
STATUTORY INSTRUMENTS

2009 No. 3069

The Ministry of Defence Police (Conduct) Regulations 2009

PART 5

Fast track procedure for special cases

Referral of case to special case hearing

41.—(1) On receipt of a statement submitted by the investigator under regulation 18(3), the appropriate authority shall determine whether the special conditions are satisfied.

(2) In a case where special case proceedings have been delayed by virtue of regulation 9(3), as soon as practicable after the appropriate authority considers that such proceedings would no longer prejudice any criminal proceedings, it shall make a further determination as to whether the special conditions are satisfied.

(3) In a case where disciplinary proceedings have been delayed by virtue of regulation 9(3), the appropriate 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 appropriate 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 shall certify the case as a special case and, subject to regulation 9(3) and paragraph (2), refer it to a special case hearing.

(5) Where the appropriate authority determines—

- (a) that the special conditions are not satisfied; or
- (b) that, although those conditions are satisfied, the circumstances are such as to make such certification inappropriate,

it shall, if the investigation was incomplete, return the case to the investigator to complete the investigation or, in any other case, proceed in accordance with Part 4.

(6) Where the appropriate authority is to proceed in accordance with Part 4, regulation 19(1) shall be read as if the following are omitted—

- (a) the words “regulation 41 and”; and
- (b) sub-paragraphs (a), (b) and (c).

Remission of case

42.—(1) Subject to paragraph (4), at any time after the case has been referred to a special case hearing but before the beginning of that hearing the appropriate 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 officer concerned shall be notified before the end of 3 working days beginning with the first working day after that direction is made and the appropriate authority shall proceed in accordance with Part 4.

(3) Where the appropriate authority is to proceed in accordance with Part 4, regulation 19(1) shall be read as if the following are omitted—

- (a) the words “regulation 41 and”; and
- (b) sub-paragraphs (a), (b) and (c).

(4) Paragraph (1) shall not apply to a case where, in relation to England and Wales, the Commission has given a direction under paragraph 20H(7) of Schedule 3 to the 2002 Act⁽¹⁾ (special cases: recommendation or direction of Commission).

Notice of referral to special case hearing

43.—(1) Where a case is certified as a special case and referred to a special case hearing, the appropriate authority shall as soon as practicable give the officer concerned written notice of these matters and shall supply the officer with a copy of—

- (a) the certificate issued under regulation 41(4);
- (b) any statement the officer may have made to the investigator during the course of the investigation; and
- (c) subject to the harm test—
 - (i) the investigator’s report or such parts of that report (together with any document attached to or referred to in that report) as relate to the officer ; and
 - (ii) any other relevant document gathered during the course of the investigation.

(2) The notice given under paragraph (1) shall describe the conduct that is the subject matter of the case and how that conduct is alleged to amount to gross misconduct.

(3) For the purposes of this regulation “relevant document” means a document which, in the opinion of the appropriate authority, is relevant to the case of the officer concerned.

Notice of special case hearing

44. The appropriate authority shall specify a date for the special case hearing which shall be not less than 10 and not more than 15 working days beginning with the first working day after the date on which notice is given under regulation 43(1) and shall immediately notify the officer concerned of—

- (a) the date, time and place of that hearing; and
- (b) the effect of regulation 7(1) to (3) in relation to a special case hearing.

Procedure on receipt of notice

45.—(1) Before the end of 7 working days beginning with the first working day after the written notice and documents are supplied to the officer concerned under regulation 43(1), the officer concerned shall provide to the appropriate authority—

- (a) written notice of whether or not the officer accepts that the conduct amounts to gross misconduct;
- (b) where it is accepted that the conduct amounts to gross misconduct, any written submission the officer wishes to make in mitigation;
- (c) where it is not accepted that the conduct amounts to gross misconduct, written notice of—
 - (i) the allegations disputed and the officer’s account of the relevant events; and
 - (ii) any arguments on points of law to be considered by the person or persons conducting the special case hearing.

(1) Paragraph 20H of the 2002 Act was inserted by section 159 of and paragraphs 1 and 3 of Schedule 11 to the Serious Organised Crime and Police Act 2005 (c. 15).

(2) Within the same time period, the officer concerned shall provide the appropriate authority and the person conducting or chairing the special case hearing with a copy of any document the officer intends to rely on at the hearing.

Person conducting special case hearing: officers other than senior officers

46.—(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 shall be conducted by the chief constable.

(3) Where the chief constable is an interested party or is unavailable, the special case hearing shall be conducted by the chief officer of police of an alternative police force.

Persons conducting special case hearing: chief constable

47.—(1) This regulation applies where the officer concerned is the chief constable.

(2) The special case hearing shall be conducted by a panel of four persons appointed by the appropriate authority, comprising—

- (a) a counsel selected by the appropriate authority from a list of candidates nominated by the Secretary of State for the purposes of these Regulations, who shall be the chair;
- (b) the chair of the Ministry of Defence Police Committee or another member of that Committee nominated by the chair;
- (c) HMCIC or an inspector of constabulary nominated by HMCIC; and
- (d) a person selected by the appropriate authority from a list of candidates maintained by the Ministry of Defence Police Committee for the purposes of these Regulations.

