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STATUTORY INSTRUMENTS

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**2020 No. 1087**

**POLICE**

**The Ministry of Defence Police (Conduct,  
Performance and Appeals Tribunals) Regulations 2020**

<i>Made</i>	- - - -	<i>6th October 2020</i>
<i>Laid before Parliament</i>		<i>8th October 2020</i>
<i>Coming into force</i>	- -	<i>2nd November 2020</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 3A, 4(1) to (4) and (6) and 4A of the Ministry of Defence Police Act 1987<sup>(1)</sup>.

**Citation and commencement**

1. These Regulations may be cited as the Ministry of Defence Police (Conduct, Performance and Appeals Tribunals) Regulations 2020 and come into force on 2nd November 2020.

**General interpretation**

2.—(1) In these Regulations—

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

“the 1998 Act” means the Police (Northern Ireland) Act 1998<sup>(2)</sup>;

“the 2002 Act” means the Police Reform Act 2002<sup>(3)</sup>;

“the Appeals Tribunals Regulations” means the Regulations set out in Schedule 5;

“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<sup>(4)</sup>;

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(1) 1987 c. 4. Section 3A was inserted by section 79(1) of the Police Reform Act 2002 (c. 30) and amended by section 126(2) of, and paragraphs 12 and 14 of Schedule 22 to, the Criminal Justice and Immigration Act 2008 (c. 4), section 6 of the Armed Forces Act 2011 (c. 18), and paragraph 2 of Schedule 7, and paragraph 63 of Schedule 9 to the Policing and Crime Act 2017 (c. 3); section 4 was substituted by paragraphs 12 and 15 of Schedule 22 to the Criminal Justice and Immigration Act 2008 and amended by paragraph 3 of Schedule 7, and paragraph 63 of Schedule 9 to the Policing and Crime Act 2017, section 4A was substituted by paragraphs 12 and 15 of Schedule 22 to the Criminal Justice and Immigration Act 2008 and amended by paragraph 4 of Schedule 7 to the Policing and Crime Act 2017, and paragraphs 20(1) and (6) of Part 1 of Schedule 2 to the Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013 (S.I. 2013/602).

(2) 1998 c. 32.

(3) 2002 c. 30.

(4) 2006 asp. 10. Section 33 was amended by section 61 of the Police and Fire Reform (Scotland) Act 2020 (asp. 8).

“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 established for England and Wales, Northern Ireland or Scotland;

“complaint” means an expression of dissatisfaction about the conduct of an MDP officer which has been investigated under external procedures established for England and Wales, Northern Ireland or Scotland;

“conduct matter” is any matter which is not and has not been the subject of a complaint but in the case of which there is an indication that an MDP officer may have—

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

“the Conduct Regulations” means the Regulations set out in Schedule 1;

“Director General” means the Director General of the Independent Office for Police Conduct, established under section 9 of the 2002 Act<sup>(5)</sup>;

“document” means anything in which information of any description is recorded;

“external procedures” means—

- (a) in the case of external procedures established for England and Wales, procedures established with the Director General in accordance with an agreement made under section 26(1) of the 2002 Act;
- (b) in the case of external procedures established for Northern Ireland, procedures established with the Ombudsman in accordance with an agreement made under section 60(1) of the 1998 Act<sup>(6)</sup>; or
- (c) in the case of external procedures established for Scotland, 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<sup>(7)</sup>,
  - (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<sup>(8)</sup>, 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<sup>(9)</sup>;

“interested person” means any person who the Director General, the Ombudsman or a relevant authority consider has an interest in being kept informed about the handling of a complaint under external procedures established for England and Wales, Northern Ireland or Scotland, where that person has given consent to being kept so informed;

“line manager” means the MDP officer or staff member who has immediate supervisory responsibility for the officer concerned;

“MDP” means Ministry of Defence Police;

“MDP officer” means a member of the MDP;

(5) The Director General is the person appointed by Her Majesty under section 9(1)(a) of the 2002 Act. Subsection (1) was substituted by s.33(2), (4) of the Policing and Crime Act 2017.

(6) Section 60(1) was amended by paragraph 23 of Schedule 6 to, the Police (Northern Ireland) Act 2000 and S.I. 2010/976.

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

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

(9) 2006 asp. 10.

- “Ombudsman” means the Police Ombudsman for Northern Ireland<sup>(10)</sup>;
- “the Performance Regulations” means the Regulations set out in Schedule 4;
- “pre-commencement allegation” means an allegation against an MDP officer which came to the attention of a relevant authority before the coming into force of these Regulations;
- “relevant force” has the meaning given in section 2B(3) of the 1987 Act<sup>(11)</sup>;
- “relevant lawyer” has the meaning given in section 4(4) of the 1987 Act;
- “senior officer” means a member of the MDP holding a rank above that of chief superintendent;
- “staff member” means any person other than an MDP officer who is employed by the Secretary of State for Defence;
- “working day” means any day other than—
- (a) a Saturday or Sunday,
  - (b) a day which is a bank holiday under the Banking and Financial Dealings Act 1971<sup>(12)</sup> in England and Wales, Scotland or Northern Ireland,
  - (c) a day which is a public holiday in England, Wales, Scotland or Northern Ireland.

### **Conduct Regulations**

- 3.—(1) Schedule 1 sets out the Conduct Regulations.
- (2) Schedule 2 provides for modifications to the Conduct Regulations as they apply to former MDP officers.
- (3) Schedule 3 sets out the standards of professional behaviour referred to in the Conduct Regulations.

### **Performance Regulations**

4. Schedule 4 sets out the Performance Regulations.

### **Appeals Tribunals Regulations**

5. Schedule 5 sets out the Appeals Tribunals Regulations.

### **Revocations and transitional provisions**

- 6.—(1) Subject to paragraph (2), the following provisions are revoked—
- (a) the Ministry of Defence Police (Conduct etc.) Regulations 2015<sup>(13)</sup> (“the 2015 Regulations”);
  - (b) regulations 2 to 31 of the Ministry of Defence Police (Conduct, Performance and Appeals Tribunals) (Amendment) Regulations 2017<sup>(14)</sup>;
  - (c) regulations 2 to 22 of and the Schedule to Ministry of Defence Police (Conduct and Appeals Tribunals) (Amendment) Regulations 2018<sup>(15)</sup>.

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<sup>(10)</sup> The Police Ombudsman for Northern Ireland is established by s. 51 of the Police (Northern Ireland) Act 1998 (c. 32).

<sup>(11)</sup> Section 2B was inserted by section 78 of the Police Reform Act 2002 (c. 30) and the definition of “relevant force” was amended by paragraph 5 of Schedule 14 and paragraph 1 of Schedule 23 to the Energy Act 2004 (c. 20), S.I. 2005/877, S.I. 2006/378, S.I. 2013/602.

<sup>(12)</sup> 1971 c. 80.

<sup>(13)</sup> S.I. 2015/25.

<sup>(14)</sup> S.I. 2017/84.

<sup>(15)</sup> S.I. 2018/1119.

- (2) Subject to paragraph 3(7) of Schedule 1, the 2015 Regulations as in force immediately before these Regulations came into force, continue to have effect in relation to—
- (a) a pre-commencement allegation,
  - (b) an allegation against an MDP officer which comes to the attention of a relevant authority on or after 2nd November 2020 and which relates to a matter in respect of which a pre-commencement allegation against that person was made, if at the time the allegation is made the pre-commencement allegation is being handled in accordance with—
    - (i) the 2015 Regulations, or
    - (ii) external procedures established for England and Wales, Northern Ireland, or Scotland.
- (3) Subject to paragraph (4), the following provisions are revoked—
- (a) the Ministry of Defence Police (Performance) Regulations 2012(16) (“the 2012 Regulations”);
  - (b) regulation 64 of and Schedule 3 to the Ministry of Defence Police (Conduct etc.) Regulations 2015(17);
  - (c) regulations 32 to 36 of the Ministry of Defence Police (Conduct, Performance and Appeals Tribunals) (Amendment) Regulations 2017.
- (4) The 2012 Regulations, as in force immediately before these Regulations come into force, continue to have effect in relation to—
- (a) unsatisfactory performance or attendance or gross incompetence which came to the attention of the line manager of an MDP officer or a senior officer before 2nd November 2020;
  - (b) unsatisfactory performance or attendance or gross incompetence which came to the attention of the line manager of an MDP officer or a senior officer on or after 2nd November 2020 but which relates to a matter being dealt with under the 2012 Regulations.
- (5) Subject to paragraph (6), the following provisions are revoked—
- (a) the Ministry of Defence Police Appeals Tribunals Regulations 2009(18) (“the 2009 Regulations”);
  - (b) regulations 37 to 48 of the Ministry of Defence Police (Conduct, Performance and Appeals Tribunals) (Amendment) Regulations 2017; and
  - (c) regulations 23 to 34 of the Ministry of Defence Police (Conduct and Appeals Tribunals) (Amendment) Regulations 2018(19).
- (6) In relation to an appeal against a decision made in accordance with the Ministry of Defence Police (Conduct etc.) Regulations 2015 or the Ministry of Defence Police (Performance) Regulations 2012, nothing in these Regulations applies and the 2009 Regulations continue to have effect.

6th October 2020

*Goldie*  
Minister of State  
Ministry of Defence

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(16) S.I. 2012/808.  
 (17) S.I. 2015/25.  
 (18) S.I. 2009/3070.  
 (19) S.I. 2018/1119.

## SCHEDULE 1

Regulation 3(1)

### The Conduct Regulations

## CONTENTS

### PART 1

#### Preliminary matters

1. Regulation
2. Interpretation and delegation
3. Application
4. Standards of Professional Behaviour
5. The harm test

### PART 2

#### General

6. Police friend
7. Legal and other representation
8. Provision of notices or documents
9. Outstanding or possible criminal proceedings
10. Suspension
11. Record of disciplinary proceedings

### PART 3

#### Investigations

12. Application of this Part
13. Severity assessment
14. Appointment of investigator
15. Investigation
16. Written notices
17. Representations to the investigator
18. Timeliness of investigation
19. Interviews during investigation
20. Report of investigation

### PART 4

#### Misconduct proceedings

21. General
22. National security: power to give directions in relation to misconduct hearings
23. Referral of case to misconduct proceedings
24. Presenting of case by the Director General or the Ombudsman
25. Joint misconduct proceedings
26. Withdrawal of misconduct proceedings
27. Persons conducting misconduct proceedings

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28. Role of chair of misconduct hearing
29. Notice of referral to misconduct proceedings
30. Procedure on receipt of notice
31. Witnesses and documents to be supplied
32. Misconduct pre-hearing
33. Timing of misconduct meeting
34. Notice of misconduct proceedings and panel
35. Public notification of misconduct hearings
36. Attendance of officer concerned at misconduct proceedings
37. Participation of the Director General, Ombudsman and investigator at misconduct proceedings
38. Reporting restrictions, participation and exclusions from proceedings
39. Attendance of complainant, interested persons and others at misconduct proceedings
40. Procedure at misconduct proceedings
41. Outcome of misconduct proceedings
42. Notification of outcome
43. Record of misconduct proceedings
44. Appeal from misconduct meeting: officers other than senior officers
45. Appeal meeting
46. Finding of the appeal

#### PART 5

##### Accelerated Misconduct Hearings

47. General
48. National security: power to give directions in relation to accelerated misconduct hearings
49. Referral of case to accelerated misconduct hearing
50. Remission of case
51. Notice of referral to accelerated misconduct hearing
52. Notice of accelerated misconduct hearing
53. Public notification of accelerated misconduct hearing
54. Procedure on receipt of notice
55. Persons conducting accelerated misconduct hearing
56. Documents to be supplied
57. Attendance of officer concerned at accelerated misconduct hearing
58. Participation of Director General, Ombudsman and investigator at accelerated misconduct hearing
59. Reporting restrictions and participation at accelerated misconduct hearing
60. Notice to complainant and interested persons of accelerated misconduct hearing
61. Procedure at accelerated misconduct hearing
62. Outcome of accelerated misconduct hearing
63. Notification of outcome
64. Record of accelerated misconduct hearing

#### PART 6

##### Reflective practice review process

65. Interpretation and application
66. General
67. Referral to reflective practice review process

- 68. Fact-finding stage
  - 69. Discussion stage
  - 70. Reflective review development report
  - 71. Failure to engage with the reflective practice review process
- Signature  
Explanatory Note

## PART 1

### Preliminary matters

#### Regulation

1. Any reference in this Schedule—
  - (a) to a numbered regulation is, unless otherwise stated, to the regulation set out in the paragraph so numbered in this Schedule;
  - (b) to “these Regulations” is to the Regulations set out in this Schedule.

#### Interpretation and delegation

- 2.—(1) In these Regulations—
  - “accelerated misconduct hearing” means a hearing to which the officer concerned is referred under regulation 49 after the case has been certified as one where the special conditions are satisfied;
  - “allegation” means an allegation relating to a complaint, conduct matter or practice requiring improvement;
  - “appeal meeting” means a meeting held in accordance with regulation 45;
  - “chief constable” means the chief constable of the MDP;
  - “conduct” includes acts, omissions, statements and decisions (whether actual, alleged or inferred);
  - “Convention rights” has the meaning given to it in section 1 of the Human Rights Act 1998<sup>(20)</sup>;
  - “criminal proceedings” means—
    - (a) any prospective criminal proceedings, or
    - (b) all criminal proceedings brought which have not been brought to a conclusion (apart from the bringing and determination of any appeal other than an appeal against conviction);
  - “disciplinary action” means, in order of seriousness starting with the least serious action—
    - (a) a written warning,
    - (b) a final written warning,
    - (c) reduction in rank, or
    - (d) dismissal without notice;
  - “disciplinary proceedings” means—
    - (a) misconduct proceedings under Part 4 of these Regulations,
    - (b) an accelerated misconduct hearing under Part 5 of these Regulations, or

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(20) 1998 c. 42.

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(c) an appeal from a misconduct hearing or from an accelerated misconduct hearing under the Appeals Tribunals Regulations;

“extended special unpaid leave” means unpaid leave for a period of more than three months which the Secretary of State has agreed may be taken by the officer concerned;

“gross misconduct” means a breach of the Standards of Professional Behaviour that is so serious as to justify dismissal;

“harm test” has the meaning given to it in regulation 5;

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

“the Inspector of Constabulary” means—

(a) in relation to England and Wales and Northern Ireland, Her Majesty’s Chief Inspector of Constabulary appointed under section 54(1) of the Police Act 1996<sup>(21)</sup> or an inspector of constabulary nominated by the Chief Inspector of Constabulary, and

(b) in relation to Scotland, one of Her Majesty’s Inspectors of Constabulary appointed under section 71 of the Police and Fire Reform (Scotland) Act 2012<sup>(22)</sup>;

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

“investigator” means a person—

(a) appointed under regulation 14, or

(b) appointed or, as the case may be, designated as an investigator under external procedures established for England and Wales or Northern Ireland;

“misconduct” means a breach of the Standards of Professional Behaviour that is so serious as to justify disciplinary action;

“misconduct hearing” means a hearing to which the officer concerned has been referred under regulation 23 to determine whether the conduct of the officer amounts to misconduct or gross misconduct or neither and whether disciplinary action should be imposed;

“misconduct meeting” means a meeting to which the officer concerned has been referred under regulation 23 to determine whether the conduct of the officer amounts to misconduct or not and whether disciplinary action should be imposed;

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

“officer concerned” means the MDP officer, or former MDP officer, in relation to whose conduct as an MDP officer there has been an allegation;

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

“practice requiring improvement” means underperformance or conduct not amounting to misconduct or gross misconduct, which falls short of the expectations of the public and the police service as set out in the “Code of Ethics” issued by the College of Policing under section 39A of the Police Act 1996 (codes of practice for chief officers)<sup>(23)</sup>;

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(21) 1996 (c. 16); to which there are amendments not relevant to these Regulations.

(22) 2012 (asp. 8).

(23) The Code of Ethics (A Code of Practice or the Principles and Standards of Professional Behaviour for the Policing Profession of England and Wales), July 2014. This publication is available for download at: <http://www.college.police.uk/en/20989.htm>. A copy of this publication can be obtained from the College of Policing. Section 39A was inserted by section 2 of the Police Reform Act 2002 (c. 30) and was amended by paragraph 30 of Schedule 16 to the Police Reform and Social Responsibility Act 2011 (c. 13) and section 124 of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12).



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

“reflective practice review process” means the process set out in Part 6;

“relevant authority” has the meaning given in section 4(4) of the 1987 Act<sup>(24)</sup>;

“severity assessment” has the meaning given to it in regulation 13;

“special conditions” has the meaning given to it in regulation 49;

“staff association” means—

- (a) in relation to an MDP officer other than a senior officer, the Defence Police Federation, and
- (b) in relation to a senior officer, the Chief Police Officers’ staff association;

“Standards of Professional Behaviour” has the meaning given in regulation 4 and references in these Regulations to the Standards of Professional Behaviour are to be construed accordingly.

(2) In these Regulations—

- (a) references to external procedures are to external procedures established for England and Wales or Northern Ireland unless otherwise stated,
- (b) references to paragraphs of Schedule 3 to the 2002 Act are to those paragraphs as applied under an agreement under section 26(1) of that Act, and
- (c) references to sections of the 1998 Act are to those sections as applied under an agreement under section 60(1) of that Act.

(3) Where the relevant authority is the chief constable, the chief constable may, subject to paragraph (4), delegate any functions under these Regulations to a member of the MDP of at least the rank of inspector.

(4) Where the chief constable delegates their functions under regulation 10 (suspension of officer) or 49 (referral to accelerated misconduct hearing), the following decisions must be authorised by a senior officer—

- (a) a decision under regulation 10 to suspend an officer or to continue or end such a suspension,
- (b) a decision under regulation 49 as to whether to certify a case as one where the special conditions are satisfied.

(5) For the purposes of these Regulations, the making of a protected disclosure by an MDP officer is not a breach of the Standards of Professional Behaviour.

(6) In paragraph (5), “protected disclosure” has the meaning given by section 43A of the Employment Rights Act 1996 (meaning of protected disclosure)<sup>(25)</sup>, or, in Northern Ireland, in Article 76B of the Employment Rights (Northern Ireland) Order 1996<sup>(26)</sup>.

## Application

**3.—(1)** Subject to paragraph (6), these Regulations apply where an allegation comes to the attention of a relevant authority which indicates that the conduct of an MDP officer may amount to misconduct, gross misconduct or practice requiring improvement.

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<sup>(24)</sup> The definition of “relevant authority” was amended by paragraph 3 of Schedule 7 to the Policing and Crime Act 2017.

<sup>(25)</sup> 1996 c. 18. Section 43A was inserted by section 1 of the Public Interest Disclosure Act 1998 (c. 23).

<sup>(26)</sup> 1996 N.I. 16. Article 76B was inserted by the Public Interest Disclosure (Northern Ireland) Order 1998 (N.I. 17), Article 3.

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(2) Subject to paragraph (6), and except as set out in paragraph (8), these Regulations also apply(27), with the modifications set out in Schedule 2, where—

- (a) an allegation comes to the attention of a relevant body 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 body.

(4) Condition B is that—

- (a) P ceased to be an MDP officer before the allegation first came to the attention of a relevant body, 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 body does 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 body,
- (b) the period between the date P ceased be an MDP officer and the date the allegation first came to the attention of the relevant body exceeded 12 months, and
- (c) the case to which the allegation relates has been investigated under external procedures established for England and Wales, Northern Ireland or Scotland.

(6) Subject to paragraph (7), these Regulations do not apply in relation to—

- (a) a pre-commencement allegation, or
- (b) an allegation against an MDP officer which comes to the attention of a relevant body on or after the date on which these Regulations come into force and which relates to a matter in respect of which a pre-commencement allegation against that person was made, if at the time the allegation is made the pre-commencement allegation is being handled in accordance with—
  - (i) the provisions referred to in regulation 6(2) of the Ministry of Defence (Conduct, Performance and Appeals) Regulations 2020;
  - (ii) external procedures established for England and Wales, Northern Ireland or Scotland.

(7) Where the Director General—

- (a) determines, under external procedures established for England and Wales, that a complaint or matter is to be re-investigated, or
- (b) has directed, in relation to conduct which took place, or circumstances which occurred, before 1 April 2004, that external procedures established for England and Wales apply,

these Regulations apply regardless of when the complaint or matter came to the attention of the relevant authority.

(8) Paragraph (2) does not apply if the disciplinary proceedings would not be the first disciplinary proceedings to be taken against P in respect of the alleged gross misconduct unless they result from a re-investigation of the allegation, whether carried out under these Regulations or under external procedures that begins not later than 12 months after the date on which P ceased to be an MDP officer.

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(27) Section 3A(1B)-(1H) of the 1987 Act which were inserted by section 29(8) of, and Schedule 7, paragraphs 1, 2(1) and (2) to the Policing and Crime Act 2017, provides that regulations made under section 3A may, in respect of former MDP officers, only be applied to such persons where there is an indication that the person’s conduct at the time they were an MDP officer amounts to gross misconduct, and had the person still been employed as an MDP Officer, they would have been at risk of dismissal.

(9) Where a relevant authority is considering more than one allegation in relation to the same MDP officer, or a person in relation to whom these Regulations apply by virtue of paragraph (2), the allegations may be taken together and treated as a single allegation for the purposes of any provision of these Regulations which requires a person to make an assessment, finding, determination or decision in connection with conduct which is the subject matter of an allegation.

(10) In this regulation, “relevant body” means—

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

### **Standards of Professional Behaviour**

4. The Standards of Professional Behaviour established are the standards of professional behaviour described in Schedule 3.

### **The harm test**

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

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

## **PART 2**

### **General**

### **Police friend**

6.—(1) The officer concerned may choose any of the following persons, provided the person is not otherwise involved in the matter, to act as a police friend—

- (a) an MDP officer,
- (b) an officer from a relevant force,

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- (c) a staff member, or
  - (d) a person nominated by a staff association.
- (2) Subject to regulation 66(1), the police friend may—
- (a) advise the officer concerned throughout the proceedings under these Regulations,
  - (b) represent the officer at the misconduct proceedings or accelerated misconduct hearing or appeal meeting, unless the officer has the right to be legally represented and chooses to be so represented,
  - (c) make representations to the relevant authority concerning any aspect of the proceedings under these Regulations, and
  - (d) accompany the officer to any interview, meeting or hearing which forms part of any proceedings under these Regulations.
- (3) Where the police friend is an MDP officer, the chief constable must permit the police friend to use a reasonable amount of duty time for the purposes referred to in paragraph (2).
- (4) Where the police friend is a staff member, the Secretary of State for Defence must permit that person to use a reasonable amount of duty time for the purposes referred to in paragraph (2).

### **Legal and other representation**

- 7.—(1) Subject to paragraph (2), the officer concerned has the right to be legally represented, by a relevant lawyer of the officer’s choice (the “preferred lawyer”), at a misconduct hearing or an accelerated misconduct hearing.
- (2) The unavailability of one or more preferred lawyers is not a valid ground for delaying a misconduct hearing or an accelerated misconduct hearing where an alternative relevant lawyer can be found.
- (3) If the officer concerned chooses not to be legally represented at a misconduct hearing or an accelerated misconduct hearing the officer may be dismissed or receive any other outcome under regulation 41 or 62 without being so represented.
- (4) Except in a case where the officer concerned has the right to be legally represented and chooses to be so represented, the officer may only be represented at misconduct proceedings, an accelerated misconduct hearing or an appeal meeting by a police friend.
- (5) The relevant authority may be represented at misconduct proceedings or an accelerated misconduct hearing or an appeal meeting by—
- (a) an MDP officer or a staff member, or
  - (b) at a misconduct hearing or an accelerated misconduct hearing only, a relevant lawyer (whether or not the officer concerned chooses to be legally represented).
- (6) Subject to paragraph (7), the relevant authority may appoint a person to advise the person conducting or chairing the misconduct proceedings or accelerated misconduct hearing or appeal meeting.
- (7) At a misconduct meeting or an appeal meeting, the person appointed under paragraph (6) must not be a relevant lawyer.
- (8) The circumstances in which the Independent Office for Police Conduct or the Ombudsman, as the case may be, is a relevant authority for the purpose of section 4(5) of the 1987 Act (representation etc. at disciplinary proceedings)(28) are prescribed as being where—
- (a) the Director General has made a decision under regulation 24(1) to present the case, and

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(28) Section 4 was substituted by paragraph 15 of Schedule 22 to the Criminal Justice and Immigration Act 2008 (c. 4), and amended by paragraph 63 of Schedule 9 to the Policing and Crime Act 2017 (c. 3).

(b) the Ombudsman is required to present the case under regulation 24(6).

(9) Where the circumstances prescribed in paragraph (8) apply, the Director General or the Ombudsman, as the case may be, may be represented by a relevant lawyer.

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

8.—(1) Where any written notice or document is to be given or supplied to the officer concerned under these Regulations, it must be—

- (a) given to the officer in person,
- (b) left with a person at, or sent by recorded delivery to, the officer's last known address,
- (c) given to the officer in person by the officer's police friend where the police friend has agreed with the relevant authority to deliver the notice or document, or
- (d) given to the officer in any other manner agreed between the person who is required to give the notice or document and the officer.

(2) Where any written notice or document is given or supplied under paragraph (1), delivery is effective on the date on which—

- (a) it is given to the officer under paragraph (1)(a), (c) or (d);
- (b) it is left with any person at the officer's last known address, under paragraph (1)(b);
- (c) receipt was recorded, if sent by recorded delivery to the officer's last known address under paragraph (1)(b).

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

9.—(1) Subject to the provisions of this regulation, proceedings under these Regulations must proceed without delay.

(2) Before referring a case to misconduct proceedings or an accelerated misconduct hearing, the relevant authority must decide whether misconduct proceedings or an accelerated misconduct hearing would prejudice any criminal proceedings.

(3) For any period during which the relevant authority considers any misconduct proceedings or accelerated misconduct hearing would prejudice any criminal proceedings—

- (a) no such misconduct proceedings or accelerated misconduct hearing may take place, and
- (b) the relevant authority must preserve any relevant evidence in its possession.

(4) Where a witness who is or may be a witness in any criminal proceedings is to be or may be asked to attend misconduct proceedings, the relevant authority must consult the relevant prosecutor (and when doing so must inform the prosecutor of the names and addresses of all such witnesses) before making its decision under paragraph (2).

(5) For the purposes of this regulation "relevant prosecutor" means—

- (a) in relation to England and Wales, the Director of Public Prosecutions or any other person who has or is likely to have responsibility for the criminal proceedings,
- (b) in relation to Scotland, the Lord Advocate or any other person who has or is likely to have responsibility for the criminal proceedings, or
- (c) in relation to Northern Ireland, the Director of Public Prosecutions for Northern Ireland or any other person who has or is likely to have responsibility for the criminal proceedings.

## **Suspension**

**10.**—(1) The relevant authority may, subject to the provisions of this regulation, suspend the officer concerned from membership of the MDP.

(2) An officer who is suspended under this regulation remains an MDP officer for the purposes of these Regulations.

(3) The relevant authority may not suspend an MDP officer under this regulation unless the following conditions (“the suspension conditions”) are satisfied—

- (a) having considered temporary redeployment to alternative duties or an alternative location as an alternative to suspension, the relevant authority has determined that such redeployment is not appropriate in all the circumstances of the case, and
- (b) it appears to the relevant authority that either—
  - (i) the effective investigation of the case may be prejudiced unless the officer concerned is so suspended, or
  - (ii) having regard to the nature of the allegation and any other relevant considerations, the public interest requires that the officer should be so suspended.

(4) The relevant authority may exercise the power to suspend the officer concerned under this regulation at any time beginning with the day on which these Regulations first apply in respect of the officer in accordance with regulation 3 and ending with the date on which—

- (a) it is decided that the conduct of the officer should not be referred to misconduct proceedings or an accelerated misconduct hearing, or
- (b) such proceedings have concluded.

(5) The relevant authority may suspend the officer concerned with effect from the date and time of notification which must be given either—

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

(6) The officer concerned (or the officer’s police friend) may make representations against suspension to the relevant authority—

- (a) before the end of 7 working days beginning with the first working day after being suspended;
- (b) at any time during the suspension if the officer reasonably believes that circumstances relevant to the suspension conditions have changed.

(7) The relevant authority must review the suspension conditions—

- (a) on receipt of any representations under paragraph (6);
- (b) if there has been no previous review, before the end of 4 weeks beginning with the first working day after the suspension;
- (c) in any other case—
  - (i) when it becomes aware that circumstances relevant to the suspension conditions may have changed (whether by means of representations made under paragraph (6)(b) or otherwise), or
  - (ii) before the end of 4 weeks beginning with the first working day after the previous review.

(8) Where, following a review under paragraph (7), the suspension conditions remain satisfied and the relevant authority decides the suspension should continue, it must, before the end of 3

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

(9) Where the officer concerned is suspended under this regulation, the officer must remain so suspended until whichever of the following occurs first—

- (a) the relevant authority decides, following a review, that the suspension conditions are no longer satisfied, or
- (b) either of the events mentioned in paragraph (4)(a) and (b).

(10) In a case investigated under paragraph 18 or 19 of Schedule 3 to the 2002 Act<sup>(29)</sup> or section 54(2), (3)(a) or section 55(3), (5) or (6) of the 1998 Act<sup>(30)</sup>, the relevant authority must consult with the Director General or, as the case may be, the Ombudsman—

- (a) in deciding whether or not to suspend the officer concerned under this regulation, and
- (b) in deciding, following a review, whether or not to end a suspension under this regulation.

### **Record of disciplinary proceedings**

**11.** The relevant authority must cause a record to be kept of disciplinary proceedings brought against every officer concerned, together with the finding and decision on disciplinary action and the decision in any appeal by the officer.

## **PART 3**

### **Investigations**

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

**12.** This Part does not apply to a case which is being or has been investigated under external procedures.

#### **Severity assessment**

**13.—(1)** The relevant authority must assess whether the conduct which is the subject matter of the allegation, if proved, would amount to misconduct or gross misconduct or neither (“the severity assessment”).

(2) Where the relevant authority assesses that the conduct, if proved, would amount to neither misconduct nor gross misconduct, it must assess whether—

- (a) the conduct, if proved, would amount to practice requiring improvement,
- (b) the matter should be referred to be dealt with under the Performance Regulations, or
- (c) it should take no further action.

(3) The relevant authority must consult the line manager of the officer concerned before making an assessment in terms of paragraph (2)(a) or (b).

(4) Where the relevant authority assesses that the conduct, if proved, would amount to practice requiring improvement, it must refer the matter to be dealt with under the reflective practice review process set out in Part 6.

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<sup>(29)</sup> Paragraphs 18 of the 2002 Act was amended by paragraph 18, 19, 56 of Schedule 5 to the Policing and Crime Act 2017 (c. 3). Paragraph 19 of that Act was also amended by paragraph 56 of Schedule 5 to that Act. There are other amendments to those provisions which are not relevant to these Regulations.

<sup>(30)</sup> Section 55 of the 1998 Act was amended by paragraph 23 of Schedule 6 to the Police (Northern Ireland) Act 2000 (c. 32), s. 34(4) of the Justice (Northern Ireland) Act 2002 (c. 46), s. 6(3) of the Justice (Northern Ireland) Act 2004 and S.I. 2010/976.

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(5) Where the relevant authority assesses that the conduct, if proved, would amount to misconduct or gross misconduct—

- (a) the matter must be investigated, and
- (b) the relevant authority must assess whether, if the matter were to be referred to misconduct proceedings under regulation 23, those would be likely to be a misconduct meeting or a misconduct hearing.

(6) At any time before the start of misconduct proceedings, the relevant authority may revise its severity assessment under this regulation if it considers it appropriate to do so.

(7) Where the relevant authority decides under this regulation to take no further action or to refer the matter to be dealt with under the reflective practice review process or the Performance Regulations, it must so notify the officer concerned in writing as soon as practicable.

### **Appointment of investigator**

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

(2) Subject to paragraph (3), the relevant authority must appoint an appropriate person to investigate the matter.

(3) No person may be appointed to investigate a matter under this regulation—

- (a) if they are an interested party,
- (b) if they work, directly or indirectly, under the management of the officer concerned, or
- (c) in a case where the officer concerned is a senior officer, if they are the chief constable, or another MDP officer.

(4) In paragraph (2), “appropriate person” means a person who has an appropriate level of knowledge, skills and experience to plan and manage the investigation.

### **Investigation**

**15.**—(1) The purpose of the investigation is to—

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

(2) The investigator must as soon as practicable after being appointed draw up the terms of reference of the investigation.

