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STATUTORY INSTRUMENTS

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**2009 No. 3069**

**POLICE**

**The Ministry of Defence Police (Conduct) Regulations 2009**

*Made* - - - - *21st November 2009*

*Coming into force* - - *1st December 2009*

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 3A and 4 of the Ministry of Defence Police Act 1987<sup>(1)</sup>.

In accordance with section 4(7) of that Act, a draft of these Regulations was laid before Parliament and approved by a resolution of each House of Parliament.

**PART 1**

**Preliminary**

**Citation and commencement**

**1.** These Regulations may be cited as the Ministry of Defence Police (Conduct) Regulations 2009 and shall come into force on 1st December 2009.

**Revocation and transitional provisions**

**2.—(1)** Subject to paragraph (2), the Ministry of Defence Police (Conduct) Regulations 2004<sup>(2)</sup> and the Ministry of Defence Police (Conduct) (Senior Officers) Regulations 2004<sup>(3)</sup> (together “the 2004 Regulations”) are revoked.

(2) Where an allegation in respect of conduct by a member of the Ministry of Defence Police came to the attention of the appropriate authority before 1st December 2009 nothing in these Regulations shall apply and the 2004 Regulations shall continue to have effect.

**Interpretation and delegation**

**3.—(1)** In these Regulations—

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(1) 1987 c. 4, section 3A was inserted by the section 79(1) of the Police Reform Act 2002 (c. 30) and amended by paragraph 14 of Schedule 22 to the Criminal Justice and Immigration Act 2008 (c. 4); section 4 was substituted by paragraph 15 of Schedule 22 to the Criminal Justice and Immigration Act 2008 (c. 4).  
(2) S.I. 2004/653, as amended by S.I. 2005/3389.  
(3) S.I. 2004/654

- “the 1987 Act” means the Ministry of Defence Police Act 1987;
- “the 1996 Act” means the Police Act 1996(4);
- “the 1998 Act” means the Police (Northern Ireland) Act 1998(5);
- “the 2002 Act” means the Police Reform Act 2002(6);
- “the 2006 Act” means the Police, Public Order and Criminal Justice (Scotland) Act 2006(7);
- “the Complaints Regulations” means the Police (Complaints and Misconduct) Regulations 2004(8);
- “Agency” means the Ministry of Defence Police and Guarding Agency;
- “Agency staff member” means any person other than a police officer who is employed by the Secretary of State in the Agency;
- “allegation” means an allegation relating to a complaint or conduct matter;
- “appropriate authority” means—
- (a) where the officer concerned is a senior officer, the Ministry of Defence Police Committee;
  - (b) in any other case, the chief constable;
- “appeal hearing” means an appeal to the police appeals tribunal in accordance with the Ministry of Defence Police Appeals Tribunals Regulations 2009(9);
- “appeal meeting” means a meeting held in accordance with regulation 39 following a misconduct meeting;
- “bank holiday” means a day which is a bank holiday under the Banking and Financial Dealings Act 1971(10) in England and Wales, in Scotland or in Northern Ireland (as the case may be);
- “chief constable” means the chief constable of the force;
- “complainant” means—
- (a) in relation to England and Wales, a person who would, in accordance with section 12(1) (a) to (c) (as the case may be) of the 2002 Act, constitute a complainant for the purposes of Part 2 of that Act;
  - (b) in relation to Scotland, a person who would, in accordance with section 34(6)(a) to (c) (as the case may be) of the 2006 Act, constitute a complainer for the purposes of Part 1 of that Act; or
  - (c) in relation to Northern Ireland, the person by, or on behalf of whom, a complaint is made;
- “complaint” means—
- (a) in relation to England and Wales, a matter which would, in accordance with section 12 of the 2002 Act, constitute a complaint for the purposes of Part 2 of that Act;
  - (b) in relation to Scotland, a matter which would, in accordance with section 34 of the 2006 Act, constitute a complaint for the purposes of Part 1 of that Act; or
  - (c) in relation to Northern Ireland, a matter which would, in accordance with section 52 of the 1998 Act, constitute a complaint for the purposes of Part 7 of that Act;
- “conduct” includes acts, omissions and statements (whether actual, alleged or inferred);

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(4) 1996 c. 16.

(5) 1998 c. 32.

(6) 2002 c. 30.

(7) 2006 asp 10

(8) S.I. 2004/643, as amended by S.I. 2008/2866

(9) S.I. 2009/3070

(10) 1971 c. 80.

“conduct matter” means any matter which is not and has not been the subject of a complaint but in the case of which there is an indication (whether from circumstances or otherwise) that a member of the force may have—

- (a) committed a criminal offence; or
- (b) behaved in a manner which would justify the bringing of disciplinary proceedings;

“the Commission” means the Independent Police Complaints Commission established under section 9 of the 2002 Act;

“counsel” means—

- (a) in England and Wales, a relevant lawyer;
- (b) in Scotland, an advocate; and
- (c) in Northern Ireland, a barrister in independent practice;

“criminal proceedings” means—

- (a) any prospective criminal proceedings; or
- (b) all criminal proceedings brought which have not been brought to a conclusion (apart from the bringing and determination of any appeal other than an appeal against conviction);

“disciplinary action” means, in order of seriousness starting with the least serious action—

- (a) management advice;
- (b) a written warning;
- (c) a final written warning;
- (d) an extension to a final written warning as described in regulation 35(6)(b);
- (e) dismissal with notice; or
- (f) dismissal without notice;

“disciplinary proceedings” means, other than in paragraph (7) of this regulation, any proceedings under these Regulations and any appeal from misconduct proceedings or a special case hearing dealt with under the Ministry of Defence Police Appeals Tribunals Regulations 2009;

“document” means anything in which information of any description is recorded and includes any recording of a visual image or images;

“the force” means the Ministry of Defence Police;

“gross misconduct” means a breach of the Standards of Professional Behaviour so serious that dismissal would be justified;

“harm test” has the meaning given to it in regulation 4;

“HMCIC” means—

- (a) in relation to England and Wales and Northern Ireland, Her Majesty’s Chief Inspector of Constabulary appointed under section 54(1) of the 1996 Act (appointment and functions of inspectors of constabulary); and
- (b) in relation to Scotland, Her Majesty’s Chief Inspector of Constabulary Scotland appointed under section 33(1) of the Police (Scotland) Act 1967(11) (Inspectors of Constabulary);

“informant” means a person who provides information to an investigation on the basis that the person’s identity is not disclosed during the course of the disciplinary proceedings;

“interested party” means a person whose appointment could reasonably give rise to a concern as to whether he or she could act impartially under these Regulations;

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

“investigator” means a person—

- (a) appointed under regulation 13;
- (b) in relation to England and Wales, appointed or designated under paragraph 16, 17, 18 or 19 of Schedule 3 (handling of complaints and conduct matters) to the 2002 Act (investigations); or
- (c) in relation to Northern Ireland, appointed or designated under section 54, 56 and 57 of the 1998 Act;

as the case may be;

“management action” means action or advice intended to improve the conduct of the officer concerned;

“management advice” means management action imposed following misconduct proceedings or an appeal meeting;

“Ministry of Defence Police Committee” means the committee appointed by the Secretary of State under section 1(5) of the 1987 Act or, in relation to any function under these Regulations that that committee has determined is to be delegated to a sub-committee appointed by the committee, the sub-committee to which it is so delegated;

“misconduct” means a breach of the Standards of Professional Behaviour, but which does not amount to gross misconduct;

“misconduct hearing” means a hearing to which the officer concerned is referred under regulation 19 and at which the officer may be dealt with by disciplinary action up to and including dismissal;

“misconduct meeting” means a meeting to which the officer concerned is referred under regulation 19 and at which the officer may be dealt with by disciplinary action up to and including a final written warning;

“misconduct proceedings” means a misconduct meeting or misconduct hearing;

“the officer concerned” means the police officer in relation to whose conduct there has been an allegation;

“the Ombudsman” means the Police Ombudsman for Northern Ireland established under section 51 of the 1998 Act;

“alternative police force” means one of the police forces in paragraph (2)(c) of this regulation;

“other police officer” means a police officer from an alternative police force;

“personal file” means the personal file maintained in accordance with the Ministry of Defence Statement of Civilian Personnel Policy Handling Personal Data;

“police friend” means a person chosen by the officer concerned in accordance with regulation 6;

“police officer” means a member of the force;

“proposed witness” means a witness whose attendance at the misconduct proceedings the officer concerned or the appropriate authority (as the case may be) wishes to request of the person conducting or chairing those proceedings;

“relevant lawyer” has the same meaning as in section 4(4) of the 1987 Act, subject to the provisions of paragraph 35 of Schedule 27 to the Criminal Justice and Immigration Act 2008(12);

“the Restoring Efficiency Procedures” means the Ministry of Defence ‘Restoring Efficiency Unsatisfactory work performance’ and the ‘Restoring Efficiency Procedures for unsatisfactory attendance due to excessive sick absence’;

