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*Status: Point in time view as at 01/12/2018.*

*Changes to legislation: There are currently no known outstanding effects for the The Ministry of Defence Police (Conduct and Appeals Tribunals) (Amendment) Regulations 2018. (See end of Document for details)*

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## STATUTORY INSTRUMENTS

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# 2018 No. 1119

## POLICE

### The Ministry of Defence Police (Conduct and Appeals Tribunals) (Amendment) Regulations 2018

<i>Made</i>	- - - -	<i>29th October 2018</i>
<i>Laid before Parliament</i>		<i>31st October 2018</i>
<i>Coming into force</i>	- -	<i>1st December 2018</i>

The Secretary of State, in exercise of the powers conferred by sections 3A(1) to (3), 4(1) to (5) and 4A(1) to (4) and (7) of the Ministry of Defence Police Act 1987<sup>M1</sup>, makes the following Regulations.

#### Marginal Citations

**M1** 1987 c. 4. Section 3A was inserted by section 79(1) of the [Police Reform Act 2002 \(2002 c. 30\)](#). Subsections (1) and (1A) of that section were substituted for subsection (1) as originally enacted by paragraph 14(2) of Schedule 22 to, the [Criminal Justice and Immigration Act 2008 \(2008 c. 4\)](#) (“the 2008 Act”) and subsequently amended by section 6 of the [Armed Forces Act 2011 \(2011 c. 18\)](#). Subsections (1B) to (1H) were inserted by paragraph 2(2) of Schedule 7 to the [Policing and Crime Act 2017 \(2017 c. 3\)](#) (“the 2017 Act”) and subsection (1B) was subsequently amended by paragraph 63(2) of Schedule 9 to the 2017 Act. Subsection (2) was substituted by paragraph 14(3) of Schedule 22 to the 2008 Act and subsequently amended by paragraph 2(1) and (3) of Schedule 7 to the 2017 Act. Section 4 was substituted by paragraph 15 of Schedule 22 to the 2008 Act. Subsection (4) of that section was amended by paragraph 3(a) and (b) of Schedule 7 to the 2017 Act. Subsection (5) was amended by paragraph 63(3) of Schedule 9 to the 2017 Act. Section 4A was inserted by section 79(2) of the [Police Reform Act 2002 \(2002 c. 30\)](#) and subsequently substituted by paragraph 16 of Schedule 22 to the 2008 Act. Subsection (1) of that section was amended by paragraph 4 of Schedule 7 to the 2017 Act and by paragraph 20(6) of Schedule 2 to [S.I. 2013/602](#).

## PART 1

### General

#### Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Ministry of Defence Police (Conduct and Appeals Tribunals) (Amendment) Regulations 2018 and come into force on 1st December 2018.

*Status: Point in time view as at 01/12/2018.*

*Changes to legislation: There are currently no known outstanding effects for the The Ministry of Defence Police (Conduct and Appeals Tribunals) (Amendment) Regulations 2018. (See end of Document for details)*

(2) In these Regulations—

“the 1987 Act” means the Ministry of Defence Police Act 1987;

“the 2009 Regulations” means the Ministry of Defence Police Appeals Tribunals Regulations 2009<sup>M2</sup>;

“the Conduct Regulations” means the Ministry of Defence Police (Conduct etc.) Regulations 2015<sup>M3</sup>.

#### Marginal Citations

**M2** S.I. 2009/3070, amended by S.I. 2017/84.

**M3** S.I. 2015/25, amended by S.I. 2017/84.

## PART 2

### Amendment of the Conduct Regulations

#### Amendment of the Conduct Regulations

2. The Conduct Regulations are amended in accordance with this Part.

#### Amendment of regulation 3 (interpretation)

3. In regulation 3(1)<sup>M4</sup>—

(a) after the definition of “conduct matter”, insert—

““Convention rights” has the meaning given to it in section 1 of the Human Rights Act 1998<sup>M5</sup>.”;

(b) in the definition of “disciplinary proceedings”, omit the words from “and” to the end;

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

(i) after paragraph (b), omit “or”;

(ii) omit paragraph (c);

(d) in the definition of “the officer concerned”, for “has the meaning given in regulation 9(1)” substitute “ means the person in relation to whose conduct as an MDP officer there has been an allegation ”.

#### Marginal Citations

**M4** Regulation 3(1) has been amended but the amendments are not relevant to these Regulations.

**M5** 1998 c. 42.

#### Amendment of regulation 4 (the harm test)

4. In regulation 4(2)(b), for “misconduct” substitute “ disciplinary ”.

#### Amendment of regulation 9 (application)

5. In regulation 9—

- (a) in paragraph (1), omit “(“the officer concerned””);
- (b) after paragraph (1), insert—
  - “(2) Except as set out in paragraph (6), these Regulations also apply, with the modifications set out in Schedule 1A, where—
    - (a) an allegation comes to the attention of a relevant person, or came to the attention of such a person before 1st December 2018 but after 22nd February 2015, which indicates that the conduct of a person who at the time of the alleged conduct was an MDP officer (“P”) may amount to gross misconduct; and
    - (b) Condition A, B or C is satisfied.
  - (3) Condition A is that P ceased to be an MDP officer after the allegation first came to the attention of a relevant person.
  - (4) Condition B is that—
    - (a) P ceased to be an MDP officer before the allegation first came to the attention of a relevant person; and
    - (b) the period between the date P ceased to be an MDP officer and the date the allegation first came to the attention of the relevant person did not exceed 12 months.
  - (5) Condition C is that—
    - (a) P ceased to be an MDP officer before the allegation first came to the attention of a relevant person;
    - (b) the period between the date P ceased to be an MDP officer and the date the allegation first came to the attention of the relevant person exceeded 12 months; and
    - (c) the case to which the allegation relates has been investigated under—
      - (i) external procedures; or
      - (ii) procedures—
        - (aa) 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 <sup>M6</sup>;
        - (bb) 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 <sup>M7</sup>; or
        - (cc) 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 (Consequential Provisions and Modifications) Order 2006 <sup>M8</sup>.
  - (6) Paragraph (2) does not apply in relation to a person who ceased to be an MDP officer before 1st December 2018.”;
- (c) paragraph (2) becomes paragraph (7) and in that paragraph, after “ MDP officer ” insert “ or person in relation to whose alleged conduct these Regulations apply by virtue of paragraph (2) ”;
- (d) after paragraph (7), insert—

*Status: Point in time view as at 01/12/2018.*

*Changes to legislation: There are currently no known outstanding effects for the The Ministry of Defence Police (Conduct and Appeals Tribunals) (Amendment) Regulations 2018. (See end of Document for details)*

“(8) In this regulation, “relevant person” means—

- (a) a relevant authority;
- (b) the Director General;
- (c) the Ombudsman; or
- (d) the Commissioner.”.

#### **Marginal Citations**

- M6** [S.I. 2007/1098](#). Article 4 was amended by section 11 of, and Schedule 6 to, the [Crime and Courts Act 2013 \(c. 22\)](#).
- M7** [S.I. 2013/602](#), to which there are amendments which are not relevant to these Regulations.
- M8** [2006 asp 10](#). Section 47 was substituted by section 128 of, and Schedule 7 to, the Police and Fire Reform (Scotland) Act 2012 ([2012 asp 8](#)).

#### **Amendment of regulation 11 (legal and other representation for the relevant authority)**

6. In regulation 11, in paragraphs (1) and (2), for the words from “misconduct proceedings” to “meeting” substitute “disciplinary proceedings”.

#### **Amendment of regulation 15 (application of Part 3)**

7. In regulation 15, for “will be” substitute “has been”.

#### **Amendment of regulation 24A (national security: power to give directions in relation to misconduct hearings)**

8. In regulation 24A <sup>M9</sup>, in paragraphs (1)(a) and (b), (3) and (4), before “hearing” insert “misconduct”.

#### **Marginal Citations**

- M9** [Regulation 24A](#) was inserted by regulation 8 of [S.I. 2017/84](#).