### **Written notices**

**16.**—(1) Subject to the harm test and except where paragraph (6) applies by virtue of subparagraph (a) of that paragraph, the investigator must, as soon as reasonably practicable after being appointed, give the officer concerned a written notice stating—

- (a) the conduct that is the subject matter of the allegation and how that conduct is alleged to fall below the Standards of Professional Behaviour,
- (b) that there is to be an investigation into the matter and the identity of the investigator,
- (c) the result of the severity assessment conducted under regulation 13,
- (d) the result of any assessment under regulation 13(5)(b) as to whether any misconduct proceedings would likely be a misconduct meeting or a misconduct hearing,



- (e) that the officer has the right to seek advice from the officer's staff association or any other body and of the effect of regulation 6(1) and (2),
  - (f) the effect of regulations 7(1) to (3) and 17,
  - (g) that it may harm the officer's case if the officer fails to attend an interview of which the officer has been given notice under regulation 19(6) (interviews during investigation), and
  - (h) that whilst the officer does not have to say anything it may harm the officer's case if the officer does not mention when interviewed or when providing any information under regulation 17(1) or 30(2) or (3) something later relied on in any disciplinary proceedings.
- (2) Where a notice is given under paragraph (1), the investigator must—
- (a) subject to the harm test and except where paragraph (6) applies by virtue of sub-paragraph (b) of that paragraph, give the officer concerned the written terms of reference of the investigation, or
  - (b) where written terms of reference are not provided under sub-paragraph (a), give the officer concerned written notice stating that the terms of reference are not being provided and explaining why.
- (3) The investigator must give the officer concerned the written terms of reference, or, as the case may be, the written notice, under paragraph (2)—
- (a) where practicable, at the same time as notice is given under paragraph (1), or
  - (b) otherwise, within a period of 5 working days, beginning with the first working day after the day on which such notice is given.
- (4) Subject to the harm test and except where paragraph (6) applies by virtue of sub-paragraph (c) of that paragraph, where notice is given under paragraph (1) and the relevant authority revises its severity assessment in accordance with regulation 13(6), the relevant authority must as soon as practicable give the officer concerned a written notice of the result of the revised severity assessment.
- (5) Subject to the harm test and except where paragraph (6) applies by virtue of sub-paragraph (d) of that paragraph, where the written terms of reference are given under paragraph (2) and those terms are revised by the investigator, the investigator must as soon as practicable give the officer concerned the revised terms of reference.
- (6) This paragraph applies for so long as the investigator considers that giving—
- (a) a written notice under paragraph (1),
  - (b) terms of reference under paragraph (2),
  - (c) a written notice under paragraph (4), or
  - (d) revised terms of reference under paragraph (5),
- might prejudice the investigation or any other investigation (including, in particular, a criminal investigation).
- (7) Once a written notice has been given in accordance with paragraph (1), the investigator must notify the officer concerned of the progress of the investigation—
- (a) if there has been no previous notification following the supply of the written notice under paragraph (1), before the end of 4 weeks beginning with the first working day after that written notice was given, and
  - (b) in any other case, before the end of 4 weeks beginning with the first working day after the previous notification.

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### **Representations to the investigator**

17.—(1) Before the end of 10 working days beginning with the first working day after the terms of reference, or, as the case may be, written notice stating terms are not being provided has been given under regulation 16(2)—

- (a) the officer concerned may provide a written or oral statement relating to any matter under investigation to the investigator, including any mitigating circumstances relevant to any such matter, and
- (b) the officer concerned or the officer's police friend may provide any relevant documents to the investigator.

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

(3) The period of 10 working days referred to in paragraph (1) may be extended by the investigator.

(4) In this regulation "relevant document"—

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

### **Timeliness of investigation**

18.—(1) Where an investigation is not completed within a relevant period, the relevant authority must, subject to paragraph (3), provide as soon as practicable the following information in writing to the Secretary of State—

- (a) the date on which the allegation came to the attention of the relevant authority,
- (b) the date on which notice was given under regulation 16(1),
- (c) the progress of the investigation,
- (d) an estimate of when—
  - (i) the investigation will be concluded, and
  - (ii) a report will be submitted under regulation 20,
- (e) the reason for the length of time taken by the investigation, and
- (f) a summary of planned steps to progress the investigation and bring it to a conclusion.

(2) For the purposes of this regulation, each of the following is a "relevant period"—

- (a) the first relevant period is the period of 12 months beginning with the day on which the allegation first came to the attention of the relevant authority,
- (b) each subsequent relevant period is the period of 6 months beginning with the day after the end of the previous relevant period.

(3) The requirement to provide information under paragraph (1) does not apply in a case where it appears to the relevant authority that to do so might prejudice the investigation or any other investigation (including a criminal investigation).

(4) Subject to the harm test, a copy of the information provided under paragraph (1) must be sent to the officer concerned.

### **Interviews during investigation**

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

(2) No interview may take place until the officer concerned has been provided with the terms of reference or, as the case may be, a written notice stating terms are not being provided under regulation 16(2).

(3) Where no date and time is agreed under paragraph (1), the investigator must specify a date and time for the interview.

(4) Where a date and time is specified under paragraph (3) and—

- (a) the officer concerned or the officer's police friend will not be available, and
- (b) the officer proposes an alternative date or time which satisfies paragraph (5),

the interview must be postponed to the date or time proposed by the officer.

(5) An alternative time must—

- (a) be reasonable, and
- (b) fall before the end of the period of 5 working days beginning with the first working day after the day specified by the investigator.

(6) The investigator must give the officer concerned written notice of the date, time and place of the interview.

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

(8) The officer concerned must attend the interview.

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

### **Report of investigation**

**20.**—(1) On completion of the investigation, the investigator must as soon as practicable submit a written report on the investigation to the relevant authority.

(2) The written report must—

- (a) provide an accurate summary of the evidence,
- (b) attach or refer to any relevant documents,
- (c) indicate the investigator's opinion as to whether there is a case to answer in respect of misconduct or gross misconduct or whether there is no case to answer, and
- (d) where the investigator's opinion under sub-paragraph (c) is that there is no case to answer, indicate the investigator's opinion as to whether the matter should be referred to be dealt with under the Performance Regulations or the reflective practice review process.

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

- (a) a statement of the investigator's belief and the grounds for it, and
- (b) a written report on the investigation to that point.

(4) If at any time during the investigation the investigator believes that, in light of evidence made available to the investigator that was not available to the relevant authority when it made its severity

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assessment or any revised severity assessment under regulation 13, the relevant authority would, on further consideration of the matter, be likely to determine that the conduct which is the subject matter of the allegation, if proved, would amount to neither misconduct nor gross misconduct, the investigator must, whether or not the investigation is complete, submit to the relevant authority—

- (a) a statement of the investigator’s belief and the grounds for it,
- (b) a written report on the investigation to that point, and
- (c) a statement of the investigator’s opinion as to whether the matter should be referred to be dealt with under the Performance Regulations or the reflective practice review process.

(5) Where a report is submitted to the relevant authority under paragraph (4), the relevant authority must make a further severity assessment under regulation 13.

(6) If the relevant authority assesses that the conduct if proved would amount to misconduct or gross misconduct, the investigator must continue to proceed with the investigation that has been commenced.

(7) If the relevant authority makes an assessment other than that the conduct if proved would amount to misconduct or gross misconduct—

- (a) the case must be dealt with in accordance with regulation 13,
- (b) the investigation must be promptly concluded, and
- (c) the relevant authority must as soon as practicable and in addition to any notice required under regulation 13(7), give the officer concerned notice in writing that—
  - (i) the notice given to the officer under regulation 16(1) has been withdrawn and no further action will be taken pursuant to that notice, and
  - (ii) the investigation has been concluded.

## PART 4

### Misconduct proceedings

#### General

**21.** Any period of time specified in this Part in relation to misconduct proceedings may be reduced by agreement between the relevant authority, the officer concerned, where the Director General or Ombudsman is presenting the case, the Director General or Ombudsman, as the case may be, and the person conducting or chairing the misconduct proceedings.

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

**22.—**(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 misconduct hearing must be conducted in private;
- (b) that a specified person must be excluded from all or part of the misconduct 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 35 (public notification of misconduct hearing) or report published in accordance with regulation 42(6) (report of outcome of misconduct hearing).

(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 misconduct hearing as soon as possible.

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

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

**23.**—(1) Subject to regulation 49, on receipt of the investigator’s report under regulation 20(1) or an equivalent report submitted under external procedures, the relevant authority must, as soon as practicable, determine—

- (a) whether the officer concerned has a case to answer in respect of misconduct or gross misconduct or whether the officer has no case to answer,
- (b) if there is a case to answer, whether or not misconduct proceedings should be brought against the officer, and
- (c) if so, and subject to paragraph (9), what form the misconduct proceedings should take.

(2) Where the relevant authority determines that the officer concerned has breached the Standards of Professional Behaviour, but that the case does not amount to misconduct, the case is to be dealt with under these Regulations as if the relevant authority had determined that there was no case to answer.

(3) In a case where the misconduct proceedings have been delayed by virtue of regulation 9(3), as soon as practicable after—

- (a) the relevant authority considers that such proceedings would no longer prejudice any criminal proceedings, or
- (b) any criminal proceedings have concluded (whatever the outcome of those proceedings),

the relevant authority must, subject to regulation 49(3) and paragraph (9) and unless the relevant authority must refer the case to misconduct proceedings in accordance with paragraph (8), make a further determination as to the matters set out in paragraph (1)(a) to (c).

(4) Where the relevant authority determines there is no case to answer or that no misconduct proceedings will be brought, it must assess whether—

- (a) the case amounts to practice requiring improvement,
- (b) the matter should be referred to be dealt with under the Performance Regulations, or
- (c) it should take no further action.

(5) The relevant authority must consult the line manager of the officer concerned before making an assessment in terms of paragraph (4)(a) or (b).

(6) As soon as practicable after it has completed the assessment under paragraph (4), the relevant authority must—

- (a) inform the officer concerned of the outcome of its assessment, and
- (b) subject to the harm test, give the officer a copy of the investigator’s report or such parts of that report as relate to the officer.

(7) Where the relevant authority assesses that the case amounts to practice requiring improvement, it must direct that the matter is dealt with under the reflective practice review process set out in Part 6.

(8) Where the relevant authority —

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- (a) has a duty under paragraph 23(5B) of Schedule 3 to the 2002 Act (duties with respect to disciplinary proceedings)(31) to comply with a direction to bring misconduct proceedings of a form specified in a determination of the Director General,
  - (b) accepts a recommendation made under paragraph 25(4C)(c) or (4E)(c) of that Schedule (reviews with respect to an investigation)(32) that misconduct proceedings of the form specified in the recommendation are brought,
  - (c) has a duty under paragraph 27(4)(b) of that Schedule (duties with respect to disciplinary proceedings etc.) to comply with a direction to give effect to a recommendation to bring misconduct proceedings of a form specified in a recommendation made under paragraph 25(4C) of that Schedule, or
  - (d) has been directed under section 59(5) of the 1998 Act to bring disciplinary proceedings,
- it must, subject to regulation 9(3), refer the case to misconduct proceedings of the form specified.

(9) Where the relevant authority determines under paragraph (1) to refer the case to misconduct proceedings—

- (a) having determined that the officer concerned has a case to answer in respect of gross misconduct, those proceedings must be a misconduct hearing,
- (b) where the officer had a final written warning in force at the date of the severity assessment under regulation 13(1) or under external procedures, those proceedings must be a misconduct hearing,
- (c) where the officer has been reduced in rank under the Ministry of Defence Police (Conduct) Regulations 2004(33), or these Regulations less than 2 years prior to the severity assessment under regulation 13(1) or, as the case may be, under external procedures, those proceedings must be a misconduct hearing, and
- (d) having determined that the officer has a case to answer in respect of misconduct and that the case does not fall under sub-paragraphs (a), (b) or (c), those proceedings must be a misconduct meeting.

(10) Where the relevant authority fails to make the determination referred to in paragraph (1) before the end of 15 working days beginning with the first working day after receipt of the report, it must notify the officer concerned of the reason for this.

(11) In determining whether any criminal proceedings are to be treated as concluded for the purposes of this regulation, any right of appeal is to be disregarded.

### **Presenting of case by the Director General or the Ombudsman**

24.—(1) The Director General may decide to present the case on behalf of the relevant authority where—

- (a) paragraph (2) applies and the case is referred to a misconduct hearing or an accelerated misconduct hearing, or
  - (b) paragraph (4) applies and the case is referred to an accelerated misconduct hearing.
- (2) This paragraph applies to a case—
- (a) in respect of which a duty referred to in regulation 23(8)(a) or (c) arises, and
  - (b) where one of the conditions set out in paragraph (3) is satisfied.
- (3) The conditions are—

(31) Sub-paragraph (5B) was inserted, with sub-paragraphs (5A) to (5F) by the Policing and Crime Act 2017 (c. 3), Schedule 5, paragraph 26.

(32) Sub-paragraphs (4A) to (4J) were inserted by the Policing and Crime Act 2017, Schedule 5, paragraph 34.

(33) S.I. 2004/653.

- (a) the relevant authority, when its views were sought in respect of the case under paragraph 23(5A)(a)(i) of Schedule 3 to the 2002 Act<sup>(34)</sup> (action by the Director General in relation to an investigation report under paragraph 22), or subsequently, has expressed a view as to whether any person to whose conduct the case relates has a case to answer in respect of misconduct or gross misconduct that differed from the determination of the Director General under paragraph 23(5A)(b)(i) on that matter,
  - (b) the relevant authority notified the Director General under paragraph 25(4D)(a) of Schedule 3 to the 2002 Act<sup>(35)</sup> (reviews with respect to an investigation) that it did not accept a recommendation of the Director General under paragraph 25(4C)(c)(i) of Schedule 3 to the 2002 Act (reviews with respect to an investigation),
  - (c) the relevant authority and the Director General agree that the Director General should present the case, or
  - (d) the Director General is of the view that in the particular circumstances of the case there is a compelling public interest for the Director General to present the case.
- (4) This paragraph applies to a case where—
- (a) the relevant authority submitted a memorandum to the Director General setting out its reasons for determining either that—
    - (i) the special conditions are not satisfied, or
    - (ii) although the special conditions are satisfied, the circumstances are such as to make it inappropriate at present to bring disciplinary proceedings, and
  - (b) the Director General directed the relevant authority to certify the case as one where the special conditions are satisfied for the purposes of these Regulations.
- (5) Where the Director General makes a decision under paragraph (1) to present a case, the Director General must as soon as practicable inform the relevant authority of the decision.
- (6) The Ombudsman must present the case on behalf of the relevant authority where the Ombudsman has, under section 59(5) of the 1998 Act, directed the chief constable that proceedings are to be brought.
- (7) The relevant authority must give the Director General or the Ombudsman any assistance the Director General or the Ombudsman reasonably requires for the purpose of presenting a case.
- (8) The special conditions are that—
- (a) there is sufficient evidence, in the form of written statements or other documents, to establish on the balance of probabilities that conduct to which the investigation relates constitutes gross misconduct, and
  - (b) it is in the public interest for the person whose conduct it is to cease being an MDP officer without delay.

### **Joint misconduct proceedings**

25.—(1) Subject to paragraphs (6) and (7), where under regulation 23 the relevant authority refers two or more cases arising from the same matter or incident, which relate to more than one MDP officer, to a misconduct hearing, the cases may be referred to a joint misconduct hearing.

(2) Subject to paragraph (6), where under regulation 23 the relevant authority refers two or more cases arising from the same matter or incident, which relate to more than one MDP officer, to a misconduct meeting, the cases may be referred to a joint misconduct meeting.

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<sup>(34)</sup> Sub-paragraph (5A) was inserted, with sub-paragraphs (5B) to (5F), by paragraph 26 of Schedule 5 to the Policing and Crime Act 2017 (c. 3).

<sup>(35)</sup> Sub-paragraph (4D) was inserted, with sub-paragraphs (4A) to (4J), by paragraph 34 of Schedule 5 to the Policing and Crime Act 2017.

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(3) Where cases are referred to joint misconduct proceedings, a reference to “the officer concerned” in regulations 26 to 43, if the context so requires, means—

- (a) any of the officers concerned, or
- (b) each of the officers concerned.

(4) Where cases are referred to joint misconduct proceedings, the officer concerned in any of the cases may object and request separate proceedings.

(5) The person conducting or chairing the misconduct proceedings must consider any objection under paragraph (4) and determine whether the request for separate proceedings should be allowed.

(6) Cases may only be referred to joint misconduct proceedings where all or none of the officers concerned are senior officers.

(7) A case in respect of which the Director General has made a decision to present a case under regulation 24(1) may only be referred to a joint misconduct hearing on the direction of the Director General, following consultation with the relevant authority.

(8) The relevant authority must comply with a direction given under paragraph (7).

(9) Where the Ombudsman is required to present a case under regulation 24(6), it can only be referred to a joint misconduct hearing if the Ombudsman agrees.

### **Withdrawal of misconduct proceedings**

**26.**—(1) Subject to paragraph (4), at any time before the beginning of the misconduct proceedings, the relevant authority—

- (a) if it is no longer satisfied that there is a case to answer in respect of misconduct or gross misconduct, must direct that the case be withdrawn, and
- (b) where sub-paragraph (a) does not apply, may direct that the case be withdrawn.

(2) Where a direction is given under paragraph (1)—

- (a) the relevant authority may—
  - (i) take no further action against the officer concerned,
  - (ii) refer the matter to the reflective practice review process, or
  - (iii) refer the matter to be dealt with under the Performance Regulations, and
- (b) the relevant authority must as soon as practicable give the officer concerned—
  - (i) written notice of the direction, indicating whether any action will be taken under paragraph (2)(a), and
  - (ii) where the investigation has been completed, on request and subject to the harm test, a copy of the investigator’s report or such parts of that report as relate to the officer.

(3) Before referring a matter to the reflective practice review process or to be dealt with under the Performance Regulations, the relevant authority must consult the line manager of the officer concerned.

(4) A case investigated under external procedures established for England and Wales or Northern Ireland may only be withdrawn—

- (a) in relation to England and Wales—
  - (i) on the direction of the Director General, following consultation with the relevant authority, if paragraph (5) applies, or
  - (ii) following consultation with the Director General, in all other cases;
- (b) in relation to Northern Ireland—



- (i) with leave of the Ombudsman, following consultation with the relevant authority, if paragraph (6) applies;
  - (ii) on the decision of the relevant authority, in all other cases.
- (5) This paragraph applies in a case where the Director General has—
  - (a) made a recommendation under paragraph 25(4C)(c) of Schedule 3 to the 2002 Act (duties with respect to disciplinary proceedings) which the relevant authority accepted,
  - (b) given a direction, under paragraph 23(5A)(e) or paragraph 27(4)(a) of that Schedule to bring disciplinary proceedings.
- (6) This paragraph applies in a case relating to MDP officers who are not senior officers, where the Ombudsman has—
  - (a) made a recommendation under section 59(2)(a) of the 1998 Act (steps to be taken after the investigation – disciplinary proceedings), or
  - (b) given a direction under section 59(5) of that Act to bring disciplinary proceedings.

### **Persons conducting misconduct proceedings**

- 27.—**(1) Where the officer concerned is an officer other than a senior officer—
- (a) where the case is referred to a misconduct meeting, that meeting must be conducted by a person—
    - (i) appointed by the relevant authority,
    - (ii) who is not an interested party, and
    - (iii) is appointed in accordance with paragraph (3);
  - (b) where the case is referred to a misconduct hearing, that hearing must be conducted by a panel of three persons appointed in accordance with paragraph (4).
- (2) Where the officer concerned is a senior officer and the case is referred to misconduct proceedings, those misconduct proceedings must be conducted by a panel of three persons appointed in accordance with paragraph (5).
- (3) The person appointed by the relevant authority in accordance with this paragraph must be—
- (a) an MDP officer of at least one rank higher than the officer concerned, or
  - (b) unless the case substantially involves operational police matters, a staff member who, in the opinion of the relevant authority, is more senior than the officer concerned.
- (4) A panel appointed in accordance with this paragraph must comprise—
- (a) a chair appointed by the relevant authority, selected on a fair and transparent basis from the list of legally qualified persons maintained by the Secretary of State for the purposes of these Regulations,
  - (b) an MDP officer of the rank of superintendent or above, who is of at least one rank above the officer concerned, and
  - (c) a person appointed by the relevant authority, selected on a fair and transparent basis, from a list of candidates maintained by the Secretary of State for the purpose of these Regulations.
- (5) A panel appointed in accordance with this paragraph must comprise—
- (a) a chair appointed by the relevant authority, selected on a fair and transparent basis from the list of legally qualified persons maintained by the Secretary of State for the purposes of these Regulations,
  - (b) the Inspector of Constabulary, and

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(c) a person appointed by the relevant authority, selected on a fair and transparent basis, from a list of candidates maintained by the Secretary of State for the purpose of these Regulations.

(6) In this regulation “legally qualified person” means a person who satisfies the judicial-appointment eligibility condition on a 5-year basis.

(7) For the purposes of section 4(4) of the 1987 Act (power to prescribe “the panel” for the purposes of conducting the proceedings), the panel of persons or the person specified by this regulation to conduct misconduct proceedings is prescribed as “the panel”.

### **Role of chair of misconduct hearing**

**28.**—(1) The chair of a panel appointed under regulation 27 must take appropriate action to ensure the efficient and effective bringing of the proceedings and that they are conducted in a timely, fair and transparent manner.

(2) In particular, and subject to paragraph (6)(a), the chair must ensure that the first day of the misconduct hearing is not more than 100 working days beginning with the day after the date on which notice is given under regulation 29(1).

(3) The chair must decide, before the end of 5 working days beginning with the first working day after the day on which the documents were supplied to the chair under regulation 31(6), whether to conduct a misconduct pre-hearing, in order to agree directions and to fix a date for the hearing, in accordance with regulation 32.

(4) Where the chair decides not to conduct a misconduct pre-hearing, the chair must determine the date, time and duration of the misconduct hearing, following consultation with the parties by telephone or by such other electronic means as may be agreed between the parties or, where the parties fail to agree, as decided by the chair.

(5) Subject to paragraphs (6)(b) and (7), where paragraph (4) applies, the misconduct hearing must take place before the end of the period of 30 working days beginning with the first working day after the day on which the documents were supplied to the chair under regulation 31(6).

(6) Where the chair considers that it would be in the interests of justice to do so, the chair may extend—

- (a) the period of 100 working days specified in paragraph (2),
- (b) the period of 30 working days specified in paragraph (5).

(7) Any of the parties may apply to the chair for the misconduct hearing to take place later than is provided for in paragraph (5).

(8) Any such application must set out the reasons for the application.

(9) The chair must determine whether it would be in the interests of justice for the application to be granted, provided that the date fixed for the commencement of the hearing must be within the period specified in paragraph (2), or such period as extended under paragraph (6)(a).

(10) For the purposes of this regulation “parties” means the relevant authority or, as the case may be, the officer concerned, the officer’s representatives and, where the Director General or the Ombudsman is presenting the case, the Director General or, as the case may be, the Ombudsman.

### **Notice of referral to misconduct proceedings**

**29.**—(1) Where a case is referred to misconduct proceedings, the relevant authority must as soon as practicable give the officer concerned—

- (a) written notice of—
  - (i) the referral,

- (ii) the conduct that is the subject matter of the case and how that conduct is alleged to amount to misconduct or gross misconduct, as the case may be,
  - (iii) the name of the person appointed to conduct (in the case of a misconduct meeting for an officer other than a senior officer) or chair (in any other case) the misconduct proceedings and, in the case of a chair, confirmation that the person has been selected on a fair and transparent basis,
  - (iv) the effect of paragraphs (3) to (6) of this regulation,
  - (v) the effect of regulations 7(1) to (3) in relation to the form of misconduct proceedings to which the case is being referred,
  - (vi) where relevant, the fact that—
    - (aa) the Director General has made a decision under regulation 24(1) to present the case, or
    - (bb) the Ombudsman is required under regulation 24(6) to present the case, and
  - (vii) where relevant, the fact that the case has been referred to joint misconduct proceedings under regulation 25,
- (b) a copy of any statement the officer may have made to the investigator during the course of the investigation, and
- (c) subject to the harm test, a copy of—
- (i) the investigator’s report or such parts of that report as relate to the officer (together with any document attached to or referred to in that report which relates to the officer), and
  - (ii) any other document which might reasonably be considered capable of undermining or assisting the case.
- (2) As soon as practicable after any person has been appointed under regulation 7(6) to advise the person conducting or chairing the misconduct proceedings, the relevant authority must give the officer concerned written notice of the name of that person and of the effect of paragraphs (3) to (6) of this regulation.
- (3) The officer concerned may object to any person whom the officer is notified under the preceding provisions of this regulation is to—
- (a) conduct or, as the case may be, chair the misconduct proceedings, or
  - (b) advise the person conducting or, as the case may be, chairing the misconduct proceedings.
- (4) Any such objection must be—
- (a) made in writing to the relevant authority, and
  - (b) in the case of joint misconduct proceedings, copied to each other officer concerned,
- before the end of 3 working days beginning with the first working day after the officer is given notice of the person’s name and must set out the grounds of objection of the officer.
- (5) The relevant authority must notify the officer concerned in writing as soon as reasonably practicable whether it upholds or rejects an objection to a person appointed to conduct or, as the case may be, chair the misconduct proceedings or to any person appointed under regulation 7(6) to advise the person conducting or chairing the misconduct proceedings.
- (6) If the relevant authority upholds the objection, the person to whom the officer concerned objects must be replaced (in accordance with regulation 7(6) and (7) or 27 as appropriate).
- (7) As soon as reasonably practicable after any such appointment, the relevant authority must give a written notice to the officer concerned of the name of the new person appointed to conduct or,

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as the case may be, chair the misconduct proceedings or of the new adviser to the person conducting or chairing the misconduct proceedings, and of the effect of paragraphs (8) and (9) of this regulation.

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

(9) In relation to an objection under paragraph (8) of this regulation—

- (a) paragraph (4) applies except in so far as it specifies the period of time for making an objection,
- (b) the objection must be made before the end of 3 working days beginning with the first working day after the officer concerned has been given the notice referred to in paragraph (7),
- (c) paragraphs (5) to (7) apply, with the exception of the requirement in paragraph (7) for the relevant authority to give written notice of the effects of paragraphs (8) and (9).

(10) Where the Director General has made a decision under regulation 24(1) to present a case, or the Ombudsman is required under regulation 24(6) to present a case, the relevant authority must—

- (a) consult the Director General, or the Ombudsman, as the case may be, about—
  - (i) the contents of the written notice to be given under paragraph (1)(a) to the extent to which they relate to the conduct that is the subject matter of the case and how that conduct is alleged to amount to misconduct or gross misconduct, as the case may be,
  - (ii) the application of the harm test under paragraph (1)(c), and
  - (iii) the documents that may be provided under paragraph (1)(c)(ii),
- (b) comply with any direction given by the Director General or the Ombudsman in relation to the matters specified in sub-paragraph (a), and
- (c) provide the Director General or the Ombudsman with a copy of the written notices given under paragraphs (1) and (2).

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

**30.**—(1) Before the end of—

- (a) 15 working days beginning with the first working day after the documents have been supplied to the officer concerned under regulation 29(1), or
- (b) where that period is extended by the person conducting or chairing the misconduct proceedings for exceptional circumstances, such extended period,

the officer concerned must comply with paragraphs (2) and (3).

(2) The officer concerned must give the relevant authority—

- (a) written notice of whether or not they accept that their conduct amounts to misconduct or gross misconduct, as the case may be,
- (b) where they accept that their conduct amounts to misconduct or gross misconduct, as the case may be, any written submission they wish to make in mitigation, and
- (c) where they do not accept that their conduct amounts to misconduct or gross misconduct, as the case may be, or they dispute part of the case against them, written notice of—
  - (i) the allegations they dispute and their account of the relevant events, and
  - (ii) any arguments on points of law they wish to be considered by the person or panel conducting the misconduct proceedings.

(3) The officer concerned must provide the relevant authority with a copy of any document they intend to rely on at the misconduct proceedings.

(4) Before the end of 3 working days beginning with the first working day after the date on which the officer concerned has complied with paragraph (2), the relevant authority and the officer concerned must each—

- (a) supply to the other a list of proposed witnesses and include brief details of the evidence that each witness is able to adduce, or
- (b) give notice to the other that they do not propose any witnesses.

(5) Where the Director General has made a decision under regulation 24(1) to present a case, or the Ombudsman is required under regulation 24(6) to present a case—

- (a) the officer concerned must, within the time period specified in paragraph (1), provide the Director General or the Ombudsman, as appropriate, with a copy of the documents specified in paragraphs (2) and (3), and
- (b) the duty specified in paragraph (4) to supply a list of proposed witnesses or give notice that there are no proposed witnesses lies with the Director General or the Ombudsman, and not with the relevant authority.

### **Witnesses and documents to be supplied**

**31.**—(1) The relevant authority must supply to the person conducting or chairing the misconduct proceedings any lists of proposed witnesses supplied or notice given under regulation 30(4).

(2) Any such lists or notice must be supplied before the end of 10 working days beginning with the first working day after the parties supplied the lists or notice under regulation 30(4).

(3) The person conducting or chairing the misconduct proceedings must—

- (a) consider any lists of proposed witnesses,
- (b) consider any documents supplied under paragraph (6), and
- (c) subject to paragraph (5), determine as soon as practicable, which, if any, witnesses should attend the misconduct proceedings.

(4) Paragraph (3) does not apply where regulation 32(8) applies (matters to be decided at misconduct pre-hearing).

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

- (a) where the witness is an MDP officer, cause that person to be ordered to attend the misconduct proceedings, and
- (b) in any other case, cause the witness to be given notice that their attendance is necessary and of the date, time and place of the proceedings.

(6) Before the end of 10 working days beginning with the first working day after the date on which the officer concerned has complied with regulation 30(2), the relevant authority must supply to the person conducting or chairing the misconduct proceedings a copy of—

- (a) the documents given to the officer under regulation 29(1),
- (b) the documents provided by the officer under—
  - (i) regulation 30(2) and (3), and
  - (ii) where paragraph (7) applies, regulation 54, and
- (c) where the officer—
  - (i) does not accept that the conduct amounts to misconduct or gross misconduct, as the case may be, or
  - (ii) disputes any part of the case,

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any other documents that, in the opinion of the relevant authority, should be considered at the misconduct proceedings.

(7) This paragraph applies where the relevant authority has directed, in accordance with regulation 49, that the case be dealt with under this Part.

(8) Prior to the misconduct proceedings, the relevant authority must supply the officer concerned with—

- (a) a list of the documents supplied under paragraph (6), and
- (b) a copy of any such document, where it has not already been supplied.

(9) The relevant authority may apply to the person conducting or chairing the misconduct proceedings for an extension of—

- (a) the period of 10 working days referred to in paragraph (2),
- (b) the period of 10 working days referred to in paragraph (6).

(10) Any such application must set out the period of the required extension and the reasons for the application.

(11) On receipt of such an application the person conducting or chairing the misconduct proceedings must determine whether the period should be extended and if so by how long.

(12) Where a period is extended, paragraph (2) or, as the case may be, paragraph (6), has effect as if for the period specified in those provisions there were substituted the extended period.

(13) Where the Director General has made a decision under regulation 24(1) to present a case, or the Ombudsman is required under regulation 24(6) to present a case—

- (a) the duty specified in paragraph (1) to supply any lists of witnesses or notice lies with the Director General or the Ombudsman and not with the relevant authority,
- (b) the duty specified in paragraph (6) to supply the specified documents to the person conducting or chairing the misconduct proceedings lies with the Director General or the Ombudsman and not with the relevant authority,
- (c) paragraph (6)(c) must be read as if “or the Director General” or, as the case may be “of the Ombudsman” were inserted after “the relevant authority”, and
- (d) the power referred to in paragraph (9) to apply for an extension of the periods of time referred to in paragraphs (2) and (6) lies with the Director General or the Ombudsman and not with the relevant authority.

### **Misconduct pre-hearing**

**32.**—(1) Where the person appointed to chair a misconduct hearing (“the chair”) has decided under regulation 28(3) to conduct a misconduct pre-hearing, the chair must as soon as practicable—

- (a) specify a date and time for a misconduct pre-hearing, which must be within a period of 15 working days, or such extended period as the chair may specify under paragraph (10)(a), beginning with the first working day after the day on which the documents were supplied to the chair under regulation 31(6), and
- (b) give written notice of the date, time and place of the misconduct pre-hearing to—
  - (i) the officer concerned,
  - (ii) the relevant authority, and
  - (iii) the Director General or the Ombudsman, where the Director General or the Ombudsman—
    - (aa) is presenting the case, or

- (bb) is entitled to attend the misconduct hearing under regulation 37(1).
- (2) Subject to paragraph (4), where a date and time is specified under paragraph (1) and—
- (a) the officer concerned or their police friend will not be available, and
  - (b) the officer proposes an alternative date or time which satisfies paragraph (3),
- the misconduct pre-hearing must be postponed to the date or time proposed by the officer.
- (3) An alternative time must—
- (a) be reasonable, and
  - (b) fall before the end of 5 working days beginning with the first working day after the day specified by the chair.
- (4) In the case of joint misconduct proceedings, where a date and time is specified under paragraph (1) and one or more of the officers concerned or their police friend will not be available at that time, the chair must—
- (a) consult each of the officers concerned as regards the timing of the misconduct pre-hearing, and
  - (b) determine the date and time of the misconduct pre-hearing, which must fall within the period specified in paragraph (3)(b).
- (5) Subject to paragraph (6), a misconduct pre-hearing must be in private.
- (6) The following are entitled to attend the misconduct pre-hearing—
- (a) those listed in paragraph (1)(b),
  - (b) the officer’s police friend,
  - (c) the officer’s relevant lawyer,
  - (d) the relevant lawyer representing the relevant authority,
  - (e) the Director General’s or, as the case may be, the Ombudsman’s relevant lawyer, where the Director General or the Ombudsman is presenting the case or would be entitled to attend the misconduct hearing under regulation 37(1), and
  - (f) any person appointed under regulation 7(6) to advise the person conducting or chairing the misconduct pre-hearing.
- (7) A misconduct pre-hearing may be conducted by telephone or by such other electronic means as may be agreed between the parties, or, where the parties fail to agree, as decided by the chair.
- (8) At the misconduct pre-hearing the chair must—
- (a) determine the date, time and duration of the misconduct hearing, following consultation with the parties,
  - (b) consider any lists of proposed witnesses supplied under regulation 31(1) and, in accordance with regulation 31(5), determine which, if any, witnesses should attend the misconduct hearing,
  - (c) consider any documents supplied under regulation 31(6),
  - (d) consider any procedural or preliminary legal arguments or points of law raised and whether it is appropriate for those matters to be dealt with at the misconduct pre-hearing or the misconduct hearing,
  - (e) consider any issues related to disclosure of documents for the purposes of the misconduct hearing, and
  - (f) seek representations from the parties as to whether to—
    - (i) exclude any person under regulation 38(6)(a),

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- (ii) impose conditions under regulation 38(6)(b), or
- (iii) prohibit the publication of any matter under regulation 38(6)(c).

(9) Subject to paragraph (10)(b) and (11), the misconduct hearing must take place before the end of 30 working days beginning with the date of the misconduct pre-hearing.