Persons conducting special case hearing: other senior officers

48. Where the officer concerned is a senior officer other than the chief constable, the special case hearing shall be conducted by a panel of four persons appointed by the appropriate authority, comprising—

- (a) HMCIC or an inspector of constabulary nominated by HMCIC, who shall be the chair;
- (b) the chief constable or a senior officer of at least one rank above that of the officer concerned, nominated by the chief constable;
- (c) the chair of the Ministry of Defence Police Committee or another member of that committee nominated by the chair; and
- (d) a person selected by the appropriate authority from a list of candidates maintained by the Ministry of Defence Police Committee for the purposes of these Regulations.

Documents to be supplied

49.—(1) Prior to the hearing the appropriate authority shall supply the person or persons conducting the special case hearing with a copy of—

- (a) the notice given to the officer concerned under regulation 43(1);
- (b) the other documents given to the officer concerned under regulation 43(1)(a) to (c);
- (c) the documents provided by the officer concerned under—
 - (i) regulation 45; and
 - (ii) where paragraph (2) applies, regulation 22(2) and (3);

- (d) where the officer concerned does not accept that the conduct amounts to gross misconduct, any other documents that, in the opinion of the appropriate 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 41(3).

(3) Prior to the hearing the officer concerned shall be supplied with a list of the documents supplied under paragraph (1) and a copy of any of such document not already supplied to the officer.

Attendance of officer concerned at special case hearing

50.—(1) Subject to paragraph (2), the officer concerned shall 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 is allowed to and does so participate in the special case hearing, or where the officer concerned does not 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 so represented.

(4) Where the officer concerned is represented in accordance with paragraph (3), the person representing the officer concerned or his police friend (if different), or both, may participate using the video link or other means where such means are also used by the officer concerned.

Participation of Commission or Ombudsman (as the case may be) and investigator at special case hearing

51.—(1) In any case where—

- (a) in relation to England and Wales, paragraph 18 or 19 of Schedule 3 to the 2002 Act (managed and independent investigations) applied, or paragraph 16 or 17 of Schedule 3 to the 2002 Act (investigations by the appropriate authority and supervised investigations) applied and the Commission—
 - (i) made a recommendation under paragraph 20H(1) of that Schedule (special cases: recommendation or direction of Commission) which the appropriate authority accepted; or
 - (ii) gave a direction under paragraph 20H(7) of that Schedule (special cases: recommendation or direction of Commission); or
- (b) in relation to Northern Ireland, section 56 of the 1998 Act applied,

the Commission or Ombudsman (as the case may be) may attend the special case hearing to make representations.

(2) Where the Commission or Ombudsman intends to attend the special case hearing—

- (a) it may instruct a relevant lawyer to represent it;
- (b) it shall notify the complainant or any interested person prior to the hearing; and
- (c) the person conducting or chairing the special case hearing shall notify the officer concerned prior to the hearing.

(3) The investigator or a nominated person shall attend the special case hearing on the request of the person conducting or chairing the hearing to answer questions.

(4) For the purposes of this regulation, a “nominated person” is a person who, in the opinion of—

- (a) the appropriate authority; or
- (b) in a case to which, in relation to England and Wales paragraph 18 or 19 of Schedule 3 to the 2002 Act (managed and independent investigations) applied, or in relation to Northern Ireland section 56 of the 1998 Act applied, the Commission or Ombudsman (as the case may be),

has sufficient knowledge of the investigation of the case to be able to assist the person or persons conducting the special case hearing.

Attendance of complainant and interested persons at special case hearing

52.—(1) This regulation shall apply in the case of a special case hearing arising from—

- (a) in relation to England and Wales, a conduct matter to which paragraph 16, 17, 18 or 19 of Schedule 3 to the 2002 Act (investigations) applied, or a complaint which was certified as subject to special requirements under paragraph 19B(1) of that Schedule (assessment of seriousness of conduct); or
- (b) in relation to Northern Ireland, a conduct matter to which section 54, 56 or 57 of the 1998 Act applied.

(2) The appropriate authority shall notify the complainant or any interested person of the date, time and place of the special case hearing.

(3) Subject to any conditions imposed under regulation 53(3), the complainant or any interested person may—

- (a) attend the special case hearing as an observer up to but not including the point at which the person or panel conducting the hearing considers the question of disciplinary action; 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) 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 understand the special case hearing.

Attendance of others at special case hearing

53.—(1) Subject to regulation 52 and this regulation, the special case hearing shall be in private.