“senior officer” means a member of the force holding a rank above that of chief superintendent;

“special case hearing” means a hearing to which the officer concerned is referred under regulation 41 after the case has been certified as a special case;

“special case proceedings” means the referral of a case to a special case hearing and any proceedings at or in connection with such a hearing;

“special conditions” means the conditions in paragraph (2)(b) of this regulation;

“staff association” means—

- (a) in relation to a member of the force other than a senior officer, the Defence Police Federation; and
- (b) in relation to a senior officer, the Chief Police Officers’ Staff Association;

“Standards of Professional Behaviour” means the standards of professional behaviour contained in the Schedule; and

“working day” means any day other than a Saturday or Sunday or a day which is a bank holiday or a public holiday in England and Wales, in Scotland or in Northern Ireland (as the case may be);

(2) In these Regulations—

- (a) a reference to a copy of a statement shall, where it was not made in writing, be construed as a reference to a copy of an account of that statement;
- (b) the “special conditions” are that—
  - (i) there is sufficient evidence, in the form of statements, documents or other material, without the need for further evidence, whether written or oral, to establish on the balance of probabilities that the conduct of the officer concerned constitutes gross misconduct; and
  - (ii) it is in the public interest for the officer concerned to cease to be a police officer without delay;
- (c) the police forces are—
  - (i) any force maintained under section 2 of the 1996 Act;
  - (ii) the metropolitan police force;
  - (iii) the City of London police force;
  - (iv) the British Transport Police Force;
  - (v) the Civil Nuclear Constabulary;
  - (vi) any force maintained under section 1 of the 1967 Act; or
  - (vii) the Police Service for Northern Ireland;

(3) For the purposes of these Regulations—

- (a) a written warning shall remain in force for a period of 12 months beginning on the day on which the warning takes effect; and

- (b) subject to regulations 35(6)(b) and 55(2)(b), a final written warning shall remain in force for a period of 18 months from the date on which it takes effect.

(4) The reference to the period of—

- (a) 12 months in paragraph (3)(a); and
- (b) 18 months in paragraph (3)(b) and regulations 35(7) and 55(3),

shall not include any time when the officer concerned is taking ‘Extended Special Unpaid Leave’ under the Ministry of Defence Police Statement of Civilian Personnel Policy Extended Special Unpaid Leave.

shall not include any time when the officer concerned is taking ‘Extended Special Unpaid Leave’ under the Ministry of Defence Police Statement of Civilian Personnel Policy Extended Special Unpaid Leave.

(5) Where the appropriate authority is—

- (a) the chief constable, the appropriate authority may, subject to paragraph (6), delegate any of its functions under these Regulations to a member of the force of at least the rank of chief inspector; or
- (b) the Ministry of Defence Police Committee, it may delegate any of its functions under these Regulations to a sub-committee appointed by the Committee

(6) Where the chief constable, as the appropriate authority, delegates any functions under regulation 10 or 41, the decisions shall be authorised by a senior officer.

(7) Any proceedings under these Regulations are disciplinary proceedings for the purposes of—

- (a) in relation to England and Wales, section 29(1) of the 2002 Act where the Secretary of State and the Commission have entered into an agreement under section 26(1) of the 2002 Act; and
- (b) in relation to Northern Ireland, section 50(1) of the 1998 Act where the Secretary of State and the Ombudsman have entered into an agreement under section 60 of the 1998 Act.

### **The harm test**

4. Information in documents which are stated to be subject to the harm test under these Regulations shall not be supplied to the officer concerned in so far as the appropriate authority considers that preventing disclosure is—

- (a) necessary for the purpose of preventing the premature or inappropriate disclosure of information that is relevant to, or may be used in, any criminal proceedings;
- (b) necessary in the interests of national security;
- (c) necessary for the purpose of the prevention or detection of crime, or the apprehension or prosecution of offenders;
- (d) necessary for the purpose of the prevention or detection of misconduct or gross misconduct by a police officer or other police officers or their apprehension for such matters;
- (e) justified on the grounds that providing the information would involve disproportionate effort in comparison to the seriousness of the allegations against the officer concerned;
- (f) necessary and proportionate for the protection of the welfare and safety of any informant or witness; or
- (g) otherwise in the public interest.

## PART 2

### General

#### Application

5.—(1) These Regulations apply where an allegation comes to the attention of an appropriate authority which indicates that the conduct of a police officer may amount to misconduct or gross misconduct.

(2) These Regulations apply to all members of the force who are serving in the United Kingdom or outside the United Kingdom whilst on detached duty from a station in the United Kingdom.

(3) It does not matter for the purposes of these Regulations whether or not the member of the force is on duty at the time of the conduct.

#### Police Friend

6.—(1) The officer concerned may choose—

- (a) a police officer or other police officer;
- (b) an Agency staff member; or
- (c) a person nominated by his or her staff association,

who is not otherwise involved in the matter, to act as the police friend.

(2) A police friend may—

- (a) advise the officer concerned throughout the proceedings under these Regulations;
- (b) unless the officer concerned has the right to be legally represented and chooses to be so represented, represent the officer concerned at the misconduct proceedings or special case hearing or appeal meeting;
- (c) make representations to the appropriate authority concerning any aspect of the proceedings under these Regulations; and
- (d) accompany, and take notes for, the officer concerned at any interview, meeting or hearing which forms part of any proceedings under these Regulations.

(3) Where a police friend is a police officer or an Agency staff member under the direction and control of the chief constable, the chief constable shall permit the police friend to use a reasonable amount of duty time for the purposes referred to in paragraph (2).

#### Legal and other representation

7.—(1) The officer concerned has the right to be legally represented, by a relevant lawyer of his or her choice, at a misconduct hearing or a special case hearing.

(2) If the officer concerned chooses not to be legally represented at such a hearing the officer may be dismissed or receive any other outcome under regulation 35 or 55 without being represented.

(3) Except in a case where the officer concerned has the right to be legally represented and chooses to be so represented, the officer may be represented at misconduct proceedings or a special case hearing or an appeal meeting only by a police friend.

(4) The appropriate authority may be represented at misconduct proceedings or a special case hearing or an appeal meeting by—

- (a) a police officer; or

- (b) at a misconduct hearing or a special case hearing only, a relevant lawyer (whether or not the officer concerned chooses to be legally represented).
- (5) Subject to paragraph (6), the appropriate authority may appoint a person to advise the person or persons conducting the misconduct proceedings or special case hearing or appeal meeting.
- (6) At a misconduct meeting or an appeal meeting, the person appointed under paragraph (5) shall not be a relevant lawyer.

#### **Provision of notices or documents**

- 8.—(1) Where any written notice or document is to be given or supplied to the officer concerned under these Regulations, it shall be—
- (a) given to the officer concerned in person;
  - (b) left with some person at, or sent by recorded delivery to, the officer’s last known address; or
  - (c) in respect of a written notice under regulation 15(1), given to the officer concerned in person by a police friend where the police friend has agreed with the appropriate authority to deliver the notice.
- (2) Service shall be deemed to be effective (as the case may be) on the date on which—
- (a) it is given to the officer concerned, under paragraph (1)(a) or (c);
  - (b) it is left with some person at the officer’s last known address, under paragraph (1)(b);
  - (c) receipt was recorded, if sent by recorded delivery to the officer’s last known address, under paragraph (1)(b).

#### **Outstanding or possible criminal proceedings**

- 9.—(1) Subject to the provisions of this regulation, proceedings under these Regulations shall proceed without delay.
- (2) Before referring a case to misconduct proceedings or a special case hearing, the appropriate authority shall decide whether misconduct proceedings or special case proceedings would prejudice any relevant criminal proceedings arising out of the same incident.
- (3) For any period during which the appropriate authority considers any misconduct proceedings or special case proceedings would prejudice any such criminal proceedings, no such misconduct or special case proceedings shall take place but any relevant evidence shall be preserved.
- (4) Where a witness who is or may be a witness in any criminal proceedings is to be or may be asked to attend misconduct proceedings, the appropriate authority shall consult the relevant prosecutor (and when doing so must inform the prosecutor of the names and addresses of all such witnesses) before making its decision under paragraph (2).
- (5) For the purposes of this regulation “relevant prosecutor” means—
- (a) in relation to England and Wales, the Director of Public Prosecutions or any other person who has or is likely to have responsibility for the criminal proceedings;
  - (b) in relation to Scotland, the Lord Advocate or any other person who has or is likely to have responsibility for the criminal proceedings; or
  - (c) in relation to Northern Ireland, the Director of Public Prosecutions or any other person who has or is likely to have responsibility for the criminal proceedings.



## **Suspension**

**10.**—(1) The appropriate authority may, subject to the provisions of this regulation, suspend the officer concerned from the office of constable and from membership of the force.