(10) Where the chair considers that it would be in the interests of justice to do so, the chair may extend—

- (a) the period of 15 working days specified in paragraph (1)(a),
- (b) the period of 30 working days specified in paragraph (9).

(11) Any of the parties may apply to the chair for the misconduct hearing to take place later than is provided for in paragraph (9).

(12) Any such application must set out the reasons for the application.

(13) The chair must determine whether it would be in the interests of justice for the application to be granted, provided that the date fixed for the commencement of the hearing must be within the period specified in regulation 28(2), or such extended period as the chair may specify under regulation 28(6)(a).

(14) At the misconduct pre-hearing the chair may issue directions including, but not limited to, the matters set out in this regulation, other than paragraph (8)(f).

(15) Within the period of 5 working days beginning with the date of the misconduct pre-hearing, the chair must serve on the parties a summary of the key matters discussed and a record of any directions issued.

(16) The parties must comply with any directions issued under paragraph (14).

(17) For the purposes of this regulation “parties” means the relevant authority, the officer concerned, the officer’s representatives and, where the Director General or the Ombudsman is presenting the case, the Director General or the Ombudsman.

### **Timing of misconduct meeting**

**33.**—(1) Subject to paragraphs (2), (6) and (8), the misconduct meeting must take place before the end of 20 working days beginning with the first working day after—

- (a) the officer complies with regulation 30(2) and (3),
- (b) the expiry of the 15 working day period referred to in regulation 30(1)(a), if the officer has not complied with regulation 30(2) and (3) within that period, or
- (c) where the 15 working day period referred to in regulation 30(1)(a) is extended in accordance with regulation 30(1)(b), the expiry of such extended period.

(2) The person conducting or chairing the misconduct meeting may extend the period specified in paragraph (1) where they consider that it would be in the interests of justice to do so.

(3) Where the person conducting or chairing the misconduct meeting decides to extend the period under paragraph (2), or decides not to do so following representations from the officer concerned or the relevant authority, they must provide written notification of the reasons for that decision to the authority and the officer.

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

(5) Where no date and time is agreed under paragraph (4), the person conducting or chairing the misconduct meeting must specify a date and time for that meeting.

- (6) Subject to paragraph (8), where a date and time is specified under paragraph (5) and—
  - (a) the officer concerned or the officer’s police friend will not be available, and



(b) the officer proposes an alternative date or time which satisfies paragraph (7), the misconduct meeting must be postponed to the date or time proposed by the officer.

(7) An alternative time must—

(a) be reasonable, and

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

(8) In the case of a joint misconduct meeting, where a date and time is specified under paragraph (5) and one or more of the officers concerned or their police friend will not be available at that time, the person conducting or chairing the misconduct meeting must—

(a) consult each of the officers concerned as regards the timing of the misconduct meeting, and

(b) determine the date and time of the misconduct meeting, which must fall within the period specified in paragraph (7)(b).

(9) When a date and time for the misconduct meeting has been agreed under this regulation, the person conducting or chairing the misconduct meeting must inform the relevant authority of the date, time and place of the misconduct meeting.

#### **Notice of misconduct proceedings and panel**

**34.**—(1) The relevant authority must give the officer concerned written notice of the date, time and place of the misconduct proceedings.

(2) Where the misconduct proceedings are to be conducted by a panel, as soon as practicable after the persons comprising that panel (other than the chair) have been determined, the relevant authority must give the officer concerned written notice of the names of such persons and of the effect of paragraphs (3) to (6) of this regulation.

(3) The officer concerned may object to any person whom the officer is notified under this regulation is to conduct (other than as chair) the misconduct proceedings.

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

(5) The chair must notify the officer concerned in writing whether the chair upholds or rejects an objection to any panel member.

(6) If the chair upholds the objection, the person to whom the officer concerned objects must be replaced with a new panel member appointed in accordance with regulation 27.

(7) As soon as reasonably practicable after any such appointment, the chair must give a written notice to the officer concerned of the name of the new panel member and of the effect of paragraphs (8) and (9) of this regulation.

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

(9) In relation to an objection under paragraph (8) of this regulation—

(a) paragraph (4) applies except in so far as it specifies the period of time for making an objection,

(b) the objection must be made before the end of 3 working days beginning with the first working day after the officer concerned has been given the notice referred to in paragraph (7), and

(c) paragraphs (5) to (7) apply, with the exception of the requirement in paragraph (7) for the chair to give written notice of the effects of paragraphs (8) and (9).

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(10) Where the Director General or the Ombudsman is entitled to attend the misconduct proceedings to make representations under regulation 37(1), the relevant authority must give the Director General or, as the case may be, the Ombudsman, written notice of the date, time and place of the proceedings.

(11) Where the Director General has made a decision under regulation 24(1) to present a case, each of paragraphs (1), (2) and (7) must be read as if “and the Director General” were inserted after “the officer concerned”.

(12) When the Ombudsman is required under regulation 24(6) to present a case, each of paragraphs (1), (2) and (7) must be read as if “and the Ombudsman” were inserted after “the officer concerned”.

### **Public notification of misconduct hearings**

**35.**—(1) The person chairing a misconduct hearing (“the chair”) may require the relevant authority to give notice of the hearing which contains information relating to one or more of—

- (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, and
- (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 the case may be, as set out in the notice given in accordance with regulation 29(1)(a).

(2) Where the chair requires notice to be given in accordance with paragraph (1), the relevant authority must publish the notice on its website as soon as practicable after notice of the hearing is given under regulation 34(1).

(3) Any person to whom this paragraph applies 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 38(6)(a),
- (b) whether the chair should impose any conditions under regulation 38(6)(b),
- (c) whether the chair should give directions prohibiting the publication of any matter relating to the proceedings under regulation 38(6)(c),
- (d) in the light of the representations made under sub-paragraphs (a) to (c)—
  - (i) whether the chair should require notice to be given under paragraph (1),
  - (ii) which types of information mentioned in paragraph (1)(a) to (e) should be included in any such notice.

(4) Paragraph (3) applies to—

- (a) the officer concerned,
- (b) the relevant authority,
- (c) the complainant,
- (d) any interested person,
- (e) any witness, and
- (f) the Director General or the Ombudsman.

(5) Written representations in relation to the matters specified in paragraph (3)(a) to (c) may also be made by any journalist or other representative of the media to the chair.

(6) Any written representations made in accordance with paragraph (3) or (5), as the case may be, must be provided no later than the date specified by the chair for provision of such representations.

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

**36.**—(1) Subject to paragraph (2), the officer concerned must attend the misconduct proceedings.

(2) Where the officer concerned informs the person conducting or chairing the misconduct proceedings in advance that the officer is unable to attend on grounds which the person conducting or chairing those proceedings considers reasonable, that person may allow the officer to participate in the proceedings by video link or other means.

(3) Where under paragraph (2) the officer concerned is allowed to and does so participate in the misconduct proceedings, or where the officer otherwise does not attend the misconduct proceedings—

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

(4) Where the officer concerned is represented in accordance with paragraph (3), the police friend or relevant lawyer of the officer, or both, as the case may be, may participate using the video link or other means where such means are also used by the officer.

#### **Participation of the Director General, Ombudsman and investigator at misconduct proceedings**

**37.**—(1) The Director General or, as the case may be, Ombudsman, may attend a misconduct hearing to make representations in any case where—

- (a) the complaint has been investigated under paragraphs 18 or 19 of Schedule 3 to the 2002 Act or sections 54(2), (3)(a) or 55(3), (5) or (6) of the 1998 Act, or
- (b) the complaint has been investigated under paragraph 16 of Schedule 3 to the 2002 Act or section 57 of the 1998 Act, and—
  - (i) the Director General—
    - (aa) made a recommendation under paragraph 25(4C)(c) of that Schedule (duties with respect to disciplinary proceedings) in respect of any MDP officer which the relevant authority accepted, or
    - (bb) gave a direction under paragraph 27(4)(a) of that Schedule (duties with respect to disciplinary proceedings), or
  - (ii) the Ombudsman made a recommendation under section 59(2) of the 1998 Act which the chief constable accepted.

(2) Where the Director General or Ombudsman so attends the misconduct proceedings—

- (a) if it is a misconduct hearing the Director General or Ombudsman may be represented by a relevant lawyer,
- (b) the Director General or Ombudsman must notify the complainant or any interested person prior to those proceedings, and
- (c) the person conducting or chairing the misconduct proceedings must notify the officer concerned prior to those proceedings.

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(3) The investigator or a nominated person must attend the misconduct proceedings on the request of the person conducting or chairing those proceedings to answer questions.

(4) For the purposes of this regulation, a “nominated person” is a person who, in the opinion of—

- (a) the relevant authority,
- (b) in a case investigated under where paragraph 18 or 19 of Schedule 3 to the 2002 Act under external procedures the Director General directed the investigation or carried out the investigation, the Director General, or
- (c) in a case where under external procedures established for Northern Ireland, the Ombudsman investigated the case, or supervised the investigation, the Ombudsman,

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

(5) Where more than one allegation is considered in the same misconduct proceedings in accordance with regulation 3(9), this regulation applies to the whole of the proceedings and accordingly the Director General or the Ombudsman, as the case may be, may make representations in respect of any allegation.

(6) Paragraph (1) does not apply—

- (a) to the Director General where the Director General has decided under regulation 24(1) to present the case, or
- (b) to the Ombudsman where the Ombudsman is required under regulation 24(6) to present the case.

### **Reporting restrictions, participation and exclusions from proceedings**

**38.**—(1) Subject to paragraph (6) and any direction to the contrary given under regulation 22 (national security: power to give directions) a misconduct hearing must be held in public.

(2) Subject to regulations 37 and 39 and paragraph (3) of this regulation, a misconduct meeting must be held in private.

(3) A person nominated by the Director General 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) Having considered any representations received under regulations 32(8)(f), 35(3) and 35(5), the person conducting or chairing the misconduct proceedings may—

- (a) exclude from the whole or part of the proceedings any person who would otherwise be entitled to attend the proceedings by virtue of regulation 39 or this regulation so far as the person conducting or chairing the misconduct proceedings considers it 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,

- (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 39 or this regulation, and
  - (c) in the case of a chair appointed under regulation 27(4) or (5), give such directions as they think appropriate prohibiting the publication of any matter relating to the proceedings.
- (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.
- (8) Where it appears to the person conducting or chairing the misconduct proceedings that any person may, in giving evidence, disclose information the disclosure of which ought not to be disclosed to any person, other than a party to the proceedings, attending the proceedings because it is information to which paragraph (9) applies, they must require such attendees to withdraw while the evidence is given.
- (9) This paragraph applies to information in so far as the person conducting or chairing the misconduct proceedings considers that preventing disclosure of it to an attendee is—
- (a) necessary for the purpose of preventing the premature or inappropriate disclosure of information that is relevant to, or may be used in, any criminal proceedings,
  - (b) necessary in the interests of national security,
  - (c) necessary for the purpose of the prevention or detection of crime, or the apprehension or prosecution of offenders,
  - (d) necessary for the purpose of the prevention or detection of misconduct by other MDP officers or their apprehension for such matters,
  - (e) necessary and proportionate for the protection of the welfare and safety of any informant or witness, or
  - (f) otherwise in the public interest.

#### **Attendance of complainant, interested persons and others at misconduct proceedings**

**39.**—(1) This regulation applies in the case of misconduct proceedings arising from a case which has been investigated under external procedures established for England and Wales, Northern Ireland, or Scotland.

(2) The relevant authority must notify the complainant and any interested person of the date, time and place of the misconduct proceedings and, if applicable, of their right to make representations under regulation 35(3).

(3) Subject to regulation 38(4) and (6), the complainant or any interested person may attend the misconduct meeting as an observer.

(4) Subject to regulation 38(4) and (6), a complainant or interested person may be accompanied at a misconduct meeting by one other person, and if the complainant or interested person has a special need, by one further person to accommodate that need.

(5) The person conducting or chairing the misconduct proceedings may, at the person's discretion, put any questions to the officer concerned that the complainant or interested person may request be put to the officer.

(6) Where regulation 37 applies, a person nominated by the Director General or the Ombudsman may attend a misconduct meeting as an observer.

**Procedure at misconduct proceedings**

**40.**—(1) The person conducting or chairing the misconduct proceedings must determine the procedure at those proceedings and, in so far as it is set out in these Regulations, must determine it in accordance with these Regulations.

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

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

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

(5) At the beginning of the misconduct proceedings, the person conducting or chairing the misconduct proceedings must give the officer concerned the opportunity to say whether or not the officer accepts that the officer's conduct amounts to misconduct or gross misconduct, as the case may be.

(6) The person representing the relevant authority may—

(a) address the proceedings in order to do any or all of the following—

(i) put the case of the authority,

(ii) sum up that case,

(iii) respond on behalf of the authority to any view expressed at the proceedings,

(iv) make representations concerning any aspect of proceedings under these Regulations, and

(v) subject to paragraph (10), ask questions of any witnesses, and

(b) confer with the authority.

(7) The person representing the officer concerned may—

(a) address the proceedings in order to do all or any of the following—

(i) put the case of the officer,

(ii) sum up that case,

(iii) respond on behalf of the officer to any view expressed at the proceedings,

(iv) make representations concerning any aspect of proceedings under these Regulations, and

(v) subject to paragraph (10), ask questions of any witnesses, and

(b) confer with the officer.

(8) Where (at a misconduct hearing) the person representing the officer concerned is a relevant lawyer, the police friend of the officer may also confer with the officer.

(9) The police friend or relevant lawyer of the officer concerned may not answer any questions asked of the officer during the misconduct proceedings.

(10) The person conducting or chairing the misconduct proceedings must determine whether any question should be put to a witness.

(11) The person conducting or chairing the misconduct proceedings may allow any document to be considered at those proceedings notwithstanding that a copy of it has not been supplied—

(a) by the officer concerned to the relevant authority in accordance with regulation 30(3), or

(b) to the officer concerned in accordance with regulation 29(1).

(12) Paragraph (14) applies where evidence is given or considered at the misconduct proceedings that the officer concerned—

- (a) on being questioned by an investigator at any time after the officer was given written notice under regulation 16(1) or external procedures, or
- (b) in submitting any information or by not submitting any information at all under regulation 17(1) or 30(2) or (3) (or, where paragraph (13) applies, regulation 54) or external procedures,

failed to mention any fact relied on in the officer's case at the misconduct proceedings, being a fact which in the circumstances existing at the time, the officer could reasonably have been expected to mention when so questioned or when providing such information.

(13) This paragraph applies where the relevant authority has directed, in accordance with regulation 50(1), that the case be dealt with under this Part.

(14) Where this paragraph applies, the person or panel conducting the misconduct proceedings may draw such inferences from the failure as appear proper.

(15) The person or panel conducting the misconduct proceedings must review the facts of the case and decide whether the conduct of the officer concerned amounts—

- (a) in the case of a misconduct meeting, to misconduct or not, or
- (b) in the case of a misconduct hearing, to misconduct, gross misconduct or neither.

(16) The person or panel conducting the misconduct proceedings must not find that the conduct of the officer concerned amounts to misconduct or gross misconduct unless—

- (a) they are satisfied on the balance of probabilities that this is the case, or
- (b) the officer admits it is the case.

(17) At misconduct proceedings conducted by a panel, any decision must be based on a majority but must not indicate whether it was taken unanimously or by a majority.

(18) Where the Director General has made a decision under regulation 24(1) to present a case, paragraph (6) must be read as if for "The person representing the relevant authority" there were substituted "The Director General".

(19) Where the Ombudsman is required under regulation 24(6) to present a case, paragraph (6) must be read as if for "The person representing the relevant authority" there were substituted "The Ombudsman".

### **Outcome of misconduct proceedings**

**41.**—(1) The person or panel conducting misconduct proceedings may, subject to the provisions of this regulation—

- (a) impose any one of the disciplinary actions mentioned in paragraph (2) or (3) as appropriate;
- (b) where they find the conduct amounts to neither gross misconduct nor misconduct, direct that the matter is referred to be dealt with under the reflective practice review process.

(2) The disciplinary action available at a misconduct meeting is—

- (a) a written warning,
- (b) a final written warning.

(3) The disciplinary action available at a misconduct hearing is—

- (a) where the person or panel conducting the misconduct proceedings decide that the conduct of the officer concerned amounts to misconduct, in accordance with regulation 40(15)—
  - (i) a written warning,

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- (ii) a final written warning,
  - (iii) reduction in rank, where paragraph (5) or (6) applies,
  - (iv) dismissal without notice, where paragraph (5) or (6) applies,
- (b) where the person or panel conducting the misconduct proceedings decide the conduct of the officer concerned amounts to gross misconduct, in accordance with regulation 40(15)—
- (i) a final written warning,
  - (ii) reduction in rank,
  - (iii) dismissal without notice.
- (4) The disciplinary action referred to in paragraph (3) has effect from the date on which it is notified to the officer concerned.
- (5) This paragraph applies where a final written warning was in force on the date of the severity assessment made under regulation 13(1) or external procedures.
- (6) This paragraph applies where it is decided at misconduct proceedings that the officer's conduct amounts to misconduct and the decision is based on the officer's conduct arising from more than one incident and those incidents are not closely factually connected.
- (7) A written warning must not be given where, on the date of the severity assessment under regulation 13(1) or external procedures, the officer concerned had a written warning in force.
- (8) Neither a written warning nor a final written warning must be given where, on the date of the severity assessment under regulation 13(1) or external procedures, the officer concerned had a final written warning in force.
- (9) Where a written warning or final written warning is given, that warning remains in force for—
- (a) a period of 18 months beginning with the day on which it was notified to the officer concerned, in the case of a written warning, or
  - (b) a period of 2 years beginning with the day on which it was notified to the officer concerned, in the case of a final written warning.
- (10) Where a final written warning is given under paragraph (3), the period in paragraph (9) (b) may be extended, by the persons considering the question of disciplinary action, to a maximum period of 5 years.
- (11) The references to a period in paragraph (9)(a) and (b), including any such period as extended, if relevant, in accordance with paragraph (10), does not include any time when the officer is taking extended special unpaid leave.
- (12) Reduction in rank may only be imposed under this regulation where the persons imposing the disciplinary action consider this is an appropriate sanction, taking into account the views of the relevant authority including in relation to the likely operational impact.
- (13) Where, on the date of the severity assessment under regulation 13(1) or under external procedures, the officer concerned is subject to a reduction in rank under these Regulations or the Ministry of Defence Police (Conduct) Regulations 2004(36), a reduction in rank must not be imposed.
- (14) Where the question of disciplinary action is being considered, the person or panel considering it—
- (a) must have regard to the record of police service of the officer concerned as shown on the officer's personal record,



- (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,
  - (ii) if the officer is legally represented, the officer’s relevant lawyer or, if the officer is not legally represented, the officer’s police friend,
  - (iii) the relevant authority or the person appointed to represent such authority in accordance with regulation 7(5),
  - (iv) the Director General or the Director General’s relevant lawyer, where the Director General made a decision under regulation 24(1) to present the case, and
  - (v) the Ombudsman or the Ombudsman’s relevant lawyer, where the Ombudsman has been directed to present the case under regulation 24(6),an opportunity to make oral or written representations before any such question is determined, including on the appropriate level of disciplinary action, and
- (d) where representations are received in relation to mitigating circumstances—
  - (i) must consider whether those circumstances have been mentioned at an earlier stage in the proceedings and, if they have not been so mentioned, whether the officer could reasonably have been expected to so mention them, and
  - (ii) in the light of their conclusions under paragraph (i), may determine that it is appropriate to place less weight on those circumstances.

### **Notification of outcome**

**42.**—(1) The person conducting or chairing the misconduct proceedings must, before the end of a period of 5 working days beginning with the first working day after the completion of the misconduct hearing or misconduct meeting, submit a report to the relevant authority setting out—

- (a) the finding of the person or panel conducting the misconduct proceedings;
- (b) the reasons for that finding;
- (c) any disciplinary action imposed;
- (d) any direction that the matter be dealt with under the reflective practice review process.

(2) The relevant authority must, as soon as practicable after receiving the report under paragraph (1), notify the officer concerned of the outcome by sending the officer a copy of—

- (a) the report submitted under paragraph (1), and
- (b) where there was a finding of misconduct or gross misconduct, a notice of the right of appeal in accordance with paragraph (3).

(3) A notice of the right of appeal under paragraph (2) is a notice—

- (a) where the officer concerned is not a senior officer—
  - (i) if the case was decided at a misconduct meeting, of the right of appeal under regulation 44, or
  - (ii) if the case was decided at a misconduct hearing, of the right of appeal under the Appeals Tribunals Regulations,
- (b) where the officer concerned is a senior officer, of the right of appeal under the Appeals Tribunals Regulations.

(4) In all cases referred to in paragraph (3) the notice of the right of appeal must be in writing and include the name of the person to whom an appeal should be sent.

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- (5) The relevant authority must send a copy of any report under this regulation to—
- (a) the Director General, in any case where the Director General—
    - (i) presented the case, or
    - (ii) was entitled to attend to make representations under regulation 37(1),
  - (b) the Ombudsman, in any case in which the Ombudsman—
    - (i) presented the case, or
    - (ii) was entitled to make representations under regulation 37(1), and
  - (c) the complainant and any interested person, in any case to which regulation 39 applies.
- (6) Subject to the harm test and to paragraph (10), the person chairing a misconduct hearing must require the relevant authority to publish the report submitted under paragraph (1).
- (7) Where the relevant authority is required to publish the report in accordance with paragraph (6), it must do so as soon as practicable after the officer has been notified of the outcome of the proceedings under paragraph (2).
- (8) Where the relevant authority publishes a report in accordance with paragraph (6), it must publish the report on its website for a period of not less than 28 days.
- (9) Prior to publication of a report under paragraph (6) the relevant authority may, subject to paragraph (12), redact the document—
- (a) in so far as the authority considers redaction is—
    - (i) necessary for the purpose of preventing the premature or inappropriate disclosure of information that is relevant to, or may be used in, any criminal proceedings,
    - (ii) necessary in the interests of national security,
    - (iii) necessary for the purpose of the prevention or detection of crime, or the apprehension or prosecution of offenders,
    - (iv) necessary for the purpose of the prevention or detection of misconduct by other MDP officers or their apprehension for such matters,
    - (v) necessary and proportionate for the protection of the welfare and safety of any informant or witness,
    - (vi) otherwise in the public interest, and
  - (b) in line with any restrictions imposed on the disclosure of information during the course of the proceedings.
- (10) The person chairing the misconduct hearing may dispense with the requirement under paragraph (6) to publish the report if in the particular circumstances of the case the person considers it is appropriate to do so on any of the grounds set out in paragraph (9)(a) or (b).
- (11) In making a decision under paragraph (10), the person chairing the misconduct hearing may have regard to any representations—
- (a) provided under regulation 35(3) or (5), or
  - (b) made at the misconduct hearing.
- (12) Information that has already been published during the course of the proceedings may not be redacted under paragraph (9).

### **Record of misconduct proceedings**

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

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

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

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

- (a) if the officer admitted the officer's conduct amounted to misconduct, against any disciplinary action imposed under regulation 41, or
- (b) if (after the officer denied misconduct) the person or panel conducting the misconduct meeting found that the officer's conduct amounted to misconduct, against that finding or any disciplinary action imposed under regulation 41.

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

- (a) the finding or disciplinary action imposed was unreasonable,
- (b) there is evidence that could not reasonably have been considered at the misconduct meeting which could have materially affected the finding or decision on disciplinary action, or
- (c) there was a serious breach of the procedures set out in these Regulations or other unfairness which could have materially affected the finding or decision on disciplinary action.

(3) An appeal under this regulation must be commenced by the officer concerned giving written notice of appeal to the relevant authority—

- (a) before the end of 7 working days beginning with the first working day after the report is given to the officer under regulation 42 (unless this period is extended by the relevant authority for exceptional circumstances), and
- (b) stating the grounds of appeal and whether a meeting is requested.

(4) An appeal under this regulation must be determined—

- (a) where the person who conducted the misconduct meeting was a member of a police force, by—
  - (i) an MDP officer of at least one rank higher than that person, or
  - (ii) unless the case substantially involves operational policing matters, a staff member who, in the opinion of the relevant authority, is more senior than that person,
- (b) where the person who conducted the misconduct meeting was a staff member, by—
  - (i) a member of a police force who, in the opinion of the relevant authority is more senior than that person, or
  - (ii) a more senior staff member,

who is not an interested party, appointed by the relevant authority.

(5) The relevant authority must as soon as practicable give the officer concerned written notice of—

- (a) the name of the person appointed to determine the appeal under paragraph (4),
- (b) the name of any person appointed under regulation 7(6) to advise the person determining the appeal, and
- (c) the effect of paragraphs (6) to (9) of this regulation.

(6) The officer concerned may object to any person whom the officer is notified under this regulation is to—

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- (a) determine the appeal, or
- (b) advise the person determining the appeal.

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

(8) The relevant authority must notify the officer concerned in writing whether it upholds or rejects an objection to the person appointed to determine the appeal or to any person appointed under regulation 7(6) to advise the person determining the appeal.

(9) If the relevant authority upholds the objection, the person to whom the officer concerned objects must be replaced (in accordance with regulation 7(6) and (7) or paragraph (4) as appropriate).

(10) As soon as reasonably practicable after any such appointment, the relevant authority must give a written notice to the officer concerned of the name of the new person appointed to determine the appeal or the advisor to the person determining the appeal, as the case may be, and of the effect of paragraphs (11) and (12) of this regulation.

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

(12) In relation to an objection under paragraph (11) of this regulation—

- (a) paragraph (7) applies except in so far as it specifies the period of time for making an objection,
- (b) the objection must be made before the end of 3 working days beginning with the first working day after the officer concerned is given the notice referred to in paragraph (10),
- (c) paragraphs (8) to (10) apply, with the exception of the requirement in paragraph (10) for the relevant authority to give written notice of the effects of paragraphs (11) and (12).

(13) The relevant authority must supply the person determining the appeal with a copy of—

- (a) the documents given to the person who held the misconduct meeting as specified in regulation 31(6),
- (b) the notice of appeal given by the officer concerned under paragraph (3),
- (c) the record of the misconduct meeting taken under regulation 43(1), and
- (d) any evidence of a kind referred to in paragraph (2)(b) that the officer wishes to submit in support of the appeal.

(14) The person determining the appeal must determine whether the notice of appeal sets out arguable grounds of appeal and if they decide that it does not, they must dismiss the appeal.

### **Appeal meeting**

**45.—**(1) This regulation applies where the officer concerned requests a meeting in the written notice of appeal under regulation 44(3).

(2) If the person determining the appeal determines under regulation 44(14) that the notice of appeal sets out arguable grounds of appeal, they must hold an appeal meeting with the officer concerned, subject to paragraphs (3) and (5), before the end of 5 working days beginning with the first working day after that determination.

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

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

(5) Where—

- (a) the officer concerned or the officer's police friend will not be available, and

(b) the officer proposes an alternative date or time which satisfies paragraph (6), the appeal meeting must be postponed to the date or time proposed by the officer.

(6) An alternative time must—

(a) be reasonable, and

(b) fall before the end of 5 working days beginning with the first working day after the day specified by the person determining the appeal.

(7) The relevant authority must give written notice of the date, time and place of the appeal meeting to—

(a) the officer concerned,

(b) where the Director General or the Ombudsman was entitled to attend the misconduct meeting to make representations under regulation 37(1), or to nominate a person to attend the meeting as an observer under regulation 39(6), the Director General or the Ombudsman, as the case may be, and

(c) where the complainant or an interested person was entitled to attend the misconduct meeting under regulation 39(3), the complainant or, as the case may be, interested person.

(8) The appeal meeting must not be held until the person determining the appeal has received a copy of the documents under regulation 44(13).

(9) The person determining the appeal must determine the procedure at the appeal meeting and, in so far as it is set out in these Regulations, must determine it in accordance with these Regulations.

(10) Subject to the provisions of this regulation, any interested person or complainant entitled to be given notice of the appeal meeting under paragraph (7) may attend the appeal meeting as an observer.

(11) Where the officer concerned objects to the complainant or interested person being present whilst a submission is made in mitigation on the officer's behalf, the person determining the appeal may require the complainant or interested person to withdraw while the submission is made.

(12) The person determining the appeal may impose such conditions as they see fit relating to the attendance of persons under paragraph (10) at the appeal meeting (including circumstances in which they may be excluded) in order to facilitate the proper conduct of the appeal meeting.

### **Finding of the appeal**

**46.**—(1) The person determining the appeal may—

(a) confirm or reverse the decision appealed against,

(b) deal with the officer concerned in any manner in which the person or panel conducting the misconduct meeting could have dealt with the officer under regulation 41.

(2) Before the end of 3 working days beginning with the first working day after the determination of the appeal, the relevant authority must give the officer concerned written notice of that determination with a summary of the reasons.

(3) The decision of the person determining the appeal takes effect by way of substitution for the decision of the person conducting or chairing the misconduct meeting and as from the date of the written notice of the outcome of that meeting.

(4) The relevant authority must give the Director General or, as the case may be, the Ombudsman, written notice of the determination of the appeal with a summary of reasons where the Director General or Ombudsman had a right to attend the misconduct proceedings under regulation 37(1).

## PART 5

### Accelerated Misconduct Hearings

#### General

47. Any period of time specified in this Part in relation to an accelerated misconduct hearing may be reduced by agreement between the relevant authority, the officer concerned, where the Director General or Ombudsman is presenting the case, the Director General or the Ombudsman, as the case may be, and the person conducting or chairing the accelerated misconduct hearing.

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

48.—(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 accelerated misconduct hearing, relating to one or more of the following matters—

- (a) that all or part of the accelerated misconduct hearing must be conducted in private;
- (b) that a specified person must be excluded from all or part of the accelerated misconduct hearing;
- (c) that specified information must be excluded from any notice published under regulation 53 (public notification of accelerated misconduct hearing) or report published under regulation 63(5) (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 accelerated misconduct hearing as soon as possible.

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

#### Referral of case to accelerated misconduct hearing

49.—(1) On receipt of a statement submitted by the investigator under regulation 20(3), the relevant authority must determine whether the special conditions are satisfied.

(2) The “special conditions” are—

- (a) that there is sufficient evidence, in the form of written statements or other documents, to establish on the balance of probabilities that the conduct of the officer concerned constitutes gross misconduct, and
- (b) that it is in the public interest for the officer concerned to cease to be a member of the MDP without delay.

(3) In a case where misconduct proceedings or an accelerated misconduct hearing have been delayed by virtue of regulation 9(3), as soon as practicable after—

- (a) the relevant authority considers that such proceedings or hearing would no longer prejudice any criminal proceedings, or
- (b) any criminal proceedings have concluded (whatever the outcome),

the relevant authority may make a determination, or in the case of an accelerated misconduct hearing must make a further determination, as to whether the special conditions are satisfied.

(4) Where the relevant authority determines that the special conditions are satisfied, unless it considers that the circumstances are such as to make it inappropriate to do so, it must certify the

case as one where the special conditions are satisfied and, subject to regulation 9(3), refer it to an accelerated misconduct hearing.

- (5) Where the relevant authority determines—
- (a) that the special conditions are not satisfied, or
  - (b) that, although those conditions are satisfied, the circumstances are such as to make such certification inappropriate,

it must, if the investigation was incomplete, return the case to the investigator to complete the investigation or, in any other case, proceed in accordance with Part 4.

(6) Where the relevant authority is to proceed in accordance with Part 4, regulation 23(1) must be read as if the words “Subject to regulation 49, on receipt of the investigator’s report under regulation 20(1), or an equivalent report made under external procedures” were omitted.

(7) Where the relevant authority certifies a case as one where the special conditions are satisfied under external procedures, it must, subject to regulation 9(3), refer it to an accelerated misconduct hearing.

### **Remission of case**

**50.**—(1) Subject to paragraph (4), at any time after the case has been referred to an accelerated misconduct hearing but before the beginning of that hearing, the relevant authority may direct that the case be dealt with under Part 4 if it considers that the special conditions are no longer satisfied.

(2) Where a direction is made under paragraph (1) the officer concerned must be notified before the end of 3 working days beginning with the first working day after that direction is made and the relevant authority must proceed in accordance with Part 4.

(3) Where the relevant authority is to proceed in accordance with Part 4, regulation 23(1) must be read as if the words “Subject to regulation 49, on receipt of the investigator’s report under regulation 20(1), or an equivalent report made under external procedures” were omitted.

- (4) Paragraph (1) does not apply to a case where—
- (a) the Director General has given a direction under external procedures established for England and Wales to certify a case as one where the special conditions are satisfied;
  - (b) the Ombudsman has given a direction under external procedures established for Northern Ireland that accelerated proceedings are brought.

### **Notice of referral to accelerated misconduct hearing**

**51.**—(1) Where a case is certified, whether under regulation 49(4) or under external procedures, as one where the special conditions are satisfied and referred to an accelerated misconduct hearing, the relevant authority must as soon as practicable give the officer concerned written notice of these matters and must supply the officer with a copy of—

- (a) the certificate issued under regulation 49(4) or under external procedures,
- (b) any statement the officer may have made to the investigator during the course of the investigation, and
- (c) subject to the harm test—
  - (i) the investigator’s report or such parts of that report as relate to the officer (together with any document attached to or referred to in that report as relates to the officer), and
  - (ii) any other document which might reasonably be considered capable of undermining or assisting the case.

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- (2) The notice given under paragraph (1) must—
  - (a) describe the conduct that is the subject matter of the case and how that conduct is alleged to amount to gross misconduct, and
  - (b) where relevant, specify that—
    - (i) the Director General has made a decision under regulation 24(1) to present the case, or
    - (ii) the Ombudsman is required under regulation 24(6) to present the case.
- (3) Where paragraph (2)(b) applies, the relevant authority must—
  - (a) consult the Director General or the Ombudsman, as appropriate, about the contents of the written notice to be given under paragraph (1) and on the application of the harm test under paragraph (1)(c),
  - (b) comply with any direction given by the Director General or the Ombudsman, as appropriate, in relation to the matters specified in paragraph (a), and
  - (c) provide the Director General or the Ombudsman, as appropriate, with a copy of the written notice given under paragraph (1).

