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STATUTORY INSTRUMENTS

2024 No. 603

POLICE

The Ministry of Defence Police (Conduct, Performance and Appeals Tribunals) (Amendment) Regulations 2024

<i>Made</i> - - - -	<i>2nd May 2024</i>
<i>Laid before Parliament</i>	<i>8th May 2024</i>
<i>Coming into force</i> - -	<i>31st May 2024</i>

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 3A(1), (1A), (1B) and (3) and 4(1)(b) and (4) of the Ministry of Defence Police Act 1987(a).

Citation, commencement, extent and interpretation

1.—(1) These Regulations may be cited as the Ministry of Defence Police (Conduct, Performance and Appeals Tribunals) (Amendment) Regulations 2024 and come into force on 31st May 2024.

(2) These Regulations extend to England and Wales, Scotland and Northern Ireland.

(3) In these Regulations—

(a) “the Conduct Regulations” means the Regulations set out in Schedule 1 to the Ministry of Defence Police (Conduct, Performance and Appeals Tribunals) Regulations 2020(b), and

(b) any reference in regulations 2, 3 and 4(1)(a) and (b) to a numbered regulation is to the regulation set out in the paragraph so numbered in that Schedule.

Amendment of the Conduct Regulations

2.—(1) The Conduct Regulations are amended as follows.

(2) In regulation 2 (interpretation and delegation)—

(a) in paragraph (1)—

(i) insert in the appropriate places—

(a) 1987 c. 4. Section 3A was inserted by section 79(1) of the Police Reform Act 2002 (c. 30) and amended by section 126(2) of, and paragraphs 12 and 14 of Schedule 22 to, the Criminal Justice and Immigration Act 2008 (c. 4), section 6 of the Armed Forces Act 2011 (c. 18), and paragraph 2 of Schedule 7, and paragraph 63 of Schedule 9 to the Policing and Crime Act 2017 (c. 3); section 4 was substituted by section 126(2) of, and paragraphs 12 and 15 of Schedule 22 to, the Criminal Justice and Immigration Act 2008, and amended by section 29(8) of, and paragraphs 1 and 3 of Schedule 7, and paragraph 63 of Schedule 9 to, the Policing and Crime Act 2017.

(b) S.I. 2020/1087.

““the Chief Inspector of Constabulary” means—

- (a) in relation to England and Wales and Northern Ireland, His Majesty’s Chief Inspector of Constabulary appointed under section 54(1) of the Police Act 1996^(a);
- (b) in relation to Scotland, the inspector of constabulary designated by the Scottish Ministers to be the chief inspector under section 71(3) of the Police and Fire Reform (Scotland) Act 2012^(b);

“an inspector of constabulary” means—

- (a) in relation to England and Wales and Northern Ireland, an inspector of constabulary appointed under section 54(1) of the Police Act 1996;
- (b) in relation to Scotland, an inspector of constabulary appointed under section 71 of the Police and Fire Reform (Scotland) Act 2012;

“the parties” means—

- (a) the relevant authority and the officer concerned, and
 - (b) the Director General or the Ombudsman, as the case may be, where the Director General has decided to present the case under regulation 24(1) or the Ombudsman is required to present the case under regulation 24(6);”;
- (ii) omit the definitions of “the Inspector of Constabulary” and “interested party”;
- (iii) in the definition of “practice requiring improvement” omit from “as set out” to the end;
- (b) in paragraph (3) for “paragraph (4)” substitute “paragraphs (4) and (4A)”;
- (c) after paragraph (4) insert—

“(4A) Where the chief constable is required to—

- (a) chair a misconduct hearing under regulation 27(4)(a), or
- (b) conduct an accelerated misconduct hearing under regulation 55(1),

the chief constable may delegate the responsibility for chairing or conducting the disciplinary proceedings in accordance with paragraphs (4B) and (4C).

(4B) Where the chief constable delegates the responsibility for chairing or conducting disciplinary proceedings under paragraph (4A), the person to whom that responsibility is delegated must be—

- (a) a senior officer,
- (b) a former senior officer who last served as a senior officer no more than 5 years before the date on which the responsibility for chairing or conducting the disciplinary proceedings is delegated to them, or
- (c) unless the case substantially involves operational policing matters, a staff member who, in the opinion of the chief constable, is of at least a similar level of seniority to a senior officer.

(4C) But where the chief constable delegates, under paragraph (3), their functions under regulation 49, the person to whom the responsibility is delegated under paragraph (4A) must not be the same officer who—

- (a) certified the case under regulation 49 as one where the special conditions are satisfied, or

(a) 1996 c. 16; to which there are amendments not relevant to these Regulations.

(b) 2012 asp 8; to which there are amendments not relevant to these Regulations.

(b) authorised the decision to certify under paragraph (4)(b).

(4D) For the purposes of paragraph (4B), “senior officer” includes a member of a relevant force holding a rank above that of chief superintendent.”.

(3) In regulation 7 (legal and other representation)—

- (a) in paragraph (6) for “the misconduct proceedings or accelerated misconduct hearing or” substitute “a misconduct meeting or an”;
- (b) in paragraph (7) for “At a misconduct meeting or an appeal meeting, the”, substitute “The”.