(2) An officer concerned who is suspended under this regulation remains a police officer for the purposes of these Regulations.

(3) A suspension under this regulation shall be with pay.

(4) The appropriate authority shall not suspend a police officer under this regulation unless the following conditions (“the suspension conditions”) are satisfied—

(a) having considered temporary redeployment to alternative duties or to an alternative location as an alternative to suspension, the appropriate authority has determined that such redeployment is not appropriate in all the circumstances of the case; and

(b) it appears to the appropriate authority that either—

(i) the effective investigation of the case may be prejudiced unless the officer concerned is suspended; or

(ii) having regard to the nature of the allegation and any other relevant considerations, the public interest requires that the officer should be suspended.

(5) The appropriate authority may exercise the power to suspend the officer concerned under this regulation at any time from the date on which these Regulations first apply to the officer concerned in accordance with regulation 5 until—

(a) it is decided that the conduct of the officer concerned shall not be referred to misconduct proceedings or a special case hearing; or

(b) such proceedings have concluded.

(6) The appropriate authority may suspend the officer concerned with effect from the date and time of notification which shall be given either—

(a) in writing with a summary of the reasons; or

(b) orally, in which case the appropriate authority shall confirm the suspension in writing with a summary of the reasons before the end of 3 working days beginning with the first working day after the suspension.

(7) The officer concerned (or the police friend) may make representations against the suspension to the appropriate authority—

(a) before the end of 7 working days beginning with the first working day after being suspended;

(b) at any time during the suspension if the officer reasonably believes that circumstances relevant to the suspension conditions have changed.

(8) The appropriate authority shall review the suspension conditions—

(a) on receipt of any representations under paragraph (7)(a);

(b) if there has been no previous review, before the end of 4 weeks beginning with the first working day after the suspension;

(c) in any other case—

(i) on being notified that circumstances relevant to the suspension conditions may have changed (whether by means of representations made under paragraph (7)(b) or otherwise); or

(ii) before the end of 4 weeks beginning with the day after the previous review.

(9) Where, following a review under paragraph (8), the suspension conditions remain satisfied and the appropriate authority decides the suspension should continue, it shall, before the end of 3

working days beginning with the day after the review, so notify the officer concerned in writing with a summary of the reasons.

(10) Subject to paragraph (12), where the officer concerned is suspended under this regulation, the officer shall remain so suspended until whichever of the following occurs first—

- (a) the suspension conditions are no longer satisfied;
- (b) either of the events mentioned in paragraph (5)(a) and, subject to paragraph (11), (5)(b).

(11) Where an officer concerned who is suspended is dismissed with notice under regulation 35 the officer shall remain suspended until the end of the notice period.

(12) In a case to which, in relation to England and Wales paragraph 17, 18 or 19 of Schedule 3 to the 2002 Act (investigations) applies, or in relation to Northern Ireland, section 56 or 57 of the 1998 Act applies, the appropriate authority must consult with the Commission or the Ombudsman (as the case may be)—

- (a) in deciding whether or not to suspend the officer concerned under this regulation; and
- (b) before a suspension under this regulation is brought to an end by virtue of paragraph (10) (a).

## PART 3

### Investigations

#### **Application of this Part**

11.—(1) This Part shall not apply to a case to which—

- (2) In relation to England and Wales, paragraph 16, 17, 18 or 19 of Schedule 3 to the 2002 Act (investigations) applies; or
- (3) In relation to Northern Ireland, section 54, 56 or 57 of the 1998 Act applies.

#### **Assessment of conduct**

12.—(1) Subject to paragraph (6) the appropriate authority shall assess whether the conduct which is the subject matter of the allegation, if proved, would amount to misconduct or gross misconduct or neither.

(2) Where the appropriate authority assesses that the conduct, if proved, would amount to neither misconduct nor gross misconduct, it may—

- (a) take no action;
- (b) take management action against the officer concerned; or
- (c) refer the matter to be dealt with under the Restoring Efficiency Procedures.

(3) Where the appropriate authority assesses that the conduct, if proved, would amount to misconduct, it shall determine whether or not it is necessary for the matter to be investigated and—

- (a) if so, the matter shall be investigated and the appropriate authority shall further determine whether, if the matter were to be referred to misconduct proceedings, those would be likely to be a misconduct meeting or a misconduct hearing;
- (b) if not, the appropriate authority may—
  - (i) take no action; or
  - (ii) take management action against the officer concerned.

(4) Where the appropriate authority determines that the conduct, if proved, would amount to gross misconduct, the matter shall be investigated.

(5) At any time before the start of misconduct proceedings, the appropriate authority may revise its assessment of the conduct under paragraph (1) if it considers it appropriate to do so.

(6) Where the appropriate authority decides under this regulation to take no action, take management action or to refer the matter to be dealt with under the Restoring Efficiency Procedures, it shall so notify the officer concerned in writing as soon as practicable.

### **Appointment of investigator**

**13.**—(1) This regulation applies where the matter is to be investigated in accordance with regulation 12.

(2) The appropriate authority shall appoint a person to investigate the matter.

(3) If the officer concerned is the chief constable, the appropriate authority shall notify the Secretary of State.

(4) No person shall be appointed to investigate the matter under this regulation who—

- (a) does not have an appropriate level of knowledge, skills and experience to plan and manage the investigation;
- (b) is an interested party;
- (c) works, directly or indirectly, under the management of the officer concerned;
- (d) in a case where the officer concerned is a senior officer, is—
  - (i) the chief constable of the force;
  - (ii) another member of the force.

### **Investigation**

**14.** The purpose of the investigation is to—

- (a) gather evidence to establish the facts and circumstances of the alleged misconduct or gross misconduct;
- (b) assist the appropriate authority to establish whether there is a case to answer in respect of misconduct or gross misconduct or whether there is no case to answer.

### **Written notices**

**15.**—(1) The investigator shall as soon as is reasonably practicable after being appointed, and subject to paragraph (3), cause the officer concerned to be given written notice—

- (a) describing the conduct that is the subject matter of the allegation and how that conduct is alleged to fall below the Standards of Professional Behaviour;
- (b) of the appropriate authority's assessment of whether that conduct, if proved, would amount to misconduct or gross misconduct;
- (c) that there is to be an investigation into the matter and the identity of the investigator;
- (d) of whether, if the matter were to be referred to misconduct proceedings, those proceedings would be likely to be a misconduct meeting or a misconduct hearing and the reason for this;
- (e) that if the likely form of any misconduct proceedings to be held changes, further notice (with reasons) will be given;
- (f) informing the officer of the right to seek advice from his or her staff association or any other body and of the effect of regulation 6(1);

- (g) of the effect of regulations 7(1) to (3) and 16;
- (h) informing the officer that, although he or she does not have to say anything, adverse inferences may be drawn if any information is not mentioned during any interview pursuant to regulation 17 or provided under regulation 16(1) or 22(2) or (3), but is later relied on in any misconduct proceedings or special case hearing or at an appeal meeting or appeal hearing.

(2) If following service of the notice under paragraph (1), the appropriate authority revises its assessment of the conduct in accordance with regulation 12(5) or its determination of the likely form of any misconduct proceedings to be taken, the appropriate authority shall, as soon as practicable, give the officer concerned further written notice of—

- (a) the assessment of whether the conduct, if proved, would amount to misconduct or gross misconduct as the case may be and the reason for that assessment;
- (b) whether, if the case were to be referred to misconduct proceedings, those would be likely to be a misconduct meeting or a misconduct hearing and the reason for this.

(3) The requirement to give a written notice to the officer concerned under paragraph (1) does not apply for so long as the investigator considers that giving such a notice might prejudice the investigation or any other investigation (including, in particular, a criminal investigation).

(4) Once a written notice has been given in accordance with paragraph (1), the investigator shall notify the officer concerned of the progress of the investigation—

- (a) if there has been no previous notification following the supply of the written notice under paragraph (1), before the end of 4 weeks beginning with the first working day after the start of the investigation; and
- (b) in any other case, before the end of 4 weeks beginning with the first working day after the previous notification.

### **Representations to the investigator**

**16.**—(1) Before the end of 10 working days starting with the first working day after which the notice is served under regulation 15(1) (unless this period is extended by the investigator)—

- (a) the officer concerned may provide a written or oral statement relating to any matter under investigation to the investigator; and
- (b) the officer concerned or the police friend may provide any relevant documents to the investigator.

(2) The investigator shall, as part of the investigation, consider any such statement or document and shall make a record of having received it.

(3) In this regulation “relevant document”—

- (a) means a document relating to any matter under investigation, and
- (b) includes such a document containing suggestions as to lines of inquiry to be pursued or witnesses to be interviewed.

### **Interviews during investigation**

**17.**—(1) Where an investigator wishes to interview the officer concerned as part of the investigation, the investigator shall, if reasonably practicable, agree a date and time for the interview with the officer concerned.