#### **Notice of accelerated misconduct hearing**

**52.**—(1) The relevant authority must specify a date for the accelerated misconduct hearing which must be not less than 10 and not more than 15 working days after the date on which notice is given under regulation 51(1) (notice of referral to accelerated conduct hearing) and must as soon as practicable—

- (a) notify the officer concerned and the person conducting or chairing the accelerated misconduct hearing of the date, time and place of that hearing, and
- (b) notify the officer concerned of the effect of regulation 7(1) to (3) in relation to an accelerated misconduct hearing.

(2) Where the Director General has made a decision under regulation 24(1) to present a case or is entitled to attend the accelerated misconduct hearing to make representations under regulation 58(1), the relevant authority must notify the Director General of the date, time and place of the hearing.

(3) When the Ombudsman is required under regulation 24(6) to present a case, or is entitled to attend the accelerated misconduct hearing to make representations under regulation 58(1), the relevant authority must notify the Ombudsman of the date, time and place of the hearing.

#### **Public notification of accelerated misconduct hearing**

**53.**—(1) The person conducting or chairing an accelerated misconduct hearing may require the relevant authority to give notice of the hearing which contains information relating to one or more of—

- (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, and
- (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 51(2).

(2) Where the person conducting or chairing the accelerated misconduct hearing requires notice to be given in accordance with paragraph (1), the relevant authority must publish the notice on its website as soon as practicable after notice of the hearing is given under regulation 52(1).



(3) Any person to whom this paragraph applies may make written representations to the person conducting or chairing the accelerated misconduct hearing in relation to—

- (a) whether, and (if so) the extent to which, the person conducting or chairing the accelerated misconduct hearing should exclude any person from the whole or part of the hearing under regulation 59(2)(a),
- (b) whether the person conducting or chairing the accelerated misconduct hearing should impose any conditions under regulation 59(2)(b),
- (c) whether the person conducting or chairing the accelerated misconduct hearing should give directions prohibiting the publication of any matter relating to the proceedings under regulation 59(2)(c),
- (d) in the light of the representations made under sub-paragraphs (a) to (c)—
  - (i) whether the person conducting or chairing the accelerated misconduct hearing should require notice to be given under paragraph (1),
  - (ii) which types of information mentioned in paragraph (1)(a) to (e) should be included in any such notice.

(4) Paragraph (3) applies to—

- (a) the officer concerned,
- (b) the relevant authority,
- (c) the complainant,
- (d) any interested person,
- (e) the Director General, and
- (f) the Ombudsman.

(5) Written representations, in relation to the matters specified in paragraph (3)(a) to (c), may also be made by any representative of the media to the person conducting or chairing the accelerated misconduct hearing.

(6) Any written representations made in accordance with paragraph (3) or (5), as the case may be, must be provided no later than the date specified by the person conducting or chairing the accelerated misconduct hearing for provision of such representations.

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

**54.—**(1) Before the end of 7 working days beginning with the first working day after the written notice is given to the officer concerned under regulation 51(1), the officer concerned must give the relevant authority—

- (a) written notice of whether or not they accept that their conduct amounts to gross misconduct;
- (b) where they accept that their conduct amounts to gross misconduct, any written submission they wish to make in mitigation;
- (c) where they do not accept that their conduct amounts to gross misconduct, written notice of—
  - (i) the allegations they dispute and their account of the relevant events, and
  - (ii) any arguments on points of law they wish to be considered by the person or panel conducting the accelerated misconduct hearing;
- (d) a copy of any document they intend to rely on at the accelerated misconduct hearing.

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(2) Where the Director General has made a decision under regulation 24(1) to present a case, the officer concerned must provide the Director General with a copy of the documents they have provided in accordance with paragraph (1).

(3) Where the Ombudsman is required under regulation 24(6) to present a case, the officer concerned must provide the Ombudsman with a copy of the documents they have provided in accordance with paragraph (1).

### **Persons conducting accelerated misconduct hearing**

55.—(1) Where the officer concerned is not a senior officer, the accelerated misconduct hearing must be conducted by the chief constable.

(2) Where the chief constable is an interested party or is unavailable, the accelerated misconduct hearing must be conducted by the chief officer of police of a relevant force.

(3) Where the officer concerned is a senior officer, the accelerated misconduct hearing must be conducted by a panel of persons specified in paragraph (4), appointed by the relevant authority.

(4) Those persons are—

- (a) a chair selected in accordance with regulation 27(4)(a),
- (b) the Inspector of Constabulary, and
- (c) a person selected in accordance with regulation 27(4)(c).

### **Documents to be supplied**

56.—(1) Prior to the accelerated misconduct hearing the relevant authority must supply the person conducting or chairing the accelerated misconduct hearing with a copy of—

- (a) the notice given to the officer concerned under regulation 51(1),
- (b) the other documents given to the officer under regulation 51(1),
- (c) the documents provided by the officer under—
  - (i) regulation 54, and
  - (ii) where paragraph (2) applies, regulation 30(2) and (3),
- (d) where the officer concerned does not accept that the officer's conduct amounts to gross misconduct, any other documents that, in the opinion of the relevant authority, should be considered at the hearing.

(2) This paragraph applies in a case where misconduct proceedings have been delayed by virtue of regulation 9(3) and the relevant authority has certified the case as one where the special conditions are satisfied following a determination made under regulation 49(3).

(3) Prior to the accelerated misconduct hearing, the relevant authority must provide the officer concerned with—

- (a) a list of the documents supplied under paragraph (1), and
- (b) a copy of any such document, where it has not already been supplied.

(4) Where the Director General has made a decision under regulation 24(1) to present a case, the duty specified in paragraph (1) to supply the specified documents to the person conducting or chairing the accelerated misconduct hearing lies with the Director General and not with the relevant authority.

(5) Where the Ombudsman is required under regulation 24(6) to present a case, the duty specified in paragraph (1) to supply the specified documents to the person conducting or chairing the accelerated misconduct hearing lies with the Ombudsman and not with the relevant authority.

### **Attendance of officer concerned at accelerated misconduct hearing**

**57.**—(1) Subject to paragraph (2), the officer concerned must attend the accelerated misconduct hearing.

(2) Where the officer concerned informs the person conducting or chairing the accelerated misconduct hearing in advance that the officer is unable to attend on grounds which the person conducting or chairing the hearing considers reasonable, that person may allow the officer to participate in the hearing by video link or other means.

(3) Where under paragraph (2) the officer concerned is allowed to and does so participate in the accelerated misconduct hearing, or where the officer otherwise does not attend the accelerated misconduct hearing—

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

(4) Where the officer concerned is represented in accordance with paragraph (3), the police friend or relevant lawyer of the officer, or both, as the case may be, may participate using the video link or other means where such means are also used by the officer.

### **Participation of Director General, Ombudsman and investigator at accelerated misconduct hearing**

**58.**—(1) The Director General or, as the case may be, Ombudsman, may attend an accelerated misconduct hearing to make representations in any case where—

- (a) the complaint has been investigated under paragraphs 18 or 19 of Schedule 3 to the 2002 Act or section 54(2), (3)(a) or section 55(3), (5) or (6) of the 1998 Act,
- (b) directed or supervised, under external procedures, the investigation of a complaint, or
- (c) the complaint has been investigated under paragraph 16 of Schedule 3 to the 2002 Act or section 57 of the 1998 Act—
  - (i) where the Director General—
    - (aa) made a recommendation under paragraph 25(4C)(c) of that Schedule (duties with respect to disciplinary proceedings) which the relevant authority accepted, or
    - (bb) gave a direction under paragraph 27(4)(a) of that Schedule (duties with respect to disciplinary proceedings), or
  - (ii) where the Ombudsman made a recommendation under section 59(2) of the 1998 Act which the chief constable accepted.

(2) Where the Director General or Ombudsman so attends the accelerated misconduct hearing—

- (a) the Director General or Ombudsman may be represented by a relevant lawyer,
- (b) the Director General or Ombudsman must notify the complainant or any interested person prior to the hearing, and
- (c) the person conducting or chairing the accelerated misconduct hearing must notify the officer concerned prior to the hearing.

(3) The investigator or a nominated person must attend the accelerated misconduct hearing on the request of the person conducting or chairing the hearing to answer questions.

(4) For the purposes of this regulation, a “nominated person” is a person who, in the opinion of—

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- (a) the relevant authority, or
- (b) in a case investigated under paragraph 18 or 19 of Schedule 3 to the 2002 Act where under external procedures the Director General directed the investigation or carried out the investigation, the Director General, or
- (c) in a case investigated under section 54(2), (3)(a) or section 55(3), (5) or (6) of the 1998 Act where under external procedures the Ombudsman investigated the case, or supervised the investigation, the Ombudsman,

has sufficient knowledge of the investigation of the case to be able to assist the person conducting or chairing the accelerated misconduct hearing.

- (5) Paragraph (1) does not apply in a case where—
  - (a) the Director General has made a decision under regulation 24(1) to present a case, or
  - (b) the Ombudsman is required under regulation 24(6) to present a case.

### **Reporting restrictions and participation at accelerated misconduct hearing**

**59.**—(1) Subject to paragraph (2), an accelerated misconduct hearing must be in public.

(2) Having considered any representations received under regulation 53(3) and (5), the person conducting or chairing the accelerated misconduct hearing may—

- (a) in relation to the attendance at the hearing of a person under this regulation, exclude any person as they see fit from the whole or a part of it,
- (b) impose such conditions as they see fit relating to the attendance under this regulation of any person at the hearing in order to facilitate the proper conduct of it, and
- (c) give such directions as they think appropriate prohibiting the publication of any matter relating to the hearing.

(3) Where the person conducting or chairing the accelerated misconduct hearing excludes a person under paragraph (2)(a) which has the effect of excluding a representative of the media, or gives a direction under paragraph (2)(c), any representative of the media may make representations to the person conducting or chairing the accelerated misconduct hearing about the exclusion or, as the case may be, direction.

### **Notice to complainant and interested persons of accelerated misconduct hearing**

**60.**—(1) This regulation applies in the case of an accelerated misconduct hearing arising from the investigation of a conduct matter or complaint under external procedures.

(2) The relevant authority must notify the complainant and any interested person of the date, time and place of the accelerated misconduct hearing and of their right to make representations under regulation 53(3).

### **Procedure at accelerated misconduct hearing**

**61.**—(1) The person conducting or chairing the accelerated misconduct hearing must determine the procedure at the hearing and, in so far as it is set out in these Regulations, must determine it in accordance with these Regulations.

(2) The accelerated misconduct hearing must not proceed unless the officer concerned has been notified of the effect of regulation 7(1) to (3) in relation to an accelerated misconduct hearing.

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

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

(5) At the beginning of the accelerated misconduct hearing, the person conducting or chairing the accelerated misconduct hearing must give the officer the opportunity to say whether or not the officer accepts that the officer's conduct amounts to gross misconduct.

(6) No witnesses other than the officer concerned may give evidence at the accelerated misconduct hearing and the person conducting or chairing the accelerated misconduct hearing must determine whether and by whom the officer concerned can be questioned.

(7) The person representing the relevant authority may—

(a) address the hearing in order to do any or all of the following—

(i) put the case of the authority,

(ii) sum up that case,

(iii) respond on behalf of the authority to any view expressed at the accelerated misconduct hearing, and

(iv) make representations concerning any aspect of proceedings under these Regulations, and

(b) confer with the authority.

(8) The person representing the officer concerned may—

(a) address the hearing in order to do any or all of the following—

(i) put the case of the officer,

(ii) sum up that case,

(iii) respond on behalf of the officer to any view expressed at the accelerated misconduct hearing, and

(iv) make representations concerning any aspect of proceedings under these Regulations, and

(b) if the officer concerned is present at the accelerated misconduct hearing or is participating in it by video link or other means in accordance with regulation 57(2), confer with the officer.

(9) Where the person representing the officer concerned is a relevant lawyer, the police friend of the officer may also confer with the officer in the circumstances mentioned in paragraph (8)(b).

(10) The police friend or relevant lawyer of the officer concerned may not answer any questions asked of the officer during the accelerated misconduct hearing.

(11) The person conducting or chairing the accelerated misconduct hearing may allow any document to be considered at the hearing notwithstanding that a copy of it has not been supplied—

(a) by the officer concerned to the relevant authority in accordance with regulation 54(1)(d), or

(b) to the officer in accordance with regulation 51(1).

(12) Where evidence is given or considered at the accelerated misconduct hearing that the officer concerned—

(a) on being questioned by an investigator, at any time after the officer was given written notice under regulation 16(1) of these Regulations or external procedures, or

(b) in submitting any information or by not submitting any information at all under (or, where paragraph (14) applies, regulation 17(1) or 31(2) or (3)) or under external procedures,

failed to mention, any fact relied on in the officer's case at the accelerated misconduct hearing, being a fact which in the circumstances existing at the time, the officer could reasonably have

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been expected to mention when so questioned or when providing such information, paragraph (13) applies.

(13) Where this paragraph applies, the person conducting or chairing the accelerated misconduct hearing may draw such inferences from the failure as appear proper.

(14) This paragraph applies where the case was certified as one where the special conditions are satisfied following a determination made under regulation 49(4), being a case where misconduct proceedings have been delayed by virtue of regulation 9(3).

(15) The person conducting or chairing the accelerated misconduct hearing must review the facts of the case and decide whether or not the conduct of the officer concerned amounts to gross misconduct.

(16) The person conducting or chairing the accelerated misconduct hearing must not find that the conduct of the officer concerned amounts to gross misconduct unless—

- (a) they are satisfied on the balance of probabilities that this is the case, or
- (b) the officer admits it is the case.

(17) At an accelerated misconduct hearing conducted by a panel, any decision must be based on a majority but must not indicate whether it was taken unanimously or by a majority.

(18) Where the Director General has made a decision under regulation 24(1) to present a case, paragraph (7) must be read as if for “The person representing the relevant authority” there were substituted “The Director General”.

(19) Where the Ombudsman is required under regulation 24(6) to present a case, paragraph (7) must be read as if for “The person representing the relevant authority” there were substituted “The Ombudsman”.

### **Outcome of accelerated misconduct hearing**

**62.—**(1) Where the person conducting or chairing the accelerated misconduct hearing finds that the conduct of the officer concerned amounts to gross misconduct, they must impose disciplinary action, which, subject to the provisions of this regulation, may be—

- (a) a final written warning,
- (b) reduction in rank, or
- (c) dismissal without notice.

(2) The disciplinary action has effect from the date on which it is notified to the officer concerned.

(3) Where, on the date of the severity assessment under regulation 13(1) or under external procedures, the officer concerned had a final written warning in force, a final written warning must not be given.

(4) Where a final written warning is given, that warning remains in force for—

- (a) a period of 2 years beginning with the day on which it was notified to the officer concerned, or
- (b) such longer period as the person or panel considering the question of disciplinary action may determine, up to a maximum of 5 years beginning with the day on which it was notified to the officer.

(5) The reference to a period in paragraph (4)(a) and (b) does not include any time when the officer concerned is taking extended special unpaid leave.

(6) Reduction in rank may only be imposed under this regulation where the person or panel imposing the disciplinary action consider this is an appropriate sanction, taking into account the views of the relevant authority, including in relation to the likely operational impact.

(7) Where, on the date of the severity assessment under regulation 13(1) or under external procedures, the officer concerned is subject to a reduction in rank under these Regulations or the Ministry of Defence Police (Conduct) Regulations 2004, a reduction in rank must not be imposed.

(8) Where the person conducting or chairing the accelerated misconduct hearing finds that the conduct of the officer concerned does not amount to gross misconduct, they may—

- (a) dismiss the case, or
- (b) return the case to the relevant authority to deal with in accordance with Part 4.

(9) Where the case is returned to the relevant authority under paragraph (8)(b), the relevant authority must proceed in accordance with Part 4, subject to regulation 23(1) being read as if the words “Subject to regulation 47, on receipt of the investigator’s report under regulation 20(1) or an equivalent report made under external procedures,” were omitted.

(10) Where the question of disciplinary action is being considered, the person or panel considering it—

- (a) must have regard to the record of police service of the officer concerned as shown on the officer’s personal record,
- (b) may consider such documentary evidence as would, in their opinion, assist them in determining the question,
- (c) must give—
  - (i) the officer,
  - (ii) if the officer is legally represented, the officer’s relevant lawyer or, where the officer is not legally represented, the officer’s police friend,
  - (iii) the relevant authority or the person appointed to represent such authority in accordance with regulation 7(5),
  - (iv) the Director General or the Director General’s relevant lawyer, where the Director General presented the case on behalf of the relevant authority, and
  - (v) the Ombudsman or the Ombudsman’s relevant lawyer, where the Ombudsman presented the case on behalf of the relevant authority,an opportunity to make oral or written representations before any such question is determined, including on the appropriate level of disciplinary action, and
- (d) where representations are received in relation to mitigating circumstances—
  - (i) must consider whether those circumstances have been mentioned at an earlier stage in the proceedings and, if they have not been so mentioned, whether the officer could reasonably have been expected to so mention them, and
  - (ii) in the light of their conclusions under paragraph (i), may determine that it is appropriate to place less weight on those circumstances.

### **Notification of outcome**

**63.**—(1) The person conducting or chairing the accelerated misconduct hearing must, before the end of a period of 5 working days beginning with the first working day after the completion of the accelerated misconduct hearing, submit a report to the relevant authority, setting out—

- (a) the finding of the person or panel conducting the accelerated misconduct hearing;
- (b) the reasons for that finding;
- (c) any disciplinary action imposed.

(2) A report under this regulation must include notice of the right of appeal under the Appeals Tribunals Regulations.

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(3) The relevant authority must, as soon as practicable after receiving the report under paragraph (1), notify the officer concerned of the outcome by sending the officer a copy of that report.

(4) The relevant authority must send a copy of any report under this regulation to—

(a) the Director General or the Ombudsman, in any case where the Director General or the Ombudsman—

(i) presented the case, or

(ii) was entitled to attend to make representations under regulation 58(1), and

(b) the complainant and any interested person, in any case to which regulation 60 (accelerated misconduct hearing arising from the investigation of a conduct matter or complaint under external procedures) applies.

(5) Subject to the harm test and paragraph (9), the person conducting or chairing the accelerated misconduct hearing must require the relevant authority to publish the report submitted under paragraph (1).

(6) Where the relevant authority is required to publish the report in accordance with paragraph (5), it must do so as soon as practicable after the officer concerned is notified of the outcome of the accelerated misconduct hearing under paragraph (3).

(7) Where the relevant authority publishes a report in accordance with paragraph (5), it must publish the notice on its website for a period of not less than 28 days.

(8) Prior to publication of a report under paragraph (5) the relevant authority may, subject to paragraph (11), redact the document—

(a) in so far as the authority considers redaction is—

(i) necessary for the purpose of preventing the premature or inappropriate disclosure of information that is relevant to, or may be used in, any criminal proceedings,

(ii) necessary in the interests of national security,

(iii) necessary for the purpose of the prevention or detection of crime, or the apprehension or prosecution of offenders,

(iv) necessary for the purpose of the prevention or detection of misconduct by other MDP officers or their apprehension for such matters,

(v) necessary and proportionate for the protection of the welfare and safety of any informant or witness, or

(vi) otherwise in the public interest, and

(b) in line with any restrictions imposed on the disclosure of information during the course of the proceedings.

(9) The person conducting or chairing the accelerated misconduct hearing may dispense with the requirement under paragraph (5) to publish the report if in the particular circumstances of the case the person considers it is appropriate to do so on any of the grounds set out in paragraph (8)(a) or (b).

(10) In making a decision under paragraph (9), the person conducting or chairing the accelerated misconduct hearing may have regard to any representations—

(a) provided under regulation 53(3) or (5), or

(b) made at the accelerated misconduct hearing.

(11) Information that has already been published during the course of the proceedings may not be redacted under paragraph (8).



### **Record of accelerated misconduct hearing**

64.—(1) A verbatim record of the proceedings at the accelerated misconduct hearing must be taken.

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

## **PART 6**

### **Reflective practice review process**

#### **Interpretation and application**

65.—(1) In this Part—

“participating officer” means the MDP officer whose actions or behaviour are subject to the reflective practice review process, and

“reviewer” means the person who is conducting the reflective practice review process.

(2) The reviewer must be—

- (a) the line manager of the participating officer,
- (b) another officer who is senior to the participating officer, or
- (c) a staff member who, in the opinion of the relevant authority, is more senior than the participating officer.

(3) This Part applies where a matter has been referred to be dealt with under the reflective practice review process—

- (a) under these Regulations, or
- (b) under external procedures.

#### **General**

66.—(1) Where a matter is dealt with under this Part, regulation 6(2)(b) to (d) does not apply.

(2) Where more than one officer is involved in a matter that has been referred to be dealt with under the reflective practice review process, a joint reflective practice review discussion may take place, provided that individual reflective review development reports are produced.

(3) A participating officer must not be prevented from applying for or obtaining a promotion by reason of the officer’s participation in the reflective practice review process.

(4) Any account given by the participating officer under regulation 67(1)(b) or during the reflective practice review discussion held under regulation 69 is not admissible in any subsequent disciplinary proceedings brought against the participating officer, except to the extent that it consists of an admission relating to a matter that has not been referred to be dealt with under the reflective practice review process.

#### **Referral to reflective practice review process**

67.—(1) Where a matter is referred to the reflective practice review process, the reviewer must as soon as practicable provide the following to the participating officer—

- (a) details of the matter that has been referred and the circumstances that are being considered, and
- (b) an invitation to provide an account of the matter that has been referred for review.

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(2) The participating officer must provide any account under paragraph (1)(b) within 5 working days beginning with the first working day after the day on which the invitation to do so is received, unless a longer period is agreed with the reviewer.

(3) The reflective practice review process consists of a fact-finding stage and a discussion stage, followed by the production of a reflective review development report.

### **Fact-finding stage**

**68.**—(1) Enquiries made by the reviewer during the fact-finding stage must be reasonable, proportionate and relevant to the purpose, which is to establish the facts of the matter subject to the review process.

(2) Paragraphs (3) and (4) apply to a matter that has been referred under these Regulations to be dealt with under the reflective practice review process.

(3) If at any time during the fact-finding stage substantial evidence becomes available to the reviewer, which was not available to the relevant authority when the matter was referred to be dealt with under the reflective practice review process, the reviewer must refer the matter to the relevant authority for a further assessment under regulation 13.

(4) Where a matter is so referred for a further assessment, unless such further assessment is that the conduct, if proved, would amount to practice requiring improvement, the reflective practice review process must not be continued.

### **Discussion stage**

**69.**—(1) The reviewer must, following completion of the fact-finding stage, invite the participating officer to attend a reflective practice review discussion.

(2) Such discussion should take place as soon as reasonably practicable.

(3) The discussion must include, in particular—

- (a) a discussion of the practice requiring improvement and related circumstances that have been identified, and
- (b) the identification of key lessons to be learnt by the participating officer, line management or the MDP, to address the matter and prevent a reoccurrence of the matter.

### **Reflective review development report**

**70.**—(1) The reviewer must, following completion of the discussion stage, produce a reflective review development report.

(2) A reflective review development report must contain—

- (a) a summary of the issue and any relevant background circumstances,
- (b) a summary of the reflective practice review discussion,
- (c) key actions to be undertaken within a specified time period,
- (d) any lessons identified for the participating officer,
- (e) any lessons identified for the line management or the MDP,
- (f) a specified period of time for reviewing the report and the actions taken.

(3) The reviewer must send a copy of the report to the relevant authority.

(4) The relevant authority must take appropriate action to ensure that any lessons identified for the line management or the MDP are addressed.

(5) A copy of the report, together with a note of the review of the report and of actions taken, must be retained.

(6) The report and review notes must be discussed as part of the participating officer's performance and development review during the 12 month period following production of the report.

### **Failure to engage with the reflective practice review process**

**71.** If the reviewer considers that the participating officer is failing to engage with the reflective practice review process, the reviewer may refer that failure for assessment by the relevant authority under regulation 13.

## SCHEDULE 2

Regulation 3(2)

### Modifications to the Conduct Regulations in their application to former officers

#### **Interpretation**

**1.** Any reference in this Schedule to a numbered regulation is to the regulation of the Conduct Regulations set out in the paragraph so numbered in Schedule 1.

#### **Modification to regulation 2 (interpretation and delegation)**

**2.** Regulation 2 is to be read as if—

(a) in paragraph (1)—

(i) the following definitions were inserted in the appropriate places—

““Condition C person” means a person in relation to whom regulation 3(2)(a) and (5)(a) and (b) is satisfied;”;

““Condition C special determination” has the meaning given in regulation 5A(4);”;

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

““MDP officer” and “officer” mean, except in regulations 3 (application), 6 (police friend) and 7 (legal and other representation), a person who has ceased to be a member of the MDP;”;

““relevant time” means the time immediately before the officer concerned ceased to be a member of the MDP;”;

(ii) the definitions of “appeal meeting”, “disciplinary action”, “extended special leave”, “misconduct meeting”, “practice requiring improvement” and “reflective practice review process” were omitted;

(iii) in the definition of “allegation”, for “, conduct matter or practice requiring improvement” there were substituted “or conduct matter”;

(iv) in the definition of “gross misconduct”, for “as to justify dismissal” there were substituted “that the officer concerned would have been dismissed if the officer had not ceased to be a member of the MDP”;

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- (v) in the definition of “misconduct”, for “so serious as to justify disciplinary action” there were substituted “not so serious that the officer concerned would have been dismissed if the officer had not ceased to be a member of the MDP”;
- (vi) in the definition of “misconduct hearing”, after “disciplinary action”, there were inserted “for gross misconduct”;
- (vii) for the definition of “misconduct proceedings”, there were substituted—
  - ““misconduct proceedings” means a misconduct hearing,”;
- (viii) in the definition of “proposed witness”, “conducting or” were omitted;
- (ix) for the definition of “staff association”, there were substituted—
  - ““staff association” means, where the officer concerned was at the relevant time—
  - (a) a senior officer, the Chief Police Officer’s Staff Association;
  - (b) any other MDP officer, the Defence Police Federation;”;
- (b) for paragraph (4), there were substituted—
  - “(4) Where the chief constable delegates their functions under regulation 49, a decision under that regulation as to whether to certify a case as one where the special conditions are satisfied must be authorised by a senior officer.”.

**Modification: insertion of Part 1A**

3. The Conduct Regulations apply as if after regulation 4, there were inserted—

**“PART 1A**

**Condition C special determination**

**Condition C special determination: matters to be taken into account**

- 5A.—**(1) This Part applies where the officer concerned is a Condition C person.
- (2) The relevant authority must, as soon as practicable following receipt of a written report made under regulation 20 (report of investigation) or an equivalent report made under external procedures established for England and Wales or Northern Ireland—
- (a) determine whether the officer concerned has a case to answer in respect of gross misconduct or 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).
- (3) 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 (2), and
  - (b) the written record referred to in paragraph (2)(b).
- (4) A “Condition C special determination” is a determination by the Director General as to whether the taking of disciplinary proceedings against the officer concerned in respect of alleged gross misconduct would be reasonable and proportionate having 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.
- (5) When assessing the seriousness of the alleged gross misconduct for the purposes of paragraph (4)(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 persons serving with the MDP,
  - (h) the extent to which the alleged gross misconduct involved abuse of a position of trust or authority held by the officer concerned,
  - (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 in the officer's defence,
  - (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.
- (6) When assessing the impact of the allegation on public confidence in the MDP for the purposes of paragraph (4)(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,
  - (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.
- (7) When assessing the public interest for the purposes of paragraph (4)(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 as a constable,
  - (b) where it appears that the officer concerned should be so prevented, whether disciplinary proceedings are necessary for this purpose,

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- (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.
- (8) In paragraph (5)(c), “vulnerable person” means a person who, by reason of age, disability or ill-health, is, or may be, unable to—
- (a) take care of themselves, or
  - (b) protect themselves against harm or exploitation.

**Condition C special determination: procedure**

- 5B.**—(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 appropriate.
- (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 5A;
  - (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 would have been dismissed if the officer had not ceased to be a member of the MDP;
  - (d) subject to the harm test, set out any findings relating to the conduct to which the investigation relates in any investigation report sent to the Director General under regulation 5A(2);
  - (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 6(1) and (2) (police friend), and 7(1) (legal representation).
- (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 with that person, 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.

(4) When making a Condition C special determination the Director General must take into account in addition to the matters specified in regulation 5A—

- (a) any response to a consultation carried out under paragraph (1)(c),
- (b) any written statement or document provided under paragraph (3),
- (c) any findings relating to the conduct to which the investigation relates in any investigation report sent to the Director General under regulation 5A(2), and
- (d) any other relevant evidence.

(5) The Director General must give notification in writing of a Condition C special determination and the consequences the determination to—

- (a) the persons mentioned in paragraph (1),
- (b) the Ombudsman, where the Ombudsman has been consulted under paragraph (1)(b)(i),
- (c) the Commissioner, where the Commissioner has been consulted under paragraph (1)(b)(ii), and
- (d) the investigator appointed under external procedures established for England and Wales, Northern Ireland or Scotland.”.

#### **Modification to regulation 6 (police friend)**

4. Regulation 6 is to be read as if—

- (a) in paragraph (1), for sub-paragraph (d), there were substituted—
  - “(d) any other person approved by the chief constable.”,
- (b) in paragraph (2)—
  - (i) “Subject to regulation 66(1),” were omitted,
  - (ii) in sub-paragraph (b), “or appeal meeting” were omitted,
  - (iii) in sub-paragraph (d), “, meeting” were omitted.

#### **Modification to regulation 7 (legal and other representation)**

5. Regulation 7 is to be read as if—

- (a) in paragraph (3), for the words “the officer may be dismissed” to the end, there were substituted “disciplinary action for gross misconduct may be imposed in relation to the officer without the officer being so represented”;
- (b) in paragraph (4), for the words “misconduct proceedings” to the end, there were substituted “misconduct proceedings or an accelerated misconduct hearing by a police friend”;
- (c) in paragraph (5)—
  - (i) in the opening words, “or an appeal meeting” were omitted,
  - (ii) in sub-paragraph (b), the words from the beginning to “only,” were omitted;
- (d) in paragraph (6), “Subject to paragraph (7)”, “conducting or” and “or appeal meeting” were omitted;
- (e) paragraph (7) were omitted;
- (f) in paragraph (8)—

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- (i) in the opening words, “or the Ombudsman, as the case may be,” were omitted;
- (ii) at the end of sub-paragraph (a), “and” were omitted;
- (iii) sub-paragraph (b) were omitted;
- (g) in paragraph (9), “or the Ombudsman, as the case may be,” were omitted.

**Modification to regulation 8 (provision of notices or documents)**

6. Regulation 8 is to be read as if after paragraph (1), there were inserted—
- “(1A) 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 10 (suspension)**

7. The Conduct Regulations are to be read as if regulation 10 were omitted.

**Modification to regulation 11 (record of disciplinary proceedings)**

8. Regulation 11 is to be read as if for “and decision on disciplinary action”, there were substituted “, any decision on disciplinary action for gross misconduct”.

**Modification to regulation 13 (severity assessment)**

9. Regulation 13 is to be read as if—
- (a) in paragraph (1)—
    - (i) at the beginning, there were inserted “Subject to paragraph (6A),”;
    - (ii) “misconduct or” and “or neither” were omitted;
  - (b) in paragraph (2), for the words beginning with “amount”, in the first place that word occurs, to the end, there were substituted “not amount to gross misconduct, it must take no further action.”;
  - (c) paragraphs (3) and (4) were omitted;
  - (d) in paragraph (5)—
    - (i) at the beginning, there were inserted “Subject to paragraph (6A),”;
    - (ii) for the words beginning with “misconduct or” to the end, there were substituted “gross misconduct, the matter must be investigated.”;
  - (e) in paragraph (6), at the beginning, there were inserted “Subject to paragraph (6A),”;
  - (f) after paragraph (6), there were inserted—

“(6A) The relevant authority must take no action or no further action under paragraph (1), (5) or (6) 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) the relevant authority has made reasonable enquiries in order to determine the last known address of the officer but it has been unsuccessful.”;
  - (g) in paragraph (7), for the words beginning with “or to refer” to the end, there were substituted “or is required under paragraph (6A)(a) to take no action or no further action, it must so notify the officer concerned in writing as soon as practicable.”.



**Modification to regulation 14 (appointment of investigator)**

10. Regulation 14 is to be read as if in paragraph (3), for sub-paragraph (b), there were substituted—

- “(b) if they worked, directly or indirectly, under the management of the officer concerned at the relevant time.”.

**Modification to regulation 15 (investigation)**

11. Regulation 15 is to be read as if, in paragraph (1), “misconduct or”, in both places where those words appear, were omitted.

**Modification to regulation 16 (written notices)**

12. Regulation 16 is to be read as if in paragraph (1)—

- (a) for sub-paragraph (d), there were substituted—

- “(d) that if the allegation of gross misconduct is proved, the officer may be subject to a finding that the officer would have been dismissed if the officer had not ceased to be a member of the MDP.”;

- (b) in sub-paragraph (h), after “17(1)”, there were inserted “, 19A(2)”.

**Modification to regulation 19 (interviews during investigation)**

13. Regulation 19 is to be read as if—

- (a) in paragraph (1), after “practicable” there were inserted “and subject to regulation 19A”;
- (b) in paragraph (5), for the words beginning with “must” to the end there were substituted “must be reasonable.”.

**Modification: insertion of regulation 19A**

14. The Conduct Regulations are to be read as if after regulation 19 there were inserted—

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

19A.—(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 written record of any notice of enquiry and response received under this regulation.”.