(4) After regulation 11 (record of disciplinary proceedings) insert—

“Conflicts of interest: disciplinary proceedings

11A—(1) A responsible authority that is aware that relevant circumstances exist in relation to a person must not—

- (a) delegate the responsibility for chairing or conducting disciplinary proceedings to that person under regulation 2(4A), or
- (b) appoint that person to a regulated position.

(2) A responsible authority that has delegated the responsibility for chairing or conducting misconduct proceedings to a person under regulation 2(4A) or appointed a person to a regulated position, must, without delay after becoming aware that relevant circumstances exist in relation to that person—

- (a) delegate the responsibility for chairing or conducting the proceedings to another person in accordance with regulation 2(4B) or, as the case may be, 2(4B) and (4C), or
- (b) appoint another person to the regulated position in accordance with regulation 7, 27, 44 or 55, as the case may be.

(3) Where the chief constable is required to chair or conduct misconduct proceedings and is, or becomes, aware that relevant circumstances exist in relation to themselves, they must, without delay, delegate the responsibility for chairing or conducting those proceedings in accordance with regulation 2(4B) or, as the case may be, 2(4B) and (4C).

(4) Any delegation required by paragraph (2) or (3) is to be treated as having been done under regulation 2(4A).

(5) A person who is aware that relevant circumstances exist in relation to themselves must not take up or act in a regulated position.

(6) A person, other than the chief constable, who becomes aware that relevant circumstances exist in relation to themselves after having taken up a regulated position must inform the responsible authority of the relevant circumstances without delay.

(7) A person who becomes aware that relevant circumstances exist in relation to themselves must inform the responsible authority of the relevant circumstances without delay if they are aware of the possibility of—

- (a) the responsibility for chairing or conducting misconduct proceedings being delegated to them under regulation 2(4A), or
- (b) being appointed to a regulated position.

(8) In this regulation—

“a regulated position” is—

- (a) chairing or conducting disciplinary proceedings;

- (b) acting as an adviser appointed under regulation 7(6) (adviser to the person or panel conducting a misconduct meeting or an appeal meeting);
- (c) acting as an adviser appointed under regulation 27(5B) or 55(5) (adviser to the panel conducting a misconduct hearing or an accelerated misconduct hearing);

“relevant circumstances” mean circumstances, in relation to a person, that give rise, or may reasonably be considered to give rise, to a conflict of interest in relation to that person’s functions in respect of the disciplinary proceedings;

“responsible authority” means—

- (a) in relation to the delegation of responsibility for chairing or conducting disciplinary proceedings under regulation 2(4A), the chief constable;
- (b) in relation to the appointment of a person to a regulated position, the person or body responsible for making the appointment.”.

(5) In regulation 14 (appointment of investigator), after paragraph (4) insert—

“(5) In paragraph 3(a) “interested party” means a person whose appointment could reasonably give rise to a concern as to whether that person could act impartially under this Part.”.

(6) In regulation 21 (general) for “relevant authority” to “as the case may be,” substitute “parties”.

(7) In regulation 27 (persons conducting misconduct proceedings)—

- (a) in paragraph (1)(a)—
 - (i) omit sub-paragraph (ii);
 - (ii) in sub-paragraph (iii) at the beginning insert “who”;
- (b) in paragraphs (1)(b) and (2) for “appointed” in each place it occurs substitute “constituted”;
- (c) in paragraph (2) after “paragraph (5)” insert “or (5A)”;
- (d) for paragraph (4) substitute—

“(4) The panel must comprise—

- (a) a chair, who must be the chief constable (but see regulation 2(4A)),
- (b) a lay person, appointed by the Secretary of State, who—
 - (i) has the qualifications or experience relevant for the purposes of disciplinary proceedings, and
 - (ii) is selected on a fair and transparent basis from the list of candidates who have such qualifications or experience maintained by the Secretary of State for the purpose of this sub-paragraph,
- (c) a lay person, appointed by the Secretary of State, who need not have such qualifications or experience, selected on a fair and transparent basis from the list of candidates maintained by the Secretary of State for the purpose of this sub-paragraph.”;

(e) for paragraph (5) substitute—

“(5) Subject to paragraph (5A), where the officer concerned is a senior officer the panel must comprise—

- (a) a chair, appointed by the relevant authority, who must be a member of a relevant force who is of a more senior rank than the officer concerned;
 - (b) a person appointed in accordance with paragraph (4)(b);
 - (c) a person appointed in accordance with paragraph (4)(c).”;
- (f) after paragraph (5) insert—

“(5A) Where the officer concerned is the chief constable, for paragraph (5)(a) substitute—

“(a) a chair, appointed by the Secretary of State, who must be the Chief Inspector of Constabulary or an inspector of constabulary nominated by the Chief Inspector.”.

(5B) A person must be appointed by the Secretary of State as an adviser to the chair and panel conducting a misconduct hearing under paragraph (4), (5) or (5A), selected on a fair and transparent basis from a list of legally qualified persons maintained by the Secretary of State for the purpose of this paragraph.

(5C) The legally qualified person appointed under paragraph (5B) must provide advice to the chair or panel conducting a misconduct hearing, upon request by the chair, in respect of any legal or procedural issues relating to the misconduct proceedings.