(2) Where no date and time are agreed under paragraph (1), the investigator shall specify a date and time for the interview.

(3) Where a date and time are specified under paragraph (2) and—

(a) the officer concerned or the police friend will not be available at that date and time; and  
(b) the officer concerned proposes an alternative date and time which satisfies subsection (4),  
the interview shall be postponed to the time proposed by the officer concerned.

(4) An alternative time must—

(a) be reasonable; and

(b) fall before the end of the period of 5 working days beginning with the first working day after the day specified by the investigator.

(5) The officer concerned shall be given written notice of the date, time and place of the interview.

(6) The investigator shall, in advance of the interview, provide the officer concerned with such information as the investigator considers appropriate in the circumstances of the case to enable the officer concerned to prepare for the interview.

(7) The officer concerned shall attend the interview.

(8) A police friend may not answer any questions asked of the officer concerned during the interview.

### **Report of investigation**

**18.**—(1) On completion of the investigation the investigator shall as soon as practicable submit a written report on the investigation to the appropriate authority.

(2) The written report shall—

(a) provide a summary of the evidence;

(b) attach or refer to any relevant documents; and

(c) indicate the investigator's opinion as to whether there is a case to answer in respect of misconduct or gross misconduct or whether there is no case to answer.

(3) If at any time during the investigation the investigator believes that the appropriate authority would, on consideration of the matter, be likely to determine that the special conditions are satisfied, the investigator shall, whether or not the investigation is complete, submit to the appropriate authority—

(a) a statement of the belief and the grounds for it; and

(b) a written report on the investigation to that point.

## **PART 4**

### **Misconduct Proceedings**

#### **Referral of case to misconduct proceedings**

**19.**—(1) Subject to regulation 41 and paragraph (6)—

(a) on receipt of the investigator's written report; and

(b) in relation to England and Wales, in the case of such a report submitted under paragraph 22 of Schedule 3 to the 2002 Act (final reports on investigations), in making a determination under paragraph 23(7) or 24(6) of Schedule 3 to the 2002 Act (action in response to an investigation report) as to what action to take in respect of matters dealt with in that report; or

(c) in relation to Northern Ireland, in the case of such a report submitted under section 56(6) or 57(8) of the 1998 Act, in making a determination under section 58, 58A(13) or 59 of the 1998 Act as to what action to take in respect of matters dealt with in that report, the appropriate authority shall, as soon as practicable, determine whether the officer concerned has a case to answer in respect of misconduct or gross misconduct or whether there is no case to answer.

(2) Subject to paragraph (6), in a case where the disciplinary 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, subject to regulation 41(3), make a further determination as to whether the officer concerned has a case to answer in respect of misconduct or gross misconduct or whether there is no case to answer.

(3) Where the appropriate authority determines there is no case to answer, it may—

- (a) take no further action against the officer concerned;
- (b) take management action against the officer concerned; or
- (c) refer the matter to be dealt with under the Restoring Efficiency Procedures.

(4) Where the appropriate authority determines that there is a case to answer in respect of gross misconduct, it shall, subject to regulation 9(3) and paragraph (2), refer the case to a misconduct hearing.

(5) Where the appropriate authority determines that there is a case to answer in respect of misconduct, it may—

- (a) subject to regulation 9(3) and paragraph (2), refer the case to misconduct proceedings; or
- (b) take management action against the officer concerned.

(6) Where the appropriate authority—

- (a) in relation to England and Wales, accepts a recommendation under paragraph 27(3) of Schedule 3 to the 2002 Act (duties with respect to disciplinary proceedings) that proceedings are brought at a misconduct meeting or a misconduct hearing; or has a duty under paragraph 27(4) (duties with respect to disciplinary proceedings) of that Schedule to comply with a direction to give effect to such a recommendation; or
- (b) in relation to Northern Ireland, accepts a recommendation under section 59(2) of the 1998 Act that disciplinary proceedings should be brought in respect of the conduct; or has a duty under section 59(6) of that Act to comply with a direction to bring disciplinary proceedings;

it shall, subject to regulation 9(3), refer the case to a misconduct meeting or a misconduct hearing.

(7) Where the appropriate authority fails to—

- (a) make the determination referred to in paragraph (1); and
- (b) where appropriate, decide what action to take under paragraph (5),

before the end of 15 working days beginning with the first working day after receipt of the investigator's written report, it shall notify the officer concerned of the reason for this.

(8) Where under paragraph (5) the appropriate authority determines to take management action, it shall give the officer concerned written notice of this as soon as practicable.

(9) Where the appropriate authority determines under paragraph (5) to refer the case to misconduct proceedings—

- (a) where 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), those proceedings shall be a misconduct hearing;

- (b) where the officer concerned has been reduced in rank under the Restoring Efficiency Procedures less than 18 months prior to the assessment of conduct under regulation 12(1) or regulation 14A of the Complaints Regulations (as the case may be), those proceedings shall be a misconduct hearing; and
- (c) in all other cases those proceedings shall be a misconduct meeting.

### **Withdrawal of case**

**20.**—(1) Subject to paragraph (3), at any time before the beginning of the misconduct proceedings, the appropriate authority may direct that the case be withdrawn.

- (2) Where a direction is given under paragraph (1)—
  - (a) the appropriate authority may—
    - (i) take no further action against the officer concerned;
    - (ii) take management action against the officer concerned; or
    - (iii) refer the matter to be dealt with under the Restoring Efficiency Procedures; and
  - (b) the appropriate authority shall as soon as practicable give the officer concerned—
    - (i) written notice of the direction, indicating whether any action will be taken under paragraph (2)(a); and
    - (ii) where the investigation has been completed, on request and subject to the harm test, a copy of the investigator's report or such parts of that report as relate to the officer concerned.
- (3) This regulation shall not apply to a case to which—
  - (a) in relation to England and Wales, paragraph 16, 17, 18 or 19 of Schedule 3 to the 2002 Act (investigations) applies; or
  - (b) in relation to Northern Ireland, section 54, 56 or 57 of the 1998 Act applies.

### **Notice of referral to misconduct proceedings and panel membership**

**21.**—(1) Where a case is referred to misconduct proceedings, the appropriate authority shall as soon as practicable give the officer concerned—

- (a) written notice of—
    - (i) the referral;
    - (ii) the conduct that is the subject matter of the case and how that conduct is alleged to amount to misconduct or gross misconduct as the case may be;
    - (iii) the name of the person appointed to (in the case of a misconduct meeting for an officer other than a senior officer) conduct or (in any other case) chair the misconduct proceedings and of the effect of paragraphs (3) to (6) of this regulation; and
    - (iv) the effect of regulation 7(1) to (3) in relation to the form of misconduct proceedings to which the case is being referred;
  - (b) a copy of any statement the officer may have made to the investigator during the course of the investigation; and
  - (c) subject to the harm test, a copy of—
    - (i) the investigator's report or such parts of that report as relate to the officer (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) As soon as practicable after—

- (a) any person has been appointed under regulation 7(5) to advise the person or persons conducting the misconduct proceedings; and
- (b) where the misconduct proceedings are to be conducted by a panel, the person or persons comprising that panel (other than the chair) have been determined,

the appropriate authority shall give the officer concerned written notice of the names of such persons and of the effect of paragraphs (3) to (6) of this regulation.

(3) The officer concerned may object to any person notified under this regulation who is to—

- (a) conduct (including chair) the misconduct proceedings; or
- (b) advise the person or persons conducting those proceedings.

(4) Any such objection must be made in writing to the appropriate authority before the end of 3 working days beginning with the first working day after the officer concerned is given notice of the person's name and must set out the grounds of objection of the officer concerned.

(5) The appropriate authority shall notify the officer concerned in writing whether it upholds or rejects an objection to any panel member or to any person appointed under regulation 7(5) to advise the person or persons conducting the misconduct proceedings.

(6) If the appropriate authority upholds the objection, the person to whom the officer concerned objects shall be replaced (in accordance with regulations 7(5) and (6) or 25 to 27 as appropriate).

(7) As soon as reasonably practicable after any such appointment, the appropriate authority shall notify in writing the officer concerned of the name of the new panel member, or the adviser to the person or persons conducting the misconduct proceedings, as the case may be.

(8) The officer concerned may object to the appointment of a person appointed under paragraph (6).

(9) Any such objection must be made in accordance with paragraph (4), provided that it must be made before the end of 3 working days beginning with the first working day after receipt of the notification referred to in paragraph (7); and the appropriate authority shall comply with paragraphs (5) to (7) in relation to that objection.

(10) In this regulation “relevant document” means a document which, in the opinion of the appropriate authority, is relevant to the case the officer concerned has to answer.

### **Procedure on receipt of notice**

22.—(1) Before the end of—

- (a) 14 working days beginning with the first working day after the documents have been supplied to the officer concerned under regulation 21(1); or
- (b) where that period is extended by the person conducting or chairing the misconduct proceedings for exceptional circumstances, such extended period,
- (c) the officer concerned shall comply with paragraphs (2) and (3).