**Modification to regulation 20 (report of investigation)**

15. Regulation 20 is to be read as if—

- (a) in paragraph (2)—

- (i) after sub-paragraph (b), “and” were inserted;
- (ii) for sub-paragraphs (c) and (d) there were substituted—

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- “(c) indicate the investigator’s opinion as to whether—
  - (i) there is a case to answer in respect of gross misconduct or there is no case to answer;
  - (ii) where the investigator’s opinion is that there is no such case to answer, there may nevertheless have been a breach of the Standards of Professional Behaviour that would have justified the bringing of disciplinary proceedings had the officer still been serving.”;
- (b) in paragraph (4)—
  - (i) for “amount to neither misconduct nor”, there were substituted “not amount to”;
  - (ii) in sub-paragraph (a), for “it,” there were substituted “it, and”;
  - (iii) sub-paragraph (c), and the “and” before it were omitted;
- (c) in paragraphs (6) and (7), “misconduct or” were omitted.

**Modification to regulation 21 (general)**

16. Regulation 21 is to be read as if—

- (a) “or Ombudsman”, both times it occurs, were omitted;
- (b) “, as the case may be,” were omitted;
- (c) “conducting or” were omitted.

**Modification to regulation 22 (national security: power to give directions in relation to misconduct hearings)**

17. Regulation 22(3) and (4) is to be read as if “conducting or” were omitted.

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

18. Regulation 23 is to be read as if—

- (a) in paragraph (1)—
  - (i) in sub-paragraph (a), in the first place it occurs, “misconduct or” were omitted;
  - (ii) for sub-paragraph (c), there were substituted—
    - “(c) if there is no case to answer, whether there may have been a breach of the Standards of Professional Behaviour that would have justified the bringing of disciplinary proceedings had the officer still been serving.”;
- (b) after paragraph there were inserted—
  - “(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 5A(3) that the taking of disciplinary proceedings against the person in respect of alleged gross misconduct was reasonable and proportionate.”;
- (c) paragraph (2) were omitted;
- (d) in paragraph (3) “and paragraph (9)” were omitted;
- (e) in paragraph (4), for the words from “assess” to the end, there were substituted “take no disciplinary action for gross misconduct against the officer concerned.”;
- (f) paragraphs (5), (7) and (9) were omitted;
- (g) in paragraph (6)—

- (i) for “completed the assessment under paragraph (3)”, there were substituted “determined there is no case to answer or that no misconduct proceedings will be brought”;
- (ii) in subparagraph (a), for “the outcome of its assessment”, there were substituted “its determination”;
- (h) in paragraph (8)—
  - (i) in sub-paragraph (a), the words from “of the form specified” to the end were omitted;
  - (ii) in sub-paragraph (b), “of the form specified in the recommendation” were omitted;
  - (iii) sub-paragraph (d) were omitted;
  - (iv) in the words after sub-paragraph (d), “of the form specified” were omitted.

#### **Modifications to regulation 24 (presenting of case by the Director General or the Ombudsman)**

19. Regulation 24 is to be read as if—

- (a) in the heading, “or the Ombudsman” were omitted;
- (b) paragraph (6) were omitted;
- (c) in paragraph (7), “or the Ombudsman” both times it occurs, were omitted

#### **Modification to regulation 25 (joint misconduct proceedings)**

20. Regulation 25 is to be read as if—

- (a) paragraph (2) were omitted;
- (b) in paragraph (5), “conducting or” were omitted;
- (c) in paragraph (6), for “are senior officers” there were substituted “were senior officers at the relevant time”;
- (d) paragraph (9) were omitted.

#### **Modification to regulation 26 (withdrawal of misconduct proceedings)**

21. Regulation 26 is to be read as if—

- (a) in paragraph (1)(a), “misconduct or” were omitted;
- (b) in paragraph (2)—
  - (i) in sub-paragraph (a), for the words from “may” to the end, there were substituted “must take no further action against the officer concerned.”;
  - (ii) in sub-paragraph (b)(i), “, indicating whether any action will be taken under paragraph (2)(a)” were omitted;
- (c) paragraph (3) were omitted;
- (d) for paragraphs (4) to (6), there were substituted—

“(4) A case investigated under external procedures established for England and Wales may only be withdrawn—

  - (a) on the direction of the Director General, following consultation with the relevant authority, where the Director General has made a recommendation under paragraph 25(4C)(c) of Schedule 3 to the 2002 Act (duties with respect to disciplinary proceedings), which the relevant authority accepted; or
  - (b) on the decision of the relevant authority, in all other cases.”.

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**Modification to regulation 27 (persons conducting misconduct proceedings)**

22. Regulation 27 is to be read as if—

- (a) paragraphs (1) to (3) were omitted;
- (b) in paragraph (4)—
  - (i) for “A panel appointed in accordance with this paragraph must comprise” there were substituted “Where the case is referred to a misconduct hearing, that hearing must be conducted by a panel of three persons, comprising”;
  - (ii) in sub-paragraph (b), for “officer concerned” there were substituted “rank the officer concerned was at the relevant time”;
- (c) in paragraph (5), for “A panel appointed in accordance with this paragraph must comprise” there were substituted “But where the case is referred to a misconduct hearing and the officer concerned was a senior officer at the relevant time, that hearing must be conducted by a panel of three persons, comprising”.

**Modification to regulation 28 (role of chair of misconduct hearing)**

23.—(1) Regulation 28(10) is to be read as if—

- (a) “or the Ombudsman” were omitted;
- (b) “or, as the case may be, the Ombudsman” were omitted.

**Modification to regulation 29 (notice of referral to misconduct proceedings)**

24. Regulation 29 is to be read as if—

- (a) in paragraph (1)—
  - (i) in sub-paragraph (a)—
    - (aa) in paragraph (ii), “misconduct or” and “, as the case may be” were omitted;
    - (bb) in paragraph (iii), for the words from “conduct” to “a chair,” there were substituted “chair the misconduct proceedings and”;
    - (cc) in paragraph (v), “in relation to the form of misconduct proceedings to which the case is being referred” were omitted;
    - (dd) in paragraph (vi), sub-paragraph (bb), and the “or” preceding it, were omitted;
    - (ee) after paragraph (vi), “and” were omitted;
    - (ff) after paragraph (vii), there were inserted—
      - “(viii) the fact that the officer will be subject to disciplinary proceedings under the Conduct Regulations, and
      - (ix) the fact that, if the allegation of gross misconduct is proved, the officer may be subject to a finding that the officer would have been dismissed if the officer had not ceased to be a member of the MDP,”;
  - (ii) in sub-paragraph (c), after paragraph (i), “and” were omitted and there were inserted—
    - “(ia) in the case of a Condition C person, any written statement or document provided to the Director General under regulation 5B(3) and any response to a consultation carried out under regulation 5B(1)(c), and”;

- (b) in paragraph (2), “conducting or” were omitted;
- (c) in paragraph (3)—
  - (i) in sub-paragraph (a), for “conduct or, as the case may be, chair”, there were substituted “chair”;
  - (ii) in sub-paragraph (b), “conducting or, as the case may be,” were omitted;
- (d) in paragraph (5)—
  - (i) “conduct or, as the case may be,” were omitted;
  - (ii) “conducting or” were omitted;
- (e) in paragraph (6), “and (7)” were omitted;
- (f) in paragraph (7)—
  - (i) “conduct or, as the case may be,” were omitted;
  - (ii) “conducting or” were omitted;
- (g) in paragraph (10)—
  - (i) in the opening words, the words from “or the Ombudsman” to “present a case,” were omitted;
  - (ii) in sub-paragraph (a), “, or the Ombudsman,” were omitted;
  - (iii) in sub-paragraphs (b) and (c), “or the Ombudsman” were omitted both times it occurs.

**Modification to regulation 30 (procedure on receipt of notice)**

25. Regulation 30 is to be read as if—
- (a) in paragraph (1)(b), “conducting or” were omitted;
  - (b) in paragraph (2)(a), (b) and (c), “misconduct or” and “, as the case may be” were omitted;
  - (c) in paragraph (2)(c)(ii), “person or” were omitted;
  - (d) in paragraph (5)—
    - (i) in the opening words, the words from “, or the Ombudsman” to “present a case” were omitted;
    - (ii) in sub-paragraph (a), “or the Ombudsman, as appropriate,” were omitted;
    - (iii) in sub-paragraph (b), “or the Ombudsman,” were omitted.

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

26. Regulation 31 is to be read as if—
- (a) in paragraphs (1), (3), (5), in both places where the words appear, (6), (9), (11) and (13) (b), “conducting or” were omitted;
  - (b) in paragraph (6)(c), for “misconduct or gross misconduct, as the case may be” there were substituted “gross misconduct”;
  - (c) in paragraph (13)—
    - (i) in the opening words, the words from “, or the Ombudsman” to the end were omitted;
    - (ii) in sub-paragraphs (a), (b) and (d), “or the Ombudsman” were omitted each time it occurs;
    - (iii) in sub-paragraph (c), “or, as the case may be “of the Ombudsman”” were omitted.

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**Modification to regulation 32 (misconduct pre-hearing)**

27. Regulation 32 is to be read as if—

- (a) in paragraph (1)(b)(iii), “or the Ombudsman” were omitted both times it occurs;
- (b) in paragraph (6)(e)—
  - (i) “or, as the case may be, the Ombudsman’s” were omitted;
  - (ii) “or the Ombudsman” were omitted;
- (c) in paragraph (17), “or the Ombudsman” were omitted both times it occurs.

**Modification: omission of regulation 33 (timing of misconduct meeting)**

28. The Conduct Regulations are to be read as if regulation 33 were omitted.

**Modification to regulation 34 (notice of misconduct proceedings and panel)**

29. Regulation 34 is to be read as if—

- (a) in paragraph (2)—
  - (i) the words from the beginning to “a panel,” were omitted;
  - (ii) for “that panel” there were substituted “the panel”;
- (b) in paragraph (10)—
  - (i) “or the Ombudsman” were omitted;
  - (ii) “or, as the case may be, the Ombudsman,” were omitted;
- (c) paragraph (12) were omitted.

**Modification to regulation 35 (public notification of misconduct hearings)**

30. Regulation 35 is to be read as if—

- (a) in paragraph (1)—
  - (i) after sub-paragraph (d), “and” were omitted;
  - (ii) in sub-paragraph (e), for “misconduct or gross misconduct, as the case may be”, there were substituted “gross misconduct”;
  - (iii) after sub-paragraph (e), there were inserted—
    - “, and
    - (f) where the officer concerned is a Condition C person, the Condition C special determination.”;
- (b) in paragraph (3)(d)(ii), for “(e)” there were substituted “(f)”;
- (c) in paragraph (4)(f), “or the Ombudsman” were omitted.

**Modification to regulation 36 (attendance of officer concerned at misconduct proceedings)**

31. Regulation 36 is to be read as if—

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

**Modification to regulation 37 (participation of the Director General, Ombudsman and investigator at misconduct proceedings)**

32. Regulation 37 is to be read as if—
- (a) in the heading, “, Ombudsman” were omitted;
  - (b) in paragraph (1)—
    - (i) in the opening words, “or, as the case may be, Ombudsman,” were omitted;
    - (ii) in sub-paragraph (a), the words from “or sections 54(2)” to “1998 Act” were omitted;
    - (iii) in sub-paragraph (b)—
      - (aa) in the opening words, “or section 57 of the 1998 Act” were omitted;
      - (bb) paragraph (ii), and the immediately preceding “or”, were omitted;
  - (c) in paragraph (2)—
    - (i) “or Ombudsman” were omitted, each time it occurs;
    - (ii) in sub-paragraph (a), “if it is a misconduct hearing” were omitted;
  - (d) in paragraphs (2)(c), (3) and (4), “conducting or” were omitted;
  - (e) in paragraph (4), sub-paragraph (c), and the immediately preceding “or”, were omitted;
  - (f) in paragraph (5), “or the Ombudsman, as the case may be,” were omitted;
  - (g) in paragraph (6) sub-paragraph (b), and the immediately preceding “or” were omitted.

**Modification to regulation 38 (reporting restrictions, participation and exclusions from proceedings)**

33. Regulation 38 is to be read as if—
- (a) paragraphs (2), (3), (4) and (5) were omitted;
  - (b) in paragraph (6)—
    - (i) “conducting or” were omitted both times it appears;
    - (ii) in sub-paragraph (c), the words from “in the case” to “regulation 27(4) or (5)” were omitted;
  - (c) in paragraphs (8) and (9), “conducting or” were omitted.

**Modification to regulation 39 (attendance of complainant, interested persons and others at misconduct proceedings)**

34. Regulation 39 is to be read as if—
- (a) paragraphs (3), (4) and (6) were omitted;
  - (b) in paragraph (5), “conducting or” were omitted.

**Modification to regulation 40 (procedure at misconduct proceedings)**

35. Regulation 40 is to be read as if—
- (a) in paragraphs (1), (3), (5), (10) and (11) “conducting or” were omitted;
  - (b) in paragraph (2), “in relation to the form of misconduct proceedings taking place” were omitted;
  - (c) in paragraph (5), for “misconduct or gross misconduct, as the case may be”, there were substituted “gross misconduct”;

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- (d) in paragraph (8), “(at a misconduct hearing)” were omitted;
- (e) after paragraph (10), there were inserted—
  - “(10A) Where evidence is given or considered at the misconduct hearing that the officer concerned was given written notice of an interview under regulation 19(6) (interviews during investigation) or external procedures and failed to attend the interview, paragraph (14) applies.”;
- (f) in paragraph (12)(b) after “17(1)” there were inserted “, 19A(2)”;
- (g) in paragraphs (14) and (16), “person or” were omitted;
- (h) for paragraph (15) there were substituted—
  - “(15) The panel conducting the misconduct proceedings must review the facts of the case and decide whether the conduct of the officer concerned amounts to misconduct, gross misconduct or neither.”;
- (i) in paragraph (17), “At misconduct proceedings conducted by a panel,” were omitted;
- (j) paragraph (19) were omitted.

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

**36.** The Conduct Regulations are to be read as if for regulation 41 there were substituted—

**“Outcome of misconduct hearing**

**41.—(1)** The panel conducting a misconduct hearing may, subject to the provisions of this regulation—

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

(2) Where the question of disciplinary action for gross misconduct is being considered, the persons considering it—

- (a) must have regard to the record of service of the officer concerned as shown on the officer’s personal record,
- (b) may receive evidence from any witness whose evidence would, in their opinion, assist them in determining the question, including evidence of mitigating circumstances disclosed prior to the hearing to—
  - (i) the MDP,
  - (ii) a registered medical practitioner, or
  - (iii) a staff association,
- (c) must give—
  - (i) the officer concerned,
  - (ii) if the officer concerned is legally represented, the officer’s relevant lawyer or, if the officer is not legally represented, the officer’s police friend,
  - (iii) the relevant authority or the person appointed to represent such authority in accordance with regulation 7(5), and
  - (iv) the Director General or the Director General’s relevant lawyer, where the Director General made a decision under regulation 24(1) to present the case,



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

- (d) where representations are received into mitigating circumstances—
  - (i) must consider whether those circumstances have been mentioned at an earlier stage in the proceedings and, if they have not been so mentioned, whether the officer concerned could reasonably have been expected to so mention them, and
  - (ii) in the light of their conclusions under paragraph (i), may determine that it is appropriate to place less weight on those circumstances.”.

**Modification to regulation 42 (notification of outcome)**

37. Regulation 42 is to be read as if—

- (a) in paragraph (1)—
  - (i) “conducting or” and “or misconduct meeting” were omitted;
  - (ii) in sub-paragraph (a), “person or” were omitted;
  - (iii) for sub-paragraphs (c) and (d), there were substituted—
    - “(c) whether disciplinary action for gross misconduct was imposed.”;
- (b) in paragraph (2)(b)—
  - (i) “misconduct or” were omitted, and
  - (ii) for “in accordance with paragraph (3)”, there were substituted “under the Appeals Tribunal Regulations”;
- (c) paragraph (3) were omitted;
- (d) in paragraph (4), “In all cases referred to in paragraph (3)” were omitted;
- (e) in paragraph (5), sub-paragraph (b) were omitted.

**Modification to regulation 43 (record of misconduct proceedings)**

38. Regulation 43 is to be read as if, for paragraph (1), there were substituted—

“(1) A verbatim record of the misconduct proceedings must be taken.”.

**Modification: omission of regulations 44 to 46 (appeals)**

39. The Conduct Regulations are to be read as if regulations 44 to 46 were omitted.

**Modification to regulation 47 (general)**

40. Regulation 47 is to be read as if—

- (a) “or Ombudsman”, were omitted.
- (b) “or the Ombudsman, as the case may be,”, were omitted;

**Modification to regulation 49 (referral of case to accelerated misconduct hearing)**

41. Regulation 49 is to be read as if in paragraph (2)(b), for the words from “for the officer concerned” to the end of the paragraph, there were substituted “that the officer concerned should be prevented from future employment or appointment as a constable”.

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**Modification to regulation 50 (remission of case)**

42. Regulation 50 is to be read as if paragraph (4)(b) were omitted.

**Modification to regulation 51 (notice of referral to accelerated misconduct hearing)**

43. Regulation 51 is to be read as if—

- (a) in paragraph (2)(b), paragraph (ii), and the immediately preceding “or”, were omitted;
- (b) in paragraph (3), “or the Ombudsman, as appropriate” were omitted, each time it occurs.

**Modification to regulation 52 (notice of accelerated misconduct hearing)**

44. Regulation 52 is to be read as if paragraph (3) were omitted.

**Modification to regulation 53 (public notification of accelerated misconduct hearing)**

45. Regulation 53 is to be read as if paragraph (4)(f), and the immediately preceding “and”, were omitted.

**Modification to regulation 54 (procedure on receipt of notice)**

46. Regulation 54 is to be read as if paragraph (3) were omitted.

**Modification to regulation 55 (persons conducting accelerated misconduct hearing)**

47. Regulation 55 is to be read as if—

- (a) in paragraph (1), for “is not a senior officer” there were substituted “was not a senior officer at the relevant time”;
- (b) in paragraph (3), for “is a senior officer” there were substituted “was a senior officer at the relevant time”.

**Modification to regulation 56 (documents to be supplied)**

48. Regulation 56 is to be read as if paragraph (5) were omitted.

**Modification to regulation 58 (participation of Director General, Ombudsman and investigator at accelerated misconduct hearing)**

49. Regulation 58 is to be read as if—

- (a) in the heading, “, Ombudsman” were omitted;
- (b) in paragraph (1)—
  - (i) in sub-paragraph (a), the words from “or section 54(2)” to the end were omitted;
  - (ii) in sub-paragraph (c)—
    - (aa) in the opening words, “or section 57 of the 1998 Act” were omitted;
    - (bb) paragraph (ii), and the immediately preceding “or”, were omitted;
- (c) in paragraph (2), “or Ombudsman” were omitted each time it occurs;
- (d) in paragraph (4), sub-paragraph (c), and the immediately preceding “or”, were omitted;
- (e) in paragraph (5), sub-paragraph (b), and the immediately preceding “or”, were omitted.

**Modification to regulation 61 (procedure at accelerated misconduct hearing)**

50. Regulation 61 is to be read as if—

(a) after paragraph (10), there were inserted—

“(10A) Where evidence is given or considered at the misconduct hearing that the officer concerned was given written notice of an interview under regulation 19(6) (interviews during investigation) or under external procedures and failed to attend the interview, paragraph (13) applies.”;

(b) in paragraph (12)(b) after “regulation 17(1) there were inserted “, 19A(2)”;

(c) paragraph (19) were omitted.

**Modification to regulation 62 (outcome of accelerated misconduct hearing)**

51. The Conduct Regulations are to be read as if for regulation 62, there were substituted—

**“Outcome of accelerated misconduct hearing**

62.—(1) Subject to the provisions of this regulation, the person or panel conducting the accelerated misconduct hearing may—

(a) where the person or panel finds the conduct amounts to gross misconduct, impose disciplinary action for gross misconduct, or

(b) where the person or panel finds the conduct amounts to misconduct but not gross misconduct, record a finding of misconduct but take no further action.

(2) Where the question of disciplinary action for gross misconduct is being considered, the person or panel considering it—

(a) must have regard to the record of service of the officer concerned as shown on the officer’s personal record,

(b) may consider such documentary evidence as would, in their opinion, assist them in determining the question,

(c) must give—

(i) the officer concerned,

(ii) if the officer concerned is legally represented, the officer’s relevant lawyer or, if the officer is not legally represented, the officer’s police friend,

(iii) the relevant authority or the person appointed to represent such authority in accordance with regulation 7(5), and

(iv) the Director General or the Director General’s relevant lawyer, where the Director General made a decision under regulation 24(1) to present the case, an opportunity to make oral or written representations, and

(d) where representations are received in relation to mitigating circumstances—

(i) must consider whether those circumstances have been mentioned at an earlier stage in the proceedings and, if they have not been so mentioned, whether the officer concerned could reasonably have been expected to so mention them, and

(ii) in the light of their conclusions under paragraph (i), may determine that it is appropriate to place less weight on those circumstances.”.

**Modification to regulation 63 (notification of outcome)**

52. In regulation 63—

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

“(c) whether disciplinary action for gross misconduct was imposed.”;

(b) in paragraph (4), “or the Ombudsman” were omitted both times it occurs.

**Modification: omission of Part 6 (reflective practice review process)**

53. The Conduct Regulations are to be read as if Part 6 were omitted.

SCHEDULE 3

Regulation 3(3)

Standards of Professional Behaviour

**Honesty and Integrity**

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

**Authority, Respect and Courtesy**

2.—(1) MDP officers act with self-control and tolerance, treating members of the public and colleagues with respect and courtesy.

(2) MDP officers do not abuse their powers or authority and respect the rights of all individuals.

**Equality and Diversity**

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

**Use of Force**

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

**Orders and Instructions**

5.—(1) MDP officers only give and carry out lawful orders and instructions.

(2) MDP officers abide by police regulations, force policies and lawful orders.

**Duties and Responsibilities**

6.—(1) MDP officers are diligent in the exercise of their duties and responsibilities.

(2) MDP officers have a responsibility to give appropriate cooperation during investigations, inquiries and formal proceedings, participating openly and professionally in line with the expectations of a MDP officer when identified as a witness.

**Confidentiality**

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

### **Fitness for Duty**

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

### **Discreditable Conduct**

9.—(1) MDP officers behave in a manner which does not discredit the police service or undermine public confidence in it, whether on or off duty.

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

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

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

## SCHEDULE 4

Regulation 4

### The Performance Regulations

## CONTENTS

### PART 1

#### Introduction

1. Regulations
2. Application
3. Interpretation and delegation

### PART 2

#### General

4. Police friend
5. Legal and other representation
6. Provision of notices or documents
7. Procedure at meetings under these Regulations
8. Nominated persons
9. Reference to certain periods
10. Suspension of certain periods
11. Meeting following investigation by the Director General
12. Provision of information to the Director General
13. Meeting following referral under the Conduct Regulations

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### PART 3

#### First stage

14. Circumstances in which a first stage meeting may be required
15. Arrangement of first stage meeting
16. Procedure at first stage meeting
17. Procedure following first stage meeting
18. Appeal against the finding and outcome of a first stage meeting
19. Arrangement of first stage appeal meeting
20. Procedure at first stage appeal meeting

### PART 4

#### Second stage

21. Circumstances in which a second stage meeting may be required
22. Arrangement of second stage meeting
23. Circumstances in which a second stage meeting may be required without a first stage meeting
24. Procedure at second stage meeting
25. Procedure following second stage meeting
26. Appeal against the finding and outcome of a second stage meeting
27. Arrangement of second stage appeal meeting
28. Procedure at second stage appeal meeting

### PART 5

#### Third stage

29. Assessment following second stage meeting
  30. Arrangement of a third stage meeting
  31. Circumstances in which a third stage meeting may be required without a prior first or second stage meeting
  32. Arrangement of a third stage meeting without a prior first or second stage meeting
  33. Appointment of panel members
  34. Right of officer concerned to object to panel members
  35. Procedure on receipt of notice of third stage meeting
  36. Witnesses
  37. Timing and notice of third stage meeting
  38. Postponement and adjournment of a third stage meeting
  39. Participation of Director General and investigator at third stage meeting
  40. Attendance of complainant or interested person at third stage meeting
  41. Attendance of others at a third stage meeting
  42. Exclusion from a third stage meeting
  43. Procedure at a third stage meeting
  44. Finding
  45. Outcomes
  46. Assessment of performance or attendance following third stage meeting where a written improvement notice has been issued
  47. Assessment of performance or attendance following third stage meeting where a final written improvement notice has been issued or extended
  48. Third stage meeting under regulation 47
- Signature

## Explanatory Note

# PART 1

## Introduction

### Regulations

1. Any reference in this Schedule—
  - (a) to a numbered regulation is, unless otherwise stated, to the regulation set out in the paragraph so numbered in this Schedule;
  - (b) to “these Regulations” is to the Regulations set out in this Schedule.

### Application

2.—(1) Subject to paragraph (2), these Regulations apply where unsatisfactory performance or attendance by an MDP officer comes to the attention of the line manager of the MDP officer, or the chief constable, on or after 2nd November 2020.

- (2) These Regulations do not apply in relation to—
  - (a) a senior officer;
  - (b) an MDP officer of the rank of constable who has not completed the period of probation applicable to the officer.

### Interpretation and delegation

- 3.—(1) In these Regulations—
  - “first stage appeal meeting” has the meaning given to it by regulation 18(8);
  - “first stage meeting” has the meaning given to it by regulation 14;
  - “gross incompetence” means a serious inability or serious failure of an MDP officer to perform the duties of the officer’s rank or the role the officer is currently undertaking to a satisfactory standard or level, without taking into account the officer’s attendance, to the extent that dismissal would be justified and “grossly incompetent” is to be construed accordingly;
  - “human resources professional” means an MDP officer or staff member who has specific responsibility for personnel matters relating to members of the MDP;
  - “investigator”, other than in regulation 13, means a person appointed or designated under external procedures established for England and Wales;
  - “nominated person” means a person appointed by the senior manager in accordance with regulation 8;
  - “officer concerned” means the MDP officer in respect of whom proceedings under these Regulations are, or are proposed to be, taken;
  - “panel” means a panel appointed by the relevant authority in accordance with regulation 33 subject to any change to the membership of that panel in accordance with regulation 34 and regulations 47;
  - “police friend” means a person chosen by the officer concerned in accordance with regulation 4;
  - “proposed witness” means a witness whose attendance at a third stage meeting the officer concerned or the relevant authority (as the case may be) wishes to request of the panel chair;

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“relevant authority” means the chief constable;

“relevant terms of the final written improvement notice” has the meaning given to it by regulation 26;

“relevant terms of the written improvement notice” has the meaning given to it by regulation 18;

“second line manager” means the person appointed by the relevant authority to act as the second line manager for the purposes of these Regulations in relation to the officer concerned and who is either—

- (a) a member of the MDP having supervisory responsibility for the line manager and who (in a case where the line manager is a member of the force) is senior in rank to the line manager, or
- (b) a staff member who has supervisory responsibility for the line manager;

“second stage appeal meeting” has the meaning given to it by regulation 26(8);

“second stage meeting” has the meaning given to it by regulation 21(2) or 23(5)(e), as the context requires;

“senior manager” means—

- (a) the MDP officer or staff member who is the supervisor of the person who is, in relation to the officer concerned, the second line manager, or
- (b) in the absence of such supervisor, the MDP officer or staff member nominated by the relevant authority to carry out any of the functions of such supervisor under these Regulations, being of at least the same or equivalent rank or grade as the person who is, in relation to the officer concerned, the second line manager;

“staff association” means the Defence Police Federation;

“third stage meeting” has the meaning given to it by regulation 29(2) or 31(3), as the context requires;

(2) In these Regulations—

- (a) a reference to—
  - (i) unsatisfactory performance or attendance, or
  - (ii) the performance or attendance of an MDP officer being unsatisfactory,is a reference to an inability or failure of an MDP officer to perform the duties of the role or rank the officer is currently undertaking to a satisfactory standard or level;
- (b) “unsatisfactory performance or attendance” may be construed as a reference to unsatisfactory performance and attendance;
- (c) “performance or attendance” may be construed as a reference to performance and attendance.

(3) In these Regulations, references to paragraphs of Schedule 3 to the 2002 Act are to those paragraphs as applied under an agreement under section 26(1) of the 2002 Act.

(4) Information in documents which are stated to be subject to the harm test under these Regulations must not be given to the officer concerned in so far as the relevant authority considers that preventing disclosure to the officer is—

- (a) necessary for the purpose of preventing the premature or inappropriate disclosure of information that is relevant to, or may be used in, criminal proceedings,
- (b) necessary in the interests of national security,
- (c) necessary for the purposes of the prevention or detection of crime, or the apprehension or prosecution of offenders,



- (d) necessary for the purpose of the prevention or detection of misconduct by—
    - (i) MDP officers;
    - (ii) persons under the direction and control of a chief officer of a relevant force; or their apprehension for such matters,
  - (e) justified on the grounds that providing the information would involve disproportionate effort in comparison to the seriousness of the unsatisfactory performance or attendance in question,
  - (f) necessary and proportionate for the protection of the welfare and safety of any informant or witness, or
  - (g) otherwise in the public interest.
- (5) The relevant authority may, subject to paragraph (5), delegate any of its functions under these Regulations to—
- (a) a member of the MDP of at least the rank of inspector, or
  - (b) a staff member who, in the opinion of the relevant authority, is of at least a similar level of seniority to an inspector.
- (6) Where the relevant authority delegates its functions under regulation 31, a decision under sub-paragraph (a) or (c) of regulation 31(1) must be authorised by a senior officer.

## PART 2

### General

#### **Police friend**

- 4.—(1) The officer concerned may choose—
- (a) an MDP officer,
  - (b) an officer from a relevant force,
  - (c) a staff member, or
  - (d) a person nominated by the officer's staff association,
- who is not otherwise involved in the matter, to act as a police friend.
- (2) The police friend may—
- (a) advise the officer concerned throughout the proceedings under these Regulations,
  - (b) represent the officer at any meeting under these Regulations, unless the officer has the right to be legally represented under regulation 5 and chooses to be so represented,
  - (c) make representations to the relevant authority concerning any aspect of the proceedings under these Regulations, and
  - (d) accompany the officer to any meeting which the officer is required to attend under these Regulations.
- (3) Where the police friend is an MDP officer, the chief constable must permit the police friend to use a reasonable amount of duty time for the purposes referred to in paragraph (2).
- (4) Where the police friend is a staff member, the Secretary of State for Defence must permit that person to use a reasonable amount of duty time for the purposes referred to in paragraph (2).

### **Legal and other representation**

5.—(1) Where the officer concerned is required to attend a third stage meeting under regulation 31, the officer has the right to be legally represented at the meeting by a relevant lawyer of the officer's choice.

(2) If the officer concerned chooses not to be legally represented—

- (a) the meeting may take place and the officer may be dismissed or be subject to any other outcome ordered under regulation 45(2) or (6) without being legally represented, and
- (b) the panel conducting the meeting may nevertheless be advised by a relevant lawyer at the meeting in accordance with regulation 41(3).

(3) Except in a case where the officer concerned has the right to be legally represented and chooses to be so represented, the officer may be represented at a meeting under these Regulations only by a police friend.

(4) A third stage meeting under regulation 31 must not take place unless the officer concerned has been notified in writing of the effect of this regulation.

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

6. Where any written notice or document is to be given to the officer concerned under these Regulations, it must be—

- (a) given to the officer in person,
- (b) left with a person at, or sent by recorded delivery to, the officer's last known address,
- (c) given to the officer in person by the officer's police friend where the police friend has agreed with the relevant authority to deliver the notice or document, or
- (d) given to the officer in any other manner agreed between the person who is required to give the notice or document and the officer.

### **Procedure at meetings under these Regulations**

7.—(1) Where the officer concerned participates in a third stage meeting by video link or other means under regulation 37(9) or otherwise does not attend a meeting under these Regulations, the officer may nevertheless be represented at that meeting by—

- (a) a police friend, or
- (b) where the officer was required to attend the third stage meeting under regulation 31, the officer's relevant lawyer.

(2) Where the officer concerned does not participate in a third stage meeting by video link or other means under regulation 37(9) or otherwise does not attend a meeting under these Regulations, the meeting may be proceeded with and concluded in the absence of the officer whether or not the officer is so represented.

(3) During any meeting under these Regulations, the person representing the officer concerned may—

- (a) address the meeting in order to do any or all of the following—
  - (i) put the case of the officer,
  - (ii) sum up that case,
  - (iii) respond on behalf of the officer to any view expressed at the meeting,
  - (iv) make representations concerning any aspect of proceedings under these Regulations, and

- (v) in the case of a third stage meeting only, subject to paragraph (7), ask questions of any witnesses;
- (b) confer with the officer.
- (4) Where the person representing the officer concerned is a relevant lawyer, the police friend may also confer with the officer.
- (5) Where the officer concerned is participating in a third stage meeting by video link or other means in accordance with regulation 37(9), the person representing the officer or (if different) the police friend (or both) may also participate in the third stage meeting by such means together with the officer.
- (6) The police friend or relevant lawyer of the officer concerned may not answer any questions asked of the officer during a meeting.
- (7) The panel chair must determine whether any question should be put to a witness at a third stage meeting.
- (8) At any meeting under these Regulations, the person or panel conducting the meeting may not make a finding of unsatisfactory performance or attendance or gross incompetence unless—
  - (a) the person or panel is satisfied on the balance of probabilities that there has been unsatisfactory performance or attendance or gross incompetence, or
  - (b) the officer concerned admits unsatisfactory performance or attendance or gross incompetence.
- (9) The person conducting or chairing a meeting under these Regulations may allow any document to be considered at that meeting notwithstanding that a copy of it has not been—
  - (a) given to the person by the officer concerned in accordance with regulation 15(9), 18(6)(b), 22(8), 26(6)(b) or 35(3),
  - (b) given to the officer concerned in accordance with regulation 15(2) or (3), 22(2), 30(2) or 32(2), or
  - (c) made available to each panel member or given to the officer concerned under regulation 33(9).