(5D) The chair or panel conducting a misconduct hearing must have regard to any advice given by the legally qualified person in accordance with paragraph (5C).

(5E) Where the officer concerned is not a senior officer, paragraph (5F) applies if—

- (a) the chief constable—
 - (i) when their view was sought in respect of the case under paragraph 23(5A)(a)(i) or (iii) of Schedule 3 to the 2002 Act (action by the Director General in relation to an investigation report under paragraph 22), expressed a view on the matter that differed from the determination of the Director General under paragraph 23(5A)(b) of that Schedule, or
 - (ii) notified the Director General under paragraph 25(4D)(a) of Schedule 3 to the 2002 Act (reviews with respect to an investigation) that they did not accept a recommendation of the Director General under paragraph 25(4C)(c)(i) of that Schedule, or
- (b) the chief constable has been directed by the Ombudsman under section 59(5) of the 1998 Act to bring misconduct proceedings.

(5F) Where this paragraph applies, the Director General or Ombudsman, as the case may be, may, within 10 working days beginning with the day after the day on which—

- (a) the determination or recommendation referred to in paragraph (5E)(a)(i) or (ii) was made, or
- (b) the direction referred to in paragraph (5E)(b) was given,

make written representations to the chief constable as to whether they should delegate responsibility for chairing the misconduct hearing to a member of a relevant force.

(5G) Where representations have been made under paragraph (5F) the chief constable must—

- (a) have regard to those representations, and
- (b) within 10 working days beginning with the day on which the representations were received, determine whether or not to delegate responsibility for chairing the misconduct hearing to an MDP officer, a former officer, a staff member, or to a member of a relevant force.”;

(g) for paragraph (6) substitute—

“(6) In this regulation—

“lay person” has the same meaning as in paragraph 10(aa)(a) of Schedule 6 to the Police Act 1996;

“legally qualified person” means a person who satisfies the judicial-appointment eligibility condition on a 5-year basis.”

(8) In regulation 28 (role of chair of misconduct hearing)—

(a) in paragraph (1) for “chair of a panel appointed under regulation 27” substitute “person who is to chair a misconduct hearing (the chair)”;

(b) omit paragraph (10).

(9) In regulation 29 (notice of referral to misconduct proceedings)—

(a) in paragraph (1)(a)(iii)—

(i) for “appointed” substitute “who is”;

(ii) omit the words from “and” to the end;

(b) after paragraph (1) insert—

“(1A) Where the chief constable delegates the responsibility for chairing the misconduct hearing to another person under regulation 2(4A), the chief constable must, as soon as practicable after delegating the responsibility, give the officer concerned written notice of the name of that person and the effect of paragraphs (3) to (6) of this regulation.”;

(c) in paragraph (2) for “conducting or chairing the misconduct proceedings” substitute “or panel conducting the misconduct meeting”;

(d) after paragraph (2) insert—

“(2A) As soon as practicable after a legally qualified person has been appointed under regulation 27(5B) in relation to the misconduct hearing, the relevant authority must give the officer concerned written notice of the name of that person and the effect of paragraphs (3) to (6) of this regulation.”;

(e) in paragraph (3)—

(i) after sub-paragraph (a) omit “or”;

(ii) in sub-paragraph (b) for “proceedings.” substitute “meeting.”;

(iii) after sub-paragraph (b) insert—

“or

(c) be the legally qualified person appointed under regulation 27(5B) in relation to the misconduct hearing.”;

(f) for paragraph (4) substitute—

“(4) Any such objection must—

(a) be made in writing to—

(i) the Secretary of State, where the person to whom the objection is made is to a person they appointed,

(ii) the chief constable, where the objection is to the chief constable chairing a misconduct hearing under regulation 27(4)(a) or to a person to whom the

(a) Paragraph 10(aa) was inserted by section 31(5)(a) of the Policing and Crime Act 2017 (c. 3).

responsibility for chairing a misconduct hearing has been delegated under regulation 2(4A), or

(iii) the relevant authority in all other cases,

(b) set out the grounds of objection, and

(c) in the case of joint misconduct proceedings, be copied to each other officer concerned,

before the end of 3 working days beginning with the first working day after the officer is given notice of the person's name.”;

(g) for paragraph (5) substitute—

“(5) The chief constable, the Secretary of State, or the relevant authority must notify the officer concerned in writing as soon as reasonably practicable whether they or it upholds or rejects an objection to the person conducting or, as the case may be, chairing the misconduct proceedings or to any person appointed under regulation 7(6) to advise the person conducting or chairing the misconduct meeting, or the legally qualified person appointed under regulation 27(5B).”;

(h) in paragraph (6)—

(i) before “relevant authority” insert “chief constable, the Secretary of State, or the”;

(ii) after “in accordance with” insert “paragraph (6A) or (6C), regulation 2(4A), ”;

(i) after paragraph (6) insert—

“(6A) Where—

(a) the chair of the misconduct hearing is the chief constable, and

(b) an objection is upheld against them,

the chief constable must delegate the responsibility for chairing the misconduct hearing to another person in accordance with regulation 2(4B).

(6B) The delegation referred to in paragraph (6A) is to be treated as having been done under regulation 2(4A).

