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STATUTORY INSTRUMENTS

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**2017 No. 84**

**POLICE**

**The Ministry of Defence Police (Conduct, Performance and Appeals Tribunals) (Amendment) Regulations 2017**

<i>Made</i>	- - - -	<i>31st January 2017</i>
<i>Laid before Parliament</i>		<i>3rd February 2017</i>
<i>Coming into force</i>	- -	<i>1st March 2017</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 3A(1), (1A) and (3)(a), 4(1) and (2)(c), and 4A(1) and (3) of the Ministry of Defence Police Act 1987(1).

**PART 1**

Preliminary matters

**Citation and commencement**

1. These Regulations may be cited as the Ministry of Defence Police (Conduct, Performance and Appeals Tribunals) (Amendment) Regulations 2017 and come into force on 1st March 2017.

**PART 2**

Amendment of the Ministry of Defence Police (Conduct etc.) Regulations 2015

**Introductory**

2. The Ministry of Defence Police (Conduct etc.) Regulations 2015(2) are amended in accordance with this Part.

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- (1) [1987 c. 4](#). Section 3A was inserted by section 79 of the Police Reform Act [2002 \(c. 30\)](#). It was amended by section 126 of, and Schedule 22 to, the Criminal Justice and Immigration Act [2008 \(c. 4\)](#) and by section 6 of the Armed Forces Act [2011 \(c. 18\)](#). Section 4 was substituted by section 126 of, and Schedule 22 to, the Criminal Justice and Immigration Act 2008. Section 4A was inserted by section 79 of the Police Reform Act 2002. It was amended by section 126 of, and Schedule 22 to, the Criminal Justice and Immigration Act 2008 and by [S.I. 2013/602](#).
- (2) [S.I. 2015/25](#).

### Amendment of regulation 3

3.—(1) Regulation 3 (interpretation) is amended as follows.

(2) In paragraph (1)—

- (a) omit the definition of “the 2013 Order”;
- (b) omit the definition of “alternative police force”;
- (c) after the definition of “the Commission”, insert—

““the Commissioner” means the officer known as the Police Investigations and Review Commissioner, established under section 33 of the Police, Public Order and Criminal Justice (Scotland) Act 2006(3);”;

(d) for the definition of “complainant”, substitute—

““complainant” means a person who makes a complaint, or on behalf of whom a complaint is made, where that complaint is being or has been investigated under external procedures;”;

(e) for the definition of “complaint”, substitute—

““complaint” means an expression of dissatisfaction about the conduct of an MDP officer;”;

(f) in the definition of “document”, omit “or images”;

(g) in the definition of “external procedures”—

(i) in sub-paragraph (a), for “article 3 of the 2013 Order” substitute “an agreement made under section 26(1) of the 2002 Act”(4);

(ii) after the end of sub-paragraph (b), insert “or”;

(iii) after sub-paragraph (b), insert—

“(c) procedures—

(i) established with the Commissioner in accordance with an agreement under article 4 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007(5);

(ii) established with the Commissioner in accordance with an agreement under article 3(5) of the Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013(6); or

(iii) which apply where the Commissioner has been directed to investigate by an appropriate prosecutor, and for this purpose “appropriate prosecutor” has the meaning given by section 47 of the Police, Public Order and Criminal Justice (Scotland) Act 2006(7);”;

(h) for the definition of “interested person”, substitute—

““interested person” means any person who the Commission or a relevant authority consider to have an interest in being kept informed about the handling

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(3) 2006 asp 10. Section 33 was substituted by section 61 of the Police and Fire Reform (Scotland) Act 2012 (asp 8).

(4) Section 26(1) of the Police Reform Act 2002 was amended by section 99 of, and Schedule 16 to, the Police Reform and Social Responsibility Act 2011 (c. 13).

(5) S.I. 2007/1098. Article 4 was amended by section 11 of, and Schedule 6 to, the Crime and Courts Act 2013 (c. 22).

(6) S.I. 2013/602, to which there are amendments which are not relevant to these Regulations.

(7) Section 47 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 was substituted by section 128 of, and Schedule 7 to, the Police and Fire Reform (Scotland) Act 2012.

of a complaint under external procedures, where that person has given consent to being kept so informed;”;

- (i) in the definition of “MOD Police Committee”, for “Ministry of Defence Police Act 1987” substitute “1987 Act”;
- (j) in the appropriate places, insert—
  - ““the 1987 Act” means the Ministry of Defence Police Act 1987;”;
  - ““relevant authority” has the meaning given in section 4(4) of the 1987 Act;”;
  - ““relevant force” has the meaning given in section 2B(3) of the 1987 Act(8);”;
  - ““relevant lawyer” has the meaning given in section 4(4) of the 1987 Act;”.
- (3) After paragraph (2), insert—
  - “(3) For the purposes of these Regulations, the making by an MDP officer of a protected disclosure is not a breach of the Standards of Professional Behaviour, and for this purpose “protected disclosure” has the meaning given by section 43A of the Employment Rights Act 1996(9).”.