(2) A person nominated by the Commission or Ombudsman (as the case may be) may attend a special case hearing which arises from a case to which—

- (a) in relation to England and Wales, paragraph 17, 18 or 19 of Schedule 3 to the 2002 Act (supervised, managed and independent investigations) applied, or paragraph 16 of Schedule 3 to the 2002 Act (investigations by the appropriate authority) applied and in relation to which the Commission—
 - (i) made a recommendation under paragraph 20H(1) of that Schedule (special cases: recommendation or direction of Commission) which the appropriate authority accepted; or
 - (ii) gave a direction under paragraph 20H(7) of that Schedule (special cases: recommendation or direction of Commission); or
- (b) in relation Northern Ireland, section 56, 57 or 59 of the 1998 Act applied.

(3) The person conducting or chairing the special case hearing may impose conditions relating to the attendance of persons under regulation 52 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

54.—(1) Subject to these Regulations, the person conducting or chairing the special case hearing shall determine the procedure.

(2) The special case hearing shall not proceed unless the officer concerned has been notified of the effect of regulation 7(1) to (3) in relation to a special case hearing.

(3) Subject to paragraph (4), the person conducting or chairing the special case hearing may from time to time adjourn the hearing if it appears to be necessary or expedient to do so.

(4) The special case hearing shall 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 shall give evidence at the 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 proceedings under these Regulations;
and

(b) if the officer concerned is present at the proceedings or is participating in them by video link or other means in accordance with regulation 50(2), 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 in the circumstances mentioned at paragraph (6)(b).

(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) The person conducting or chairing the special case hearing may allow any document to be considered at the hearing notwithstanding that a copy of it has not been supplied—

- (a) by the officer concerned in accordance with regulation 45(2); or
- (b) to the officer concerned in accordance with regulation 43(1).

(10) Where evidence is given at the special case hearing that the officer concerned—

- (a) on being questioned by an investigator, at any time having been given written notice under regulation 15(1); or
- (b) in submitting any information under regulation 45 (or, where paragraph (12) applies, regulations 16(1), 22(2) or (3)),

failed to mention any fact which is later relied on in the case 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 so questioned or when providing such information, paragraph (11) applies.

(11) Where this paragraph applies, the person or persons conducting the special case hearing may draw such inferences from the failure as appear proper.

(12) This paragraph applies where the case was certified as a special case following a determination made under regulation 41(3).

(13) The person or persons conducting the special case hearing shall review the facts of the case and decide whether or not the conduct of the officer concerned amounts to gross misconduct.

(14) The person or persons conducting the special case hearing shall 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.

(15) At a special case hearing conducted by a panel, any decision shall be based on a majority (with the chair having the casting vote if necessary), but no indication shall be given as to whether it was taken unanimously or by a majority.

Outcome of special case hearing

55.—(1) Where the person or persons conducting the special case hearing find that the conduct of the officer concerned amounts to gross misconduct, they shall impose disciplinary action, which may be—

- (a) subject to paragraphs (2) and (3), a final written warning;
- (b) extension of a final written warning in accordance with paragraph (2); or
- (c) dismissal without notice.

(2) Where the officer concerned had a final written warning in force on the date of the assessment of the conduct under regulation 12(1) or regulation 14A of the Complaints Regulations (as the case may be)—

- (a) a final written warning shall not be given; but
- (b) subject to paragraph (4), in exceptional circumstances, the final written warning may be extended.

(3) Where a final written warning is extended under paragraph (2), that warning shall remain in force for a period of 18 months from the date on which it would otherwise expire.

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

(5) Where the person or persons conducting the special case hearing 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 appropriate 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 date of the assessment of conduct under regulation 12(1) or regulation 14A of the Complaints Regulations (as the case may be), at a misconduct hearing .

(6) Where the case is returned to the appropriate authority under paragraph (5)(b), the appropriate authority shall proceed in accordance with Part 4, subject to regulation 19(1) being read as if the following are omitted—

- (a) the words “regulation 41 and”; and
- (b) sub-paragraphs (a), (b) and (c).

(7) Except in the case of extending a final written warning, the disciplinary action shall have effect from the date on which it is notified to the officer concerned.

(8) Where the question of disciplinary action is being considered, the person or persons conducting the special case hearing—

- (a) shall have regard to the record of police service of the officer concerned as shown on the personal file;
- (b) may consider such documentary evidence as would, in their opinion, assist them in determining the question; and
- (c) shall give—
 - (i) the officer concerned; and
 - (ii) the police friend or the relevant lawyeran opportunity to make oral or written representations.

Notification of outcome

56.—(1) The officer concerned shall be informed of—

- (a) the finding; and
- (b) any disciplinary action imposed under regulation 55(1) or any action taken under regulation 55(5) as the case may be,

as soon as practicable and in any event shall be provided with written notice of these matters and a summary of the reasons before the end of 5 working days beginning with the first working day after the conclusion of the special case hearing.

(2) A written notice under this regulation shall include notice of the right of the officer concerned to an appeal hearing.

Record of special case hearing

57.—(1) A verbatim record of the proceedings at the special case hearing shall be taken.

(2) The officer concerned shall, on request, be supplied with a copy of the record of the proceedings at the special case hearing.