(6C) Where—

(a) the chair of the misconduct proceedings has been appointed by the Secretary of State under regulation 27(5A), and

(b) an objection is upheld against them,

the Secretary of State must require the Chief Inspector of Constabulary to chair the misconduct proceedings or to nominate an inspector of constabulary to replace the chair appointed under regulation 27(5A), and appoint that person as the chair.”;

(j) in paragraph (7)—

(i) after “appointment” insert “or delegation”;

(ii) for “appointed” substitute “who is”;

(iii) after “proceedings” in the first place it occurs insert “, the new legally qualified person appointed under regulation 27(5B)”;

(iv) for “proceedings” in the second place it appears substitute “meeting”.

(k) in paragraph (8) for “the appointment of a person” to the end substitute “a person who, in accordance with paragraph (6), replaces a person in respect of whom an objection has been upheld”.

(10) In regulation 31 (witnesses and documents to be supplied)—

- (a) in paragraphs (1) and (2) for “lists” in each place it occurs substitute “list”;
 - (b) in paragraph (2)—
 - (i) omit “the parties supplied”;
 - (ii) after “regulation 30(4)” insert “was supplied or given”.
- (11) In regulation 32 (misconduct pre-hearing)—
- (a) in paragraph (1) for “appointed” substitute “who is”;
 - (b) after paragraph (1)(b)(ii) omit the “and”;
 - (c) after paragraph (1)(b)(iii)(bb) insert—
 - “, and
 - (iv) the legally qualified person appointed under regulation 27(5B).”;
 - (d) after paragraph (8) insert—
 - “(8A) At the misconduct pre-hearing the chair—
 - (a) may require the legally qualified person appointed under regulation 27(5B) to provide advice on any legal or procedural matters relating to the misconduct proceedings, and
 - (b) must have regard to any advice provided by the legally qualified person under sub-paragraph (a) or regulation 27(5C).”;
 - (e) omit paragraph (17).
- (12) In regulation 35 (public notification of misconduct hearing), in paragraph (5) omit “journalist or other”.
- (13) In regulation 38 (reporting restrictions, participation and exclusions from proceedings)—
- (a) in paragraph (6)(c)—
 - (i) for “chair appointed under regulation 27(4) or (5)” substitute “person chairing a misconduct hearing”;
 - (ii) for “proceedings” substitute “hearing”;
 - (b) after paragraph (6) insert—
 - “(6A) Where the person chairing a misconduct hearing exercises their power under paragraph (6) to exclude any person from all or part of the hearing, impose conditions that have the effect of excluding any person from all or part of the hearing or prohibit the publication of any matter relating to the hearing, the person must inform the Secretary of State in writing of their reason for taking such action.”.
- (14) In regulation 40 (procedure at misconduct proceedings), after paragraph (14) insert—
- “(14A) Any advice provided by the legally qualified person under regulation 27(5C) or 32(8A)(a) must be given to the parties.”.
- (15) In regulation 42 (notification of outcome)—
- (a) in paragraph (1)—
 - (i) in the words before sub-paragraph (a) for “The person” substitute “Subject to paragraph (1B), the person”;
 - (ii) after sub-paragraph (d) insert—
 - “, and
 - (e) where it was found that the conduct of the officer concerned amounted to gross misconduct but the disciplinary action imposed was not dismissal without notice, the reasons for that decision.”;

- (b) after paragraph (1) insert—
 - “(1A) The person chairing a misconduct hearing—
 - (a) may require the legally qualified person appointed under regulation 27(5B) to provide advice in respect of legal and procedural issues relating to the report under paragraph (1), and
 - (b) must have regard to any advice provided under sub-paragraph (a).
 - (1B) The person chairing a misconduct hearing may delegate responsibility for preparing the report under paragraph (1) to the legally qualified person appointed under regulation 27(5B).
 - (1C) Where the person chairing the misconduct hearing delegates responsibility for preparing the report under paragraph (1B)—
 - (a) the legally qualified person must submit the report to the person chairing the misconduct hearing within 5 working days beginning with the first working day after completion of the misconduct hearing, and
 - (b) the person chairing the misconduct hearing—
 - (i) may amend the report prepared by the legally qualified person, and
 - (ii) must satisfy themselves that they are content with the report prepared by the legally qualified person (whether or not they have amended it under paragraph (i)).
 - (1D) Where the person chairing a misconduct hearing delegates responsibility for preparing the report under paragraph (1B), paragraph (1) is to be read as if for “5 working days” there were substituted “10 working days”;
- (c) in paragraph (5)—
 - (i) after sub-paragraph (b)(ii) omit the “and”;
 - (ii) after sub-paragraph (c) insert—
 - “, and
 - (d) the Secretary of State, where it was found that the conduct of the officer concerned amounted to gross misconduct but the disciplinary action imposed was not dismissal without notice.”.
- (16) In regulation 44 (appeal from misconduct meeting: officers other than senior officers)—
 - (a) in paragraph (1)(b) omit “or panel”;
 - (b) in paragraph (4)—
 - (i) in sub-paragraph (a) for “a member of a police force” substitute “an MDP officer”;
 - (ii) in sub-paragraph (b)(i) for “a member of a police force” substitute “an MDP officer”;
 - (iii) after sub-paragraph (b) omit “who is not an interested party”.
- (17) In regulation 47 (general) for the words from “relevant authority” to “as the case may be,” substitute “parties”.
- (18) In regulation 51 (notice of referral to accelerated misconduct hearing)—
 - (a) in paragraph (2)—
 - (i) after sub-paragraph (a) omit the “and”;
 - (ii) after sub-paragraph (b) insert—