#### **Amendment of regulation 4**

- 4.—(1) Regulation 4 (the harm test) is amended as follows.
  - (2) In paragraph (1)—
    - (a) for “are”, substitute “is”;
    - (b) for sub-paragraph (c), substitute—
      - “(c) necessary for the purpose of the prevention or detection of crime, or the apprehension or prosecution of offenders;”;
    - (c) for sub-paragraph (d), substitute—
      - “(d) necessary for the purpose of the prevention or detection of misconduct by —
        - (i) other MDP officers;
        - (ii) persons under the direction and control of the chief constable;
        - (iii) persons under the direction and control of a chief officer of a relevant force,
- or their apprehension for such matters;”.

#### **Amendment of regulation 5**

- 5. In regulation 5(1) (conduct matters)—
  - (a) after the end of sub-paragraph (a), insert “or”;
  - (b) omit sub-paragraphs (c) and (d).

#### **Amendment of regulation 7**

- 6.—(1) Regulation 7 (written warnings) is amended as follows.

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(8) Section 2B of the 1987 Act was inserted by section 78 of the Police Reform Act 2002 and was amended by sections 69 and 197 of, and Schedules 14 and 23 to, the Energy Act 2004 (c. 20), sections 59 and 174 of, and Schedules 4 and 17 to, the Serious Organised Crime and Police Act 2005 (c. 15), and by S.I. 2013/602.

(9) 1996 c. 18. Section 43A was inserted by section 1 of the Public Interest Disclosure Act 1998 (c. 23).

(2) In paragraph (2), for ““Extended Special Unpaid Leave”” to the end, substitute “extended special unpaid leave”.

(3) After paragraph (2), insert—

“(3) In paragraph (2), “extended special unpaid leave” means a period of more than 3 months’ unpaid leave which the Secretary of State has agreed may be taken by the officer concerned.”.

#### **Amendment of regulation 10**

7. In regulation 10(1)(b) (police friend and legal representation), for “an alternative police force” substitute “a relevant force”.

#### **Insertion of regulation 24A**

8. After regulation 24 (withdrawal of case), insert—

##### **“National security: power to give directions in relation to misconduct hearings**

**24A.**—(1) If the Secretary of State considers it expedient in the interests of national security, the Secretary of State may give a direction (“the direction”), in writing, in relation to a misconduct hearing, relating to one or more of the following matters—

- (a) that all or part of the hearing must be conducted in private;
- (b) that a specified person must be excluded from all or part of the hearing;
- (c) that steps must be taken to conceal the identity of a witness;
- (d) that specified information must be excluded from any notice published under regulation 30A (notification of misconduct hearings) or 40A (publication of information in relation to outcome).

(2) The Secretary of State must provide the direction (or a copy of it) to the relevant authority as soon as possible.

(3) Following receipt of the direction, the relevant authority must supply a copy of it to the person conducting or chairing the hearing as soon as possible.

(4) The person conducting or chairing the hearing must comply with the direction.”.

#### **Amendment of regulation 29**

9. In regulation 29 (persons conducting misconduct proceedings: officers other than senior officers), for paragraph (4)(a) substitute—

“(a) a chair selected by the relevant authority from a list of persons who satisfy the judicial-appointment eligibility condition on a 5-year basis and have been nominated by the Secretary of State for the purposes of these Regulations;”(10).

#### **Amendment of regulation 30**

10. In regulation 30 (persons conducting misconduct proceedings: senior officers), for paragraph (3)(a) substitute—

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(10) For the meaning of “judicial-appointment eligibility condition”, see section 50 of the Tribunals, Courts and Enforcement Act 2007 (c. 15).

- “(a) a chair selected by the relevant authority from a list of persons who satisfy the judicial-appointment eligibility condition on a 7-year basis and have been nominated by the Secretary of State for the purposes of these Regulations;”.

### **Insertion of regulation 30A**

#### **11. After regulation 30, insert—**

#### **“Notification of misconduct hearings**

**30A.**—(1) The person (“the chair”) chairing a misconduct hearing may require notice of the hearing to be published which contains information relating to one or more of the matters in paragraph (6).

(2) Before requiring notice to be published under paragraph (1), the chair must—

- (a) specify the date (“the specified date”) by which written representations under paragraph (4) must be provided;
- (b) inform the relevant authority of the specified date; and
- (c) consider any representations made under paragraph (4).

(3) The relevant authority, having been informed of the specified date, must without delay inform the persons in paragraph (5)(a) and (c) to (f) of the specified date in writing.

(4) A person mentioned in paragraph (5) may make written representations to the chair in relation to—

- (a) whether, and (if so) the extent to which, the chair should exclude any person from the whole or part of the hearing under regulation 35(6)(a);
- (b) whether the chair should impose any conditions under regulation 35(6)(b); and
- (c) whether the chair should require notice to be published under paragraph (1) and, if so, which information relating to the matters in paragraph (6) should be included in any such notice.

(5) The persons are—

- (a) the officer concerned;
- (b) the relevant authority;
- (c) the complainant;
- (d) any interested person;
- (e) any witness;
- (f) if the case was investigated under external procedures, the Commission or the Ombudsman.