### **Nominated persons**

- 8.—**(1) A senior manager may appoint another person (a “nominated person”) to carry out any of the functions of the line manager or the second line manager in these Regulations.
- (2) A person appointed to carry out any of the functions of the line manager under paragraph (1) may not also be appointed under that paragraph to carry out any of the functions of the second line manager.
- (3) A person appointed to carry out any of the functions of the second line manager under paragraph (1) may not also be appointed under that paragraph to carry out any of the functions of the line manager.
- (4) A nominated person must be a member of the MDP or a staff member and must be, in the opinion of the relevant authority, of at least the same or equivalent rank or grade as the person whose functions the nominated person is carrying out.
- (5) Where a nominated person is appointed, references in these Regulations to a line manager or a second line manager, as the case may be, must be construed as references to the nominated person, in relation to the functions which the nominated person has been appointed to carry out.

**Reference to certain periods**

9.—(1) The relevant authority may, on the application of the officer concerned or otherwise, extend the period specified in accordance with any of the regulations mentioned in paragraph (2) if it is satisfied that it is appropriate to do so.

(2) The regulations are—

- (a) regulation 16(6)(c),
- (b) regulation 24(6)(c), and
- (c) regulation 45(7)(c) and (8)(a).

(3) Unless the relevant authority is satisfied that there are exceptional circumstances making it appropriate, any such period may not be extended if the extension would result in the total length of that period exceeding 12 months.

(4) Where an extension is granted under paragraph (1) of a period specified under a regulation mentioned in paragraph (2), any reference in these Regulations to such period is to be construed as a reference to that period as so extended.

**Suspension of certain periods**

10.—(1) Any reference in these Regulations to a period mentioned in paragraph (2) does not include any time when the officer concerned is taking extended special unpaid leave.

(2) A period is—

- (a) a period specified in accordance with regulation 16(6)(c);
- (b) the validity period of a written improvement notice specified in regulation 17(4);
- (c) a period specified in accordance with regulation 24(6)(c);
- (d) the validity period of a final written improvement notice specified in regulation 25(4);
- (e) a period specified under regulation 45(7)(c), (d) or (8)(a);
- (f) the validity period of a final written improvement notice extended under regulation 45(8)(c).

**Meeting following investigation by the Director General**

11.—(1) The relevant authority must direct the line manager of the officer concerned to take the action specified in paragraph (2), (3) or (4), as the case may be, where—

- (a) regulation 31 does not apply, and
- (b) the relevant authority—
  - (i) receives an investigator's report submitted under paragraph 22 or 24A of Schedule 3 to the 2002 Act (final reports on investigations)(37), and in making a determination under paragraph 24(6) (action by the relevant authority in response to an investigation report)(38) of 24C(4) of that Schedule (action by the Director General

(37) Paragraph 22 was substituted by paragraphs 1, 11 and 21 of Schedule 12 to the Serious Organised Crime and Police Act 2005 ("the 2005 Act") and amended by paragraphs 1, 3 and 12 of Schedule 23 to the Criminal Justice and Immigration Act 2008 ("the 2008 Act") and section 19 of, and paragraph 47 of Schedule 5, and paragraphs 15 and 56 of Schedule 9, to the Policing and Crime Act 2017 ("the 2017 Act"). Paragraph 24A was inserted by paragraphs 1, 11 and 24 of Schedule 12 to the 2005 Act and amended by paragraphs 1, 3 and 15 of Schedule 23 to the 2008 Act and section 18 of, and paragraphs 9, 28 and 47 of Schedule 5, and paragraphs 15 and 56 of Schedule 9, to the 2017 Act.

(38) Paragraph 24(6) was substituted by paragraph 14(6) of the Schedule 23 to the 2008 Act and amended by paragraph 14(3) of Schedule 14 to the Police Reform and Social Responsibility Act 2011 and paragraphs 27(2) and 47(h)(xiii) of Schedule 5 to the 2017 Act.

in response to an investigation report)(39), considers that the performance of the MDP officer is unsatisfactory,

- (ii) has a duty under paragraph 23(5B) of that Schedule (duties of relevant authority in relation to direction by Director General to bring disciplinary proceedings)(40) to comply with a direction to bring disciplinary proceedings, following a determination under paragraph 23(5A)(b) of that Schedule (duties of Director General on receipt or completion of report on investigation)(41) that a person's performance is unsatisfactory,
- (iii) accepts a recommendation made under paragraph 25(4C)(c) of that Schedule (reviews with respect to an investigation)(42) that misconduct proceedings of the form specified in the recommendation are brought,
- (iv) accepts a recommendation made under paragraph 25(4E)(c) of that Schedule that misconduct proceedings of the form specified in the recommendation are brought,
- (v) accepts a recommendation made under paragraph 27(3A) of that Schedule (recommendation of Director General to relevant authority)(43) in relation to the unsatisfactory performance of an MDP officer, or
- (vi) has a duty under paragraph 27(4)(b) of that Schedule (duties with respect to disciplinary proceedings etc)(44) to comply with a direction to give effect to a recommendation referred to in paragraph (iii) or (v).

(2) In a case where—

- (a) the officer concerned has received a written improvement notice under regulation 17 or 45 in relation to unsatisfactory performance which is similar to or connected with the unsatisfactory performance to which the determination mentioned in paragraph (1)(b)(i) or (ii) or the recommendation mentioned in paragraph (1)(b)(iii), (iv) or (v) relates, and
- (b) the validity period of the written improvement notice, within the meaning of regulation 17(4) or 45(7)(d), has not expired,

the line manager must require the officer to attend a second stage meeting.

(3) In a case where—

- (a) the officer concerned has received a final written improvement notice under regulation 25 or 45 in relation to unsatisfactory performance which is similar to or connected with the unsatisfactory performance to which the determination mentioned in paragraph (1)(b)(i) or (ii) or the recommendation mentioned in paragraph (1)(b)(iii), (iv) or (v) relates, and
- (b) the validity period of the final written improvement notice, within the meaning of—
  - (i) regulation 25(4) or regulation 45(7)(d), or,
  - (ii) where the period is extended under regulation 45(8), regulation 45(8)(c),has not expired,

the line manager must require the officer to attend a third stage meeting.

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(39) Paragraph 24C was inserted by paragraphs 1, 11 and 24 of Schedule 12 to the 2005 Act and amended by section 138 of, and paragraph 95 of Schedule 11 to, the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12) ("the 2014 Act") and paragraphs 15 and 56 of Schedule 9 to the 2017 Act.

(40) Paragraph 23(5B) was inserted by paragraphs 9 and 26 of Schedule 5 to the 2017 Act.

(41) Paragraph 23(5A) was inserted by paragraphs 9 and 26 of Schedule 5 to the 2017 Act and amended by paragraphs 15 and 56 of Schedule 9 to that Act.

(42) Paragraph 25(4A) to (4J) was inserted by paragraphs 29 and 34(1) and (5) of Schedule 5 to the 2017 Act and amended by paragraphs 15 and 56 of Schedule 9 to that Act.

(43) Paragraph 27(3A) was inserted by section 138(2) and (4) of the 2014 Act and amended by paragraph 56(2) of Schedule 9 to the 2017 Act.

(44) Paragraph 27(4) was amended by paragraphs 15 and 56 of Schedule 9 to the 2017 Act.

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(4) In any other case, the line manager must require the officer concerned to attend a first stage meeting.

(5) The line manager must comply with a direction given by the relevant authority under paragraph (1).

(6) Where an MDP officer is required to attend a meeting under this regulation—

- (a) regulations 15 to 20 apply, if the meeting is a first stage meeting,
- (b) regulations 22 to 28 apply, if the meeting is a second stage meeting, and
- (c) regulations 30, 33 to 38 and 41 to 48 apply, if the meeting is a third stage meeting,

but this is subject to paragraphs (7) and (8).

(7) Subject to the harm test under these Regulations (see regulation 3(4)), the duty to provide documents in each of regulations 15(2), 22(2) and 30(2) has effect as a duty to provide the officer concerned with a copy of—

- (a) the investigator's report referred to in paragraph (1)(b)(i);
- (b) any determination of the Director General mentioned in paragraph (1)(b)(ii);
- (c) any recommendation mentioned in paragraph (1)(b)(iii), (iv) or (v).

(8) Where an MDP officer is required to attend a third stage meeting under paragraph (3) by reason of the fact that the officer is subject to a final written improvement notice issued under regulation 45—

- (a) the meeting must be conducted by the same panel as conducted the initial third stage meeting,
- (b) regulation 47(11) to (15) apply in relation to that panel, and
- (c) the officer concerned does not have the right to object to panel members under regulation 34, except in accordance with regulation 47(15).

(9) Where the relevant authority fails to make the determination referred to in paragraph (1)(b)(i) (in so far as it involves consideration of the performance of an MDP officer) before the end of 15 working days beginning with the first working day after receipt of the investigator's report, it must notify the officer concerned of the reason for this.

### **Provision of information to the Director General**

**12.—**(1) This regulation applies in a case where—

- (a) paragraph 18 or 19 of Schedule 3 to the 2002 Act (investigations directed by or by the Director General) applied, or
- (b) paragraph 16 of that Schedule (investigations by the authority on its own behalf) applied and—

(i) the Director General—

- (aa) made a recommendation under paragraph 25(4C)(c) of that Schedule (reviews with respect to an investigation) which the relevant authority accepted;
- (bb) made a recommendation under paragraph 27(3A) of that Schedule (recommendation of Director General to authority) which the relevant authority accepted, or
- (cc) gave a direction to the relevant authority under paragraph 27(4)(a) of that Schedule (direction by Director General where authority does not take steps to secure that full effect is given to Director General's recommendation), or

- (ii) the Secretary of State for Defence made a recommendation under paragraph 25(4E) (c) of that Schedule (reviews with respect to an investigation) which the relevant authority accepted.
- (2) Where this regulation applies, the relevant authority must—
- (a) send the Director General a copy of—
    - (i) any written record and written improvement notice given to the officer concerned under regulation 17(5);
    - (ii) any written notice and written summary given to the officer concerned under regulation 20(9);
    - (iii) any written notice as to improvement in performance or attendance under regulation 21(1)(b);
    - (iv) any written record and final written improvement notice given to the officer concerned under regulation 25(5);
    - (v) any written notice and written summary given to the officer concerned under regulation 28(9);
    - (vi) any written notice as to improvement in performance or attendance under regulation 29(1)(b);
    - (vii) any written decision given to the officer concerned under regulation 44(3);
    - (viii) any final written improvement notice issued or extended under regulation 45(3);
    - (ix) any written improvement notice issued under regulation 45(6);
    - (x) any written notice as to improvement in performance or attendance under regulation 47(1)(b), and
  - (b) notify the Director General if it extends, under regulation 9(1), any period specified in accordance with regulation 16(6)(c), 24(6)(c) or 45(7)(c) or (8)(a).

### **Meeting following referral under the Conduct Regulations**

**13.**—(1) Where neither regulation 23 nor regulation 31 applies and the relevant authority assesses under regulation 13(2)(b), 23(4)(b) or 26(2)(a)(iii) of the Conduct Regulations that a matter should be referred to be dealt with under these Regulations—

- (a) the relevant authority must direct the line manager of the officer concerned to take the action specified in regulation 11(2), (3) or (4), as the case may be, and
  - (b) paragraphs (2) to (8) of regulation 11 apply, with the following modifications—
    - (i) in each of paragraphs (2)(a) and (3)(a), for the words from “the determination” to “(1)(b)(ii)” substitute “the assessment mentioned in regulation 13(1)”;
    - (ii) in paragraph (5), for “paragraph (1)” substitute “regulation 13(1)(a)”;
    - (iii) in paragraph (6), for “this regulation” substitute “regulation 13”;
    - (iv) in paragraph (7), for sub-paragraph (a) substitute—
      - “(a) where relevant, the investigator’s report submitted under regulation 20 of the Conduct Regulations;”.
- (2) In paragraph (1)(b)(iv), “investigator” means a person—
- (a) appointed under regulation 14 of the Conduct Regulations, or
  - (b) appointed or, as the case may be, designated as an investigator under external procedures established for England and Wales.

## PART 3

### First stage

#### **Circumstances in which a first stage meeting may be required**

14. Where the line manager of an MDP officer considers that the performance or attendance of that officer is unsatisfactory, the line manager may require the officer concerned to attend a meeting (in these Regulations referred to as a first stage meeting) to discuss the performance or attendance of the officer.

#### **Arrangement of first stage meeting**

15.—(1) Where the line manager requires an MDP officer to attend a first stage meeting, the line manager must give a written notice to the officer concerned—

- (a) requiring the officer to attend a first stage meeting with the line manager,
- (b) informing the officer of the procedures for determining the date and time of the meeting under paragraphs (4) to (7),
- (c) summarising the reasons why the officer's performance or attendance is considered unsatisfactory,
- (d) informing the officer of the possible outcomes of a first stage meeting, a second stage meeting and a third stage meeting,
- (e) informing the officer that a human resources professional or an MDP officer may attend the meeting to advise the line manager on the proceedings,
- (f) informing the officer that, if the officer consents, any other person specified in the notice may attend the meeting,
- (g) informing the officer that the officer may seek advice from a representative of the staff association,
- (h) informing the officer that the officer may be accompanied and represented at the meeting by a police friend, and
- (i) informing the officer that the officer must provide to the line manager in advance of the meeting a copy of any document the officer intends to rely on at the meeting.

(2) The notice must be accompanied by a copy of any document relied on by the line manager when considering that the performance or attendance of the officer concerned is unsatisfactory.

(3) Where a reflective review development report has been produced under regulation 70 of the Conduct Regulations in relation to a matter which is similar to or connected with unsatisfactory performance to be discussed at the first stage meeting, the notice must also be accompanied by a copy of that report.

(4) The line manager must, if reasonably practicable, agree a date and time for the meeting with the officer concerned.

(5) Where no date and time is agreed, the line manager must specify a date and time for the meeting.

(6) Where a date and time is specified and—

- (a) the officer concerned or a police friend will not be available at that time, and
- (b) the officer proposes an alternative time which satisfies paragraph (7),

the meeting must be postponed to the time proposed by the officer.

(7) An alternative time must—



- (a) be reasonable, and
- (b) fall before the end of 5 working days beginning with the first working day after the day specified by the line manager under paragraph (5).

(8) The line manager must give the officer concerned a written notice of the date and time of the first stage meeting determined in accordance with paragraphs (4) to (7) and of the place of the meeting.

(9) In advance of the first stage meeting, the officer concerned must provide the line manager with a copy of any document the officer intends to rely on at the meeting.

### **Procedure at first stage meeting**

**16.**—(1) This regulation applies to the procedure to be followed at the first stage meeting.

(2) The meeting must be conducted by the line manager.

(3) A human resources professional or an MDP officer may attend the meeting to advise the line manager on the proceedings.

(4) Any other person specified in the notice referred to in regulation 15(1) may attend the meeting if the officer concerned consents.

(5) The line manager must—

- (a) explain to the officer concerned the reasons why the line manager considers that the performance or attendance of the officer is unsatisfactory,
- (b) provide the officer with an opportunity to make representations in response, and
- (c) provide the police friend (if the officer has one) with an opportunity to address the meeting in accordance with regulation 7(3)(a).

(6) If, after considering such representations (if any) and address (if any), the line manager finds that the performance or attendance of the officer concerned has been unsatisfactory, the line manager must—

- (a) inform the officer in what respect the officer's performance or attendance is considered unsatisfactory,
- (b) inform the officer of the improvement that is required in performance or attendance,
- (c) inform the officer that, if a sufficient improvement is not made within such reasonable period as the line manager specifies (being a period not exceeding 12 months), the officer may be required to attend a second stage meeting in accordance with regulation 21,
- (d) inform the officer that the officer will receive a written improvement notice, and
- (e) inform the officer that if sufficient improvement is not maintained during any part of the validity period of the notice remaining after the expiry of the period specified in accordance with sub-paragraph (c), the officer may be required to attend a second stage meeting in accordance with regulation 21.

(7) The line manager may, if the line manager considers it appropriate, recommend that the officer concerned seek assistance in relation to any matter affecting the officer's health or welfare.

(8) The line manager may postpone or adjourn the meeting to a specified time, or date and time, if it appears to the line manager necessary or expedient to do so.

### **Procedure following first stage meeting**

**17.**—(1) The line manager must, as soon as reasonably practicable after the conclusion of the first stage meeting—

- (a) cause to be prepared a written record of the meeting, and

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- (b) where the line manager found at the meeting that the performance or attendance of the officer concerned has been unsatisfactory, cause to be prepared a written improvement notice.
- (2) Where the officer concerned has failed to attend a first stage meeting, if the line manager finds that the performance or attendance of the officer has been unsatisfactory, the line manager must as soon as reasonably practicable—
  - (a) cause to be prepared a written improvement notice, and
  - (b) if the police friend attended the meeting, cause to be prepared a written record of the meeting.
- (3) A written improvement notice must—
  - (a) record the matters of which the officer concerned was informed (or would have been informed had the officer attended the meeting) under sub-paragraphs (a) to (c) and (e) of regulation 16(6),
  - (b) state the period for which it is valid, and
  - (c) be signed and dated by the line manager.
- (4) A written improvement notice is valid for a period of 12 months beginning with the date of the notice.
- (5) The line manager must give a copy of any written record and any written improvement notice to the officer concerned as soon as reasonably practicable after they have been prepared.
- (6) Where the line manager found that the performance or attendance of the officer concerned has been unsatisfactory and has caused to be prepared a written improvement notice, the line manager must, at the same time as giving the documents mentioned in paragraph (5), give a written notice to the officer of—
  - (a) the matters set out in regulation 18,
  - (b) the name of the second line manager to whom a written notice of appeal must be given under regulation 18(5),
  - (c) the officer's rights under paragraph (7), and
  - (d) the effect of paragraphs (8) and (9).
- (7) Subject to paragraph (9), the officer concerned may submit written comments on any written record to the line manager before the end of 7 working days beginning with the first working day after the day on which the officer receives the copy.
- (8) The line manager may, on the application of the officer concerned, extend the period specified in paragraph (7) if satisfied that it is appropriate to do so.
- (9) The officer concerned may not submit written comments on the written record if the officer has exercised a right to appeal under regulation 18.
- (10) The line manager must ensure that any written record, any written improvement notice and any written comments of the officer concerned on the written record are retained together and filed.

### **Appeal against the finding and outcome of a first stage meeting**

- 18.**—(1) This regulation applies where, at the first stage meeting, the line manager found that the performance or attendance of the officer concerned has been unsatisfactory.
- (2) Where this regulation applies, the officer concerned may appeal against—
    - (a) that finding, or

- (b) any of the matters specified in paragraph (3) and recorded in the written improvement notice (in these Regulations referred to as the relevant terms of the written improvement notice),

or both.

(3) These matters are—

- (a) the respect in which the performance or attendance of the officer concerned is considered unsatisfactory,
- (b) the improvement that is required in performance or attendance,
- (c) the length of the period specified by the line manager in accordance with regulation 16(6) (c).

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

- (a) that the finding of unsatisfactory performance or attendance was unreasonable;
- (b) that any of the relevant terms of the written improvement notice are unreasonable;
- (c) that there is evidence that could not reasonably have been considered at the first stage meeting which could have materially affected the finding of unsatisfactory performance or attendance or any of the relevant terms of the written improvement notice;
- (d) that there was a breach of the procedures set out in these Regulations or other unfairness which could have materially affected the finding of unsatisfactory performance or attendance or any of the relevant terms of the written improvement notice.

(5) The officer concerned may commence an appeal by giving a written notice of appeal to the second line manager before the end of 7 working days beginning with the first working day after receipt of the documents referred to in regulation 17(5).

(6) The notice must—

- (a) set out the grounds of appeal, and
- (b) be accompanied by any evidence on which the officer relies.

(7) The second line manager may, on the application of the officer concerned, extend the period specified in paragraph (5) if satisfied that it is appropriate to do so.

(8) Subject to paragraph (9), the meeting at which the appeal is to be heard (referred to in these Regulations as the first stage appeal meeting) must take place before the end of 7 working days beginning with the first working day after the day on which the second line manager receives the notice under paragraph (5).

(9) A first stage appeal meeting may take place after the period of 7 working days referred to in paragraph (8) if the second line manager considers it necessary or expedient, in which case the second line manager must give the officer a written notice of the reasons.

### **Arrangement of first stage appeal meeting**

**19.**—(1) As soon as reasonably practicable after receiving the notice of appeal referred to in regulation 18(5), the second line manager must give the officer concerned a written notice—

- (a) informing the officer of the procedures for determining the date and time of the meeting under paragraphs (2) to (5),
- (b) informing the officer that a human resources professional or an MDP officer may attend the meeting to advise the second line manager on the proceedings,
- (c) informing the officer that, if the officer consents, any other person specified in the notice may attend the meeting,

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- (d) informing the officer that the officer may seek advice from a representative of the staff association, and
  - (e) informing the officer that the officer may be accompanied and represented at the meeting by a police friend.
- (2) The second line manager must, if reasonably practicable, agree a date and time for the meeting with the officer concerned.
- (3) Where no date and time is agreed, the second line manager must specify a date and time for the meeting.
- (4) Where a date and time is specified and—
- (a) the officer concerned or the police friend will not be available at that time, and
  - (b) the officer proposes an alternative time which satisfies paragraph (5),
- the meeting must be postponed to the time proposed by the officer.
- (5) An alternative time must—
- (a) be reasonable, and
  - (b) fall before the end of 5 working days beginning with the first working day after the day specified by the second line manager under paragraph (3).
- (6) The second line manager must give the officer concerned a written notice of the date and time of the first stage appeal meeting determined in accordance with paragraphs (2) to (5) and of the place of the meeting.

#### **Procedure at first stage appeal meeting**

- 20.**—(1) This regulation applies to the procedure to be followed at a first stage appeal meeting.
- (2) The meeting must be conducted by the second line manager.
- (3) A human resources professional or an MDP officer may attend the meeting to advise the second line manager on the proceedings.
- (4) Any other person specified in the notice referred to in regulation 19(1) may attend the meeting if the officer concerned consents.
- (5) The second line manager must—
- (a) provide the officer concerned with an opportunity to make representations, and
  - (b) provide the police friend (if the officer has one) with an opportunity to address the meeting in accordance with regulation 7(3)(a).
- (6) After considering such representations (if any) and address (if any), the second line manager may—
- (a) confirm or reverse the finding of unsatisfactory performance or attendance,
  - (b) confirm or vary any of the relevant terms of the written improvement notice appealed against.
- (7) Where the second line manager reverses the finding of unsatisfactory performance or attendance, the second line manager must also revoke the written improvement notice.
- (8) The second line manager may postpone or adjourn the meeting to a specified time, or date and time, if it appears to the second line manager necessary or expedient to do so.
- (9) As soon as reasonably practicable after the conclusion of the meeting and in any event before the end of 3 working days beginning with the first working day after the conclusion of the meeting, the officer concerned must be given a written notice of the second line manager's decision and a written summary of the reasons for that decision.

(10) Where the second line manager has—

- (a) reversed the finding of unsatisfactory performance or attendance and revoked the written improvement notice, or
- (b) varied any of the relevant terms of the written improvement notice,

the decision of the second line manager takes effect by way of substitution for the finding, the written improvement notice issued or the relevant terms of the written improvement notice appealed against immediately after the first stage meeting.

## PART 4

### Second stage

#### **Circumstances in which a second stage meeting may be required**

**21.**—(1) Where an MDP officer has received a written improvement notice, as soon as reasonably practicable after the date with which the period specified in accordance with regulation 16(6)(c) ends—

- (a) the line manager must assess the performance or attendance of the officer concerned during that period, in consultation with the second line manager or a human resources professional (or both), and
- (b) the line manager must give the officer a written notice as to whether the line manager considers that there has been a sufficient improvement in performance or attendance during that period.

(2) If the line manager considers that there has not been a sufficient improvement, the line manager must, at the same time as giving a notice under paragraph (1)(b), also give the officer concerned a written notice that the officer is required to attend a meeting (in these Regulations referred to as a second stage meeting) to consider performance or attendance.

(3) The officer concerned may be required to attend a second stage meeting under paragraph (4) where—

- (a) the officer has not been required to attend a second stage meeting under paragraph (2), or
- (b) the officer has been required to attend a second stage meeting under paragraph (2) but the second line manager did not make a finding of unsatisfactory performance or attendance at that meeting.

(4) If the line manager considers that the officer concerned has failed to maintain a sufficient improvement in performance or attendance during any part of the validity period of the written improvement notice remaining after the expiry of the period specified in accordance with regulation 16(6)(c), the line manager must give the officer a written notice of the matters set out in paragraph (5).

(5) Those matters are—

- (a) that the line manager is of the view mentioned in paragraph (4), and
- (b) that the officer concerned is required to attend a meeting (in these Regulations referred to as a second stage meeting) to consider performance or attendance.

(6) Any second stage meeting which an MDP officer is required to attend other than such a meeting under regulation 23 must concern unsatisfactory performance or attendance which is similar to or connected with the unsatisfactory performance or attendance referred to in the written improvement notice.

### **Arrangement of second stage meeting**

**22.**—(1) Where the line manager requires the officer concerned to attend a second stage meeting, the second line manager must as soon as reasonably practicable give the officer a written notice—

- (a) referring to the requirement that the officer attend a second stage meeting with the second line manager,
- (b) informing the officer of the procedures for determining the date and time of the meeting under paragraphs (3) to (6),
- (c) summarising the reasons why the officer's performance or attendance is considered unsatisfactory,
- (d) informing the officer of the possible outcomes of a second stage meeting and a third stage meeting,
- (e) informing the officer that the line manager may attend the meeting,
- (f) informing the officer that a human resources professional or an MDP officer may attend the meeting to advise the second line manager on the proceedings,
- (g) informing the officer that, if the officer consents, any other person specified in the notice may attend the meeting,
- (h) informing the officer that the officer may seek advice from a representative of the staff association,
- (i) informing the officer that the officer may be accompanied and represented at the meeting by a police friend, and
- (j) informing the officer that the officer must provide to the second line manager in advance of the meeting a copy of any document the officer intends to rely on at the meeting.

(2) The notice must be accompanied by a copy of any document relied on by the line manager when the line manager formed the view referred to in regulation 21(2) or (4), as the case may be.

(3) The second line manager must, if reasonably practicable, agree a date and time for the meeting with the officer concerned.

(4) Where no date and time is agreed, the second line manager must specify a date and time for the meeting.

(5) Where a date and time is specified and—

- (a) the officer concerned or a police friend will not be available at that time, and
- (b) the officer proposes an alternative time which satisfies paragraph (6),

the meeting must be postponed to the time proposed by the officer.

(6) An alternative time must—

- (a) be reasonable, and
- (b) fall before the end of 5 working days beginning with the first working day after the day specified by the second line manager under paragraph (4).

(7) The second line manager must give the officer concerned a written notice of the date and time of the second stage meeting determined in accordance with paragraphs (3) to (6) and of the place of the meeting.

(8) In advance of the second stage meeting, the officer concerned must provide the second line manager with a copy of any document the officer intends to rely on at the meeting.

### **Circumstances in which a second stage meeting may be required without a first stage meeting**

- 23.**—(1) This regulation applies where—
- (a) regulation 32 does not apply, and
  - (b) conditions A and B are satisfied.
- (2) Condition A is that the relevant authority assesses under regulation 23(4)(b) or 26(2)(a)(iii) of the Conduct Regulations that a matter should be referred to be dealt with under these Regulations.
- (3) Condition B is that the relevant authority—
- (a) considers that there are reasonable grounds, based on evidence from an investigation under external procedures established for England and Wales or Northern Ireland or an investigation or misconduct proceedings under the Conduct Regulations, to conclude that the officer concerned has demonstrated a serious inability or serious failure to perform the duties of the officer’s rank or the role the officer is currently undertaking to a satisfactory standard or level, such that a referral to a second stage meeting is appropriate, and
  - (b) having consulted the officer and the line manager, or second line manager, of the officer, is satisfied that the officer has been given a reasonable opportunity to address that inability or failure to perform, but has failed to make a sufficient improvement.
- (4) The relevant authority must as soon as reasonably practicable give the officer concerned and the line manager of the officer a written notice of the matters set out in paragraph (5).
- (5) Those matters are—
- (a) that the relevant authority is of the view mentioned in paragraph (3),
  - (b) the reasons why the performance of the officer concerned is assessed as unsatisfactory,
  - (c) the reasons why it is considered appropriate for the matter to be referred to a second stage meeting,
  - (d) summary evidence in support of the conclusion that the performance is unsatisfactory, and
  - (e) that the officer is required to attend a meeting (in these Regulations referred to as a second stage meeting) to consider the officer’s performance.
- (6) Where notice has been given in accordance with paragraph (4), the line manager must require the officer concerned to attend a second stage meeting.
- (7) Where an MDP officer is required to attend a second stage meeting under this regulation, regulations 22 and 24 to 28 apply with the following modifications—
- (a) omit regulation 22(2);
  - (b) in regulation 24(6), omit the words from “during the period” to “specified period”;
  - (c) in regulation 26(2)(c), for “line manager” substitute “relevant authority”;
  - (d) in regulation 26(4)(a), for the words from “as the meeting” to the end substitute “as the conclusions of the relevant authority under regulation 23(3) were unreasonable”.

### **Procedure at second stage meeting**

- 24.**—(1) This regulation applies to the procedure to be followed at the second stage meeting.
- (2) The meeting must be conducted by the second line manager and may be attended by the line manager.
- (3) A human resources professional or an MDP officer may attend the meeting to advise the second line manager on the proceedings.

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(4) Any other person specified in the notice referred to in regulation 22(1) may attend the meeting if the officer concerned consents.

(5) The second line manager must—

- (a) explain to the officer concerned the reasons why the officer has been required to attend the meeting,
- (b) provide the officer with an opportunity to make representations in response, and
- (c) provide the police friend (if the officer has one) with an opportunity to address the meeting in accordance with regulation 7(3)(a).

(6) If, after considering such representations (if any) and address (if any), the second line manager finds that the performance or attendance of the officer concerned has been unsatisfactory during the period specified in accordance with regulation 16(6)(c) or during any part of the validity period of the written improvement notice remaining after the expiry of that specified period, the second line manager must—

- (a) inform the officer in what respect the performance or attendance is considered unsatisfactory,
- (b) inform the officer of the improvement that is required in performance or attendance,
- (c) inform the officer that, if a sufficient improvement is not made within such reasonable period as the second line manager specifies (being a period not exceeding 12 months), the officer may be required to attend a third stage meeting in accordance with regulation 29 and the second line manager must specify the date with which this period ends,
- (d) inform the officer that the officer will receive a final written improvement notice, and
- (e) inform the officer that if the sufficient improvement referred to in sub-paragraph (c) is not maintained during any part of the validity period of the notice remaining after the expiry of the period specified in accordance with sub-paragraph (c), the officer may be required to attend a third stage meeting in accordance with regulation 29.

(7) The second line manager may, if the second line manager considers it appropriate, recommend that the officer concerned seek assistance in relation to any matter affecting the officer's health or welfare.

(8) The second line manager may postpone or adjourn the meeting to a specified time, or date and time, if it appears to the second line manager necessary or expedient to do so.

### **Procedure following second stage meeting**

**25.**—(1) The second line manager must, as soon as reasonably practicable after the conclusion of the second stage meeting—

- (a) cause to be prepared a written record of the meeting, and
- (b) where the second line manager made a finding at the meeting as set out in regulation 24(6), cause to be prepared a final written improvement notice.

(2) Where the officer concerned has failed to attend a second stage meeting, if the second line manager makes a finding as set out in regulation 24(6), the second line manager must as soon as reasonably practicable—

- (a) cause to be prepared a final written improvement notice, and
- (b) if the police friend attended the meeting, cause to be prepared a written record of the meeting.

(3) A final written improvement notice must—



- (a) record the matters of which the officer concerned was informed (or would have been informed had the officer attended the meeting) under sub-paragraphs (a) to (c) and (e) of regulation 24(6),
  - (b) state the period for which it is valid, and
  - (c) be signed and dated by the second line manager.
- (4) A final written improvement notice is valid for a period of twelve months beginning with the date of the notice.
- (5) The second line manager must give a copy of the written record and any final written improvement notice to the officer concerned as soon as reasonably practicable after they have been prepared.
- (6) Where the second line manager made a finding as set out in regulation 24(6) and has caused to be prepared a final written improvement notice, the second line manager must, at the same time as giving the documents mentioned in paragraph (5), give the officer concerned a written notice of—
- (a) the matters set out in regulation 26(3),
  - (b) the name of the senior manager to whom a written notice of appeal must be given under regulation 26(5),
  - (c) the officer's rights under paragraph (7), and
  - (d) the effect of paragraphs (8) and (9).
- (7) Subject to paragraph (9), the officer concerned may submit written comments on the written record to the second line manager before the end of 7 working days beginning with the first working day after the day on which the copy is received by the officer.
- (8) The second line manager may, on the application of the officer concerned, extend the period specified in paragraph (7) if satisfied that it is appropriate to do so.
- (9) The officer concerned may not submit written comments on the written record if the officer has exercised a right to appeal under regulation 26.
- (10) The second line manager must ensure that any written record, any final written improvement notice and any written comments of the officer concerned on the written record are retained together and filed.

### **Appeal against the finding and outcome of a second stage meeting**

**26.—**(1) This regulation applies where, at the second stage meeting, the second line manager found that the performance or attendance of the officer concerned has been unsatisfactory as set out in regulation 24(6).