- “(c) notify the officer concerned of the name of the person conducting or chairing the accelerated misconduct hearing, and
- (d) notify the officer concerned of the effect of paragraphs (2C) to (2F) of this regulation.”;

(b) after paragraph (2) insert—

“(2A) Where the chief constable delegates the responsibility for conducting an accelerated misconduct hearing to another person under regulation 2(4A), the chief constable must, as soon as practicable after delegating the responsibility, give the officer concerned written notice of the name of that person and the effect of paragraphs (2C) to (2F) of this regulation.

(2B) As soon as practicable after a legally qualified person has been appointed under regulation 55(5) in relation to the accelerated misconduct hearing, the relevant authority must give the officer concerned written notice of the name of that person and the effect of paragraphs (2C) to (2F) of this regulation.

(2C) The officer concerned may object to any person whom the officer has been notified under the preceding provisions of this regulation is to—

- (a) conduct, or as the case may be, chair the accelerated misconduct hearing;
- (b) be the legally qualified person appointed under regulation 55(5) in relation to the accelerated misconduct hearing.

(2D) Any such objection—

- (a) must be made in writing to—
 - (i) where the objection is to the person to whom the responsibility for conducting an accelerated hearing has been delegated under regulation 2(4A), the chief constable,
 - (ii) the Secretary of State, where they appointed the person in relation to whom the objection is made, or
 - (iii) the relevant authority in all other cases,
- (b) must set out the grounds of objection of the officer, and
- (c) in the case of a joint accelerated misconduct hearing, must be copied to each other officer concerned,

before the end of three working days beginning with the first working day after the officer is given notice of the person’s name.

(2E) The person or relevant authority to whom the objection was made must notify the officer concerned in writing whether they or it upholds or rejects an objection to the person conducting or chairing the accelerated misconduct hearing or the legally qualified person appointed under regulation 55(5).

(2F) If the person or relevant authority upholds the objection, the person to whom the officer concerned objects must be replaced in accordance with paragraph (2G), (2I) or (2J), regulation 2(4A) or regulation 55(5), as appropriate.

(2G) Where—

- (a) the person conducting the accelerated misconduct hearing is the chief constable, and
- (b) the objection is upheld against them,

the chief constable must delegate responsibility for conducting the accelerated misconduct hearing to another person in accordance with regulation 2(4B) and (4C).

(2H) The delegation referred to in paragraph (2G) is to be treated as having been done under regulation 2(4A).

(2I) Where—

- (a) the person chairing the accelerated misconduct hearing is appointed by the Secretary of State under regulation 55(4)(a)(i), and
- (b) an objection is upheld against the chair,

the Secretary of State must require the Chief Inspector of Constabulary to chair the accelerated misconduct hearing or nominate an inspector of constabulary to replace the chair appointed under regulation 55(4)(a)(i), and appoint that person to be the chair.

(2J) Where—

- (a) the person chairing the accelerated misconduct hearing is appointed by the relevant authority under regulation 55(4)(a)(ii), and
- (b) an objection is upheld against the chair,

the relevant authority must appoint another officer to be the chair in accordance with regulation 55(4)(a)(ii).

(2K) As soon as reasonably practicable after any such delegation or appointment, the relevant authority must give written notice to the officer concerned of the name of the new person who is to conduct or, as the case may be, chair the accelerated misconduct hearing or the new legally qualified person appointed under regulation 55(5), and of the effects of paragraphs (2L) and (2M).

(2L) The officer concerned may object to the person who, in accordance with paragraph (2K), replaces the person in respect of whom an objection has been upheld.

(2M) In relation to an objection under paragraph (2L)—

- (a) paragraph (2C) applies except insofar as it specifies the period of time for making an objection;
- (b) the objection must be made before the end of 3 working days beginning with the first working day after the officer concerned has been given the notice referred to in paragraph (2K);
- (c) paragraphs (2D) to (2K) apply, with the exception of the requirement in paragraph (2K) for the relevant authority to give written notice of the effects of paragraph (2L) and this paragraph.”.

(19) In regulation 52 (notice of accelerated misconduct hearing), after paragraph (1) insert—

“(1A) Where—

- (a) the officer concerned raises an objection under regulation 51(2C) or (2L), and
- (b) that objection is upheld,

the relevant authority must specify a date to replace that specified under paragraph (1), which must be not less than 10 and not more than 15 working days after the date on which the person in respect of whom the objection was made is replaced.”.