(6) The matters referred to in paragraphs (1) and (4)(c) are—

- (a) the name of the officer concerned;
- (b) the date of the hearing;
- (c) the time of the hearing;
- (d) the place at which the hearing will take place;
- (e) the conduct that is the subject matter of the case and how that conduct is alleged to amount to misconduct or gross misconduct, as set out in the notice given in accordance with regulation 25(1)(a).

(7) If the chair requires notice to be published in accordance with paragraph (1), the relevant authority must publish the notice on its website at least 5 working days before the day on which the hearing is to begin and, once published, it must remain there until the conclusion of the hearing.”.

#### **Amendment of regulation 34**

**12.**—(1) Regulation 34 (attendance of complainant or interested person at misconduct proceedings) is amended as follows.

(2) For paragraphs (3) and (4), substitute—

“(3) Subject to regulations 35(6) and (7) and 36, a complainant or interested person may attend a misconduct meeting as an observer.

(4) Subject to regulations 35(6) and (7) and 36, a complainant or interested person may be accompanied to a misconduct meeting by one other person, and if the complainant or the interested person has a special need, by one further person to accommodate that need.”.

(3) Omit paragraphs (5) and (6).

#### **Substitution of regulation 35**

**13.** For regulation 35 (attendance of others at misconduct proceedings), substitute—

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

**35.**—(1) Subject to regulations 33 and 34 and paragraphs (3) to (7), a misconduct meeting must be held in private.

(2) Subject to paragraphs (6) and (7) and regulation 36, a misconduct hearing must be held in public.

(3) A person nominated by the Commission or the Ombudsman may attend a misconduct meeting which arises from a case which has been investigated under external procedures as an observer.

(4) Unless expressly authorised by the person conducting or chairing a misconduct meeting, a witness, other than a witness who is also a complainant, an interested person or the officer concerned, may only attend the meeting for the purpose of giving evidence.

(5) The person conducting or chairing a misconduct meeting may permit a witness in the meeting to be accompanied by one other person at that meeting.

(6) The person conducting or chairing the misconduct proceedings may—

(a) exclude from the whole or a part of the proceedings any person who would otherwise be entitled to attend the proceedings by virtue of regulation 34 or this regulation; and

(b) in order to facilitate the proper conduct of those proceedings, impose conditions relating to the attendance at the proceedings of any person who is entitled to attend the proceedings by virtue of regulation 34 or this regulation.

(7) If a person is to give evidence as a witness in misconduct proceedings, the witness, and any person accompanying the witness, must not attend the proceedings before the witness is called to give evidence.”.

### **Amendment of regulation 38**

14.—(1) Regulation 38 (senior officers: meeting of MOD Police Committee to consider disciplinary action) is amended as follows.

(2) In the heading, for “meeting” substitute “further meeting or further hearing”.

(3) For paragraph (3), substitute—

“(3) On receiving a report under paragraph (1), the MOD Police Committee must—

(a) in a case where the report was submitted following a misconduct meeting, hold a further meeting; or

(b) in a case where the report was submitted following a misconduct hearing, hold a further hearing,

for the purpose of considering what disciplinary action (if any) should be imposed.”.

(4) For paragraph (4), substitute—

“(4) The provisions of these Regulations specified in paragraph (6) apply, with the modifications specified in paragraph (7)—

(a) where those provisions relate to misconduct meetings, to a further meeting held under paragraph (3)(a) as if it were a misconduct meeting;

(b) where those provisions relate to misconduct hearings, to a further hearing held under paragraph (3)(b) as if it were a misconduct hearing.”.

(5) In paragraph (5), for “meeting” substitute “further meeting or further hearing”.

(6) In paragraph (6)—

(a) after sub-paragraph (c), insert—

“(ca) regulation 24A(4) (national security: power to give directions in relation to misconduct hearings);”;

(b) after sub-paragraph (f), insert—

“(fa) regulation 30A (notification of misconduct hearings);”.

(7) In paragraph (7)—

(a) in sub-paragraph (a), omit “the Chair of”;

(b) in sub-paragraph (b), omit the “and” at the end;

(c) after sub-paragraph (c), insert—

“(d) in regulation 30A—

(i) paragraph (2)(b) is omitted;

(ii) in paragraph (3), “, having been informed of the specified date,” is omitted;

(iii) paragraph (5)(b) is omitted.”.

### **Amendment of regulation 39**

15. In regulation 39 (outcome of misconduct proceedings), in paragraph (2), for “meeting” substitute “further meeting or further hearing”.

### **Amendment of regulation 40**

16.—(1) Regulation 40 (notification of outcome) is amended as follows.

(2) In paragraph (2), for “meeting” substitute “further meeting or further hearing”.

(3) After paragraph (4), insert—

“(5) If the disciplinary action imposed as a result of the misconduct proceedings is dismissal (whether with or without notice), the relevant authority must send a copy of the written information provided to the officer concerned in accordance with paragraph (1) or (2) to the College of Policing.”.