#### **Amendment of regulation 33 (participation of Director General or Ombudsman and investigator at misconduct proceedings)**

9. In regulation 33 <sup>M10</sup>—

- (a) in paragraph (4), for the words from “instruct” to the end substitute “be represented by a relevant lawyer”;
- (b) in paragraph (6), for “9(2)” substitute “9(7)”.

#### **Marginal Citations**

- M10** Paragraphs (4) and (6) were amended by regulation 32(2) and (5)(b) of [S.I. 2017/1250](#). There are other amendments of regulation 33 but they are not relevant.

### **Amendment of regulation 35 (attendance of others at misconduct proceedings)**

10. In regulation 35<sup>M11</sup>—

- (a) in paragraph (1), omit the words from the beginning to “(7),”;
- (b) in paragraph (2), for “and regulation 36” substitute “, regulation 36 and any direction to the contrary given under regulation 24A ”;
- (c) in paragraph (6), at the end of sub-paragraph (a), insert—
  - “so far as that person considers necessary—
  - (i) in the interests of justice;
  - (ii) to protect the Convention rights of any person; or
  - (iii) where the proceedings involve confidential information and publicity would damage that confidentiality”.

#### **Marginal Citations**

**M11** This regulation was substituted by regulation 13 of [S.I. 2017/84](#). Paragraph (3) was amended by regulation 32(2) of [S.I. 2017/1250](#).

### **Amendment of regulation 38 (senior officers: further meeting or further hearing of MOD Police Committee to consider disciplinary action)**

11. In regulation 38—

- (a) for paragraph (1), substitute—
  - “(1) Where the officer concerned is a senior officer, the persons conducting the misconduct proceedings must, as soon as reasonably practicable after the meeting or hearing—
  - (a) submit to the MOD Police Committee a report setting out—
    - (i) the finding of the persons conducting the proceedings (regulation 37(12));
    - (ii) the reasons for that finding;
    - (iii) in the case of a finding that the conduct of the officer concerned amounted to misconduct or gross misconduct, a recommendation as to any disciplinary action which in their opinion should be imposed; and
    - (iv) any other matter arising out of the proceedings which they desire to bring to the notice of the relevant authority;
  - (b) provide to the MOD Police Committee a copy of the direction (if any) given under regulation 24A(1).”;
- (b) in paragraph (6)(ca)<sup>M12</sup>, for “24A(4)” substitute “ 24A ”;
- (c) in paragraph (7), after sub-paragraph (a) insert—
  - “(aa) in regulation 24A, in paragraphs (3) and (4), “conducting or” is omitted.”.

#### **Marginal Citations**

**M12** Sub-paragraph (ca) was inserted by regulation 14(6)(a) of [S.I. 2017/84](#). There are other amendments of regulation 38 but they are not relevant.

**Amendment of regulation 39 (outcome of misconduct proceedings)**

12. In regulation 39(3) <sup>M13</sup>—

- (a) in sub-paragraph (a), for the words from the beginning to “meeting” substitute “ at a misconduct meeting or, in the case of a senior officer, a further meeting ”;
- (b) in sub-paragraph (b), for the words from the beginning to “hearing” substitute “ at a misconduct hearing or, in the case of a senior officer, a further hearing ”.

**Marginal Citations**

**M13** Paragraph (2) was amended by regulation 15 of [S.I. 2017/84](#).

**Amendment of regulation 45A (national security: power to give directions in relation to special case hearings)**

13. In regulation 45A <sup>M14</sup>, in paragraphs (1)(a) and (b), (3) and (4), before “hearing” insert “ special case ”.

**Marginal Citations**

**M14** [Regulation 45A](#) was inserted by regulation 20 of [S.I. 2017/84](#).

**Substitution of regulation 46 (notice of referral to special case hearing)**

14. For regulation 46 substitute—

**“Notice of referral to special case hearing**

**46.**—(1) Where a case is certified as a special case and referred to a special case hearing (regulation 45(4)), the relevant authority must, before the end of 3 working days beginning with the first working day after the case is so certified—

- (a) give the officer concerned written notice of the certification and referral which describes the conduct which is the subject matter of the case and how that conduct is alleged to amount to gross misconduct; and
- (b) supply the officer with a copy of—
  - (i) the certificate issued under regulation 45(4);
  - (ii) any statement the officer may have made to the investigator during the course of the investigation; and
  - (iii) subject to the harm test—
    - (aa) 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 relates to the officer); and
    - (bb) any other relevant document gathered during the investigation.

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

**Amendment of regulation 48 (notice of special case hearing)**

15. In regulation 48, for paragraph (2) substitute—

- “(2) The relevant authority must immediately notify the officer concerned of—
- (a) the date, time and place of that hearing; and
  - (b) the effect of regulation 10 (police friend and legal representation).”.

**Amendment of regulation 49 (procedure on receipt of notice of special case hearing)**

16. In regulation 49(1), for “48(2)” substitute “ 46(1) ”.

**Amendment of regulation 52 (documents to be supplied)**

17. In regulation 52(1)—
- (a) in sub-paragraph (a), after “the notice” insert “ and other documents ”;
  - (b) omit sub-paragraph (b).

**Amendment of regulation 54 (participation of Director General or the Ombudsman and investigator at special case hearing)**

18. In regulation 54(4) <sup>M15</sup>, for the words from “instruct” to the end substitute “ be represented by a relevant lawyer ”.

**Marginal Citations**

**M15** Paragraph (4) was amended by regulation 32(2) and (6) of [S.I. 2017/1250](#). There are other amendments of regulation 54 but they are not relevant.

**Amendment of regulation 56 (attendance of others at special case hearing)**

19. In regulation 56 <sup>M16</sup>—
- (a) in paragraph (1), after “(2)” insert “ and any direction to the contrary given under regulation 24A ”;
  - (b) in paragraph (2), at the end of sub-paragraph (a), insert—
    - “so far as that person considers necessary—
    - (i) in the interests of justice;
    - (ii) to protect the Convention rights of any person; or
    - (iii) where the proceedings involve confidential information and publicity would damage that confidentiality;”;
  - (c) omit paragraph (3).

**Marginal Citations**

**M16** This regulation was substituted by regulation 26 of [S.I. 2017/84](#).

**Amendment of regulation 57 (procedure at special case hearing)**

20. In regulation 57, after paragraph (8) insert—
- “(8A) 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—

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- (a) supplied to the officer concerned in accordance with regulation 46(1)(b); or
- (b) given by the officer concerned to the relevant authority in accordance with regulation 49(2).”.

**Amendment of regulation 58 (senior officers: further hearing of MOD Police Committee to consider disciplinary action)**

**21.** In regulation 58—

(a) for paragraph (1), substitute—

“(1) Where the officer concerned is a senior officer, the persons conducting the special case hearing must, as soon as reasonably practicable after the hearing—

(a) submit to the MOD Police Committee a report setting out—

- (i) the finding of the persons conducting the hearing (regulation 57(11));
- (ii) the reasons for that finding;
- (iii) in the case of a finding that the conduct of the officer concerned amounted to gross misconduct, a recommendation as to any disciplinary action which in their opinion should be imposed; and
- (iv) any other matter arising out of the hearing which they desire to bring to the notice of the relevant authority; and

(b) provide to the MOD Police Committee a copy of the direction (if any) given under regulation 45A(1).”;

(b) in paragraph (5) <sup>M17</sup>—

- (i) in sub-paragraph (ca), for “45A(4)” substitute “ 45A ”;
- (ii) in sub-paragraph (d), for “48(1), (2)(a), (3) and (4)” substitute “ 48 ”;

(c) in paragraph (6), after sub-paragraph (a) insert—

“(aa) in regulation 45A, in paragraphs (3) and (4), “conducting or” is omitted.”.