(2) The officer concerned shall provide to the appropriate authority—

- (a) written notice of whether or not it is accepted that the conduct amounts to misconduct or gross misconduct as the case may be;
- (b) where the officer accepts that the conduct amounts to misconduct or gross misconduct as the case may be, any written submission the officer wishes to make in mitigation;
- (c) where the officer does not accept that the conduct amounts to misconduct or gross misconduct as the case may be, or disputes part of the case, written notice of—
  - (i) the allegations disputed and the officer's account of the relevant events; and



(ii) any arguments on points of law the officer wishes to be considered by the person or persons conducting the misconduct proceedings.

(3) The officer concerned shall provide the appropriate authority with a copy of any document the officer intends to rely on at the misconduct proceedings.

(4) Before the end of 3 working days beginning with the first working day after the date on which the officer concerned has complied with paragraph (2), the appropriate authority and the officer concerned shall each supply to the other a list of proposed witnesses or give notice that they do not have any proposed witnesses; and any list of proposed witnesses shall include brief details of the evidence that each witness is able to adduce and their address.

(5) Where there are proposed witnesses, the officer concerned shall, if reasonably practicable, agree a list of proposed witnesses with the appropriate authority.

### **Witnesses**

**23.**—(1) As soon as practicable after any list of proposed witnesses has been—

(a) agreed under regulation 22(5); or

(b) where there is no agreement under regulation 22(5), supplied under regulation 22(4),

the appropriate authority shall supply that list to the person conducting or chairing the misconduct proceedings.

(2) The person conducting or chairing the misconduct proceedings shall—

(a) consider the list or lists of proposed witnesses; and

(b) subject to paragraph (3), determine which, if any, witnesses should attend the misconduct proceedings.

(3) No witness shall give evidence at misconduct proceedings unless the person conducting or chairing those proceedings reasonably believes that it is necessary for the witness to do so in the interests of justice, in which case—

(a) where the witness is a police officer, that person shall be ordered to attend the misconduct proceedings; and

(b) in any other case, the witness shall be given notice that attendance is necessary and of the date, time and place of the proceedings.

(4) The person conducting or chairing the misconduct proceedings may determine that witnesses should be reimbursed for their reasonable expenses; and any such expenses are to be met out of Ministry of Defence funds.

### **Timing and notice of misconduct proceedings**

**24.**—(1) Subject to paragraphs (2) and (6), the misconduct proceedings shall take place—

(a) in the case of a misconduct meeting, before the end of 20 working days, or

(b) in the case of a misconduct hearing, before the end of 30 working days,

beginning with the first working day after the documents have been supplied to the officer concerned under regulation 21(1).

(2) The person conducting or chairing the misconduct proceedings may extend the period specified in paragraph (1) where it is considered in the interests of justice to do so.

(3) Where the person conducting or chairing the misconduct proceedings decides to extend the period under paragraph (2), or decides not to do so following representations from the officer concerned or the appropriate authority, written notification shall be provided of the reasons for that decision to the appropriate authority and the officer concerned.

(4) The person conducting or chairing the misconduct proceedings shall, if reasonably practicable, agree a date and time for the misconduct proceedings with the officer concerned.

(5) Where no date and time are agreed under paragraph (4), the person conducting or chairing the misconduct proceedings shall specify a date and time for those proceedings.

(6) Where a date and time are specified under paragraph (5) and—

(a) the officer concerned or the police friend will not be available at that date and time; and

(b) the officer concerned proposes an alternative date and time which satisfies subsection (7), the misconduct proceedings shall be postponed to the time proposed by the officer concerned.

(7) An alternative date and time must—

(a) be reasonable; and

(b) fall before the end of 5 working days beginning with the first working day after the day specified by the person conducting or chairing the misconduct proceedings.

(8) The officer concerned shall be given written notice of the date, time and place of the misconduct proceedings.

#### **Persons conducting misconduct proceedings: officers other than senior officers**

**25.**—(1) This regulation applies where the officer concerned is an officer other than a senior officer.

(2) The misconduct meeting shall be conducted by a person appointed by the appropriate authority who is not an interested party and who satisfies paragraph (3).

(3) The person shall be—

(a) another member of the force of at least one rank higher than the officer concerned; or

(b) unless the case substantially involves operational policing matters, an Agency staff member who, in the opinion of the appropriate authority, is more senior than the officer concerned.

(4) Where the case is referred to a misconduct hearing, that hearing shall be conducted by a panel of three persons appointed by the appropriate authority, comprising—

(a) a senior officer, who shall be the chair;

(b) a police officer of the rank of superintendent or above, who is of at least one rank above the officer concerned; and

(c) 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 misconduct proceedings: chief constable**

**26.**—(1) Where the officer concerned is the chief constable the misconduct proceedings shall be conducted by a panel of persons as specified in paragraph (2) or (3) as appropriate, appointed by the appropriate authority.

(2) For a misconduct meeting, those persons are—

(a) the chair of the Ministry of Defence Police Committee, or another member of that Committee nominated by the chair, who shall chair the meeting; and

(b) HMCIC or an inspector of constabulary nominated by HMCIC.

(3) For a misconduct hearing, those persons are—

(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 misconduct proceedings: other senior officers**

27.—(1) Where the officer concerned is a senior officer other than the chief constable, the misconduct proceedings shall be conducted by a panel of persons as specified in paragraph (2) or (3) as appropriate, appointed by the appropriate authority.

- (2) For a misconduct meeting, those persons are—
  - (a) the chief constable, who shall be the chair; and
  - (b) the chair of the Ministry of Defence Police Committee or another member of that Committee nominated by the chair.
- (3) For a misconduct hearing, those persons are—
  - (a) HMCIC or an inspector of constabulary nominated by HMCIC, who shall be the chair;
  - (b) 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**

28.—(1) Prior to the hearing the appropriate authority shall supply the person or persons conducting the misconduct proceedings with a copy of—

- (a) the documents given to the officer concerned under regulation 21(1)(a) to (c);
- (b) the documents provided by the officer concerned under—
  - (i) regulation 22(2) and (3); and
  - (ii) where paragraph (2) applies, regulation 45; and
- (c) where the officer concerned does not accept that the conduct amounts to misconduct or gross misconduct as the case may be or where the officer disputes any part of the case, any other documents that, in the opinion of the appropriate authority, should be considered at the misconduct proceedings.

(2) This paragraph applies where the appropriate authority has directed, in accordance with regulation 42(1), that the case be dealt with under this Part.

(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 such document which the officer has not already been supplied with.

#### **Attendance of officer concerned at misconduct proceedings**

29.—(1) Subject to paragraph (2), the officer concerned shall attend the misconduct proceedings.

(2) Where the officer concerned informs the person conducting or chairing the misconduct proceedings in advance that the officer is unable to attend on grounds which the person conducting

or chairing those proceedings considers reasonable, that person may allow the officer concerned to participate in the proceedings by video link or other means.

(3) Where the officer concerned is allowed to and does so participate in the misconduct proceedings or where the officer concerned does not attend the misconduct proceedings—

- (a) the officer may nonetheless be represented at those proceedings by the—
  - (i) police friend; or
  - (ii) in the case of a misconduct hearing, the relevant lawyer (in which case the police friend may also attend); and
- (b) the proceedings may be proceeded with and concluded in the absence of the officer concerned whether or not the officer is so represented.

(4) Where the officer concerned is represented in accordance with paragraph (3), the person representing the officer concerned or the 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 misconduct proceedings**

**30.—**(1) The Commission or Ombudsman (as the case may be) may attend the misconduct proceedings to make representations in any case where—

- (a) in relation to the Commission, 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 or supervised investigations) applied and the Commission—
  - (i) made a recommendation under paragraph 27(3) of that Schedule (duties with respect to disciplinary proceedings) which the appropriate authority accepted; or
  - (ii) gave a direction under paragraph 27(4)(a) of that Schedule (duties with respect to disciplinary proceedings),
- (b) in relation to the Ombudsman, section 56 of the 1998 Act applied; or section 57 of that Act applied and the Ombudsman—
  - (i) made a recommendation under section 59(2) of that Act which the appropriate authority accepted; or
  - (ii) gave a direction under section 59(5).

(2) Where the Commission or Ombudsman (as the case may be) so attends the misconduct proceedings—

- (a) if it is a misconduct hearing 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 misconduct proceedings shall notify the officer concerned prior to the hearing.

(3) The investigator or a nominated person shall attend the misconduct proceedings on the request of the person conducting or chairing those proceedings 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 paragraph 18 or 19 of Schedule 3 to the 2002 Act (managed and independent investigations by Commission) applied, the Commission; or
- (c) in a case to which section 56 (formal investigation by Ombudsman) of the 1998 Act applied, the Ombudsman,

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

### **Attendance of complainant or interested person at misconduct proceedings**

**31.**—(1) This regulation shall apply in the case of misconduct proceedings 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 the investigation of a complaint which was certified as subject to special requirements under paragraph 19B(1)(14) 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 misconduct proceedings.