#### **Insertion of regulation 40A**

17. After regulation 40, insert—

##### **“Publication of information in relation to outcome**

**40A.**—(1) The person (“the chair”) chairing a misconduct hearing, other than a further hearing under regulation 38(3)(b), may, having taken into account any representations made under regulation 30A or during the misconduct hearing, require the relevant authority to publish a notice containing information relating to one or more of the matters in paragraph (3), and the relevant authority must comply with any such requirement.

(2) In relation to a further hearing under regulation 38(3)(b), the relevant authority may, having taken into account any representations made under regulation 30A or during the further hearing, publish a notice during the notification period containing information relating to one or more of the matters in paragraph (3).

(3) The matters referred to in paragraphs (1) and (2) are—

- (a) the name of the officer concerned;
- (b) the conduct that was the subject matter of the case and how that conduct was alleged to amount to misconduct or gross misconduct, as set out in the notice given in accordance with regulation 25(1)(a);
- (c) the finding as a result of the hearing or the further hearing;
- (d) any disciplinary action imposed.

(4) A notice under paragraph (1) or (2) must be published on the relevant authority’s website during the notification period and, once published, it must remain there for a period of at least 28 days.

(5) In paragraph (4), “the notification period” is the period from the beginning of the 7th working day after the date on which the misconduct hearing or the further hearing under regulation 38(3)(b) concluded, until the end of the 12th working day after that date.”.

#### **Amendment of regulation 43**

18. In regulation 43 (appeal meeting), in paragraph (4)(b), for “35(2)” substitute “35(3)”.

#### **Amendment of regulation 44**

19. In regulation 44 (procedure and finding of the appeal), in paragraph (8), for “35(2)” substitute “35(3)”.

#### **Insertion of regulation 45A**

20. After regulation 45 (referral of case to special case hearing), insert—



**“National security: power to give directions in relation to special case hearings**

**45A.**—(1) If the Secretary of State considers it expedient in the interests of national security, the Secretary of State may give a direction (“the direction”), in writing, in relation to a special case hearing, relating to one or more of the following matters—

- (a) that all or part of the hearing must be conducted in private;
- (b) that a specified person must be excluded from all or part of the hearing;
- (c) that steps must be taken to conceal the identity of a witness;
- (d) that specified information must be excluded from any notice published under regulation 52A (notification of special case hearings) or 60(A) (publication of information in relation to outcome).

(2) The Secretary of State must provide the direction (or a copy of it) to the relevant authority as soon as possible.

(3) Following receipt of the direction, the relevant authority must supply a copy of it to the person conducting or chairing the hearing as soon as possible.

(4) The person conducting or chairing the hearing must comply with the direction.”.

**Amendment of regulation 48**

**21.**—(1) Regulation 48 (notice of special case hearing) is amended as follows.

(2) In paragraph (3), omit “, or to nominate a person to attend the hearing as an observer (regulation 56(2) or (3)),”.

(3) After paragraph (3), insert—

“(4) In any special case hearing arising from a case which has been investigated under external procedures, the relevant authority must notify the complainant and all interested persons of the date, time and place of the special case hearing.”.

**Amendment of regulation 50**

**22.**—(1) Regulation 50 (person conducting special case hearing: officers other than senior officers) is amended as follows.

(2) In paragraph (2), for “3” substitute “(3)”.

(3) In paragraph (3), for “an alternative police force” substitute “a relevant force”.

**Amendment of regulation 51**

**23.** In regulation 51 (persons conducting special case hearing: senior officers), for paragraph (2) (a) substitute—

“(a) a chair selected by the relevant authority from a list of persons who satisfy the judicial-appointment eligibility condition on a 7-year basis and have been nominated by the Secretary of State for the purposes of these Regulations;”.

**Insertion of regulation 52A**

**24.** After regulation 52 (documents to be supplied), insert—

### **“Notification of special case hearings**

**52A.**—(1) The person (“the chair”) conducting or chairing a special case hearing may require notice of the hearing to be published which contains information relating to one or more of the matters in paragraph (6).

(2) Before requiring notice to be published under paragraph (1), the chair must—

- (a) specify the date (“the specified date”) by which written representations under paragraph (4) must be provided;
- (b) inform the relevant authority of the specified date; and
- (c) consider any representations made under paragraph (4).

(3) The relevant authority, having been informed of the specified date, must without delay inform the persons in paragraph (5)(a) and (c) to (f) of the specified date in writing.

(4) A person mentioned in paragraph (5) may make written representations to the chair in relation to—

- (a) whether, and (if so) the extent to which, the chair should exclude any person from the whole or part of the hearing under regulation 56(2)(a);
- (b) whether the chair should impose any conditions under regulation 56(2)(b); and
- (c) whether the chair should require notice to be published under paragraph (1) and, if so, which information relating to the matters in paragraph (6) should be included in any such notice.

(5) The persons are—

- (a) the officer concerned;
- (b) the relevant authority;
- (c) the complainant;
- (d) any interested person;
- (e) any witness;
- (f) if the case was investigated under external procedures, the Commission or the Ombudsman.