**Marginal Citations**

**M17** Sub-paragraph (ca) was inserted, and sub-paragraph (d) was amended, by regulation 27(6)(a) and (b) respectively of [S.I. 2017/84](#). There are other amendments of regulation 58(5) but they are not relevant.

**New Schedule**

**22.** After Schedule 1, insert Schedule 1A which is set out in the Schedule to these Regulations.

**PART 3**

**Amendment of the 2009 Regulations**

**Amendment of the 2009 Regulations**

**23.** The 2009 Regulations are amended in accordance with this Part.

**Amendment of regulation 3 (interpretation)**

**24.** In regulation 3(1) <sup>M18</sup>—



- (a) after the definition of “the 1967 Act”, insert the following definition—  
““the 1996 Act” means the Police Act 1996 <sup>M19</sup>;”;
- (b) in the definition of “appellant”, after “officer” insert “ or a former police officer ”;
- (c) for the definition of “head of HR”, substitute—  
““head of HR” means the head of human resources for the MDP in the Ministry of Defence;”;
- (d) in the definition of “relevant decision”, for “4 or 4A” substitute “ 4, 4A or 4B ”.

#### Marginal Citations

**M18** The definition of “relevant decision” was inserted by regulation 38(7) of [S.I. 2017/84](#). There are other amendments of regulation 3 but they are not relevant. The definition of “head of HR” was inserted and amended by regulation 38(5) and (6) respectively of [S.I. 2017/84](#).

**M19** 1996, c.16.

#### New regulation 4B

**25.** After regulation 4A (circumstances in which a police officer may appeal to a tribunal against a finding or disciplinary action under the Performance Regulations) <sup>M20</sup>, insert—

#### “Circumstances in which a former police officer may appeal to a tribunal

**4B.—**(1) Subject to paragraph (3), a former police officer to whom paragraph (2) applies may appeal to a tribunal in reliance on one or more of the grounds of appeal referred to in paragraph (4) against—

- (a) the finding referred to in paragraph (2)(a) or (b) made under the Conduct Regulations; or
- (b) any decision to impose disciplinary action under the Conduct Regulations in consequence of that finding,

or both.

(2) This paragraph applies to—

- (a) a former police officer against whom a finding of misconduct or gross misconduct has been made at a misconduct hearing; or
- (b) a former police officer against whom a finding of gross misconduct has been made at a special case hearing.

(3) A former police officer may not appeal to a tribunal against the finding referred to in paragraph (2)(a) or (b) where that finding was made following acceptance by the former officer that the former officer's conduct amounted to misconduct or gross misconduct (as the case may be).

(4) The grounds of appeal under this rule are—

- (a) that the finding or decision to impose disciplinary action was unreasonable;
- (b) that there is evidence that could not reasonably have been considered at the original hearing which could have materially affected the finding or decision on disciplinary action; or
- (c) that there was a breach of the Conduct Regulations, or other unfairness which could have materially affected the finding or disciplinary action imposed.”.

*Status: Point in time view as at 01/12/2018.*

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#### Marginal Citations

**M20** Regulation 4A was inserted by regulation 43(3) of [S.I. 2012/808](#).

### Amendment of regulation 5 (appointment and composition of police appeals tribunal)

**26.** In regulation 5 <sup>M21</sup>—

- (a) in paragraphs (1)(a), (2), (4) and (4A), after “original hearing” insert “ or, as the case may be, at the relevant time ”;
- (b) in paragraph (2), for sub-paragraph (a) substitute—
  - “(a) one must be a person chosen from a list of persons who have been nominated by the Lord Chancellor for the purposes of paragraph 1(1)(a) of Schedule 6 to the 1996 Act.”;
- (c) for paragraph (5) substitute—
  - “(5) The chair of the tribunal must be the person referred to in paragraph (2)(a), (4) (a) or (4A)(a) (whichever is relevant).”;
- (d) in paragraph (6)—
  - (i) for “For the purposes of this regulation” substitute “ In this regulation— ”;
  - (ii) the definition of “appropriate staff association” becomes the first definition in this paragraph;
  - (iii) after that definition insert—
    - ““relevant time” means the time immediately before the person ceased to be a police officer.”.

#### Marginal Citations

**M21** Sub-paragraphs (a) to (c) of paragraph (2) were substituted for paragraphs (a) and (b), as originally enacted, by paragraph 5(1) of Schedule 2 to [S.I. 2015/25](#). Sub-paragraph (a) was subsequently further substituted by regulation 39(2) of [S.I. 2017/84](#). Paragraphs (4) and (4A) were substituted for paragraph (4), as originally enacted, by paragraph 5(3) of Schedule 3 to [S.I. 2015/75](#). Sub-paragraphs (b)(i) and (c)(ii) of paragraph (4) were subsequently further amended by regulation 39(3) and (4) respectively of [S.I. 2017/84](#). There are other amendments to this regulation but they are not relevant.

### Amendment of regulation 6 (notice of appeal)

**27.** In regulation 6—

- (a) in paragraph (1)—
  - (i) after “police officer” insert “ or former police officer ”;
  - (ii) after “the officer” insert “ or former officer ”;
- (b) in paragraph (3), after “officer” insert “ or former officer ”.

### Amendment of regulation 7

**28.** In regulation 7—

- (a) in paragraph (1), after “officer” insert “ or a former police officer ”;
- (b) in paragraph (2)—

- (i) after “officer” insert “ or a former police officer ”;
- (ii) after “officer's” insert “or former officer's”.

#### Amendment of regulation 8 (the respondent)

29. In regulation 8 <sup>M22</sup>—

- (a) in paragraph (1), after “officer” insert “ or was a senior officer at the relevant time ”;
- (b) in paragraph (2), after “officer” insert “ or former police officer ”.

##### Marginal Citations

**M22** This regulation was amended by regulation 40 of [S.I. 2017/84](#).

#### Amendment of regulation 9 (procedure on notice of appeal)

30. In regulation 9 <sup>M23</sup>—

- (a) in paragraph (5)(a), after “4(4)(b)” insert “ , 4A(6)(b) or 4B(4)(b) ”;
- (b) in paragraph (9), after “4(4)(b)”, in both places where it appears, insert “ , 4A(6)(b) or 4B(4)(b) ”.

##### Marginal Citations

**M23** This regulation was amended by paragraph 6 of Schedule 2 to, [S.I. 2015/25](#) and by regulation 14(2) of [S.I. 2017/1250](#).

#### Amendment of regulation 14 (notice of the hearing)

31. In regulation 14 <sup>M24</sup>—

- (a) in paragraph (2), for “or 4A(6)(b)” substitute “ , 4A(6)(b) or 4B(4)(b) ”;
- (b) in paragraph (5), after “4” insert “ or 4B ”;
- (c) in paragraph (11)(a), for “officer concerned” substitute “ appellant ”.

##### Marginal Citations

**M24** Paragraphs (5) to (12) were inserted by regulation 42 of [S.I. 2017/84](#). This regulation was also amended by paragraph 7 of Schedule 2 to, [S.I. 2015/25](#) and by regulation 14(2) of [S.I. 2017/1250](#).