(20) In regulation 55 (persons conducting accelerated misconduct hearing)—

- (a) in paragraph (1) after “chief constable” insert “(but see regulation 2(4A))”;
- (b) omit paragraph (2);
- (c) in paragraph (3) for “specified in paragraph (4)” to the end substitute “constituted in accordance with paragraph (4)”;
- (d) for paragraph (4) substitute—

“(4) The panel of persons must comprise—

(a) a chair, who must be—

(i) where the officer concerned is the chief constable, the Chief Inspector of Constabulary or an inspector of constabulary nominated by the Chief Inspector, appointed by the Secretary of State;

(ii) in every other case, a more senior officer than the officer concerned who is a member of a relevant force, appointed by the relevant authority;

(b) a person appointed in accordance with regulation 27(4)(b);

(c) a person appointed in accordance with regulation 27(4)(c).”;

(e) after paragraph (4) insert—

“(5) A legally qualified person must be appointed by the Secretary of State as an adviser to the chair and the panel conducting an accelerated misconduct hearing, to be selected in accordance with regulation 27(5B).

(6) The legally qualified person appointed under paragraph (5) must provide advice to the chair and the panel conducting an accelerated misconduct hearing, on request by the chair, in respect of any legal or procedural matters relating to the accelerated misconduct hearing.

(7) The chair and the panel conducting an accelerated misconduct hearing must have regard to any advice provided by the legally qualified person under paragraph (6).

(8) Where the officer concerned is not a senior officer, paragraph (9) applies if—

(a) the chief constable—

(i) when their view was sought in respect of the case under paragraph 23(5A)(a)(i) or (iii) of Schedule 3 to the 2002 Act (action by the Director General in relation to an investigation report under paragraph 22), expressed a view on the matter that differed from the determination of the Director General under paragraph 23(5A)(b) of that Schedule, or

(ii) notified the Director General under paragraph 25(4D)(a) of Schedule 3 to the 2002 Act (reviews with respect to an investigation) that they did not accept a recommendation of the Director General under paragraph 25(4C)(c)(i) of that Schedule, or

(b) the chief constable has been directed by the Ombudsman under section 59(5) of the 1998 Act to bring misconduct proceedings.

(9) Where this paragraph applies, the Director General or Ombudsman, as the case may be, may, within 10 working days beginning with the day after the day on which—

(a) the determination or recommendation referred to in paragraph (8)(a)(i) or (ii) was made, or

(b) the direction referred to in paragraph (8)(b) was given,

make written representations to the chief constable as to whether they should delegate responsibility for chairing the misconduct hearing to a member of a relevant force.

(10) Where representations have been made under paragraph (9) the chief constable must—

(a) have regard to those representations, and

(b) within 10 working days beginning with the day on which the representations were received, determine whether or not to delegate responsibility for chairing the

accelerated misconduct hearing to an MDP officer, a former officer, a staff member, or to a member of a relevant force.

(11) For the purpose of section 4(4) of the 1987 Act (power to prescribe “the panel” for the purpose of representation at proceedings), the panel of persons or the person specified by this regulation to conduct an accelerated misconduct hearing is prescribed as “the panel”.

(21) In regulation 59 (reporting restrictions and participation at accelerated misconduct hearing), after paragraph (3) insert—

“(4) Where the person conducting or chairing an accelerated misconduct hearing exercises their power under paragraph (2) to exclude any person from all or part of the hearing, impose conditions that have the effect of excluding any person from all or part of the hearing or prohibit the publication of any matter relating to the hearing, the person must inform the Secretary of State in writing of their reason for taking such action.”.

(22) In regulation 61 (procedure at accelerated misconduct hearing) after paragraph (14) insert—

“(14A) The advice provided by the legally qualified person under regulation 55(6) must be given to the parties.”.

(23) In regulation 63 (notification of outcome)—

(a) in paragraph (1)—

(i) in the words before sub-paragraph (a) for “The person” substitute “Subject to paragraph (1B), the person”;

(ii) after sub-paragraph (c) insert—

“, and

(d) where it was found that the conduct of the officer concerned amounted to gross misconduct but the disciplinary action imposed was not dismissal without notice, the reasons for that decision.”;

(b) after paragraph (1) insert—

“(1A) The person chairing the accelerated misconduct hearing under regulation 55—

(a) may require the legally qualified person appointed under regulation 55(5) to provide advice in respect of legal and procedural issues relating to the report under paragraph (1), and

(b) must have regard to any advice provided under sub-paragraph (a).

(1B) The person chairing the accelerated misconduct hearing under regulation 55 may delegate responsibility for preparing the report under paragraph (1) to the legally qualified person appointed under regulation 55(5).

(1C) Where the person chairing the accelerated misconduct hearing under regulation 55 delegates responsibility for preparing the report under paragraph (1B)—

(a) the legally qualified person must submit the report to the person chairing the misconduct hearing within 3 working days beginning with the first working day after completion of the accelerated misconduct hearing, and

(b) the person chairing the accelerated misconduct hearing—

(i) may amend the report prepared by the legally qualified person, and

(ii) must satisfy themselves that they are content with the report prepared by the legally qualified person (whether or not they have amended it under paragraph (i)).

(1D) Where the person chairing an accelerated misconduct hearing delegates responsibility for preparing the report under paragraph (1B), paragraph (1) is to be read as if for “5 working days” there were substituted “10 working days.”;

(c) in paragraph (4)—

(i) after sub-paragraph (a)(ii) omit the “and”;

(ii) after sub-paragraph (b) insert—

“, and

(c) the Secretary of State, where it was found that the conduct of the officer concerned amounted to gross misconduct but the disciplinary action imposed was not dismissal without notice.”.