(6) The matters referred to in paragraphs (1) and (4)(c) are—

- (a) the name of the officer concerned;
- (b) the date of the hearing;
- (c) the time of the hearing;
- (d) the place at which the hearing will take place;
- (e) the conduct that is the subject matter of the case and how that conduct is alleged to amount to gross misconduct, as set out in the notice given in accordance with regulation 46(2).

(7) If the chair requires notice to be published under paragraph (1), the relevant authority must publish the notice on its website at least 5 working days before the day on which the hearing is to begin and, once published, it must remain there until the conclusion of the hearing.”.

### **Revocation of regulation 55**

**25.** Regulation 55 (attendance of complainant and interested persons at special case hearing) is revoked.

## **Substitution of regulation 56**

26. For regulation 56 (attendance of others at special case hearing), substitute—

### **“Attendance of others at special case hearing**

56.—(1) Subject to paragraph (2), a special case hearing must be held in public.

(2) The person conducting or chairing the special case hearing may—

- (a) exclude from the whole or a part of the hearing any person who would otherwise be entitled to attend the hearing by virtue of paragraph (1); and
- (b) in order to facilitate the proper conduct of the hearing, impose conditions relating to the attendance at the hearing of any person who is entitled to attend the hearing by virtue of paragraph (1).

(3) If a person is to give evidence as a witness in a special case hearing, the witness, and any person accompanying the witness, must not attend the hearing before the witness is called to give evidence.”.

## **Amendment of regulation 58**

27.—(1) Regulation 58 (senior officers: meeting of MOD Police Committee to consider disciplinary action) is amended as follows.

(2) In the heading, for “meeting” substitute “further hearing”.

(3) In paragraph (3), for “meet” substitute “hold a further hearing”.

(4) In paragraph (4), for “meeting” substitute “further hearing”.

(5) After paragraph (4), insert—

“(4A) The MOD Police Committee may appoint a person (who may be a relevant lawyer) to advise it at the further hearing.”.

(6) In paragraph (5)—

(a) after sub-paragraph (c), insert—

“(ca) regulation 45A(4) (national security: power to give directions in relation to special case hearings);”;

(b) in sub-paragraph (d), for “and (3)” substitute “, (3) and (4)”;

(c) after sub-paragraph (d), insert—

“(da) regulation 52A (notification of special case hearings);”;

(d) omit sub-paragraph (g).

(7) In paragraph (6)—

(a) in sub-paragraph (a)—

(i) omit “the Chair of”; and

(ii) omit the “and” at the end;

(b) after sub-paragraph (b), insert—

“(c) in regulation 52A—

(i) paragraph (2)(b) is omitted;

(ii) in paragraph (3), “, having been informed of the specified date,” is omitted;

(iii) paragraph (5)(b) is omitted.”.

### **Amendment of regulation 59**

28. In regulation 59 (outcome of special case hearing), in paragraph (8)(a) after “special” insert “case”.

### **Amendment of regulation 60**

29.—(1) Regulation 60 (notification of outcome) is amended as follows.

(2) In paragraph (1)(c), for “meeting” substitute “further hearing”.

(3) In paragraph (2), omit “(senior officers: meeting of MOD Police Committee to consider disciplinary action)”.

(4) In paragraph (4)(b), for “to which regulation 55 applies” substitute “which has been investigated under external procedures”.

(5) After paragraph (4) insert—

“(5) If the disciplinary action imposed as a result of the special case hearing or the further hearing under regulation 58(3) is dismissal (whether with or without notice), the relevant authority must send a copy of the written information provided to the officer concerned in accordance with paragraph (1) or (2) to the College of Policing.”.

### **Insertion of regulation 60A**

30. After regulation 60, insert—

#### **“Publication of information in relation to outcome**

60A.—(1) The person (“the chair”) chairing a special case hearing, other than a further hearing under regulation 58(3), may, having taken into account any representations made under regulation 52A or during the hearing, require the relevant authority to publish a notice containing information relating to one or more of the matters in paragraph (3), and the relevant authority must comply with any such requirement.

(2) In relation to a further hearing under regulation 58(3), the relevant authority may, having taken into account any representations made under regulation 52A or during the further hearing, publish a notice containing information relating to one or more of the matters in paragraph (3).

(3) The matters referred to in paragraphs (1) and (2) are—

- (a) the name of the officer concerned;
- (b) the conduct that was the subject matter of the case and how that conduct was alleged to amount to gross misconduct, as set out in the notice given in accordance with regulation 46(2);
- (c) the finding as a result of the hearing or the further hearing under regulation 58(3);
- (d) any disciplinary action imposed.

(4) A notice under paragraph (1) or (2) must be published on the relevant authority’s website during the notification period and, once published, it must remain there for a period of at least 28 days.

(5) In paragraph (4), “the notification period” is the period from the beginning of the 7th working day after the date on which the special case hearing or the further hearing under regulation 58(3) concluded, until the end of the 12th working day after that date.”.