#### Amendment of regulation 15 (legal and other representation)

32. In regulation 15(4), for “an Agency” substitute “ a ”.

#### Amendment of regulation 18 (attendance at hearing)

33. In regulation 18(1) <sup>M25</sup>, after “4” insert “ or 4B ”.

**Status:** Point in time view as at 01/12/2018.

**Changes to legislation:** There are currently no known outstanding effects for the The Ministry of Defence Police (Conduct and Appeals Tribunals) (Amendment) Regulations 2018. (See end of Document for details)

#### Marginal Citations

**M25** This regulation was substituted by regulation 43 of [S.I. 2017/84](#).

#### Amendment of regulation 22 (tribunal's determination)

**34.** In regulation 22 <sup>M26</sup>—

(a) in paragraph (1A)—

(i) for “or regulation 4A(6)(b) or (c)” substitute “, regulation 4A(6)(b) or (c) or regulation 4B(4)(b) or (c)”;

(ii) omit “the relevant provisions of”;

(iii) at the end, insert “ (as the case may be) ”;

(b) for paragraph (1B) substitute—

“(1B) Where the tribunal remits the matter under paragraph (1A) and the relevant decision was the decision of a panel (“the original panel”), the matter must be decided by a fresh panel which is constituted in accordance with the Conduct Regulations or the Performance Regulations (as the case may be) but does not contain any of the members of the original panel.”;

(c) after paragraph (8) insert—

“(9) In any case where the appellant is a former police officer and disciplinary action was imposed under the Conduct Regulations, if on determination of the appeal the tribunal's decision results in disciplinary action no longer being imposed, the relevant authority must notify the College of Policing of the tribunal's decision.”.

#### Marginal Citations

**M26** Paragraph (2) was substituted by paragraph 10(2) of Schedule 2 to [S.I. 2015/25](#). Paragraph (8) was inserted by regulation 47 of [S.I. 2017/84](#). This regulation was also amended by paragraph 10(1), (3) and (4) of Schedule 2 to [S.I. 2015/25](#) and by regulation 14(1) and (2) of [S.I. 2017/1250](#).

Ministry of Defence  
29th October 2018

*Tobias Ellwood*  
Parliamentary Under Secretary of State

## SCHEDULE

Regulation 22

### Modifications to the Conduct Regulations

#### “SCHEDULE 1A

Regulation 9(2)

Modifications to these Regulations in their application to former MDP officers

#### **Modification to regulation 3 (interpretation)**

**1.** In regulation 3(1)—

(a) insert the following definitions in the appropriate places—

““Condition C person” means a person in relation to whom Condition C in regulation 9(5) is satisfied;”;

““Condition C special determination” has the meaning given in regulation 22B(2);”;

““relevant time” means the time immediately before the officer concerned ceased to be an MDP officer;”;

(b) omit the definitions of “the 2009 Regulations”, “appeal meeting”, “management action”, “management advice” and “misconduct meeting”;

(c) for the definition of “disciplinary action” substitute—

““disciplinary action” means a finding that the officer concerned would have been dismissed if the officer concerned had not ceased to be an MDP officer;”;

(d) in the definition of “misconduct hearing”, omit “up to and including dismissal”;

(e) in the definition of “misconduct proceedings”, omit “misconduct meeting or”;

(f) in the definition of “proposed witness”, omit “conducting or”;

(g) for the definition of “staff association” substitute—

““staff association” means where the officer concerned was at the relevant time—

(a) a senior officer, the Chief Police Officers' Staff Association;

(b) any other MDP officer, the Defence Police Federation;”.

#### **Modification to regulation 4 (harm test)**

**2.** In regulation 4(1)(d)(i) <sup>M27</sup>, omit “other”.

#### **Modifications: omission of regulations 6 (disciplinary action) and 7 (written warnings)**

**3.** Omit regulations 6 and 7.

#### **Modification to regulation 10 (police friend and legal representation)**

**4.** In regulation 10—

(a) in paragraph (2)—

(i) in sub-paragraph (b), omit “or appeal meeting”;

(ii) in sub-paragraph (d), omit “, meeting”;

(b) in paragraph (5), for “the officer may be dismissed or” to the end substitute “disciplinary action may still be imposed, or a finding of misconduct may still be recorded, in relation to the officer”.

**Status:** Point in time view as at 01/12/2018.

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**Modification to regulation 11 (legal and other representation for the relevant authority)**

5. In regulation 11, omit paragraph (3).

**Modification to regulation 12 (provision of notices or documents)**

6. In regulation 12, after paragraph (2) insert—

“(3) The relevant authority must make reasonable enquiries in order to determine the last known address of the officer concerned for the purposes of paragraph (1)(b).”.

**Modification: omission of regulation 14 (suspension)**

7. Omit regulation 14.

**Modification to regulation 15 (application of Part 3)**

8. In regulation 15—

- (a) re-number the existing provision as paragraph (1);
- (b) at the beginning of the newly re-numbered paragraph (1), insert “ Subject to paragraph (2), ”;
- (c) after that paragraph, insert—

“(2) Where disciplinary proceedings have been taken against the officer concerned in relation to an allegation investigated under external procedures, this Part applies unless that allegation is being or has been re-investigated under those procedures.”.

**Modification to regulation 16 (assessment of conduct)**

9. In regulation 16—

- (a) in paragraph (1), for the words from “misconduct”, in the first place it appears, to the end substitute “ gross misconduct. ”;
- (b) in paragraph (2), for the words from “amount” to the end substitute “ not amount to gross misconduct, it must take no further action. ”;
- (c) omit paragraph (3);
- (d) after paragraph (5), insert—

“(5A) The relevant authority must take no action or no further action under paragraph (1), (4) or (5) if—

- (a) it is satisfied that the officer concerned is unfit for disciplinary proceedings to be brought against the officer by reason of disability or ill-health; or
- (b) it has made all reasonable efforts to establish the whereabouts of the officer concerned but it has been unsuccessful.”;

- (e) for paragraph (6) substitute—

“(6) Where the relevant authority is required by paragraph (2) to take no further action or by paragraph (5A) to take no action or no further action, it must notify the officer concerned in writing as soon as practicable.”.

**Modification to regulation 17 (appointment of investigator)**

10. In regulation 17—

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- (a) in paragraph (3), for “is the chief constable” substitute “ was the chief constable at the relevant time ”;
- (b) in paragraph (4), for sub-paragraphs (c) and (d) substitute—
  - “(c) worked, directly or indirectly, under the management of the officer concerned at the relevant time;
  - (d) in a case where the officer concerned was a senior officer at the relevant time, is—
    - (i) the chief constable;
    - (ii) an MDP officer.”.

#### **Modification to regulation 18 (investigation)**

11. In regulation 18, omit “misconduct or” in both places where those words appear before “gross”.

#### **Modification to regulation 19 (written notice of investigation)**

12. In regulation 19—

- (a) in paragraph (1)—
  - (i) for sub-paragraphs (b) and (c) substitute—
    - “(b) of the relevant authority's assessment of whether the conduct, if proved, would amount to gross misconduct;
    - (c) that if the matter were to be referred to proceedings under Part 4—
      - (i) the form of those proceedings would be a misconduct hearing and the reason for this; and
      - (ii) if the allegation of gross misconduct is proved, the officer may be subject to a finding that the officer would have been dismissed if the officer had not ceased to be an MDP officer;”;
  - (ii) after sub-paragraph (f), insert—
    - “(fa) informing the officer that failure to attend an interview of which the officer has been given notice under regulation 21(5) (interviews during investigation) may harm the officer's case;”;
- (b) omit paragraph (2).

#### **Modification to regulation 21 (interviews during investigations)**

13. In regulation 21—

- (a) in paragraph (1), after “practicable” insert “ and subject to regulation 21A ”;
- (b) in paragraph (4), for the words from “must” to the end substitute “ must be reasonable. ”.

#### **Modification: insertion of regulation 21A**

14. After regulation 21 insert—

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**“Notice of enquiry of officer concerned during investigation**

**21A.—**(1) Where the investigator is satisfied that, having regard to the circumstances of the officer concerned, it would be unreasonable to require the officer to attend an interview, the investigator may cause the officer concerned to be given a written notice of enquiry.