(3) Subject to the provisions of this regulation, regulation 33 and any conditions imposed under regulation 32(8), the complainant or any interested person may attend the misconduct proceedings as an observer up to but not including the point at which the person or panel conducting those proceedings considers the question of disciplinary action.

(4) Subject to paragraph (5), regulation 33 and any conditions imposed under regulation 32(8), a complainant or interested person may 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.

(5) Where a complainant or interested person is to give evidence as a witness at the misconduct proceedings, that witness and any person accompanying that witness shall not be allowed to attend the proceedings before giving evidence.

(6) The person conducting or chairing the misconduct proceedings may put any questions to the officer concerned that the complainant or interested person requested to be put.

(7) For the purposes of this regulation, a person has a special need who, in the opinion of the person conducting or chairing the misconduct proceedings, has a disability or learning difficulty, or does not have sufficient knowledge of English, to fully participate in or understand the misconduct proceedings.

### **Attendance of others at misconduct proceedings**

**32.**—(1) Subject to regulation 31 and the provisions of this regulation, the misconduct proceedings shall be in private.

(2) A person nominated by the Commission or Ombudsman (as the case may be) may, as an observer, attend misconduct proceedings which arise 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 27(3) of that Schedule (duties with respect to disciplinary proceedings) which the appropriate authority accepted, or
  - (ii) gave a direction under paragraph 27(4)(a) of that Schedule (duties with respect to disciplinary proceedings);

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(14) Paragraph 19B was inserted into the 2002 Act by paragraph 5 of Schedule 23 to the Criminal Justice and Immigration Act 2008 (c. 4).

(b) in relation to Northern Ireland, section 56 of the 1998 Act applied; or section 57 of that Act applied and the Ombudsman—

- (i) made a recommendation under section 59(2) of that Act which the appropriate authority accepted; or
- (ii) gave a direction under section 59(5).

(3) Subject to any contrary decision by the person conducting or chairing the misconduct proceedings, a witness other than a complainant, interested person or the officer concerned, shall only attend the misconduct proceedings for the purpose of giving their evidence.

(4) The person conducting or chairing the misconduct proceedings may permit a witness in the misconduct proceedings to be accompanied at those proceedings by one other person.

(5) Where a misconduct hearing arises from a case to which, in relation to England and Wales paragraph 19 of Schedule 3 to the 2002 Act (investigations by the Commission) applied, or in relation to Northern Ireland section 56 of the 1998 Act (formal investigation by the Ombudsman) applied, and the Commission or Ombudsman considers that because of the gravity of the case or other exceptional circumstances it would be in the public interest to do so, the Commission or Ombudsman may, having consulted with—

- (a) the appropriate authority;
- (b) the officer concerned;
- (c) the complainant or interested person; and
- (d) any witnesses,

direct that the whole or part of the misconduct hearing be held in public.

(6) It shall be the duty of the persons conducting the misconduct hearing to comply with a direction given under paragraph (5).

(7) A direction under paragraph (5), together with the reasons for it, shall be notified as soon as practicable, and in any event before the end of 5 working days beginning with the first working day after the direction was given, to the persons consulted under that paragraph.

(8) The person conducting or chairing the misconduct proceedings may impose such conditions as he or she sees fit relating to the attendance under regulation 31 or this regulation of persons at the misconduct proceedings (including circumstances in which they may be excluded) in order to facilitate the proper conduct of the proceedings.

### **Exclusion from misconduct proceedings**

**33.** Where it appears to the person conducting or chairing the misconduct proceedings that any person may, in giving evidence, disclose information which, under the harm test, ought not to be disclosed to any person attending the proceedings, such attendees shall be required to withdraw while the evidence is given.

### **Procedure at misconduct proceedings**

**34.—(1)** Subject to these Regulations, the person conducting or chairing the misconduct proceedings shall determine the procedure at those proceedings.

(2) The misconduct proceedings shall not proceed unless the officer concerned has been notified of the effect of regulation 7(1) to (3) in relation to the form of misconduct proceedings taking place.

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

(4) The misconduct proceedings shall not, except in exceptional circumstances, be adjourned solely to allow the complainant or any witness or interested person to attend.

- (5) The person representing the officer concerned may—
- (a) address the proceedings 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;
    - (iv) make representations concerning any aspect of proceedings under these Regulations; and
    - (v) subject to paragraph (8), ask questions of any witnesses; and
  - (b) confer with the officer concerned.
- (6) Where (at a misconduct hearing) the person representing the officer concerned is a relevant lawyer, the police friend of the officer concerned may also confer with the officer concerned.
- (7) The police friend or relevant lawyer of the officer concerned may not answer any questions asked of the officer concerned during the misconduct proceedings.
- (8) Whether any question should or should not be put to a witness shall be determined by the person conducting or chairing the misconduct proceedings.
- (9) The person conducting or chairing the misconduct proceedings may allow any document to be considered at those proceedings notwithstanding that a copy of it has not been supplied—
- (a) by the officer concerned in accordance with regulation 22(3); or
  - (b) to the officer concerned in accordance with regulation 21(1).
- (10) Where evidence is given at the misconduct proceedings 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 16(1), 22(2) or (3) (or, where paragraph (11) applies, regulation 45),
- failed to mention any fact relied on by the officer concerned in the case at the misconduct proceedings, 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 (12) applies.
- (11) This paragraph applies where the appropriate authority has directed, in accordance with regulation 42(1), that the case be dealt with under this Part.
- (12) Where this paragraph applies, the person or persons conducting the misconduct proceedings may draw such inferences from the failure as appear proper.
- (13) The person or persons conducting the misconduct proceedings shall review the facts of the case and decide whether the conduct of the officer concerned amounts—
- (a) in the case of a misconduct meeting, to misconduct or not; or
  - (b) in the case of a misconduct hearing, to misconduct, gross misconduct or neither.
- (14) The person or persons conducting the misconduct proceedings shall not find that the conduct of the officer concerned amounts to misconduct or 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 misconduct proceedings conducted by a panel, any decision shall be based on a majority (with, where there is a panel of two or four, 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 misconduct proceedings**

35.—(1) Subject to the provisions of this regulation, the person or persons conducting the misconduct proceedings may—

- (a) impose any of the disciplinary action in paragraph (2)(a) or (b) or (6)(b) as appropriate; or
- (b) where they find the conduct amounts to misconduct but not gross misconduct following a misconduct meeting or hearing, record a finding of misconduct but take no further action.

(2) The disciplinary action is—

(a) at a misconduct meeting—

- (i) management advice;
- (ii) written warning; or
- (iii) final written warning;

(b) at a misconduct hearing—

- (i) management advice;
- (ii) written warning;
- (iii) final written warning;
- (iv) dismissal with notice; or
- (v) dismissal without notice.

(3) The disciplinary action referred to in paragraph (2) shall have effect from the date on which it is notified to the officer concerned and, in the case of dismissal with notice, the person or persons conducting the misconduct hearing shall decide the period of notice to be given, subject to a minimum period of 28 days.

(4) Where the person or persons conducting the misconduct proceedings finds that the conduct of the officer concerned amounts to misconduct but not gross misconduct following a misconduct hearing, unless 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), the officer concerned may not be dismissed whether with or without notice.

(5) Where the officer concerned had a 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 written warning shall not be given.

(6) 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) neither a written warning nor a final written warning shall be given; but
- (b) subject to paragraph (8), in exceptional circumstances, the final written warning may be extended.

(7) Where a final written warning is extended under paragraph (6)(b), that warning shall remain in force for a period of 18 months from the date on which it would otherwise expire.

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

(9) Where there is a finding of gross misconduct and the persons conducting the misconduct hearing decide that the officer concerned shall be dismissed, the dismissal shall be without notice.

(10) Where the question of disciplinary action is being considered, the person or persons conducting the misconduct proceedings—

- (a) shall have regard to the record of police service of the officer concerned as shown on the personal file;



- (b) may receive evidence from any witness whose evidence would, in their opinion, assist them in determining the question; and
- (c) shall give—
  - (i) the officer concerned, the police friend or, at a misconduct hearing, the relevant lawyer; and
  - (ii) the appropriate authority or person appointed to represent the appropriate authority in accordance with regulation 7(4);

an opportunity to make oral or written representations before any such question is determined.

### **Notification of outcome**

**36.**—(1) The officer concerned shall be informed by the appropriate authority of—

- (a) the finding of the person or persons conducting the misconduct proceedings; and
- (b) any disciplinary action imposed,

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 misconduct proceedings.

