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## STATUTORY INSTRUMENTS

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# 2018 No. 1119

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

### 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>M1</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>M2</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 ”.

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##### Marginal Citations

**M1** Regulation 3(1) has been amended but the amendments are not relevant to these Regulations.

**M2** 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—

*Status: Point in time view as at 01/12/2018.*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, PART 2. (See end of Document for details)*

“(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>M3</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>M4</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>M5</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—

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

(a) a relevant authority;

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

**Marginal Citations**

- M3** [S.I. 2007/1098](#). Article 4 was amended by section 11 of, and Schedule 6 to, the [Crime and Courts Act 2013 \(c. 22\)](#).
- M4** [S.I. 2013/602](#), to which there are amendments which are not relevant to these Regulations.
- M5** [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>M6</sup>, in paragraphs (1)(a) and (b), (3) and (4), before “hearing” insert “ misconduct ”.

**Marginal Citations**

- M6** [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>M7</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**

- M7** 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>M8</sup>—
- (a) in paragraph (1), omit the words from the beginning to “(7),”;

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- (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**

**M8** 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>M9</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**

**M9** 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>M10</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**

**M10** 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>M11</sup>, in paragraphs (1)(a) and (b), (3) and (4), before “hearing” insert “ special case ”.

**Marginal Citations**

**M11** [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).”.

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#### **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>M12</sup>, for the words from “instruct” to the end substitute “ be represented by a relevant lawyer ”.

##### **Marginal Citations**

**M12** 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>M13</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**

**M13** 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—

- (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>M14</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**

**M14** 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.

**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, PART 2.