(2) A notice of enquiry given under paragraph (1) must—

- (a) state any question the investigator wishes to ask the officer concerned; and
- (b) request a response to any such question from the officer concerned within a specified period.

(3) The investigator must make a record of any notice of enquiry and response received under this regulation.”.

**Modification to regulation 22 (report of investigation)**

**15.** In regulation 22—

(a) in paragraph (2)(c), for “whether there is a case” to the end substitute—

“whether—

(i) other than in a case to which sub-paragraph (ii) applies—

(aa) there is a case to answer in respect of gross misconduct;

(bb) where the investigator's opinion is that there is no case to answer in respect of gross misconduct, there may nevertheless have been a breach of the Standards of Professional Behaviour;

(ii) where the officer concerned is a Condition C person—

(aa) there is a case to answer in respect of gross misconduct or there is no case to answer;

(bb) there may have been a breach of the Standards of Professional Behaviour;

(cc) where the investigator's opinion is that there may have been such a breach, the breach is so serious that, if the person had not ceased to be an MDP officer, it would have justified dismissal.”

(b) for paragraph (4)(b) substitute—

“(b) it is in the public interest that a determination as to whether the conduct amounts to gross misconduct and a decision whether to impose disciplinary action is made without delay.”.

**Modification: insertion of Part 3A**

**16.** After regulation 22, insert—



## “PART 3A

### Condition C Special Determination

#### Application of this Part

**22A.** This Part applies where the officer concerned is a Condition C person.

#### Interpretation

**22B.** In this Part, a “Condition C special determination” means a determination by the Director General as to whether the taking of disciplinary proceedings against a Condition C person in respect of alleged gross misconduct would be reasonable and proportionate.

#### Condition C special determination

**22C.—**(1) The relevant authority must, as soon as practicable following receipt of a written report made under regulation 22(2) (report of investigation) or an equivalent report made under external procedures—

- (a) determine whether the officer concerned has a case to answer in respect of gross misconduct or has no case to answer; and
- (b) send to the Director General a copy of the report and a written record of its determination under sub-paragraph (a).

(2) The Director General must make a Condition C special determination after receiving—

- (a) a copy of the written report or equivalent report (as the case may be) referred to in paragraph (1); and
- (b) the written record referred to in paragraph (1)(b).

#### Procedure before making a Condition C special determination

**22D.—**(1) Before making a Condition C special determination, the Director General—

- (a) must give a notification in writing to—
  - (i) any complainant;
  - (ii) any interested person; and
  - (iii) the officer concerned;
- (b) must consult—
  - (i) the Ombudsman, where the case has been investigated by the Ombudsman;
  - (ii) the Commissioner, where the case has been investigated by the Commissioner;
- (c) may consult any other person the Director General thinks fit.

(2) A notification under paragraph (1)(a) must—

- (a) state that the Director General is to make a Condition C special determination and the consequences of such a determination;
- (b) explain the effect of regulation 22E;

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- (c) explain that if disciplinary proceedings are taken and the allegation of gross misconduct is proved, the officer concerned may be subject to a finding that the officer concerned would have been dismissed if the officer concerned had not ceased to be an MDP officer;
  - (d) subject to the harm test, set out any findings relating to the conduct to which the investigation relates in any report sent to the Director General under regulation 22C(1);
  - (e) set out the person's rights under paragraph (3);
  - (f) in the case of the officer concerned, state that the officer has the right to seek advice from the officer's staff association or any other body and the effect of regulation 10(1) and (2).
- (3) A person given a notification under paragraph (1)(a) may, within the period of 21 days beginning with the day on which the notice is given or such longer period as the Director General may agree, provide a written statement and any document which the person wishes the Director General to take into account for the purposes of the Condition C special determination.

#### **Matters to be taken into account**

**22E.—(1)** In making a Condition C special determination, the Director General must have regard to—

- (a) the seriousness of the alleged gross misconduct;
- (b) the impact of the allegation on public confidence in the MDP; and
- (c) the public interest.

(2) When assessing the seriousness of the alleged gross misconduct for the purposes of paragraph (1)(a), the matters which the Director General must take into account are—

- (a) whether it appears that the alleged gross misconduct amounts to a criminal offence;
- (b) whether it appears that a complainant or other person has been harmed (whether physically or psychologically) by the alleged gross misconduct and, if so, the extent and seriousness of the harm;
- (c) where it appears that a complainant or other person has been so harmed, whether that person was a vulnerable person;
- (d) whether it appears that the alleged gross misconduct was intentional;
- (e) whether it appears that the purpose or one of the purposes of the alleged gross misconduct was personal gain or benefit for the officer concerned;
- (f) whether it appears that the alleged gross misconduct is aggravated by discriminatory behaviour on the grounds of a person's race, gender, disability, age, religion or belief, sexual orientation or gender identity;
- (g) whether it appears that the officer concerned acted with one or more other MDP officers or staff members under the direction and control of the chief constable;
- (h) the extent to which the alleged gross misconduct involved abuse of a position of trust or authority held by the officer concerned;

**Status:** Point in time view as at 01/12/2018.

**Changes to legislation:** There are currently no known outstanding effects for the The Ministry of Defence Police (Conduct and Appeals Tribunals) (Amendment) Regulations 2018. (See end of Document for details)

- (i) whether it appears that the officer concerned has taken steps to prevent the alleged gross misconduct being identified or to obstruct investigations into it, other than lawful steps to defend himself or herself;
  - (j) whether it appears that the alleged gross misconduct has had an adverse effect on community relations;
  - (k) whether it appears that there are mitigating circumstances arising out of the health (whether physical or mental) of the officer concerned at the time of the alleged gross misconduct; and
  - (l) any other matters that the Director General considers relevant.
- (3) When assessing the impact of the allegation on public confidence in the MDP for the purposes of paragraph (1)(b), the matters which the Director General must take into account are—
- (a) whether it appears that the alleged gross misconduct has had an effect on relations between the public and the MDP, including relations between the members of the community where the alleged gross misconduct occurred and the MDP;
  - (b) the extent of any apparent harm to public confidence in the MDP;
  - (c) the effect that a decision not to take disciplinary proceedings might have on public confidence in the MDP; and
  - (d) any other matters that the Director General considers relevant.
- (4) When assessing the public interest for the purposes of paragraph (1)(c), the matters which the Director General must take into account are—
- (a) whether it appears that the officer concerned should be prevented from future employment or appointment by a person mentioned in section 88C(5) of the 1996 Act <sup>M28</sup>;
  - (b) where it appears that the officer concerned should be so prevented, whether disciplinary proceedings are necessary for this purpose;
  - (c) the length of time since the alleged gross misconduct occurred;
  - (d) whether it appears that the officer concerned will be held to account in respect of the alleged gross misconduct through other means, such as criminal or other proceedings;
  - (e) where it appears that a complainant or other person has been harmed (whether physically or psychologically) by the alleged gross misconduct, whether it appears that a decision not to take disciplinary proceedings would adversely affect that person;
  - (f) whether it appears that the officer concerned is unfit to be subject to or to participate in disciplinary proceedings by reason of disability or ill-health; and
  - (g) any other matters that the Director General considers relevant.
- (5) When making a Condition C special determination the Director General must also take into account—
- (a) any written statement or document provided under regulation 22D(3);
  - (b) any response to a consultation carried out under sub-paragraph (b) or (c), or both, of regulation 22D(1);

**Status:** Point in time view as at 01/12/2018.

**Changes to legislation:** There are currently no known outstanding effects for the The Ministry of Defence Police (Conduct and Appeals Tribunals) (Amendment) Regulations 2018. (See end of Document for details)

- (c) any findings relating to the conduct to which the investigation relates in any special report or investigation report submitted to the Director General in accordance with regulation 22C(2); and
- (d) any other relevant evidence.