(2) Where there was a finding of misconduct or gross misconduct a written notice under this regulation shall include—

- (a) where the officer concerned is an officer other than a senior officer—
  - (i) if the case was decided at a misconduct meeting, notice of the right of appeal under regulation 38; or
  - (ii) if the case was decided at a misconduct hearing, notice of the right of appeal to a police appeals tribunal;
- (b) where the officer concerned is a senior officer, notice of the right of appeal to a police appeals tribunal.

(3) In all cases referred to in paragraph (2) a written notice under this regulation shall include the name of the person to whom an appeal should be sent.

### **Record of misconduct proceedings**

**37.**—(1) A record of the misconduct proceedings shall be taken and in the case of a misconduct hearing that record shall be verbatim.

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

### **Appeal from misconduct meeting: officers other than senior officers**

**38.**—(1) Where the officer concerned is an officer, other than a senior officer, whose case was decided at a misconduct meeting, the officer may, subject to the provisions of this regulation, appeal—

- (a) if it was admitted the conduct amounted to misconduct, against any disciplinary action imposed under regulation 35; or
- (b) if (after misconduct was denied) the person conducting the misconduct meeting found that the conduct amounted to misconduct, against that finding or against any disciplinary action imposed under regulation 35.

(2) The only grounds of appeal under this regulation are that—

- (a) the finding or disciplinary action imposed was unreasonable;
  - (b) there is evidence that could not reasonably have been considered at the misconduct meeting which could have materially affected the finding or decision on disciplinary action; or
  - (c) there was a serious breach of the procedures set out in these Regulations or other unfairness which could have materially affected the finding or decision on disciplinary action.
- (3) An appeal under this regulation shall be commenced by the officer concerned giving written notice of appeal to the appropriate authority—
- (a) before the end of 7 working days beginning with the first working day after the written notice and summary of reasons is given under regulation 36 (unless this period is extended by the appropriate authority for exceptional circumstances);
  - (b) stating the grounds of appeal and whether a meeting is requested.
- (4) An appeal under this regulation shall be determined—
- (a) where the person who conducted the misconduct meeting was a member of the force, by—
    - (i) a member of the force of at least one rank higher than that person; or
    - (ii) unless the case substantially involves operational policing matters, an Agency staff member who, in the opinion of the appropriate authority, is more senior than that person;
  - (b) where the person who conducted the misconduct meeting was an Agency staff member, by—
    - (i) a member of the force who, in the opinion of the appropriate authority is more senior than that person; or
    - (ii) a more senior Agency staff member;
  - (c) who is not an interested party, appointed by the appropriate authority.
- (5) The appropriate authority shall as soon as practicable give the officer concerned written notice of—
- (a) the name of the person appointed to determine the appeal under paragraph (4);
  - (b) the name of any person appointed under regulation 7(5) to advise the person determining the appeal; and
  - (c) the effect of paragraphs (6) to (9) of this regulation.
- (6) The officer concerned may object to any person appointed under this regulation or regulation 7(5) to—
- (a) determine the appeal; or
  - (b) advise the person determining the appeal.
- (7) Any such objection must be made in writing to the appropriate authority before the end of 3 working days beginning with the first working day after the officer concerned is given notice of the person's name and must set out the grounds of objection of the officer concerned.
- (8) The appropriate authority shall notify the officer concerned in writing whether it upholds or rejects an objection to the person appointed to conduct the appeal meeting or to any person appointed under regulation 7(5) to advise the person conducting the appeal meeting.
- (9) If the appropriate authority upholds the objection, the person to whom the officer concerned objects shall be replaced (in accordance with regulation 7(5) or paragraph (4) as appropriate).
- (10) As soon as reasonably practicable after any such appointment, the appropriate authority shall notify in writing the officer concerned of the name of the new person appointed to determine the appeal or of the new advisor to the person determining the appeal as the case may be.

(11) The officer concerned may object to the appointment of a person appointed under paragraph (9).

(12) Any such objection must be made in accordance with paragraph (7), provided that it must be made before the end of 3 working days beginning with the first working day after the officer concerned is given the notice referred to in paragraph (10); and the appropriate authority shall comply with paragraphs (8) to (10) in relation to that objection.

### **Appeal meeting**

**39.**—(1) This regulation applies where the officer concerned requests a meeting in the written notice of appeal under regulation 38(3).

(2) The person determining the appeal shall determine whether the notice of appeal sets out arguable grounds of appeal and—

- (a) if it does, that person shall hold an appeal meeting with the officer concerned, subject to paragraphs (3) and (5), before the end of 5 working days beginning with the first working day after that determination; or
- (b) if it does not, that person shall dismiss the appeal.

(3) The person determining the appeal may extend the time period specified in paragraph (2)(a) where that person considers that it would be in the interests of justice to do so.

(4) The person determining the appeal shall specify a date and time for the appeal meeting.

(5) Where—

- (a) the officer concerned or the police friend will not be available at that date and time; and
  - (b) the officer concerned proposes an alternative date and time which satisfies subsection (6),
- the appeal meeting shall be postponed to the date and time proposed by the officer concerned.

(6) An alternative date and time must—

- (a) be reasonable; and
- (b) fall before the end of 5 working days beginning with the first working day after the day specified by the person determining the appeal.

(7) Written notice of the date, time and place of the appeal meeting shall be given to—

- (a) the officer concerned;
- (b) where the misconduct meeting arose from a complaint which was certified as subject to special requirements under paragraph 19B(1) of Schedule 3 to the 2002 Act (assessment of seriousness of conduct), the complainant; and
- (c) where the misconduct meeting arose from a conduct matter to which, in relation to England and Wales paragraph 16, 17, 18 or 19 of Schedule 3 to the 2002 Act (investigations) applied, or in relation to Northern Ireland section 54, 56 or 57 of the 1998 Act applied, any interested person.

(8) Prior to the appeal meeting the appropriate authority shall supply the person determining the appeal with a copy of—

- (a) the documents given to the person who held the misconduct meeting as specified in regulation 28(1);
- (b) the notice of appeal given by the officer concerned under regulation 38(3);
- (c) the record of the misconduct meeting taken under regulation 37(1); and
- (d) any evidence of a kind referred to in regulation 38(2)(b) that the officer concerned wishes to submit in support of the appeal.

### **Procedure and finding of the appeal**

**40.**—(1) Subject to the provisions of this regulation, the person determining the appeal shall determine the procedure at the appeal meeting.

(2) Subject to paragraph (4), any interested person or complainant given notice of the appeal meeting under regulation 39(7) may attend the appeal meeting as an observer up to but not including the point at which the person determining the appeal considers the question of disciplinary action.

(3) Subject to paragraph (4), a complainant or interested person may 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) The person determining the appeal may impose conditions relating to the attendance of persons under paragraph (2) or (3) at the appeal meeting (including circumstances in which they may be excluded) in order to facilitate the proper conduct of the appeal meeting.

(5) The person determining the appeal may—

(a) confirm or reverse the decision appealed against;

(b) deal with the officer concerned in any manner in which the person conducting the misconduct meeting could have dealt with the officer under regulation 35.

(6) Before the end of 3 working days beginning with the first working day after the determination of the appeal, the officer concerned shall be given written notice of that determination with a summary of the reasons.

(7) The decision of the person determining the appeal shall take effect by way of substitution for the decision of the person conducting the misconduct meeting and as from the date of the written notice of the outcome of that meeting.

(8) In a case where—

(a) in relation to England and Wales, paragraph 18 or 19 of Schedule 3 to the 2002 Act applied (managed and independent investigations), or paragraph 16 or 17 of Schedule 3 to the 2002 Act (investigation by appropriate authority and supervised investigations) applied and the Commission—

(i) made a recommendation under paragraph 27(3) of that Schedule (duties with respect to disciplinary proceedings) which the appropriate authority accepted; or

(ii) gave a direction to the appropriate authority under paragraph 27(4) of that Schedule (duties with respect to disciplinary proceedings); or

(b) in relation to Northern Ireland, section 56 of the 1998 Act applied; or section 57 of that Act applied and the Ombudsman—

(i) made a recommendation under section 59(2) of that Act which the appropriate authority accepted; or

(ii) gave a direction under section 59(5),

the appropriate authority shall give the Commission or Ombudsman (as the case may be) written notice of the determination of the appeal with a summary of the reasons.

(9) For the purposes of this regulation, a person has a special need who, in the opinion of the person determining the appeal, has a disability or learning difficulty, or does not have sufficient knowledge of English, to understand the appeal meeting.

## 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<sup>(15)</sup> (special cases: recommendation or direction of Commission).

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<sup>(15)</sup> 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).

### **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.

(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 lawyer

an 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.

## **PART 6**

### **Record Keeping**

#### **Record of disciplinary proceedings**

58.—(1) Subject to paragraph (2), the chief constable shall cause a record to be kept of disciplinary proceedings and special case proceedings brought against every officer concerned, together with the finding and decision on disciplinary action and the decision in any appeal by the officer concerned.