Amendment of the modifications to the Conduct Regulations

3.—(1) The modifications to the Conduct Regulations in their application to former officers set out in Schedule 2 to the Ministry of Defence Police (Conduct, Performance and Appeals Tribunals) Regulations 2020 are amended as follows.

(2) In paragraph 5 (modification to regulation 7 (legal and other representation)), for paragraph (d) substitute “paragraph (6) were omitted”.

(3) In paragraph 16 (modification to regulation 21 (general)) omit paragraphs (a) and (b).

(4) In paragraph 22 (modification to regulation 27 (persons conducting misconduct proceedings))—

(a) for paragraph (b) substitute—

“(b) in paragraph (4) for “The panel must comprise” there were substituted “Subject to paragraphs (5) and (5A), where the case is referred to a misconduct hearing, that hearing must be conducted by a panel of three persons, comprising”;

(b) for paragraph (c) substitute—

“(c) “in paragraph (5), for “where the officer concerned is a senior officer the panel must comprise” there were substituted “where the case is referred to a misconduct hearing and the officer concerned was a senior officer at the relevant time, that hearing must be conducted by a panel of three persons comprising”;

(c) after paragraph (c) insert—

“(d) in paragraph (5A) for “is the chief constable” there were substituted “was the chief constable at the relevant time”;

(e) in paragraph (5E)—

(i) for “is not a senior officer” there were substituted “was not a senior officer at the relevant time”;

(ii) paragraph (b) were omitted;

(f) in paragraph (5F)—

(i) “or Ombudsman, as the case may be,” were omitted;

(ii) paragraph (b) were omitted.”.

(5) Omit paragraph 23 (modification to regulation 28 (role of chair of misconduct hearing)).

(6) In paragraph 24 (modification to regulation 29 (notice of referral to misconduct proceedings))—

- (a) for paragraph (b) substitute “paragraph (2) were omitted”;
 - (b) in paragraph (c), for sub-paragraph (ii) substitute “sub-paragraph (b) were omitted”;
 - (c) in paragraph (d), for paragraph (ii) substitute “or to any person appointed under regulation 7(6) to advise the person conducting or chairing the misconduct meeting” were omitted;
 - (d) for paragraph (e) for “and (7)” substitute “, regulation 7(6)”.
- (7) In paragraph 27 (modification to regulation 32 (misconduct pre-hearing)) omit paragraph (c).
- (8) In paragraph 33 (modification to regulation 38 (reporting restrictions, participation and exclusion from proceedings)) for paragraph (b)(ii) substitute—
- “(ii) omit from “in the case” to “misconduct hearing”;
- (9) In paragraph 37 (modification to regulation 42 (notification of outcome))—
- (a) in paragraph (a) after paragraph (iii) insert—
 - “(iv) in para (e) for “but the disciplinary action imposed was not dismissal without notice” there were substituted “but disciplinary action for gross misconduct was not imposed”;
 - (b) for paragraph (e) substitute—
 - “(e) in paragraph (5)—
 - (i) sub-paragraph (b) were omitted,
 - (ii) in sub-paragraph (d) for “the disciplinary action imposed was not dismissal without notice” there were substituted “disciplinary action for gross misconduct was not imposed”;
- (10) Omit paragraph 40 (modification to regulation 47 (general)).
- (11) In paragraph 43 (modification to regulation 51 (notice of referral to accelerated misconduct hearing))—
- (a) before paragraph (a) insert—
 - “(za) in paragraph (1)(c)—
 - (i) the “and” after sub-paragraph (i) were omitted;
 - (ii) after sub-paragraph (i) there were inserted—
 - “(ia) in the case of a Condition C person, any written statement or document provided to the Director General under regulation 4B(3) and any response to a consultation carried out under regulation 4B(4), and”;
 - (b) for paragraph (a) substitute—
 - “(a) in paragraph (2)—
 - (i) in sub-paragraph (b), paragraph (ii) and the “or” immediately preceding it were omitted;
 - (ii) the “and” after paragraph (d) were omitted;
 - (iii) after paragraph (d) there were inserted—
 - “(da) set out the fact that the officer will be subject to disciplinary proceedings under these Regulations, and
 - (db) set out the fact that, if the allegation of gross misconduct is proved, the officer may be subject to a finding that the officer

would have been dismissed if the officer had not ceased to be a member of the MDP,”;”.

(12) In paragraph 47 (modification to regulation 55 (persons conducting accelerated misconduct hearing)) after paragraph (b) insert—

- “(c) in paragraph (4)(a)(ii) after “office concerned” there were inserted “was at the relevant time”;
- (d) in paragraph (8)—
 - (i) for “is not a senior officer” there were substituted “was not a senior officer at the relevant time”;
 - (ii) paragraph (b) were omitted;
- (e) in paragraph (9)—
 - (i) “or Ombudsman, as the case may be,” were omitted;
 - (ii) paragraph (b) were omitted.”.