(2) Where this regulation applies, the officer concerned may appeal against one or more of the following—

- (a) that finding;
  - (b) any of the matters specified in paragraph (3) and recorded in the final written improvement notice (in these Regulations referred to as the relevant terms of the final written improvement notice);
  - (c) the decision of the line manager to require the officer concerned to attend the second stage meeting.
- (3) The matters are—
- (a) the respect in which the performance or attendance of the officer concerned is considered unsatisfactory;
  - (b) the improvement that is required in performance or attendance;

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- (c) the length of the period specified by the second line manager in accordance with regulation 24(6)(c).
- (4) The only grounds of appeal under this regulation are—
  - (a) that, in relation to an appeal under paragraph (2)(c), the officer concerned should not have been required to attend the second stage meeting as the meeting did not concern unsatisfactory performance or attendance which is similar to or connected with the unsatisfactory performance or attendance referred to in the written improvement notice;
  - (b) that the finding of unsatisfactory performance or attendance was unreasonable;
  - (c) that any of the relevant terms of the final written improvement notice are unreasonable;
  - (d) that there is evidence that could not reasonably have been considered at the second stage meeting which could have materially affected the finding of unsatisfactory performance or attendance or any of the relevant terms of the final written improvement notice;
  - (e) that there was a breach of the procedures set out in these Regulations or other unfairness which could have materially affected the finding of unsatisfactory performance or attendance or any of the relevant terms of the final written improvement notice.
- (5) An appeal must be commenced by the officer concerned giving a written notice of appeal to the senior manager before the end of 7 working days beginning with the first working day after receipt of the documents referred to in regulation 25(5).
- (6) The notice must—
  - (a) set out the grounds of appeal of the officer concerned, and
  - (b) be accompanied by any evidence on which the officer relies.
- (7) The senior manager may, on the application of the officer concerned, extend the period specified in paragraph (5) if satisfied that it is appropriate to do so.
- (8) Subject to paragraph (9), the meeting at which the appeal will be heard (referred to in these Regulations as a second stage appeal meeting) must take place before the end of 7 working days beginning with the first working day after the day on which the notice under paragraph (5) is received by the senior manager.
- (9) A second stage appeal meeting may take place after the period of 7 working days referred to in paragraph (8) if the senior manager considers it necessary or expedient, in which case the senior manager must give the officer concerned a written notice of the reasons.

#### **Arrangement of second stage appeal meeting**

- 27.—**(1) As soon as reasonably practicable after receiving the notice of appeal referred to in regulation 26(5), the senior manager must give the officer concerned a written notice—
- (a) informing the officer of the procedures for determining the date and time of the meeting under paragraphs (2) to (5),
  - (b) informing the officer that a human resources professional or an MDP officer may attend the meeting to advise the senior manager on the proceedings,
  - (c) informing the officer that, if the officer consents, any other person specified in the notice may attend the meeting,
  - (d) informing the officer that the officer may seek advice from a representative of the staff association, and
  - (e) informing the officer that the officer may be accompanied and represented at the meeting by a police friend.
- (2) The senior manager must, if reasonably practicable, agree a date and time for the meeting with the officer concerned.

(3) Where no date and time is agreed, the senior manager must specify a date and time for the meeting.

(4) Where a date and time is specified and—

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

(b) the officer proposes an alternative time which satisfies paragraph (5),

the meeting must be postponed to the time proposed by the officer.

(5) An alternative time must—

(a) be reasonable, and

(b) fall before the end of 5 working days beginning with the first working day after the day specified by the senior manager under paragraph (3).

(6) The senior manager must give the officer concerned a written notice of the date, time and place of the second stage appeal meeting.

### **Procedure at second stage appeal meeting**

**28.**—(1) This regulation applies to the procedure to be followed at a second stage appeal meeting.

(2) The meeting must be conducted by the senior manager.

(3) A human resources professional or an MDP officer may attend the meeting to advise the senior manager on the proceedings.

(4) Any other person specified in the notice referred to in regulation 27(1) may attend the meeting if the officer concerned consents.

(5) The senior manager must—

(a) provide the officer concerned with an opportunity to make representations, and

(b) provide the police friend (if the officer has one) with an opportunity to address the meeting in accordance with regulation 7(3)(a).

(6) After considering such representations (if any) and address (if any), the senior manager may—

(a) in an appeal under regulation 26(2)(c), make a finding that the officer concerned should not have been required to attend the second stage meeting and reverse the finding made at that meeting;

(b) confirm or reverse the finding of unsatisfactory performance or attendance made at the second stage meeting;

(c) confirm or vary the relevant terms of the final written improvement notice appealed against.

(7) Where the senior manager reverses the finding of unsatisfactory performance or attendance made at the second stage meeting, the senior manager must also revoke the final written improvement notice.

(8) The senior manager may postpone or adjourn the meeting to a specified time, or date and time, if it appears to the senior manager necessary or expedient to do so.

(9) As soon as reasonably practicable after the conclusion of the meeting and in any event before the end of 3 working days beginning with the first working day after the conclusion of the meeting, the senior manager must give the officer concerned a written notice of the senior manager's decision and a written summary of the reasons for that decision.

(10) Where the senior manager has—

(a) reversed the finding of unsatisfactory performance or attendance made at the second stage meeting (see regulation 24(6)) and revoked the final written improvement notice, or

(b) varied any of the relevant terms of the final written improvement notice, the decision of the senior manager takes effect by way of substitution for the finding and the final written improvement notice issued or the relevant terms of the final written improvement notice appealed against immediately after the second stage meeting.

## PART 5

### Third stage

#### **Assessment following second stage meeting**

**29.**—(1) Where an MDP officer has received a final written improvement notice, as soon as reasonably practicable after the date with which the period specified in accordance with regulation 24(6)(c) ends—

- (a) the line manager must assess the performance or attendance of the officer concerned during that period, in consultation with the second line manager or a human resources professional (or both), and
- (b) the line manager must give the officer a written notice as to whether the line manager considers that there has been a sufficient improvement in performance or attendance during that period.

(2) If the line manager considers that there has not been a sufficient improvement, the line manager must, at the same time as the line manager gives a notice under paragraph (1)(b), also give the officer concerned a written notice that the officer is required to attend a meeting (in these Regulations referred to as a third stage meeting) to consider performance or attendance.

(3) The officer concerned may be required to attend a third stage meeting under paragraph (4) where—

- (a) the officer has not been required to attend a third stage meeting under paragraph (2), or
- (b) the officer has been required to attend a third stage meeting under paragraph (2) but the panel did not make a finding of unsatisfactory performance or attendance at that meeting.

(4) If the line manager considers that the officer concerned has failed to maintain a sufficient improvement in performance or attendance during any part of the validity period of the final written improvement notice remaining after the expiry of the period specified in accordance with regulation 24(6)(c), the line manager must give the officer a written notice of the matters set out in paragraph (5).

(5) Those matters are—

- (a) that the line manager is of the view mentioned in paragraph (4), and
- (b) that the officer concerned is required to attend a meeting (in these Regulations referred to as a third stage meeting) to consider performance or attendance.

(6) Unless regulation 31 applies, any third stage meeting which an MDP officer is required to attend must concern unsatisfactory performance or attendance which is similar to or connected with the unsatisfactory performance or attendance referred to in the final written improvement notice.

#### **Arrangement of a third stage meeting**

**30.**—(1) Where the line manager requires the officer concerned to attend a third stage meeting, the senior manager must as soon as reasonably practicable give the officer a written notice—

- (a) referring to the requirement that the officer attend a third stage meeting with a panel appointed by the relevant authority,

- (b) informing the officer of the procedures for determining the date and time of the meeting under regulation 37,
- (c) summarising the reasons why performance or attendance is considered unsatisfactory,
- (d) informing the officer of the possible outcomes of the meeting,
- (e) informing the officer that a human resources professional and an MDP officer may attend the meeting to advise the panel on the proceedings,
- (f) informing the officer that a relevant lawyer may attend the meeting to advise the panel on the proceedings and on any question of law that may arise at the meeting,
- (g) informing the officer that, if the officer consents, any other person specified in the notice may attend the meeting,
- (h) informing the officer that the officer may seek advice from a representative of the staff association, and
- (i) informing the officer that the officer may be accompanied and represented at the meeting by a police friend.

(2) The notice must be accompanied by a copy of any document relied on by the line manager when the line manager formed the view referred to in regulation 29(2) or (4), as the case may be.

(3) A third stage meeting under this regulation must not take place unless the officer concerned has been notified of the right to representation under paragraph (1)(i).

### **Circumstances in which a third stage meeting may be required without a prior first or second stage meeting**

**31.**—(1) This regulation applies where the relevant authority—

- (a) decides that the performance of an MDP officer constitutes gross incompetence,
- (b) has a duty under paragraph 23(5B)(45) of Schedule 3 to the 2002 Act (duties of appropriate authority in relation to direction by Director General to bring disciplinary proceedings) to comply with a direction, following a determination under paragraph 23(5A)(b) of that Schedule (duties of Director General on receipt or completion of report on investigation) that a person's performance is unsatisfactory and amounts to gross incompetence,
- (c) decides to accept a recommendation made under paragraph 25(4C)(c)(46) of that Schedule (reviews with respect to an investigation) that misconduct proceedings of the form specified in the recommendation are brought,
- (d) decides to accept a recommendation made under paragraph 25(4E)(c) of that Schedule that misconduct proceedings of the form specified in the recommendation are brought,
- (e) decides to accept a recommendation made under paragraph 27(3A)(47) of that Schedule (recommendation of Director General to appropriate authority) that a police officer's performance is unsatisfactory and amounts to gross incompetence, or
- (f) has a duty under paragraph 27(4)(b) of that Schedule (duties with respect to disciplinary proceedings etc) to comply with a direction to give effect to a recommendation referred to in sub-paragraph (c) or (e).

(2) The relevant authority must inform the officer concerned in writing that the officer is required to attend a meeting to consider performance where this regulation applies.

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(45) Sub-paragraphs (5A) to (5F) were inserted by paragraph 26 of Schedule 5 to the Policing and Crime Act 2017 (c. 3).

(46) Sub-paragraphs (4A) to (4J) were inserted by paragraph 34 of Schedule 5 to the Policing and Crime Act 2017.

(47) Sub-paragraph (3A) was inserted by section 1238(4) of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12), and amended by paragraph 56 of Schedule 9 to the Policing and Crime Act 2017.

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(3) Such meeting is referred to in these Regulations as a third stage meeting, notwithstanding that the officer concerned has not attended a first stage meeting or a second stage meeting in respect of such performance.

### **Arrangement of a third stage meeting without a prior first or second stage meeting**

**32.**—(1) Where the relevant authority has informed the officer concerned under regulation 31(2) that the officer is required to attend a third stage meeting, the relevant authority must as soon as reasonably practicable give the officer a written notice—

- (a) referring to the requirement that the officer attend a third stage meeting with a panel appointed by the relevant authority,
- (b) informing the officer of the procedures for determining the date and time of the meeting under regulation 37,
- (c) summarising the reasons why the officer’s performance is considered to constitute gross incompetence,
- (d) informing the officer of the possible outcomes of the meeting,
- (e) informing the officer that a human resources professional and an MDP officer may attend the meeting to advise the panel on the proceedings,
- (f) informing the officer that a relevant lawyer may attend the meeting to advise the panel on the proceedings and on any question of law that may arise at the meeting,
- (g) in a case to which regulation 39 applies, informing the officer that the Director General may attend the meeting to make representations,
- (h) in a case to which regulation 40 applies, informing the officer that the complainant or any interested person may attend the meeting as an observer,
- (i) in a case to which regulation 41(5) applies, informing the officer that a person nominated by the Director General may attend the meeting as an observer,
- (j) informing the officer that, if the officer consents, any other person specified in the notice may attend the meeting,
- (k) in a case to which regulation 41(9) applies, informing the officer that the Director General may direct that the whole or part of the meeting be in public,
- (l) informing the officer that the officer may seek advice from a representative of the staff association,
- (m) informing the officer of the effect of regulation 5, and
- (n) informing the officer that the officer may be accompanied at the meeting by a police friend.

(2) Subject to the harm test under these Regulations (see regulation 3(4)), the notice must be accompanied by a copy of—

- (a) any document relied on by the relevant authority when it formed the view referred to in sub-paragraph (a) of regulation 31(1), in a case where regulation 31 applies by virtue of that sub-paragraph, or
- (b) in a case investigated under eternal procedures established for England and Wales—
  - (i) the investigator’s report under paragraph 22 or 24A(48) of Schedule 3 to the 2002 Act (reports of final investigations) and the determination of the Director General under paragraph 23(5A)(b) (duties of Director General on receipt or completion of report on investigation), or

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(48) Paragraph 24A was inserted by paragraph 24 of Schedule 12 to the Serious Organised Crime and Police Act 2005 (c. 15), and amended by paragraph 45 of Schedule 5, and 56 of Schedule 9, to the Policing and Crime Act 2017. There are other amendments to this provision which are not relevant to this instrument.

- (ii) in a case where regulation 32 applies by virtue of paragraph (1)(b), (c) or (d), the recommendation made under paragraph 25(4C)(c) (reviews with respect to an investigation), paragraph 27(3A) (recommendation of Director General to appropriate authority), or paragraph 25(4E)(c) (reviews with respect to an investigation), of that Schedule.

### **Appointment of panel members**

**33.—**(1) The third stage meeting must be conducted by a panel comprising a panel chair and two other members.

(2) The panel must be appointed by the relevant authority and consist of at least one MDP officer and one human resources professional.

(3) The panel chair must be a senior officer or a member of a relevant force holding a rank above that of chief superintendent or a senior human resources professional.

(4) The second panel member must be either an MDP officer or an officer of a relevant force, or a human resources professional of at least the rank of superintendent or (in the opinion of the relevant authority) equivalent rank.

(5) The third panel member must be either an MDP officer or an officer of a relevant force, or a staff member of at least the rank of superintendent or (in the opinion of the relevant authority) equivalent rank.

(6) Each panel member must be of at least the same rank as the officer concerned or (in the opinion of the relevant authority) equivalent rank.

(7) No panel member may be an interested party.

(8) As soon as reasonably practicable after the panel members have been appointed, the relevant authority must give the officer concerned a written notice of their names.

(9) As soon as the relevant authority has appointed the panel members, the relevant authority must arrange for a copy of any document—

- (a) which was available to the line manager in relation to any first stage meeting,
- (b) which was available to the second line manager in relation to any second stage meeting, or
- (c) which was prepared or submitted under regulation 17, 20, 25, 28, 29, 30, 31 or 32 as the case may be,

to be made available to each panel member, and a copy of any such document must be given to the officer concerned.

(10) In this regulation—

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

“senior human resources professional” means a human resources professional who, in the opinion of the relevant authority, has sufficient seniority, skills and experience to be a panel chair.

### **Right of officer concerned to object to panel members**

**34.—**(1) The officer concerned may object to the appointment of any of the panel members.

(2) Any such objection must be made in writing to the relevant authority before the end of 3 working days beginning with the first working day after receipt of the notice referred to in regulation 33(8) and must set out the grounds of objection of the officer concerned.

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(3) The relevant authority must give the officer concerned a written notice as to whether it upholds or rejects an objection to any panel member.

(4) If the relevant authority upholds an objection, the relevant authority must remove that member from the panel and must appoint a new member to the panel.

(5) If the relevant authority appoints a new panel member under paragraph (4), it must ensure that the requirements for the composition of the panel in regulation 33 continue to be met.

(6) As soon as reasonably practicable after any such appointment, the relevant authority must give the officer concerned a written notice of the name of the new panel member.

(7) The officer concerned may object to the appointment of a panel member appointed under paragraph (4).

(8) Any such objection must be made in writing before the end of 3 working days beginning with the first working day after receipt of the notice referred to in paragraph (6) and must set out the grounds of objection of the officer concerned.

(9) The relevant authority must comply with paragraphs (3) to (6) in relation to the objection referred to in paragraph (7).

### **Procedure on receipt of notice of third stage meeting**

**35.**—(1) Before the end of—

- (a) 14 working days beginning with the first working day after the date on which a notice has been given to the officer concerned under regulation 30 or 32, or
- (b) where that period is extended by the panel chair for exceptional circumstances, such extended period,

the officer concerned must comply with paragraphs (2) and (3).

(2) The officer concerned must give the relevant authority—

- (a) a written notice of whether or not the officer accepts that the officer's performance or attendance has been unsatisfactory or that the officer has been grossly incompetent, as the case may be;
- (b) where the officer accepts that the officer's performance or attendance has been unsatisfactory or that the officer has been grossly incompetent, any written submission the officer wishes to make in mitigation;
- (c) where the officer does not accept that the officer's performance or attendance has been unsatisfactory or that the officer has been grossly incompetent, or where the MDP officer disputes all or part of the matters referred to in the notice given under regulation 30 or 32, a written notice of—
  - (i) the matters the officer disputes and the officer's account of the relevant events, and
  - (ii) any arguments on points of law the officer wishes to be considered by the panel.

(3) The officer concerned must provide the relevant authority and the panel with a copy of any document the officer intends to rely on at the third stage meeting.

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

(5) Where there are proposed witnesses, the officer concerned must, if reasonably practicable, agree a list of proposed witnesses with the senior manager.



(6) Where no list of proposed witnesses is agreed under paragraph (5), the officer concerned must give the relevant authority the officer's list of proposed witnesses.

### **Witnesses**

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

- (a) agreed under regulation 35(5), or
- (b) given under regulation 35(6),

the relevant authority must give that list to the panel chair, together with, in the latter case, a list of its proposed witnesses.

(2) The panel chair must—

- (a) consider the list or lists of proposed witnesses, and
- (b) subject to paragraph (3), determine which, if any, witnesses should attend the third stage meeting.

(3) The panel chair may determine that witnesses not named in any list of proposed witnesses should attend the third stage meeting.

(4) No witness may give evidence at a third stage meeting unless the panel chair reasonably believes that it is necessary in the interests of fairness for the witness to do so, in which case the chair must—

- (a) where the witness is an MDP officer, cause that person to be ordered to attend the third stage meeting, and
- (b) in any other case, cause the witness to be given notice that the witness's attendance is necessary and of the date, time and place of the meeting.

### **Timing and notice of third stage meeting**

**37.**—(1) Subject to paragraphs (2) and (6) and regulation 38, the third stage meeting must take place before the end of 30 working days beginning with the first working day after the day on which a notice has been given to the officer concerned under regulation 30 or 32.

(2) The panel chair may extend the time period specified in paragraph (1) where the panel chair considers that it would be in the interests of fairness to do so.

(3) Where the panel chair extends the time period under paragraph (2), the panel chair must give a written notice of the reasons for so doing to the relevant authority and the officer concerned.

(4) The panel chair must, if reasonably practicable, agree a date and time for the third stage meeting with the officer concerned.

(5) Where no date and time is agreed, the panel chair must specify a date and time for the third stage meeting.

(6) Where a date and time is specified and—

- (a) the officer concerned or a police friend will not be available at that time, and
- (b) the officer proposes an alternative time which satisfies paragraph (7),

the third stage meeting must be postponed to the time proposed by the officer.

(7) An alternative time must—

- (a) be reasonable, and
- (b) fall before the end of 5 working days beginning with the first working day after the day specified by the panel chair.

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(8) The panel chair must give the officer concerned a written notice of the date and time of the third stage meeting determined in accordance with this regulation and of the place of the meeting.

(9) Where the officer concerned informs the panel chair in advance that the officer is unable to attend the third stage meeting on grounds which the panel chair considers reasonable, the panel chair may allow the officer to participate in the meeting by video link or other means.

(10) Where the Director General is entitled to attend the third stage meeting to make representations under regulation 39(2), or to nominate a person to attend the proceedings as an observer under regulation 41(4), the relevant authority must give the Director General written notice of the date, time and place of the proceedings.

### **Postponement and adjournment of a third stage meeting**

**38.**—(1) If the panel chair considers it necessary or expedient, the panel chair may direct that the third stage meeting take place at a date and time that is later than that specified in the notice given under regulation 37.

(2) Such direction may specify a date and time which falls after the period of 30 working days referred to in regulation 37(1).

(3) Where the panel chair makes a direction under paragraph (1), the panel chair must give a written notice of the reasons and the revised date, time and place for the meeting to—

- (a) the officer concerned,
- (b) the other panel members, and
- (c) the relevant authority.

### **Participation of Director General and investigator at third stage meeting**

**39.**—(1) This regulation applies in a case falling within regulation 31, where—

- (a) paragraph 18 or 19 of Schedule 3 to the 2002 Act applied (investigations directed by or by the Director General), or
- (b) paragraph 16 of that Schedule (investigations by the relevant authority on its own behalf) applied and—

(i) the Director General—

- (aa) made a recommendation under paragraph 25(4C)(c) of that Schedule (reviews with respect to an investigation) which the relevant authority accepted,
- (bb) made a recommendation under paragraph 27(3A) of that Schedule (recommendation of Director General to relevant authority) which the relevant authority accepted, or
- (cc) gave a direction under paragraph 27(4)(a) of that Schedule (direction by Director General where relevant authority does not take steps to secure that full effect is given to Director General's recommendation), or

(ii) the Secretary of State for Defence made a recommendation under paragraph 25(4E) (c) of that Schedule (reviews with respect to an investigation) which the relevant authority accepted.

(2) The Director General may attend the third stage meeting to make representations, and where the Director General does so—

- (a) the Director General may be represented by a relevant lawyer,

- (b) the Director General must notify the complainant or any interested person before the meeting, and
  - (c) the panel chair must notify the officer concerned before the meeting.
- (3) The investigator or a nominated person must attend the third stage meeting on the request of the panel chair to answer questions.
- (4) For the purpose of this regulation, a “nominated person” is a person who, in the opinion of—
- (a) the relevant authority, or
  - (b) in a case to which paragraph 18 or 19 of Schedule 3 to the 2002 Act (investigations directed by or by the Director General) applied,
- has sufficient knowledge of the investigation of the case to be able to assist the panel.

#### **Attendance of complainant or interested person at third stage meeting**

**40.**—(1) This regulation applies in a case falling within regulation 31 where the third stage meeting arises from a complaint or conduct matter investigated under external procedures established for England and Wales, Northern Ireland or Scotland.

(2) The relevant authority must give the complainant or any interested person a written notice of the date, time and place of the third stage meeting.

(3) Subject to this regulation and any conditions imposed under regulation 41(12)—

- (a) the complainant may attend as an observer any part of the third stage meeting relating to the subject matter of the complaint, and
- (b) an interested person may attend as an observer any part of the third stage meeting relating to the subject matter of the complaint or conduct matter in respect of which the person is an interested person.

(4) Subject to paragraph (5) and any conditions imposed under regulation 41(12), a complainant or interested person may be accompanied by one other person, and if the complainant or interested person has a special need, by one further person to accommodate that need.

(5) Where a complainant or interested person, or any accompanying person, is to give evidence as a witness at the third stage meeting, the complainant or interested person and any accompanying person may not be allowed to attend the meeting before giving evidence.

(6) Where the officer concerned objects to the complainant or interested person, or any accompanying person, being present while a submission is made in mitigation on the officer’s behalf, the panel chair may require the complainant or interested person, or any accompanying person, to withdraw while the submission is made.

(7) The panel chair may, at the panel chair’s discretion, put any questions to the officer concerned that the complainant or interested person may request be put to the officer.

#### **Attendance of others at a third stage meeting**

**41.**—(1) Subject to regulations 39 and 40 and paragraph (10) of this regulation, the third stage meeting must be in private.

(2) A human resources professional and an MDP officer may attend the meeting to advise the panel on the proceedings.

(3) A relevant lawyer may attend the meeting to advise the panel on the proceedings and on any question of law that may arise at the meeting.

(4) Where regulation 39 applies, a person nominated by the Director General may attend a third stage meeting held under regulation 31 as an observer.

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(5) Any other person specified in the notice to the officer concerned in accordance with regulation 30(1)(g) or 32(1)(j) may attend the meeting if the officer consents.

(6) Subject to any contrary decision by the panel chair, a witness other than a complainant, interested person or the officer concerned may only attend the third stage meeting for the purposes of giving their evidence.

(7) The panel chair may, at the panel chair's discretion, permit a witness in the third stage meeting to be accompanied at that meeting by one other person.

(8) This paragraph applies where—

- (a) a third stage meeting is held under regulation 31;
- (b) the Director General investigated the case under paragraph 19 of Schedule 3 to the 2002 Act;
- (c) the Director General considers that, because of the gravity of the case or other exceptional circumstances, it would be in the public interest for all or part of the third stage meeting to be held in public;
- (d) the Director General has consulted with—
  - (i) the relevant authority;
  - (ii) the officer concerned;
  - (iii) the complainant or interested person;
  - (iv) any witnesses.

(9) Where paragraph (8) applies, the Director General may direct that the whole or part of the third stage meeting be in public.

(10) The panel is under a duty to comply with a direction given under paragraph (9).

(11) A direction under paragraph (9), together with the reasons for it, must be notified as soon as practicable, and in any event before the end of 5 working days beginning with the first working day after the decision was taken, to the persons consulted under that paragraph.

(12) The panel chair may impose such conditions as the panel chair sees fit relating to the attendance under regulation 40 or this regulation of persons at the third stage meeting (including circumstances in which they may be excluded) in order to facilitate the proper conduct of the meeting.

### **Exclusion from a third stage meeting**

**42.—**(1) Where it appears to the panel chair that any person may, in giving evidence, disclose information which ought not to be disclosed to any person attending the meeting, other than the officer concerned, because it is information to which paragraph (2) applies, the panel chair must require such attendees to withdraw while the evidence is given.

(2) This paragraph applies to information in so far as the panel chair considers that preventing disclosure of it is—

- (a) necessary for the purpose of preventing the premature or inappropriate disclosure of information that is relevant to, or may be used in, any criminal proceedings,
- (b) necessary in the interests of national security,
- (c) necessary for the purpose of the prevention or detection of crime, or the apprehension or prosecution of offenders,
- (d) necessary for the purposes of the prevention or detection of misconduct by—
  - (i) other MDP officers, or
  - (ii) persons under the direction or control of a chief officer of a relevant force,

- or their apprehension for such matters,
- (e) necessary and proportionate for the protection of the welfare and safety of any informant or witness, or
- (f) otherwise in the public interest.

### **Procedure at a third stage meeting**

**43.**—(1) The panel chair must determine the procedure at the third stage meeting and, in so far as it is set out in these Regulations, must determine it in accordance with these Regulations.

(2) Where the officer concerned is required to attend a third stage meeting under regulation 29, the panel chair must—

- (a) provide the officer with an opportunity to make representations in relation to the matters referred to in the notice given under regulation 30, and
- (b) provide the police friend (if the officer has one) with an opportunity to address the meeting in relation to such matters in accordance with regulation 7(3)(a).

(3) Where the officer concerned is required to attend a third stage meeting under regulation 31, the panel chair must—

- (a) provide the officer concerned with an opportunity to make representations in relation to the matters referred to in the notice given under regulation 32;
- (b) provide the person representing the officer with an opportunity to address the meeting in relation to such matters in accordance with regulation 7(3)(a).

(4) The panel chair may adjourn the meeting to a specified time, or date and time, if it appears to the panel chair necessary or expedient to do so.

(5) A verbatim record of the meeting must be taken and the officer concerned must, on request, be given a copy.

### **Finding**

**44.**—(1) Following the third stage meeting, the panel must make a finding as to whether—

- (a) in a case falling within regulation 29(2), the performance or attendance of the officer concerned during the period specified in accordance with regulation 24(6)(c) has been satisfactory,
- (b) in a case falling within regulation 29(4), the performance or attendance of the officer concerned during any part of the validity period of the final written improvement notice remaining after the expiry of the period specified in accordance with regulation 24(6)(c) has been satisfactory, or
- (c) in a case falling within regulation 31, the performance of the officer concerned constitutes gross incompetence, unsatisfactory performance or neither.

(2) The panel must prepare (or must cause to be prepared) their decision in writing which must state the finding and their reasons, as well as any outcome which they order under regulation 45.

(3) As soon as reasonably practicable and in any event before the end of 3 working days beginning with the first working day after the conclusion of the meeting, the panel chair must give a written copy of the decision to—

- (a) the officer concerned, and
- (b) the line manager.

(4) Where the panel have made a finding of unsatisfactory performance or attendance or gross incompetence, the copy of the decision given to the officer concerned must be accompanied by a

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written notice setting out the circumstances in which and the time within which an MDP officer may appeal under the Appeals Tribunals Regulations.

(5) Any finding or decision of the panel under this regulation or regulation 46 must be based on a simple majority but must not indicate whether it was taken unanimously or by a majority.

### **Outcomes**

**45.**—(1) If the panel make a finding that, in a case falling within regulation 29(2) or (4), the performance or attendance of the officer concerned has been unsatisfactory they may, subject to paragraph (4), order—

- (a) one of the outcomes mentioned in paragraph (3)(a), (c) or (f), or
- (b) where the panel are satisfied that there are exceptional circumstances which justify it, the outcome mentioned in paragraph (3)(d).

(2) If the panel make a finding that, in a case falling within regulation 31, the performance of the officer concerned constitutes gross incompetence, they may, subject to paragraph (4), order one of the outcomes mentioned in paragraph (3)(b), (c), (e) or (f).

(3) The outcomes are—

- (a) dismissal of the officer concerned with notice, the period of the notice to be decided by the panel, subject to a minimum period of 28 days;
- (b) dismissal of the officer concerned with immediate effect;
- (c) reduction in rank of the officer concerned with immediate effect;
- (d) an extension of the period of the final written improvement notice issued to the officer concerned;
- (e) the issue to the officer concerned of a final written improvement notice;
- (f) redeployment of the officer concerned to alternative duties (which may involve a reduction of rank) within the MDP.

(4) The panel may not order a reduction in rank with immediate effect where the third stage meeting relates to the attendance of the officer.

(5) In considering whether to order any of the outcomes mentioned in paragraph (3), the panel—

- (a) must have regard to the record of police service of the officer concerned as shown on the officer's personal record,
- (b) may receive evidence from any witness whose evidence would, in their opinion, assist their consideration, and
- (c) must give—
  - (i) the officer, the officer's police friend or, in a case falling within regulation 31, the officer's relevant lawyer, and
  - (ii) the relevant authority,

an opportunity to make oral or written representations before making a decision.

(6) If the panel make a finding, in a case falling within regulation 31, of unsatisfactory performance, they must order the issue to the officer concerned of a written improvement notice.

(7) A written improvement notice or a final written improvement notice issued under this regulation must—

- (a) state in what respect the performance or attendance of the officer concerned (as the case may be) is considered unsatisfactory or the performance, grossly incompetent,
- (b) state the improvement that is required in performance or attendance,

- (c) state that, if a sufficient improvement is not made within such reasonable period as the panel specifies (being a period not exceeding 12 months), the officer may be required to attend a second stage meeting (in the case of a written improvement notice) or another third stage meeting (in the case of a final written improvement notice) and state the date with which this period ends,
  - (d) state that it is valid for a period of 12 months beginning with the date of the notice,
  - (e) state that, if the sufficient improvement referred to in sub-paragraph (c) is not maintained during any part of the validity period remaining after the expiry of the period specified in accordance with sub-paragraph (c), the officer may be required to attend a second stage meeting (in the case of a written improvement notice) or another third stage meeting (in the case of a final written improvement notice), and
  - (f) be signed and dated by the panel chair.
- (8) Where the panel orders an extension of the period relating to the final written improvement notice—
- (a) the notice must be amended—
    - (i) to state that if the officer concerned does not make a sufficient improvement within such reasonable period as the panel specifies (being a period not exceeding 12 months) the officer may be required to attend another third stage meeting, and
    - (ii) to state the date with which this period ends;
  - (b) the panel may vary any of the other matters recorded in the notice;
  - (c) the notice is valid for a further period of 12 months.

**Assessment of performance or attendance following third stage meeting where a written improvement notice has been issued**

**46.—**(1) Where a written improvement notice has been issued under regulation 45, the performance or attendance of the officer concerned must be assessed under regulation 21 as if the officer had received a written improvement notice under regulation 17.

(2) Where, as a result of such assessment, the officer concerned is required to attend a second stage meeting, these Regulations have effect as if the officer had been required to attend that meeting under regulation 21 in which case—

- (a) references to the period specified in accordance with regulation 16(6)(c) must be construed as references to the period specified under regulation 45(7)(c), and
- (b) references to the validity period of the written improvement notice must be construed as references to the validity period of the written improvement notice issued under regulation 45.

(3) Where an MDP officer is required to attend such a second stage meeting, that meeting must concern unsatisfactory performance or attendance which is similar to or connected with the unsatisfactory performance or attendance referred to in the written improvement notice.

**Assessment of performance or attendance following third stage meeting where a final written improvement notice has been issued or extended**

**47.—**(1) Where a final written improvement notice has been issued under regulation 45, as soon as reasonably practicable after the end of the period specified by the panel under regulation 45(7)(c) or, where the panel orders an extension of the period, regulation 45(8)(a)—

- (a) the panel must assess the performance or attendance of the officer concerned (as the case may be) during that period, and

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- (b) the panel chair must give the officer a written notice as to whether the panel considers that there has been a sufficient improvement in performance or attendance during that period.
- (2) If the panel considers that there has not been a sufficient improvement, the panel chair must, at the same time as the panel chair gives a written notice under paragraph (1)(b), also give the officer concerned a written notice that the officer is required to attend another third stage meeting to consider the officer's performance or attendance.
- (3) The officer concerned may be required to attend a third stage meeting under paragraph (4) where—
  - (a) the officer has not been required to attend a third stage meeting under paragraph (2), or
  - (b) the officer has been required to attend a third stage meeting under paragraph (2) but the panel did not make a finding of unsatisfactory performance or attendance at that meeting.
- (4) If the panel considers that the officer concerned has failed to maintain a sufficient improvement in performance or attendance during any part of the validity period of the final written improvement notice remaining after the expiry of the period specified in accordance with regulation 45(7)(c) or, where the panel orders and extension of the period, regulation 45(8)(a), the panel chair must give the officer a written notice of the matters set out in paragraph (5).
- (5) Those matters are—
  - (a) that the panel is of the view mentioned in paragraph (4), and
  - (b) that the officer concerned is required to attend another third stage meeting to consider the officer's performance or attendance.
- (6) In a case falling within paragraph (2) or (4), the relevant authority must give the officer concerned the notice referred to in regulation 30.
- (7) Where the officer concerned is required to attend a third stage meeting under this regulation, these Regulations have effect as if the case fell within regulation 29(2) or (4), as the case may be.
- (8) Where these Regulations have effect in the manner described in paragraph (7)—
  - (a) references to the period specified in accordance with regulation 24(6)(c) are to be construed as references to the period specified under regulation 45(7)(c) or (8)(a), as the case may be, and
  - (b) references to the validity period of the final written improvement notice are to be construed as references to the validity period mentioned in regulation 45(7)(d) or (8)(c), as the case may be.
- (9) Any third stage meeting which an MDP officer is required to attend under this regulation must concern unsatisfactory performance or attendance which is similar to or connected with the unsatisfactory performance or attendance referred to in the final written improvement notice issued or extended under regulation 45 or, if amended under regulation 45(8)(a), as so amended.
- (10) References in this regulation to the panel are references to the panel that conducted the initial third stage meeting, subject to paragraph (11).
- (11) Where any of the panel members are not able to continue to act as such, the relevant authority must remove that member from the panel and must appoint a new member to the panel.
- (12) If the relevant authority appoints a new panel member under paragraph (11), it must ensure that the requirements for the composition of the panel in regulation 33 continue to be met.
- (13) As soon as reasonably practicable after any such appointment, the relevant authority must give the officer concerned a written notice of the name of the new panel member.
- (14) The officer concerned may object to the appointment of a panel member appointed under paragraph (11).