#### **Procedure after making a Condition C special determination**

**22F.** The Director General must give a notification in writing of a Condition C special determination and the consequences of the determination to—

- (a) the persons mentioned in regulation 22D(1)(a);
- (b) the relevant authority;
- (c) the Ombudsman, where the Ombudsman has been consulted under regulation 22D(1)(b);
- (d) the Commissioner, where the Commissioner has been consulted under regulation 22D(1)(b); and
- (e) the investigator appointed by the relevant authority or under external procedures.”.

#### **Modification to regulation 23 (referral of case to misconduct proceedings)**

**17.** In regulation 23—

- (a) in paragraph (1)—
  - (i) for “paragraph” substitute “ paragraphs (1A) and ”;
  - (ii) omit “misconduct or” in the first place where those words appear;
  - (iii) at the end, insert “ unless it has already made a determination under regulation 22C(1)(a) ”.
- (b) after paragraph (1), insert—
 

“(1A) In relation to a Condition C person, the relevant authority must not refer the case to misconduct proceedings unless the Director General has made a Condition C special determination under regulation 22C(2) that the taking of disciplinary proceedings against the person in respect of alleged gross misconduct would be reasonable and proportionate.”;
- (c) in paragraph (3), omit “misconduct or”, in the first place where these words appear;
- (b) in paragraph (4), for the words from “may” to the end substitute “ must take no further disciplinary action against the officer concerned ”;
- (c) after paragraph (4), insert—
 

“(4A) The relevant authority must not refer the case to misconduct proceedings if—

  - (a) it is satisfied that the officer concerned is unfit for disciplinary proceedings to be brought against the officer by reason of disability or ill-health; or
  - (b) it has made all reasonable efforts to establish the whereabouts of the officer concerned but it has been unsuccessful.”;
- (d) omit paragraph (6);
- (e) in paragraph (7)—
  - (i) in sub-paragraph (a), omit “a misconduct meeting or”;
  - (ii) after “such a”, omit “meeting or”;

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**Changes to legislation:** There are currently no known outstanding effects for the The Ministry of Defence Police (Conduct and Appeals Tribunals) (Amendment) Regulations 2018. (See end of Document for details)

- (f) in paragraph (8), for the words from “fails to” to the end of sub-paragraph (b) substitute “ fails to make the determination referred to in paragraph (1) ”;
- (g) for paragraph (9) substitute—
  - “(9) Where disciplinary proceedings have already been taken against the officer concerned after an investigation under these Regulations or external procedures in relation to an allegation, the case may not be referred to misconduct proceedings unless—
    - (a) there has been a re-investigation of the allegation under these Regulations or external procedures; and
    - (b) that re-investigation began within the period of 12 months beginning with the date on which that person ceased to be an MDP officer.”.

#### **Modification to regulation 24 (withdrawal of case)**

**18.** In regulation 24(3)—

- (a) after “paragraph (2)” insert “ the relevant authority must ”;
- (b) for sub-paragraphs (a) and (b) substitute —
  - “(a) take no further action against the officer concerned; and
  - (b) as soon as reasonably practicable give the officer concerned written notice of the direction.”.

#### **Modification to regulation 25 (notice of referral to misconduct proceedings and panel membership)**

**19.** In regulation 25—

- (a) in paragraph (1)—
  - (i) in sub-paragraph (a)—
    - (aa) in paragraph (ii), omit “misconduct or”;
    - (bb) for paragraph (iii) substitute—
      - “(iii) the name of the person appointed to chair the misconduct proceedings and of the effect of paragraphs (3) to (6) of this regulation;”;
    - (cc) after paragraph (iii), omit “and”;
    - (dd) after paragraph (iv), insert—
      - “and
      - (v) the matters mentioned in paragraph (1A);”;
  - (ii) in sub-paragraph (c), after paragraph (i)—
    - (aa) omit “and”;
    - (bb) insert—
      - “(ia) in the case of a Condition C person, any written statement or document provided to the Director General under regulation 22D(3) and any response to a consultation under regulation 22D(1)(b) or (c); and”;
- (b) after paragraph (1), insert—
  - “(1A) The matters referred to in paragraph (1)(a)(v) are the fact that the officer—

**Status:** Point in time view as at 01/12/2018.

**Changes to legislation:** There are currently no known outstanding effects for the The Ministry of Defence Police (Conduct and Appeals Tribunals) (Amendment) Regulations 2018. (See end of Document for details)

- (a) will be subject to disciplinary proceedings under these Regulations; and
- (b) if the allegation of gross misconduct is proved, may be subject to a finding that the officer would have been dismissed if the officer had not ceased to be an MDP officer.”;
- (c) in paragraph (2)—
  - (i) in sub-paragraph (a), omit “person or”;
  - (ii) for sub-paragraph (b) substitute—
    - “(b) the persons comprising the panel which is to conduct the misconduct proceedings (other than the chair) have been determined,”.

**Modification to regulation 26 (procedure on receipt of notice)**

20. In regulation 26—
- (a) in paragraph (2), omit “conducting or”;
  - (b) in paragraph (3)—
    - (i) in sub-paragraphs (a), (b) and (c), omit “misconduct or”;
    - (ii) in sub-paragraph (c)(ii), omit “person or”.

**Modification to regulation 27 (witnesses)**

21. In regulation 27, in paragraphs (1) and (2) and in both places where those words appear in paragraph (3), omit “conducting or”.

**Modification to regulation 28 (timing and notice of misconduct proceedings)**

22. In regulation 28 <sup>M29</sup>—
- (a) in paragraph (1), for sub-paragraphs (a) and (b) substitute “ before the end of 30 working days ”;
  - (b) in paragraphs (2), (3), (4), (5), (7)(b), (8) and (9), omit “conducting or”.

**Modification to regulation 29 (persons conducting misconduct proceedings: officers other than senior officers)**

23. In regulation 29 <sup>M30</sup>—
- (a) in paragraph (1), for “is” substitute “ was at the relevant time ”;
  - (b) omit paragraphs (2) and (3);
  - (c) in paragraph (4)—
    - (i) for the words from the beginning to “that hearing” substitute “ A misconduct hearing ”;
    - (ii) in sub-paragraph (b), after “above”, in the second place where it appears, insert “ the rank held at the relevant time by ”.

**Modification to regulation 30 (persons conducting misconduct proceedings: senior officers)**

24. In regulation 30 <sup>M31</sup>—

**Status:** Point in time view as at 01/12/2018.

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- (a) in paragraph (1), for “is” substitute “ was at the relevant time ”;
- (b) in paragraph (2), for the words from the beginning to “or hearing” substitute “ A misconduct hearing ”.

**Modification to regulation 30A (notification of misconduct hearings)**

25. In regulation 30A(6) <sup>M32</sup>—

- (a) in sub-paragraph (e), omit “misconduct or”;
- (b) after sub-paragraph (e), insert—
  - “(f) where the officer concerned is a Condition C person, the Condition C special determination.”.

**Modification to regulation 31 (documents to be supplied)**

26. In regulation 31(1)—

- (a) omit “person or”;
- (b) in sub-paragraph (c), omit “misconduct or”.

**Modification to regulation 32 (attendance of officer concerned at misconduct proceedings)**

27. In regulation 32—

- (a) in paragraph (2), omit “conducting or” in both places where those words appear;
- (b) in paragraph (3)(a)(ii), omit “in the case of a misconduct hearing, the”.

**Modification to regulation 33 (participation of Director General or Ombudsman and investigator at misconduct proceedings)**

28. In regulation 33 <sup>M33</sup>—

- (a) in paragraphs (3)(a)(ii) and (b) and (5), omit “conducting or”;
- (b) in paragraph (7), omit “person or”.