### **Revocation of paragraph 3 of Schedule 3**

31. In Schedule 3 (amendments of the Performance Regulations), omit paragraph 3.

## **PART 3**

### **Amendment of the Ministry of Defence Police (Performance) Regulations 2012**

#### **Introductory**

32. The Ministry of Defence Police (Performance) Regulations 2012<sup>(11)</sup> are amended in accordance with this Part.

#### **Amendment of regulation 4**

- 33.—(1) Regulation 4(1) (interpretation)<sup>(12)</sup> is amended as follows.
- (2) Omit the definition of “the 2013 Order”.
  - (3) Omit the definition of “alternative police force”.
  - (4) In the definition of “external procedures”, for “article 3 of the 2013 Order” substitute “an agreement made under section 26(1) of the Police Reform Act 2002”.
  - (5) After the definition of “police officer”, insert—  
““relevant force” has the meaning given in section 2B(3) of the 1987 Act;”.
  - (6) Omit the definition of “senior officer of an alternative police force”.

#### **Amendment of regulation 5**

34. In regulation 5(1)(b) (police friend), for “an alternative police force” substitute “a relevant force”.

#### **Amendment of regulation 11**

- 35.—(1) Regulation 11 (suspension of certain periods)<sup>(13)</sup> is amended as follows.
- (2) In paragraph (1), for “leave under the Ministry of Defence Statement of Civilian Personnel Policy Extended Special Unpaid Leave” substitute “extended special unpaid leave”.
  - (3) After paragraph (2), insert—  
“(3) In paragraph (1), “extended special unpaid leave” means a period of more than 3 months’ unpaid leave which the Secretary of State has agreed may be taken by the officer concerned.”.

#### **Amendment of regulation 30**

- 36.—(1) Regulation 30 (appointment of panel members) is amended as follows.
- (2) In paragraph (3), for “an alternative police force” substitute “a relevant force”.
  - (3) In paragraph (4), for “an alternative police force” substitute “a relevant force”.

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<sup>(11)</sup> [S.I. 2012/808](#).

<sup>(12)</sup> Regulation 4 was amended by [S.I. 2015/25](#).

<sup>(13)</sup> Regulation 11 was amended by [S.I. 2015/25](#).

## PART 4

### Amendment of the Ministry of Defence Police Appeals Tribunals Regulations 2009

#### Introductory

**37.** The Ministry of Defence Police Appeals Tribunals Regulations 2009<sup>(14)</sup> are amended in accordance with this Part.

#### Amendment of regulation 3

**38.**—(1) Regulation 3(1) (interpretation)<sup>(15)</sup> is amended as follows.

(2) Omit the definition of “the 1998 Act”.

(3) Omit the definition of “the 2013 Order”.

(4) In the definition of “chair”—

(a) for “5(3)” substitute “5(2)”;

(b) for “22” substitute “22A”.

(5) Move the definition of “head of HR” to the appropriate place in the alphabetical order.

(6) In the definition of “head of HR” (as so moved to the appropriate place), for “Ministry of Defence” substitute “MOD”.

(7) Move the definition of “relevant decision” to the appropriate place in the alphabetical order.

(8) In the definition of “specified appeal”, in sub-paragraph (a), for “article 3 of the 2013 Order” substitute “an agreement made under section 26(1) of the 2002 Act”.

#### Amendment of regulation 5

**39.**—(1) Regulation 5 (appointment and composition of police appeals tribunal)<sup>(16)</sup> is amended as follows.

(2) For paragraph (2)(a), substitute—

“(a) a chair selected from a list of persons who satisfy the judicial-appointment eligibility condition on a 7-year basis and have been nominated by the Secretary of State for the purposes of these Regulations;”.

(3) In paragraph (4)(b)(i), for “an alternative police force” substitute “a relevant force”.

(4) In paragraph (4)(c)(ii), for “an alternative police force” substitute “a relevant force”.

#### Amendment of regulation 8

**40.** In regulation 8(1) (the respondent), for “Ministry of Defence” substitute “MOD”.

#### Insertion of regulation 12A

**41.** After regulation 12 (determination of an appeal), insert—

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<sup>(14)</sup> S.I. 2009/3070.

<sup>(15)</sup> Regulation 3 was amended by S.I. 2012/808, 2013/602 and 2015/25.

<sup>(16)</sup> Regulation 5 was amended by S.I. 2015/25.

**“National security: power to give directions in relation to appeals**

**12A.**—(1) If the Secretary of State considers it expedient in the interests of national security, the Secretary of State may give a direction (“the direction”), in writing, in relation to an appeal hearing, relating to one or more of the following matters—

- (a) that all or part of the hearing must be conducted in private;
- (b) that a specified person must be excluded from all or part of the hearing;
- (c) that steps must be taken to conceal the identity of a witness;
- (d) that specified information must be excluded from any notice published under regulation 14(6) (notice of the hearing) or 22A (publication of information in relation to tribunal’s determination of appeals under regulation 4).

(2) The Secretary of State must provide the direction (or a copy of it) to the relevant authority and the head of HR as soon as possible.

(3) Following receipt of the direction, the head of HR must supply a copy of it to the chair as soon as possible.

