of administrative action procedures, or to gross misconduct;

“working day” means any day other than a Saturday or Sunday or a day which is a public holiday in any part of the United Kingdom.

(2) “Appropriate authority”—

(a) in relation to a member of a service police force means—

- (i) if that person is the Provost Marshal for serious crime, the Defence Council;
- (ii) if that person is a Provost Marshal of a service police force, the Board for that force; and
- (iii) if that person is not a Provost Marshal, the Provost Marshal of the service police force of which that person is a member;

(b) in relation to a complaint, conduct matter or investigation relating to the conduct of a member of a service police force, means—

- (i) if that person is the Provost Marshal for serious crime, the Defence Council;
- (ii) if that person is a Provost Marshal of a service police force, the Board for that force; and
- (iii) if that person is not a Provost Marshal, the Provost Marshal under whose direction that person came at the time of the alleged conduct;

(c) in relation to any other complaint, means—

- (i) where the complaint relates to the tri-service serious crime unit, the Provost Marshal for serious crime; or
- (ii) where the complaint relates to a service police force, the Provost Marshal of that service police force;

(d) in relation to a death or serious injury matter, means—

- (i) if the relevant officer is the Provost Marshal for serious crime, the Defence Council;
- (ii) if the relevant officer is a Provost Marshal of a service police force, the Board for that force;
- (iii) if the relevant officer is not a Provost Marshal, the Provost Marshal under whose direction that person comes.

(3) “The relevant officer”, in relation to a death or serious injury matter, means the member of a service police force—

- (a) who arrested the person who has died or suffered serious injury;
- (b) in whose custody that person was at the time of the death or serious injury; or
- (c) with whom that person had the contact in question,

and where there is more than one member of a service police force involved it means, subject to paragraph (4), the member who so dealt with that person last before the death or serious injury occurred.

(4) Where it cannot be determined which of two or more members of a service police force dealt with a person last before the death or serious injury occurred, the relevant officer is the most senior of them.

(5) “Relevant review body”, in relation to a review of the outcome of a complaint (under regulation 18(2) or 64(1)), means—

- (a) the Commissioner—

- (i) where the Defence Council, or the Board for the service police force, is the appropriate authority in relation to the complaint; or
- (ii) in relation to any complaint—
  - (aa) concerning the conduct of a senior officer;
  - (bb) where the appropriate authority is unable to satisfy itself, from the complaint alone, that the conduct complained of (if it were proved) would not justify the bringing of disciplinary proceedings or initiation of administrative action procedures against a member of a service police force;
  - (cc) where the appropriate authority is unable to satisfy itself, from the complaint alone, that the conduct complained of (if it were proved) would not involve an infringement of a person's rights under Article 2 or 3 of the Convention (within the meaning of the Human Rights Act 1998(7));
  - (dd) that has been, or must be, referred to the Commissioner under regulation 13;
  - (ee) that the Commissioner is treating as having been referred to the Commissioner under regulation 14(1);
  - (ff) arising from the same incident as a complaint to which any of sub-paragraphs (aa) to (ee) applies;
  - (gg) to any part of which any of sub-paragraphs (aa) to (ff) applies;
- (b) in the case of a complaint not falling within sub-paragraph (a)—
  - (i) the Defence Council, where the Provost Marshal for serious crime is the appropriate authority for the complaint;
  - (ii) the Board for the relevant service police force, where the Provost Marshal of that force is the appropriate authority for the complaint.