**Modification to regulation 34 (attendance of complainant or interested person at misconduct proceedings)**

29. In regulation 34 <sup>M34</sup>—

- (a) omit paragraphs (3), (4) and (8);
- (b) in paragraph (7), omit “conducting or”.

**Modification to regulation 35 (attendance of others at misconduct proceedings)**

30. In regulation 35 <sup>M35</sup>—

- (a) omit paragraphs (1) and (3) to (5);
- (b) in paragraph (6), omit “conducting or”.

**Modification to regulation 36 (exclusion from misconduct proceedings)**

31. In regulation 36, in paragraphs (1) and (2), omit “conducting or”.

*Status: Point in time view as at 01/12/2018.*

*Changes to legislation: There are currently no known outstanding effects for the The Ministry of Defence Police (Conduct and Appeals Tribunals) (Amendment) Regulations 2018. (See end of Document for details)*

### **Modification to regulation 37 (procedure at misconduct proceedings)**

**32.** In regulation 37—

- (a) in paragraphs (1), (3), (8) and (9), omit “conducting or”;
- (b) in paragraph (10)(c), after paragraph (i), insert—
  - “(ia) regulation 21A(2) (notice of enquiry of officer concerned during investigation),”
- (c) in paragraphs (11), (12) and (13), omit “person or”;
- (d) in paragraph (12), for the words from “amounts” to the end substitute “ amounts to misconduct, gross misconduct or neither ”.

### **Modification to regulation 38 (senior officers: further meeting or further hearing of MOD Police Committee to consider disciplinary action)**

**33.** In regulation 38 <sup>M36</sup>—

- (a) in the heading, omit “further meeting or”;
- (b) in paragraph (1)—
  - (i) for “is” substitute “ was at the relevant time ”;
  - (ii) for “meeting or hearing” substitute “ proceedings ”;
  - (iii) in sub-paragraph (a)(iii), for the words from “misconduct or” to the end substitute “ gross misconduct, a recommendation as to whether disciplinary action should be imposed ”;
- (c) in paragraph (3), for the words from “must” to the end substitute “ must hold a further hearing for the purpose of considering whether disciplinary action should be imposed ”;
- (d) in paragraph (4), for the words from “paragraph (7)” to the end substitute “ paragraph (7) to a further hearing under paragraph (3) as if it were a misconduct hearing ”;
- (e) in paragraph (5), omit “further meeting or”;
- (f) in paragraph (7)(a), omit “conducting or”.

### **Modification to regulation 39 (outcome of misconduct proceedings)**

**34.** For regulation 39 substitute—

#### **“Outcome of misconduct proceedings**

**39.—**(1) The persons conducting misconduct proceedings in the case where the officer concerned was at the relevant time an officer other than a senior officer may—

- (a) where they find the conduct amounts to gross misconduct, impose disciplinary action; or
- (b) where they find the conduct amounts to misconduct but not gross misconduct, record a finding of misconduct but take no further action.

(2) At a further hearing held under regulation 38(3), the MOD Police Committee may—

- (a) where the finding set out in the report is that the conduct amounted to gross misconduct, impose disciplinary action; or



(b) where the finding set out in the report is that the conduct amounted to misconduct but not gross misconduct, record a finding of misconduct but take no further action.

(3) Where the question of disciplinary action is being considered by the persons mentioned in paragraph (1) or by the Committee mentioned in paragraph (2), those persons or that Committee (as the case may be)—

- (a) must have regard to the record of police service of the officer concerned;
- (b) may receive evidence from any witness whose evidence would, in their opinion, assist them in determining the question; and
- (c) must give—
  - (i) the officer concerned, the police friend or the relevant lawyer; and
  - (ii) in the case where the officer concerned was at the relevant time an officer other than a senior officer, the relevant authority or any person appointed to advise the relevant authority (regulation 11(2)),  
an opportunity to make oral or written representations before any such question is determined.”.

#### **Modification to regulation 40 (notification of outcome)**

**35.** In regulation 40 <sup>M37</sup>—

- (a) in paragraph (1)—
  - (i) omit “of” in the first place where it appears;
  - (ii) at the beginning of sub-paragraphs (a) and (b), insert “ of ”;
  - (iii) in sub-paragraph (a), omit “person or”;
  - (iv) in sub-paragraph (c)—
    - (aa) for “meeting” substitute “ further hearing ”;
    - (bb) for “any disciplinary action” substitute “ whether disciplinary action has been ”;
- (b) in paragraph (2)—
  - (i) for “of any disciplinary action” substitute “ whether disciplinary action has been ”;
  - (ii) omit “further meeting or”;
- (c) in paragraph (3)—
  - (i) omit “misconduct or”;
  - (ii) for sub-paragraph (a) substitute—
    - “(a) notice of the right of the officer concerned to appeal to a police appeals tribunal;”;
  - (iii) omit sub-paragraph (b);
- (d) in paragraph (5), for the words from the beginning to “without notice)” substitute “ Where disciplinary action is imposed ”.

#### **Modification to regulation 40A (publication of information in relation to outcome)**

**36.** In regulation 40A(3)(b) <sup>M38</sup>, omit “misconduct or”.

*Status: Point in time view as at 01/12/2018.*

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**Modification to regulation 41 (record of misconduct proceedings)**

37. In regulation 41, for paragraph (1) substitute—

“(1) The relevant authority must ensure that a verbatim record of the misconduct proceedings is taken.”.

**Modifications: omission of regulations 42 (appeal from misconduct meeting: officers other than senior officers), 43 (appeal meeting) and 44 (procedure and finding of the appeal)**

38. Omit regulations 42 to 44.

**Modification to regulation 45 (referral of case to special case hearing)**

39. In regulation 45<sup>M39</sup>—

(a) after paragraph (1), insert—

“(1A) In relation to a Condition C person, the relevant authority must not refer the case to a special case hearing unless the Director General has made a Condition C special determination under regulation 22C(2) that the taking of disciplinary proceedings against the person in respect of alleged gross misconduct would be reasonable and proportionate.

(1B) Where the Director General has made such a determination, the relevant authority must, when making its determination under paragraph (1), determine that the special condition mentioned in regulation 22(4)(b) is satisfied in respect of that person.”;

(b) in paragraph (7), in the modifying text, omit “misconduct or” in the first place where these words appear;

(c) after paragraph (8), insert—

“(9) Where disciplinary proceedings have already been taken against the officer concerned after an investigation under these Regulations or external procedures in relation to an allegation, the case may not be referred to a special case hearing unless—

(a) there has been a re-investigation of the allegation under these Regulations or external procedures; and

(b) that re-investigation began within the period of 12 months beginning with the date on which that person ceased to be an MDP officer.”.

**Modification to regulation 46 (notice of referral to special case hearing)**

40. In regulation 46(1)(b)(iii), after paragraph (aa)—

(a) omit “and”;

(b) insert—

“(ab) in the case of a Condition C person, any written statement or document provided to the Director General under regulation 22D(3) and any response to a consultation under regulation 22D(1)(b) or (c); and”.

**Modification to regulation 47 (remission of case)**

41. In regulation 47(3), in the modifying text, omit “misconduct or” in the first place where these words appear.

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**Modification to regulation 50 (person conducting special case hearing: officers other than senior officers)**

42. In regulation 50(1)<sup>M40</sup>, for “is” substitute “ was at the relevant time ”.

**Modification to regulation 51 (persons conducting special case hearing: senior officers)**

43. In regulation 51(1)<sup>M41</sup>, for “is” substitute “ was at the relevant time ”.

**Modification to regulation 57 (procedure at special case hearing)**

44. In regulation 57, after paragraph (9)(c)(i) insert—  
“(ia) regulation 21A(1) (notice of enquiry of officer concerned during investigation),”.