(4) The chair must comply with the direction.”.

**Amendment of regulation 14**

**42.**—(1) Regulation 14 (notice of the hearing)(**17**) is amended as follows.

(2) After paragraph (4), insert—

“(5) Paragraphs (6) to (12) apply only to hearings of appeals under regulation 4.

(6) The chair may require notice of the hearing to be published which contains information relating to one or more of the matters in paragraph (11).

(7) Before requiring notice to be published under paragraph (6), the chair must—

- (a) specify the date (“the specified date”) by which written representations under paragraph (9) must be provided;
- (b) inform the head of HR of the specified date; and
- (c) consider any representations made under paragraph (9).

(8) The head of HR, having been informed of the specified date, must without delay inform the persons in paragraph (10)(a) and (c) to (f) of the specified date in writing.

(9) A person mentioned in paragraph (10) may make written representations to the chair in relation to—

- (a) whether, and (if so) the extent to which, the chair should exclude any person from the whole or part of the hearing under regulation 21(1);
- (b) whether the chair should impose any conditions under regulation 21(2); and
- (c) whether the chair should require notice to be published under paragraph (6) and, if so, which information relating to the matters in paragraph (11) should be included in any such notice.

(10) The persons are—

- (a) the appellant;
- (b) the respondent;
- (c) the complainant;
- (d) any interested person;

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(17) Regulation 14 was amended by [S.I. 2015/25](#).

- (e) any witness;
  - (f) if the case was investigated under external procedures, the Commission or the Ombudsman.
- (11) The matters referred to in paragraphs (6) and (9)(c) are—
- (a) the name of the officer concerned;
  - (b) the date of the hearing;
  - (c) the time of the hearing;
  - (d) the place at which the hearing will take place;
  - (e) the finding made under the Conduct Regulations or the disciplinary action, if any, imposed under the Conduct Regulations in consequence of a finding in relation to which the appeal has been brought.
- (12) If the chair requires notice to be published under paragraph (6), the relevant authority must publish the notice on its website at least 5 working days before the day on which the hearing is to begin and, once published, it must remain there until the conclusion of the hearing.”.

#### **Substitution of regulation 18**

**43.** For regulation 18 (hearing to be in private), substitute—

##### **“Attendance at hearing**

- 18.**—(1) Subject to regulations 12A and 21, the hearing of an appeal under regulation 4 must be held in public.
- (2) Subject to paragraph (3) and regulations 19 and 20, the hearing of an appeal under regulation 4A must be held in private.
- (3) The tribunal may allow a person to attend all or part of the hearing of an appeal under regulation 4A as an observer for the purposes of training.”.

#### **Amendment of regulation 19**

- 44.**—(1) Regulation 19 (attendance of complainant at hearing)(**18**) is amended as follows.
- (2) In paragraph (3), after “hearing” insert “of an appeal under regulation 4A”.
- (3) In paragraph (4), after “21,” insert “in the hearing of an appeal under regulation 4A”.
- (4) Omit paragraph (5).

#### **Amendment of regulation 20**

**45.** In regulation 20(3) (attendance of the Commission or Ombudsman (as the case may be) at hearing), after “hearing” insert “of an appeal under regulation 4A”.

#### **Amendment of regulation 21**

- 46.** In regulation 21 (exclusion from hearing), after paragraph (2) insert—
- “(3) If a person is to give evidence as a witness in the hearing, the witness, and any person accompanying the witness, must not attend the hearing before the witness is called to give evidence.”.



## **Amendment of regulation 22**

**47.** In regulation 22 (Tribunal’s determination)(**19**), after paragraph (7), insert—

“(8) If the disciplinary action imposed under the Conduct Regulations was dismissal (whether with or without notice), and on determination of the appeal the tribunal’s decision results in the appellant no longer being dismissed, the relevant authority must notify the College of Policing of the tribunal’s decision.”.

## **Insertion of regulation 22A**

**48.** After regulation 22, insert—

### **“Publication of information in relation to tribunal’s determination of appeals under regulation 4**

**22A.**—(1) This regulation applies to appeals under regulation 4.

(2) The chair may, having taken into account any representations made under regulation 14 or during the appeal hearing, require the relevant authority to publish a notice containing information relating to one or more of the matters in paragraph (3), and the relevant authority must comply with any such requirement.

(3) The matters referred to in paragraph (2) are—

- (a) the name of the appellant;
- (b) the finding made under the Conduct Regulations or the disciplinary action, if any, imposed under the Conduct Regulations in consequence of a finding in relation to which the appeal had been brought;
- (c) the tribunal’s determination of the appeal;
- (d) the reasons for that determination.

(4) A notice under paragraph (2) must be published on the relevant authority’s website during the notification period and, once published, it must remain there for a period of at least 28 days.

(5) In paragraph (4), “the notification period” is the period from the beginning of the 5th working day after the date on which the hearing concluded, until the end of the 10th working day after that date.”.