(13) For paragraph 52 (modification to regulation 63 (notification of outcome)), substitute—

“Regulation 63 is to be read as if—

- (a) in paragraph (1)—
 - (i) for sub-paragraph (c) there were substituted—

“(c) whether disciplinary action for gross misconduct was imposed,”;
 - (ii) in sub-paragraph (d) for “the disciplinary action imposed was not dismissal without notice” there were substituted “no disciplinary action for gross misconduct was imposed”;
- (b) in paragraph (4)(a) “or the Ombudsman” were omitted both times it occurs;
- (c) in paragraph (4)(c) for “the disciplinary action imposed was not dismissal without notice” there were substituted “no disciplinary action for gross misconduct was imposed”;

Saving provision

4.—(1) Subject to paragraph (2), the amendments made by regulations 2 and 3 do not have effect in relation to any matter in respect of which the officer concerned has been given notice before the coming into force of these Regulations under—

- (a) regulation 29(1) (notice of referral to misconduct proceedings) of the Conduct Regulations, or
- (b) regulation 51(1) (notice of referral to accelerated misconduct hearing) of the Conduct Regulations.

(2) Paragraph (1) does not apply to the amendments made by regulations 2(16) and 3(13).

(3) In this regulation, “officer concerned” has the same meaning as in regulation 2(1) of the Conduct Regulations.

2nd May 2024

Timothy Minto
Minister of State
Ministry of Defence

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Ministry of Defence Police Conduct Regulations and the modifications to those Regulations set out in Schedules 1 and 2 to the Ministry of Defence Police (Conduct, Performance and Appeals Tribunals) Regulations 2020 (S.I. 2020/1087) (“the 2020 Regulations”).

Regulation 1 makes general provision.

Regulation 2 amends the Conduct Regulations set out in Schedule 1 to the 2020 Regulations (“the Conduct Regulations”). References to numbered regulations are to the paragraph so numbered in that Schedule.

Paragraph (2) inserts a new definition of “Chief Inspector of Constabulary” and “an inspector of constabulary” which replace the existing definition of “the Inspector of Constabulary”, inserts a definition of “the parties”, omits the definition of “interested party” (which is inserted in regulation 14 - see paragraph (5)), amends the definition of “practice requiring improvement”. It also amends the rules on delegation to allow the chief constable to delegate responsibility for chairing or conducting disciplinary proceedings to others, and in limited cases, allows the delegation to a member of another police force.

Paragraph (3) removes the power to appoint a legal adviser to the person or panel conducting misconduct proceeding which is provided for in other regulations (see paragraphs (7) and (20)).

Paragraph (4) inserts a new regulation to deal with conflicts of interest (new regulation 11A) for persons appointed to a regulated position and in relation to the chief constable where they are the chair of misconduct proceedings.

Paragraph (7) makes changes to the composition of panels that deal with misconduct proceedings. It removes the legally qualified chairs and replaces them with i) the Chief Inspector of Constabulary or an inspector of Constabulary they nominate, where the officer concerned is the chief constable, ii) a senior police officer from another force, where the officer concerned is another senior officer; and iii) the chief constable where the officer concerned is a non-senior officer. The other two members of the panel are lay members. It also requires that a legally qualified person is appointed to advise the panel (and chair). The regulation also enables the Director General and Ombudsman to make recommendations to the chief constable as to whether they should delegate responsibility for chairing a hearing to a member of another police force, and requires the chief constable to have regard to such a recommendation.

Paragraphs (9) and (18) make changes to the matters to be included in a notice of referral to misconduct proceedings and accelerated misconduct proceedings. They also make other amendments consequential on some of the other changes made by these regulations (for example the rules relating to those to whom the officer concerned can object to).

Paragraph (12) makes a minor amendment to remove superfluous words.

Paragraphs (13) and (21) require the chair to give written reasons to the Secretary of State where they have issued directions that have the effect of excluding persons from a hearing.

Paragraphs (14) and (22) require any legal advice given to the panel by the legally qualified person to be given to the parties.

Paragraphs (15) and (23) require that where a finding of gross misconduct is made but this does not lead to dismissal without notice, that the reasons for this decision are given to the relevant authority and for a copy of the report of the hearing to be sent to the Secretary of State. They also allow the chair to delegate the preparation of the report of the hearing to the legally qualified person.

Paragraph (20) makes changes to the composition of panels that deal with accelerated misconduct hearings and other changes that are similar to those made by paragraph (7).

Paragraphs (5), (6), (8), (10), (11), (17) and (19) make minor consequential amendments.

Paragraph (16) corrects some minor errors in regulation 44 of the Conduct Regulations.

Regulation 3 makes amendments to Schedule 2 to the 2020 Regulations for former MDP officers which are consequential on the amendments made to Schedule 1 by Regulation 2, apart from paragraph (13) which corrects an error in paragraph 52 of Schedule 2 (which modifies regulation 63 of the Conduct Regulations).

Regulation 4 is a saving provision.

Paragraph (1) provides that the amendments made by regulations 2 and 3 do not apply to cases where the officer concerned has been given a notice of referral to misconduct proceedings or an accelerated misconduct meeting before the Regulations come into force.

Paragraph (2) provides that the rule in paragraph (1) does not apply to amendments made by regulation 2(16) and 3(13) which correct errors.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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