(2) Where the officer concerned is the chief constable, the Ministry of Defence Police Committee shall cause such a record to be kept.

21st November 2009

*Kevan Jones*  
Parliamentary Under Secretary of State  
Ministry of Defence

## SCHEDULE

Regulation 3

### Standards of Professional Behaviour

#### **Honesty and Integrity**

Police officers are honest, act with integrity and do not compromise or abuse their position.

#### **Authority, Respect and Courtesy**

Police officers act with self-control and tolerance, treating members of the public and colleagues with respect and courtesy.

Police officers do not abuse their powers or authority and they respect the rights of all individuals.

#### **Equality and Diversity**

Police officers act with fairness and impartiality. They do not discriminate unlawfully or unfairly.

#### **Use of Force**

Police officers only use force to the extent that it is necessary, proportionate and reasonable in all the circumstances.

#### **Orders and Instructions**

Police officers only give and carry out lawful orders and instructions.

Police officers abide by police regulations, force policies and lawful orders.

#### **Duties and Responsibilities**

Police officers are diligent in the exercise of their duties and responsibilities.

#### **Confidentiality**

Police officers treat information with respect and access or disclose it only in the proper course of police duties.

#### **Fitness for Duty**

Police officers when on duty or presenting themselves for duty are fit to carry out their responsibilities.

#### **Discreditable Conduct**

Police officers behave in a manner which does not discredit the police service or undermine public confidence in it, whether on or off duty.

Police officers report any action taken against them for a criminal offence, any conditions imposed on them by a court or the receipt of any penalty notice.

#### **Challenging and Reporting Improper Conduct**

Police officers report, challenge or take action against the conduct of colleagues which has fallen below the Standards of Professional Behaviour.

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

The Regulations establish procedures for the taking of disciplinary proceedings in respect of the conduct of members of the Ministry of Defence Police (“police officers”). They apply to all police officers, although for senior officers (a police officer above the rank of chief superintendent), the persons dealing with some of the proceedings differ. These Regulations also make provision in relation to the representation of police officers by a police friend at any misconduct proceedings and representation by a lawyer at a misconduct hearing or special case hearing at which the officer concerned may be dismissed.

These Regulations apply where an allegation comes to the attention of an appropriate authority (as defined in regulation 3) which indicates that the conduct of a police officer may amount to misconduct or gross misconduct (as defined in regulation 3). This includes an allegation contained within a complaint or conduct matter referred to:

- the Independent Police Complaints Commission in accordance with the Police Reform Act 2002 (“the 2002 Act”), or
- the Police Ombudsman for Northern Ireland in accordance with the Police (Northern Ireland) Act 1998 (“the 1998 Act”)

except that Part 3 of these Regulations (Investigations) does not apply in such cases where Schedule 3 to the 2002 Act or section 54, 56 or 57 of the 1998 Act deal with the investigation of such cases. These are cases where the Commission (under Schedule 3 to the 2002 Act) or the Ombudsman (under section 54, 56 or 57 of the 1998 Act) is involved in the investigation.

Part 1 deals with preliminary matters. Regulation 2 revokes the Ministry of Defence Police (Conduct) Regulations 2004 and the Ministry of Defence Police (Conduct) (Senior Officers) Regulations 2004 save in relation to proceedings outstanding at 1 December 2009. Regulation 3 provides definitions of terms used in these Regulations, including the ‘special conditions’ which trigger the fast track procedure set out in Part 5. Regulation 3 also makes provision in relation to the delegation of the functions of the chief constable for the Ministry of Defence Police and the Ministry of Defence Police Committee under these Regulations. Regulation 4 sets out the harm test, which mirrors provisions in the Police (Complaints and Misconduct) Regulations 2004, placing restrictions on the disclosure of information to the officer concerned in the public interest.

Part 2 deals with general matters. Regulations 6 and 7 make provision about the role of a police friend under these Regulations and the right to legal representation. Regulation 8 deals with the provision of notices or documents to the officer concerned. Regulation 9 provides that disciplinary or special case proceedings should proceed notwithstanding any criminal proceedings unless the appropriate authority considers they would prejudice such criminal proceedings. Regulation 10 makes provision in relation to the suspension of a police officer.

Part 3 deals with the investigation of conduct allegations other than those dealt with under Schedule 3 to the 2002 Act or section 54, 56 or 57 of the 1998 Act. Regulation 12 provides that the appropriate authority must make a preliminary assessment as to whether the conduct, if proved, would amount to misconduct, gross misconduct or neither, and sets out what action must or may be taken as a consequence of that assessment. Regulation 13 deals with the appointment of an investigator who, subject to conditions, may be a police officer, another person employed in the Ministry of Defence Police and Guarding Agency or any other person. Regulation 14 sets out the purpose of the investigation. Regulation 15 provides for notice to be given to the officer concerned that there is to

be an investigation and describes what must be set out in that notice. Regulation 16 provides that the investigator must consider any suggestions as to lines of inquiry made by the officer concerned within the given time limit. Regulation 17 deals with interviews and regulation 18 with the investigation report.

Part 4 relates to misconduct proceedings. Regulation 19 provides that on receipt of the investigator's report (under these Regulations, Schedule 3 to the 2002 Act or section 56 or 57 of the 1998 Act) the appropriate authority must determine whether or not there is a case to answer in respect of misconduct or gross misconduct, and makes provision about the referral of a case to a misconduct meeting or misconduct hearing. Where there is no case to answer, the appropriate authority may take no further action, may take management action or may refer the matter under the Ministry of Defence 'Restoring Efficiency Procedures'. Where there is a case to answer for gross misconduct, the appropriate authority must refer the case to a misconduct hearing. Where there is a case to answer for misconduct, the appropriate authority may refer the case to misconduct proceedings (either a hearing or, more normally, a meeting) or take management action.

Regulation 20 deals with when and how cases may be withdrawn before the start of misconduct meetings; and what action may be taken. Regulation 21 provides that notice must be given to the officer concerned of the referral of their case to misconduct proceedings and provides that the officer may object to the persons appointed to deal with the case. Regulation 22 sets out the information to be provided by the officer concerned on receipt of a notice under regulation 21. Regulation 23 provides that the person conducting or chairing the misconduct proceedings will decide whether any witnesses will attend the proceedings, and that a witness may only attend where it is reasonably believed to be necessary. Regulation 24 deals with the timing and notice of the misconduct proceedings. Regulations 25 to 27 set out the person(s) who will conduct the misconduct proceedings. Regulations 29 to 33 deal with who must and who may attend those proceedings. Regulation 34 covers the procedure at the proceedings.

Regulation 35 deals with the outcomes following misconduct proceedings. At a misconduct meeting the disciplinary action that may be imposed is management advice, a written warning or a final written warning. Such action is also available at a misconduct hearing, along with dismissal with or without notice or, in exceptional circumstances, the extension of a final written warning. Regulation 36 deals with the notice to be provided to the officer of the outcome of the misconduct proceedings. Regulation 37 makes provision for the record of the proceedings, which the officer must on request be supplied with. Regulations 38 to 40 deal with an appeal by a non senior officer from a misconduct meeting. Non senior officers have a right to appeal from a misconduct hearing to a police appeals tribunal (PAT) under the Ministry of Defence Police Appeals Tribunal Regulations 2009 (the PAT Regulations); senior officers have a right of appeal from a misconduct meeting or a misconduct hearing to a PAT under the PAT Regulations.

Part 5 deals with the procedures for special case hearings for those cases where there is written or documentary evidence to establish gross misconduct on the balance of probabilities and it is in the public interest for the officer concerned to cease to be a police officer without delay if the case is proven. Procedures for these cases are fast tracked and there are no witnesses at the hearing.

Part 6 deals with the record to be kept of all proceedings and appeals under these Regulations. Any officer has the right of appeal from a special case hearing to a PAT under the PAT Regulations.

The Schedule sets out the standards of professional behaviour expected of police officers, breach of which constitutes misconduct and a breach of which so serious that dismissal would be justified, constitutes gross misconduct.

These Regulations were laid before Parliament in draft as they are Regulations under section 4 of the Ministry of Defence Police Act 1987 coming into force at a time that is the earliest time at which any Regulations under section 4 are to come into force after the commencement of paragraph 15 of Schedule 22 to the Criminal Justice and Immigration Act 2008 (see section 4(7) of the Ministry of Defence Police Act 1987).

**Status:** *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

Copies of the Restoring Efficiency Procedures and the Ministry of Defence Police Statements of Civilian Personnel Policy Extended Special Unpaid Leave and Civilian Personnel Policy Handling Personal Data referred to in regulation 3 of these Regulations may be obtained from the People, Pay and Pensions Agency (PPPA) at People Service Centre PPPA, Foxhill, Bath BA1 5AB (telephone: 0800 345 7772).