## **PART 5**

### **Transitional provisions**

#### **Transitional provision in relation to protected disclosures under the Ministry of Defence Police (Conduct etc.) Regulations 2015**

**49.** The amendment made by regulation 3(3) of these Regulations (insertion of regulation 3(3) of the Ministry of Defence Police (Conduct etc.) Regulations 2015: protected disclosures) does not apply to a protected disclosure made before the date on which these Regulations come into force, and for this purpose “protected disclosure” has the meaning given in section 43A of the Employment Rights Act 1996.

**Transitional provision with respect to other amendments to the Ministry of Defence Police (Conduct etc.) Regulations 2015**

**50.**—(1) The amendments in Part 2 are of no effect where the officer concerned was given notice of referral under regulation 25 or 46 of the Ministry of Defence Police (Conduct etc.) Regulations 2015 before the date on which these Regulations come into force, and for this purpose “the officer concerned” has the meaning given in the Ministry of Defence Police (Conduct etc.) Regulations 2015.

(2) Paragraph (1) does not apply to the amendments made by regulations 3 and 6.

**Transitional provision with respect to the amendment of the Ministry of Defence Police Appeals Tribunals Regulations 2009**

**51.** The amendments in Part 4 are of no effect if the notice of appeal under the Ministry of Defence Police Appeals Tribunals Regulations 2009 was given to the relevant authority before the date on which these Regulations come into force, and for this purpose “relevant authority” has the meaning given in section 4(4) of the Ministry of Defence Police Act 1987.

31st January 2017

*Mark Lancaster*  
Parliamentary Under Secretary of State  
Ministry of Defence

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## EXPLANATORY NOTE

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

These Regulations amend the Ministry of Defence Police (Conduct etc.) Regulations 2015 (S.I. 2015/25, “the Conduct Regulations”), the Ministry of Defence Police (Performance) Regulations 2012 (S.I. 2012/808, “the Performance Regulations”) and the Ministry of Defence Police Appeals Tribunals Regulations 2009 (S.I. 2009/3070, “the Appeals Tribunals Regulations”).

Part 2 amends the Conduct Regulations, the principal amendments to which are summarised as follows.

Regulation 3 amends the definition of “external procedures” to include cases involving Ministry of Defence Police officers (“MDP officers”) that have been investigated under the Scottish complaints procedures and which are overseen by the Police Investigation and Review Commissioner. Regulation 3 also amends the Conduct Regulations so that the making of a protected disclosure by an MDP officer is not a breach of the Standards of Professional Behaviour set out in Schedule 1 to those Regulations.

The provision inserted by regulation 8 enables the Secretary of State to give directions in relation to misconduct hearings where it is expedient to do so in order to protect national security.

Regulation 9 makes provision for misconduct hearings for non-senior officers to be conducted by a legally qualified chair.

Regulations 11 to 17 make provision in relation to the publication of information about misconduct hearings and the holding of those hearings in public. The provision inserted by regulation 11 enables the person chairing a misconduct hearing to require publication by the relevant authority of certain information about the hearing at least 5 working days before it starts; it also enables certain persons to make written representations in relation to attendance at the misconduct hearing and the publication of information about the hearing. Regulation 13 makes provision that, subject to exceptions, a misconduct hearing is to take place in public. Regulation 14 makes consequential amendments about further meetings and further hearings of the MOD Police Committee to consider disciplinary action in relation to senior officers. The amendments made by regulation 16 require the relevant authority to notify the College of Policing where an officer is dismissed. The provision inserted by regulation 17 enables publication of certain information about a misconduct hearing between 7 and 12 working days after its conclusion and for representations to be considered in relation to that.

Regulations 20 and 23 to 30 make amendments in relation to special case hearings which are equivalent to the amendments made in relation to misconduct hearings. Regulation 25 revokes regulation 55 (in light of the amendments made by regulations 24 and 26 respectively).

Regulation 31 revokes paragraph 3 of Schedule 3, which purported to make an amendment to the Performance Regulations relating to the definition of extended special unpaid leave.

Part 3 amends the Performance Regulations. In particular, regulation 35 inserts a definition of “extended special unpaid leave”. The other provisions make minor amendments to the Performance Regulations.

Part 4 amends the Appeals Tribunals Regulations. In particular, regulation 38 amends the definition of a “specified appeal”. The provision inserted by regulation 41 enables the Secretary of State to give directions in relation to appeal hearings where it is expedient to do so in order to protect national security. The amendments in regulation 42 enable the person chairing an appeal hearing to require publication by the relevant authority of certain information about the hearing at least 5 working

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days before it starts; they also enable certain persons to make written representations in relation to attendance at the appeal hearing and the publication of information about the hearing.

The amendment in regulation 43 provides that, subject to exceptions, appeals under regulation 4 of the Appeals Tribunals Regulations take place in public.

The amendment made by regulation 47 requires the relevant authority to notify the College of Policing where the dismissal of an officer is reversed on appeal.

The provision inserted by regulation 48 enables publication of certain information about an appeal hearing between 5 and 10 working days after its conclusion and for representations to be considered in relation to that.

Regulations 49 to 51 contain transitional provisions.

An impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.