**Modification to regulation 58 (senior officers: further hearing of MOD Police Committee to consider disciplinary action)**

45. In regulation 58<sup>M42</sup>—  
(a) in paragraph (1), for “is” substitute “ was at the relevant time ”;  
(b) in paragraph (3), for “what disciplinary action (if any)” substitute “ whether disciplinary action ”.

**Modification to regulation 59 (outcome of special case hearing)**

46. For regulation 59 substitute—

**“Outcome of special case hearing**

**59.—**(1) The person or persons conducting the special case hearing in the case where the officer concerned was at the relevant time an officer other than a senior officer may—

- (a) where they find the conduct amounts to gross misconduct, impose disciplinary action; or
- (b) where they find the conduct amounts to misconduct but not gross misconduct, record a finding of misconduct but take no further action.

(2) At a hearing held under regulation 58, the appropriate authority may—

- (a) where the finding set out in the report under regulation 58(1) is that the conduct amounted to gross misconduct, impose disciplinary action; or
- (b) where the finding set out in the report is that the conduct amounted to misconduct but not gross misconduct, record a finding of misconduct but take no further action.

(3) Where the question of disciplinary action is being considered by the person or persons mentioned in paragraph (1) or by the authority mentioned in paragraph (2), that person, those persons or that authority (as the case may be)—

- (a) must have regard to the record of police service of the officer concerned;
- (b) may consider such documentary evidence as would, in their opinion, assist them in determining the question; and
- (c) must give—
  - (i) the officer concerned; and

**Status:** Point in time view as at 01/12/2018.

**Changes to legislation:** There are currently no known outstanding effects for the The Ministry of Defence Police (Conduct and Appeals Tribunals) (Amendment) Regulations 2018. (See end of Document for details)

(ii) the police friend or relevant lawyer of the officer concerned, an opportunity to make oral or written representations.”.

#### **Modification to regulation 60 (notification of outcome)**

47. In regulation 60 <sup>M43</sup>—
- (a) in paragraph (1)—
    - (i) omit “of” in the first place where it appears;
    - (ii) at the beginning of each of sub-paragraphs (a) and (b), insert “ of”;
    - (iii) in sub-paragraph (c), for the words from “any” to the end substitute “ whether disciplinary action has been imposed under regulation 59(1) (outcome of special case hearing) ”;
  - (b) in paragraph (2)(a), omit “or any action taken under regulation 59(7)”;
  - (c) in paragraph (5), for the words from the beginning to “without notice)” substitute “ Where disciplinary action is imposed, ”.”

#### **Marginal Citations**

- M27** Regulation 4(1) has been amended by regulation 4(2)(a) to (c) of [S.I. 2017/84](#).
- M28** 1996 c.16. Section 88C was inserted by section 30 of, and Schedule 8 to, the Policing and Crime Act 2017.
- M29** Paragraph (9) of this regulation was amended by regulation 32(2) of [S.I. 2017/1250](#).
- M30** Paragraph (4)(a) of this regulation was substituted by regulation 9 of [S.I. 2017/84](#).
- M31** Paragraph (3)(a) of this regulation was substituted by regulation 10 of [S.I. 2017/84](#).
- M32** This regulation was inserted by regulation 11 of [S.I. 2017/84](#) and amended by regulation 32(2) of [S.I. 2017/1250](#).
- M33** This regulation and its heading were amended by regulation 32(2) and (5) of [S.I. 2017/1250](#).
- M34** This regulation was amended by regulation 12(2) and (3) of [S.I. 2017/84](#).
- M35** This regulation was substituted by regulation 3 of [S.I. 2017/84](#) and amended by regulation 32(2) of [S.I. 2017/1250](#).
- M36** This regulation has been amended by regulation 14 of [S.I. 2017/84](#) and regulation 32(2) of [S.I. 2017/1250](#).
- M37** This regulation was amended by regulation 16(2) of [S.I. 2017/84](#) and by regulation 32(2) of [S.I. 2017/1250](#).
- M38** This regulation was inserted by regulation 17 of [S.I. 2017/84](#).
- M39** This regulation was amended by regulation 32(2) of [S.I. 2017/1250](#).
- M40** This regulation was amended by regulation 22(2) and (3) of [S.I. 2017/84](#).
- M41** This regulation was amended by regulation 23 of [S.I. 2017/84](#).
- M42** This regulation was amended by regulation 27 of [S.I. 2017/84](#) and by regulation 32(2) of [S.I. 2017/1250](#).
- M43** This regulation was amended by regulation 29 of [S.I. 2017/84](#).

#### **EXPLANATORY NOTE**

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

**Status:** Point in time view as at 01/12/2018.

**Changes to legislation:** There are currently no known outstanding effects for the The Ministry of Defence Police (Conduct and Appeals Tribunals) (Amendment) Regulations 2018. (See end of Document for details)

These Regulations amend the Ministry of Defence Police (Conduct etc.) Regulations 2015 (S.I. 2015/25) (“the Conduct Regulations”) and the Ministry of Defence Police Appeals Tribunals Regulations 2009 (S.I. 2009/3070) (“the Appeal Regulations”), both as previously amended by the Ministry of Defence Police (Conduct, Performance and Appeals Tribunals) (Amendment) Regulations 2017 (S.I. 2017/84), to apply modified disciplinary procedures and associated appeals procedures to former Ministry of Defence Police (“MDP”) officers.

Part 2 amends the Conduct Regulations. Regulation 5 amends the application provisions (regulation 9 of the Conduct Regulations) to set out the circumstances in which the Conduct Regulations apply, with the modifications set out in new Schedule 1A to those Regulations (inserted by regulation 22 of, and the Schedule to, these Regulations), to former MDP officers.

Part 3 amends the Appeal Regulations. Regulation 25 inserts a new regulation setting out the grounds on which a former MDP officer may appeal to a police appeals tribunal. Regulations 24(b) and (d), 26 to 33 and 34(a) and (c) make further amendments to the Appeal Regulations so that they apply to such persons.

Part 2 further amends the Conduct Regulations as follows. Regulation 9(b) makes a consequential amendment. Regulation 3 inserts a definition of “Convention rights” relevant to the amendments made by regulations 10 and 19 (see below) and amends the definition of “external procedures” to exclude procedures established with the Police Investigations and Review Commissioner in Scotland so that the provisions of Part 3 (investigations) of the Conduct Regulations apply to cases investigated under those procedures. It also corrects the definition of “disciplinary proceedings” to remove the reference to any appeal and amends the definition of “the officer concerned” to remove the unnecessary cross-reference.

Regulations 4 and 6 make minor corrections, regulations 7 and 12 correct errors relating to the circumstances in which Part 3 does not apply (regulation 7) and references to when disciplinary action may be imposed (regulation 12) and regulations 10 and 19 amend provisions relating to who may attend misconduct proceedings and special case hearings respectively. Regulations 8 and 13 correct provisions conferring on the Secretary of State a power to give directions so that they also provide for further hearings (following misconduct hearings) in relation to senior officers. Regulations 9(a) and 18 correct provisions relating to the legal representation of the Director General or Ombudsman at misconduct hearings and special case hearings respectively. Regulations 11 and 21 amend incorrect cross-references and regulations 14 to 17, 19 and 20 amend provisions relating to notices of, and procedures at, special case hearings.

Part 3 further amends the Appeal Regulations as follows. Regulation 24(a) and (c) respectively insert a missing definition and amend the definition of “head of HR”. Regulation 34(b) amends the provision relating to the remission of a matter to a new panel where a tribunal determines that a ground of appeal has been made out.

A full Impact Assessment has not been prepared for this instrument as no, or no significant, impact on the private, voluntary or private sector is foreseen.

**Status:**

Point in time view as at 01/12/2018.

**Changes to legislation:**

There are currently no known outstanding effects for the The Ministry of Defence Police (Conduct and Appeals Tribunals) (Amendment) Regulations 2018.