(15) Any such objection must be made in accordance with regulation 34(2), provided that it must be made before the end of 3 working days beginning with the first working day after receipt of the notice referred to in paragraph (13); and the relevant authority must comply with regulation 34(3) to (6) in relation to the objection but paragraph (7) of that regulation does not apply.

### **Third stage meeting under regulation 47**

**48.—**(1) Where an MDP officer is required to attend another third stage meeting under regulation 47—

- (a) that meeting must be conducted by the same panel as conducted the initial third stage meeting (subject to any change in that panel under regulation 47);
- (b) the officer concerned may not object to panel members under regulation 34, except in accordance with regulation 47;
- (c) subject to paragraph (2), regulations 35 to 45 apply to, or in relation to, that meeting.

(2) Following that third stage meeting, the panel may not order an extension of the period of the final written improvement notice issued to the officer concerned.

## SCHEDULE 5

Regulation 5

### The Appeals Tribunals Regulations

## CONTENTS

1. Regulations
2. Interpretation and general provision as to written notices or documents
3. Circumstances in which an MDP officer may appeal to a tribunal – Conduct Regulations
4. Circumstances in which an MDP officer may appeal to a tribunal – Performance Regulations
5. Circumstances in which a former MDP officer may appeal to a tribunal
6. Appointment and composition of police appeals tribunal
7. Notice of appeal
8. Notice of appeal out of time
9. The respondent
10. Presenting of case by Director General or Ombudsman
11. Procedure on notice of appeal
12. Extensions of time limits
13. Review of appeal
14. Determination of an appeal
15. National security: power to give directions in relation to appeals
16. Power to request disclosure of documents
17. Notice of the hearing
18. Legal and other representation
19. Procedure and oral evidence at hearing
20. Statements in lieu of oral evidence
21. Attendance at hearing

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22. Attendance of complainant and interested person at hearing
  23. Attendance of Director General and the Ombudsman at hearing
  24. Exclusion from hearing
  25. Statement of tribunal's determination
- Signature  
Explanatory Note

## Regulations

1. Any reference in this Schedule—
  - (a) to a numbered regulation is, unless otherwise stated, to the regulation set out in the paragraph so numbered in this Schedule;
  - (b) to “these Regulations” is to the Regulations set out in this Schedule.

## Interpretation and general provision as to written notices or documents

- 2.—(1) In these Regulations—

“appellant” means an MDP officer or a former MDP officer who has given a notice of appeal in accordance with regulation 7 or 8;

“chair” means the person appointed in accordance with regulation 6(2)(a), 6(3)(a) or 6(4)(a) as the case may be;

“disciplinary action”—

  - (a) in relation to an MDP officer, means disciplinary action under the Conduct Regulations;
  - (b) in relation to a former MDP officer, means a finding that the former officer would have been dismissed if the former officer had not ceased to be a member of the MDP;

“Head of HR” means the head of HR for the MDP in the Ministry of Defence;

“lay person” has the meaning given in paragraph 10 of Schedule 6 to the Police Act 1996<sup>(49)</sup>;

“original hearing” means—

  - (a) the misconduct hearing or accelerated misconduct hearing under the Conduct Regulations, or
  - (b) a third stage meeting under the Performance Regulations,

at or following which the relevant decision was made;

“relevant decision” means the finding or decision as to the disciplinary action or outcome which may be appealed or is being appealed to a tribunal in accordance with regulation 3, 4 or 5;

“relevant time” means, in relation to a former MDP officer, the time immediately before the former officer ceased to be such an officer;

“specified appeal” means—

  - (a) in relation to England and Wales, an appeal where paragraph 16 of Schedule 3 to the 2002 Act (investigations by the appropriate authority on its own behalf)<sup>(50)</sup> applied and—
    - (i) the Director General—

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<sup>(49)</sup> 1996 c. 16. The definition of “lay person” was inserted by section 31(5) of the Policing and Crime Act 2017 (c. 3), and amended by section 41(4) of that Act. There are other amendments to paragraph 10 which are not relevant to these Regulations.

<sup>(50)</sup> Paragraph 16 has been amended by paragraph 14 of Schedule 12 to the Serious Organised Crime and Police Act 2005 (c. 15), paragraph 9, 11, 12 of Schedule 14 to the Police Reform and Social Responsibility Act 2011 (c. 13), paragraph 17 of Schedule 6 to the Crime and Courts Act 2013 (c. 22), paragraph 16 and 17 of Schedule 5 and paragraph 56 of Schedule 9 to the Policing and Crime Act 2017 (c. 3).

- (aa) made a recommendation under paragraph 25(4C)(c) of that Schedule (reviews with respect to an investigation)(51) which the relevant authority accepted,
- (bb) made a recommendation under paragraph 27(3A) of that Schedule (recommendation of Director General to authority)(52) in relation to the unsatisfactory performance of an MDP officer, or
- (cc) gave a direction under paragraph 27(4)(a) of that Schedule (duties with respect to disciplinary proceedings)(53), or
- (ii) the Secretary of State for Defence made a recommendation under paragraph 25(4E)(c) of that Schedule (reviews with respect to an investigation) which the relevant authority accepted;
- (b) in relation to England and Wales, an appeal where paragraph 18 or 19 of Schedule 3 to the 2002 Act (directed and independent investigations)(54) applied;
- (c) in relation to Northern Ireland, an appeal where the relevant decision arose from a case where—
  - (i) a recommendation had been made under section 59(2) of the 1998 Act (steps to be taken after investigation) that disciplinary proceedings should be brought, or
  - (ii) a direction had been given under section 59(5) of that Act;

“tribunal” means the police appeals tribunal appointed under regulation 6.

(2) In these Regulations, any expression which is also used in the Conduct Regulations or the Performance Regulations, unless that expression is given a different meaning in paragraph (1), has the same meaning as in those Regulations.

(3) Where any written notice or document is to be given or supplied to the appellant under these Regulations, it must be—

- (a) given to the appellant in person,
- (b) left with a person at, or sent by recorded delivery to, the appellant’s last known address, or
- (c) given to the appellant in any other manner agreed between the person who is required to give the notice or document and the appellant.

### **Circumstances in which an MDP officer may appeal to a tribunal – Conduct Regulations**

3.—(1) Subject to paragraph (3), an MDP 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 one or both of the following—

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

(2) This paragraph applies to—

- (a) an officer, other than a senior officer, against whom a finding of misconduct or gross misconduct has been made at a misconduct hearing,

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(51) Paragraph 25(4C) was inserted, with paragraphs (4A) to (4J) by paragraph 34 of Schedule 5 to the Policing and Crime Act 2017.

(52) Paragraph 27(3A) was inserted by section 138 of the Anti-Social Behaviour, Crime and Policing Act 2014 (c. 12).

(53) Paragraph 27(4)(a) was amended by paragraph 56 of Schedule 9 to the Policing and Crime Act 2017.

(54) Paragraphs 18 of the 2002 Act was amended by paragraph 18, 19, 56 of Schedule 5 to the Policing and Crime Act 2017 (c. 3). Paragraph 19 of that Act was also amended by paragraph 56 of Schedule 5 to that Act. There are other amendments to those provisions which are not relevant to these Regulations.

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- (b) a senior officer against whom a finding of misconduct or gross misconduct has been made at a misconduct meeting or a misconduct hearing, or
  - (c) an officer against whom a finding of gross misconduct has been made at an accelerated misconduct hearing.
- (3) An MDP officer may not appeal to a tribunal against a finding referred to in paragraph (2)(a), (b) or (c) where that finding was made following acceptance by the officer that the officer's conduct amounted to misconduct or gross misconduct (as the case may be).
- (4) The grounds of appeal under this regulation 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 procedures set out in the Conduct Regulations or external procedures established for England and Wales or Northern Ireland or unfairness which could have materially affected the finding or decision on disciplinary action.

#### **Circumstances in which an MDP officer may appeal to a tribunal – Performance Regulations**

4.—(1) Subject to paragraph (3), an MDP 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 (6) against one or both of the following—

- (a) a finding referred to in paragraph (2) made under the Performance Regulations;
- (b) an outcome which is imposed under the Performance Regulations in consequence of that finding and mentioned in paragraph (4) or (5).

(2) This paragraph applies to an MDP officer against whom a finding of unsatisfactory performance or attendance or gross incompetence has been made at a third stage meeting.

(3) An MDP officer may not appeal to a tribunal against a finding referred to in paragraph (2) where that finding was made following acceptance by the officer that the officer's performance or attendance has been unsatisfactory or that the officer has been grossly incompetent (as the case may be).

(4) Where there has been a finding of unsatisfactory performance or attendance following a third stage meeting which the MDP officer was required to attend under regulation 29 of the Performance Regulations, the officer may appeal against the following outcomes—

- (a) dismissal with notice;
- (b) reduction in rank;
- (c) redeployment to alternative duties.

(5) Where there has been a finding of gross incompetence or unsatisfactory performance following a third stage meeting which the MDP officer was required to attend under regulation 31 of the Performance Regulations, the officer may appeal against the following outcomes—

- (a) dismissal without notice;
- (b) reduction in rank;
- (c) redeployment to alternative duties;
- (d) the issue of a final written improvement notice;
- (e) the issue of a written improvement notice.

(6) The grounds of appeal under this regulation are—

- (a) that the finding or outcome imposed was unreasonable,

- (b) that there is evidence that could not reasonably have been considered at the original meeting which could have materially affected the finding or decision on the outcome,
- (c) that there was a breach of the procedures set out in the Performance Regulations or in the external procedures established for England and Wales, or unfairness which could have materially affected the finding or decision on the outcome, or
- (d) that, where the MDP officer was required to attend the third stage meeting under regulation 29 of the Performance Regulations, the officer should not have been required to attend that meeting as it did not, in accordance with regulation 29(6) or 47(9) of those Regulations, concern unsatisfactory performance or attendance similar to or connected with the unsatisfactory performance or attendance referred to in the final written improvement notice.

### **Circumstances in which a former MDP officer may appeal to a tribunal**

5.—(1) Subject to paragraph (3), a former MDP 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 one or both of the following—

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

(2) This paragraph applies to—

- (a) a former MDP officer against whom a finding of misconduct or gross misconduct has been made at a misconduct hearing, and
- (b) a former MDP officer against whom a finding of gross misconduct has been made at an accelerated misconduct hearing.

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

(4) The grounds of appeal under this regulation 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 to impose disciplinary action, or
- (c) that there was a breach of the procedures set out in the Conduct Regulations, or unfairness which could have materially affected the finding or decision to impose disciplinary action.

### **Appointment and composition of police appeals tribunal**

6.—(1) The composition of the tribunal is to differ according to—

- (a) whether the appellant was a senior officer immediately before the original hearing or, as the case may be, relevant time, and
- (b) whether the appellant was an MDP officer serving in England and Wales, Scotland or Northern Ireland at the time the relevant conduct occurred or began.

(2) If the appellant was a senior officer immediately before the original hearing or, as the case may be, at the relevant time, the tribunal is to consist of three members appointed by the Head of HR, of whom—

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- (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 Police Act 1996<sup>(55)</sup>,
  - (b) one must be Her Majesty's Chief Inspector of Constabulary appointed under section 54(1) of the Police Act 1996 (appointment of functions of inspectors of constabulary), and
  - (c) one must be chosen from a list of candidates maintained by the Ministry of Defence Police Committee appointed by the Secretary of State under section 1(5) of the 1987 Act.
- (3) If the appellant was an MDP officer (other than a senior officer) serving in England and Wales or Northern Ireland immediately before the original hearing or, as the case may be, at the relevant time, the tribunal is to consist of three members appointed by the Head of HR, of whom—
- (a) one must be a person chosen from the list referred to in paragraph (2)(a),
  - (b) one must be a senior officer who is—
    - (i) from a relevant force other than the Police Service of Scotland, and
    - (ii) not based in Scotland, and
  - (c) one must be a lay person.
- (4) If the appellant was an MDP officer (other than a senior officer) serving in Scotland immediately before the original hearing or, as the case may be, at the relevant time, the tribunal is to consist of three members appointed by the Head of HR, of whom—
- (a) one must be a person chosen from a list of persons who have been nominated by the Lord President of the Court of Session for the purposes of Schedule 3 to the Police and Fire (Scotland) Reform Act 2012<sup>(56)</sup>,
  - (b) one must be a senior officer from the Police Service of Scotland, and
  - (c) one must be a lay person.
- (5) The chair of the tribunal must be the person referred to in paragraph (2)(a), (3)(a) or (4)(a), whichever is relevant.
- (6) If at any time that is relevant for the purposes of this regulation, the appellant was serving outside of the United Kingdom on detached duty from a station in the United Kingdom, the appellant is to be treated for those purposes as if serving at the station at that time.

### **Notice of appeal**

7.—(1) Subject to regulation 8 (notice of appeal out of time), an MDP officer or a former MDP officer who wishes to appeal to a tribunal must give notice of the appeal before the end of 10 working days beginning with the first working day after the day on which the officer is first supplied with a written copy of the relevant decision.

(2) The notice of appeal must be given in writing to the Head of HR.

(3) The officer or former officer may request a transcript of the proceedings (or part of the proceedings) at the original hearing in the officer's or former officer's notice of appeal.

### **Notice of appeal out of time**

8.—(1) This regulation applies where an MDP officer or a former MDP officer wishes to give notice of an appeal to a tribunal after the end of the period mentioned in regulation 7(1).

<sup>(55)</sup> 1996 c. 16; paragraph 1(1)(a) was amended by paragraph 27 of Schedule 10 to the Tribunals, Courts and Enforcement Act 2007 (c. 15), subject to transitional provisions specified in S.I. 2008/1653, section 31 of the Policing and Crime Act 2017 (c. 3) and S.I. 2018/226.

<sup>(56)</sup> 2012 asp. 8.

(2) An MDP officer or a former MDP officer may give notice of the appeal within a reasonable time after the end of that period.

(3) The notice must be accompanied by the reasons why it was not given within that period and the reasons for the officer's or former officer's view that it has been given within a reasonable time after that period.

(4) Upon receipt of a notice of appeal out of time, the Head of HR must supply a copy of the notice and the reasons to the chair who must determine—

(a) whether it was reasonably practicable for the notice to be given within the period mentioned in regulation 7(1), and

(b) whether the notice has been given within a reasonable time after the end of that period.

(5) If the chair determines either that it was reasonably practicable for the notice to be given within that period or that the notice has not been given within a reasonable time after the end of that period, the appeal must be dismissed.

(6) Where the appeal is not dismissed under paragraph (5), the appeal must proceed and the chair must give directions for the application of regulation 11 to the appeal (procedure on notice of appeal).

### **The respondent**

9.—(1) Where the appellant is a senior officer or a former senior officer, the respondent must be a person designated by the Head of HR.

(2) Where the appellant is any other MDP officer or former MDP officer, the respondent must be the chief constable.

### **Presenting of case by Director General or Ombudsman**

10.—(1) Where paragraph (2) applies to an appeal, the Director General or Ombudsman must present the case for the respondent.

(2) This paragraph applies to an appeal if the Director General or Ombudsman presented the case to which the appeal relates at the misconduct hearing or, as the case may be, accelerated misconduct hearing.

(3) The respondent must give the Director General or Ombudsman any assistance the Director General or Ombudsman reasonably requires for the purpose of presenting a case.

(4) Where the Director General or Ombudsman is presenting the case in accordance with paragraph (1), all references to the respondent in regulations 11 (other than paragraph (1)(a)), 12 to 14, 16, 17, 22, 24 and 25 are to be read as if they referred instead to the Director General or Ombudsman, as the case may be.

### **Procedure on notice of appeal**

11.—(1) As soon as reasonably practicable, the Head of HR must supply a copy of the notice of appeal—

(a) to the respondent;

(b) to the Director General, where—

(i) the appeal is a specified appeal in relation to England and Wales, or

(ii) the Director General is presenting the case, in accordance with regulation 10(1), and

(c) to the Ombudsman, where—

(i) the appeal is a specified appeal in relation to Northern Ireland, or

(ii) the Ombudsman is presenting the case, in accordance with regulation 10(1).

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- (2) As soon as reasonably practicable after receipt of a copy of the notice of appeal, and in any event before the end of 15 working days beginning with the first working day after the day of such receipt, the respondent must supply to the Head of HR—
  - (a) a copy of the relevant decision made at or following the original hearing provided under regulation 42(2) or 63(1) of the Conduct Regulations or regulation 44(3) of the Performance Regulations;
  - (b) any documents which were made available to the person or persons conducting the original hearing, and
  - (c) a copy of any transcript requested under regulation 7(3).
- (3) A copy of any such transcript must at the same time be given to the appellant.
- (4) The appellant must supply the following documents to the Head of HR in accordance with paragraph (6)—
  - (a) a statement of the relevant decision and the grounds of appeal,
  - (b) any supporting documents,
  - (c) where the appellant is permitted to adduce witness evidence—
    - (i) a list of any proposed witnesses,
    - (ii) a witness statement from each proposed witness, and
  - (d) if the appellant consents to the appeal being determined without a hearing, notice of such consent.
- (5) For the purposes of paragraph (4)(c)—
  - (a) an appellant is only permitted to adduce witness evidence where the appellant is relying on the ground of appeal set out in regulation 3(4)(b), 4(6)(b) or 5(4)(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 to impose disciplinary action);
  - (b) a “proposed witness” is a person—
    - (i) whom the appellant wishes to call to give evidence at the hearing,
    - (ii) whose evidence was not and could not reasonably have been considered at the original hearing, and
    - (iii) whose evidence could have materially affected the relevant decision.
- (6) The appellant must supply the documents mentioned in paragraph (4) before the end of—
  - (a) 20 working days beginning with the first working day after the day on which the appellant is supplied with a copy of the transcript under paragraph (3), or
  - (b) where no transcript has been requested under regulation 7(3), 35 working days beginning with the first working day after the day on which the appellant gave notice of the appeal to the Head of HR.
- (7) The Head of HR must give a copy of the documents supplied under paragraph (4) to the respondent as soon as reasonably practicable following receipt.
- (8) Before the end of 20 working days beginning with the first working day after the day on which the respondent receives the documents under paragraph (7), the respondent must supply the following documents to the Head of HR—
  - (a) a statement of the respondent’s response to the appeal,
  - (b) any supporting documents,
  - (c) where the respondent is permitted to adduce witness evidence—
    - (i) a list of any proposed witnesses,



- (ii) a witness statement from each proposed witness, and
  - (d) if the respondent consents to the appeal being determined without a hearing, notice of such consent.
- (9) For the purposes of paragraph (8)(c)—
- (a) a respondent is only permitted to adduce witness evidence where the appellant is relying on the ground of appeal set out in regulation 3(4)(b), 4(6)(b) or 5(4)(b);
  - (b) a “proposed witness” is a person—
    - (i) whom the respondent wishes to call to give evidence at the hearing, and
    - (ii) whose evidence is relevant to all or part of the evidence on which the appellant is relying for the purposes of regulation 3(4)(b), 4(6)(b), or 5(4)(b).
- (10) The respondent must at the same time as supplying to the Head of HR the documents referred to in paragraph (8)(a) to (d), give the appellant a copy of the documents referred to in paragraph (8) (a), (c) and (d), together with a list of the documents (if any) supplied under paragraph (8)(b).
- (11) On receipt of the documents supplied under paragraph (8), the Head of HR must give to the chair a copy of the documents supplied under paragraphs (4) and (8).

### **Extensions of time limits**

**12.**—(1) The appellant or the respondent may apply to the Head of HR for an extension of a relevant period.

(2) Any such application must set out the period of the required extension and the reasons for the application.

(3) As soon as reasonably practicable after receipt of an application under paragraph (1), the Head of HR must—

- (a) give a copy of the application to the other party (being the appellant or the respondent as the case may be), and
- (b) ask that other party whether the party consents to the application.

(4) If the other party consents to the application, the relevant period must be extended in accordance with the application and regulation 11 has effect as if for that period there were substituted the extended period.

(5) If the other party does not consent to the application, the application must be referred to the chair who must determine whether the relevant period should be extended and, if so, by how long; and where the chair extends the relevant period, regulation 11 has effect as if for that period there were substituted the extended period.

(6) In this regulation, “relevant period” means, in relation to an application by the appellant, the period referred to in regulation 11(6)(a) or (b) and, in relation to an application by the respondent, the period referred to in regulation 11(2) or (8).

### **Review of appeal**

**13.**—(1) Upon receipt of the documents mentioned in regulation 11(4) and (8), the chair must determine whether the appeal, or one or more grounds of appeal, must be dismissed under paragraph (2).

(2) An appeal, or a ground of appeal, must be dismissed under this paragraph if the chair considers that the appeal, or ground of appeal, has no real prospect of success, unless the chair considers there is some compelling reason why the appeal, or, as the case may be, ground of appeal, should proceed.

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(3) If the chair proposes to dismiss the appeal, or ground of appeal, under paragraph (2), the chair must give the appellant and the respondent notice in writing of the chair's view together with the reasons for that view before making a determination.

(4) The appellant and the respondent may make written representations in response to the chair before the end of 10 working days beginning with the first working day after the day of receipt of that notification; and the chair must consider any such representations before making a determination.

(5) The chair must give notice in writing of the determination to—

- (a) the appellant,
- (b) the respondent,
- (c) the Head of HR, and
- (d) where the appeal was a specified appeal—
  - (i) relating to England and Wales, to the Director General, or
  - (ii) relating to Northern Ireland, to the Ombudsman.

(6) Where the chair determines that the appeal, or ground of appeal, must be dismissed under paragraph (2)—

- (a) the notification under paragraph (5) must include the reasons for the determination, and
- (b) the appeal, or, as the case may be, ground of appeal, must be dismissed.

#### **Determination of an appeal**

**14.**—(1) Where an appeal has not been dismissed under regulation 13, the chair must determine whether the appeal should be dealt with at a hearing.

(2) The chair may determine that the appeal should be dealt with without a hearing, but only if the appellant has so consented.

(3) Where the appeal is to be dealt with at a hearing—

- (a) regulations 16 to 25 apply, and
- (b) the chair must give the appellant and the respondent the chair's name and contact details.

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

**15.**—(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 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 17(5) (notice of the hearing) or statement published under regulation 25(9) (publication of statement and report during notice period).

(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.

### **Power to request disclosure of documents**

16.—(1) At any time following the provision of the documents mentioned in regulation 11(4) and (8), the appellant or the respondent (the “requesting party”) may apply to the chair for disclosure of any document by the other party which is relevant to the appeal.

(2) The chair may request the disclosure of any such document by the other party and where it is disclosed, a copy must be given to the chair and to the requesting party.

(3) Where a party does not comply with a request to disclose under paragraph (2), the party must give the chair and the requesting party the reasons for non-disclosure in writing.

### **Notice of the hearing**

17.—(1) The chair must cause the appellant and the respondent to be given written notice of the date, time and place of the hearing at least 20 working days, or such shorter period as may with the agreement of both parties be determined, before the date of the hearing.

(2) Where the appellant or the respondent (or both) have proposed witnesses under regulation 11, the chair must determine which, if any, witnesses may give evidence at the hearing.

(3) No witness may give evidence at the hearing unless the chair reasonably believes that it is necessary for the witness to do so, in which case the chair must—

(a) where the witness is an MDP officer, cause that person to be ordered to attend the hearing, and

(b) in any other case, cause the witness to be given notice that their attendance is necessary and of the date, time and place of the hearing.

(4) The following paragraphs only apply to an appeal brought in accordance with regulation 3 or 5.

(5) Having taken into account any representations made under paragraph (7)(c), the chair may require notice of the hearing to be published which contains information relating to one or more of—

(a) the name of the appellant;

(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.

(6) Where the chair requires notice to be published in accordance with paragraph (5), the MDP must publish the notice on its website at least than 5 working days before the day on which the hearing begins.

(7) Any person to whom this paragraph applies 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 all or any part of the hearing under regulation 24(1);

(b) whether the chair should impose any conditions under regulation 24(2);

(c) in the light of the representations made under sub-paragraphs (a) and (b)—

(i) whether the chair should require notice to be published under paragraph (5);

(ii) which types of information mentioned in paragraph (5)(a) to (e) should be included in any such notice.

(8) Paragraph (7) applies to—

- (a) the appellant;
- (b) the respondent;
- (c) the complainant;
- (d) any interested person;
- (e) any witness;
- (f) the Director General;
- (g) the Ombudsman.

(9) Any written representations made in accordance with paragraph (7) must be provided no later than the date specified by the chair for provision of such representations.

### **Legal and other representation**

**18.**—(1) The appellant has the right to be represented at a hearing by a relevant lawyer or a police friend.

(2) Where the appellant is represented at the hearing by a relevant lawyer, the appellant may also be accompanied at the hearing by a police friend.

(3) If an appellant chooses not to be represented, the hearing may take place and the appeal may be determined without the appellant being represented.

(4) The respondent has the right to be represented at a hearing by—

- (a) a relevant lawyer,
- (b) an MDP officer, or
- (c) a staff member.

(5) Where a police friend is an MDP officer, the chief constable must permit the police friend to use a reasonable amount of duty time for the purposes referred to in this regulation.

(6) Where the police friend is a staff member, the Secretary of State for Defence must permit that person to use a reasonable amount of duty time for the purposes referred to in this regulation.

(7) Paragraph (4)(b) to (d) do not apply where the Director General or the Ombudsman is presenting the case in accordance with regulation 10(1).

### **Procedure and oral evidence at hearing**

**19.**—(1) The tribunal must determine the procedure at a hearing and, insofar as it is set out in these Regulations, must determine it in accordance with these Regulations.

(2) The tribunal may proceed with the hearing in the absence of either party, whether represented or not, if it appears to be just and proper to do so, and may adjourn it from time to time if it appears necessary to do so.

(3) Unless the tribunal determines otherwise, the evidence adduced by the appellant must be given first.

(4) Witnesses giving evidence at the hearing may be subject to questioning and cross-questioning.

(5) Any question as to whether any evidence is admissible, or whether any question should or should not be put to a witness, must be determined by the tribunal.

(6) A verbatim record of the evidence given at the hearing must be taken; and the Head of HR must keep that record for a period of at least two years beginning with the day after the date of the end of the hearing.

### **Statements in lieu of oral evidence**

**20.**—(1) Subject to paragraph (2), the tribunal may admit as evidence a witness statement of a proposed witness supplied under regulation 11(4)(c)(ii) or (8)(c)(ii), notwithstanding that the person is not to be called as a witness at the hearing.

(2) Evidence is not admissible under this regulation if it would not have been admissible had it been given orally.

(3) For the purposes of this regulation, a written statement purporting to be made and signed by a person and witnessed by another person must be presumed to have been made by that person unless the contrary is shown.

(4) This regulation does not affect the admissibility of written evidence which would be admissible apart from the provisions of this regulation.

### **Attendance at hearing**

**21.**—(1) Subject to regulations 15 and 24, the hearing of an appeal brought in accordance with regulation 3 or 5 (appeals made in relation to the Conduct Regulations and by former officers) must be held in public.

(2) Subject to paragraph (3) and regulations 22 and 23, the hearing of an appeal brought in accordance with regulation 4 (appeals made in relation to the Performance Regulations) must be held in private.

(3) The tribunal may allow a person to attend all or part of the hearing of an appeal brought in accordance with regulation 4 as an observer for the purposes of training.

### **Attendance of complainant and interested person at hearing**

**22.**—(1) This regulation applies where a complainant or interested person was entitled to attend the original hearing.

(2) The chair must cause notice of the date, time and place of the hearing to be given to the complainant or any interested person at the same time as that notice is given to the appellant and the respondent under regulation 17(1).

(3) Subject to this regulation and regulation 24, the complainant or any interested person (or both) may attend the hearing as an observer.

(4) Subject to this regulation and regulation 24, the complainant or interested person may each be accompanied by one other person, and if the complainant or interested person has a special need, each by one further person to accommodate that need.

(5) The chair may put any questions to the appellant that the complainant or interested person request be put to the appellant.

### **Attendance of Director General and the Ombudsman at hearing**

**23.**—(1) Subject to paragraphs (3) and (4), this regulation applies to a specified appeal.

(2) The chair must cause notice of the date, time and place of the hearing to be given, in the case of a specified appeal—

(a) relating to England and Wales to the Director General, and

(b) relating to Northern Ireland, to the Ombudsman,

at the same time as such notice is given to the appellant and the respondent under regulation 17(1).

*Status: This is the original version (as it was originally made).*

(3) The Director General, or the Ombudsman, as the case may be, may attend the hearing as an observer, except where an appeal is brought in accordance with regulation 4 or 5 (appeals brought in relation to the Performance Regulations or by former MDP officers).

(4) This regulation does not apply if the Director General or Ombudsman is presenting the case in accordance with regulation 10(1).

### **Exclusion from hearing**

**24.**—(1) On the application of the appellant or the respondent or otherwise, the chair may require any person to withdraw from all or any part of the hearing.

(2) The chair may impose such conditions as the chair sees fit relating to the attendance of a person at the hearing in order to facilitate the proper conduct of the hearing.

(3) Where a person is to give evidence as a witness at a hearing, the witness (and any person accompanying the witness) must not be allowed to attend the hearing before giving evidence.

(4) Before excluding any person under paragraph (1) or imposing any conditions under paragraph (2), the chair must take into account any representations made under regulation 17(7)(a) or (b), as the case may be.

### **Statement of tribunal's determination**

**25.**—(1) The tribunal must determine whether the ground or grounds of appeal on which the appellant relies have been made out.

(2) Where the tribunal determines that a ground of appeal under regulation 3(4)(b) or (c), 4(6)(b) or (c) or 5(4)(b) or (c) has been made out, the tribunal may set aside the relevant decision and remit the matter to be decided again in accordance with the relevant provisions of the Conduct Regulations or the Performance Regulations (as the case may be).

(3) Where the tribunal remits the matter under paragraph (2) 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 relevant provisions of the Conduct Regulations or the Performance Regulations (as the case may be) but does not contain any of the members of the original panel.

(4) The determination of the tribunal must be based on a simple majority but must not indicate whether it was taken unanimously or by a majority.

(5) The chair must prepare a written statement of the tribunal’s determination of the appeal and of the reasons for the decision.

(6) As soon as reasonably practicable after the determination of the appeal, the chair must cause the appellant, the respondent and the Head of HR to be given a copy of the written statement; but, in any event, the appellant must be given written notice of the decision of the tribunal before the end of 3 working days beginning with the first working day after the day on which the appeal is determined.

(7) Where the relevant decision arose from a complaint which has been investigated under external procedures, the Head of HR must notify the complainant and any interested person of the decision of the tribunal.

(8) Where the appeal is a specified appeal—

(a) relating to England and Wales, the Head of HR must notify the Director General of the decision of the tribunal except where the Director General is presenting the case in accordance with regulation 10(1);

(b) relating to Northern Ireland, the Head of HR must notify the Ombudsman of the decision of the tribunal, except where the Ombudsman is presenting the case in accordance with regulation 10(1).

- (9) The chair must require the MDP to publish during the notification period—
- (a) subject to paragraph (15), the statement prepared in accordance with paragraph (5), and
  - (b) the report of the persons conducting the misconduct hearing or accelerated misconduct hearing, but only if and to the extent that this has been published under regulation 42(7) or, as the case may be, 63(5) of the Conduct Regulations.
- (10) In paragraph (9), the notification period is the period of 10 working days beginning the day after the day on which the hearing is concluded.
- (11) Where the chair requires publication to take place in accordance with paragraph (9), the MDP must publish the information on its website for a period of no less than 28 days.
- (12) Prior to publication of a statement under paragraph (9)(a), the MDP may redact the document—
- (a) in so far as the force considers redaction is—
    - (i) necessary for the purpose of preventing the premature or inappropriate disclosure of information that is relevant to, or may be used in, any criminal proceedings;
    - (ii) necessary in the interests of national security;
    - (iii) necessary for the purpose of the prevention or detection of crime, or the apprehension or prosecution of offenders;
    - (iv) necessary for the purpose of the prevention or detection of misconduct by other MDP officers or persons under the direction and control of a chief officer of a relevant force or their apprehension for such matters;
    - (v) necessary and proportionate for the protection of the welfare and safety of any informant or witness;
    - (vi) otherwise in the public interest, and
  - (b) in line with any restrictions imposed on the disclosure of information during the course of the proceedings.
- (13) The chair may dispense with the requirement to publish the statement under paragraph (9)
- (a) if in the particular circumstances of the case the chair considers it is appropriate to do so on any of the grounds set out in paragraph (14)(a) or (b).
- (14) In making a decision under paragraph (13), the chair may have regard to any representations—
- (a) provided under regulation 17(7);
  - (b) made at the hearing.
- (15) Paragraphs (9) to (14) do not apply to an appeal brought in accordance with regulation 4 (appeals brought in relation to the Performance Regulations).
- (16) In paragraph (3), “panel” includes a person who conducted an accelerated misconduct hearing under the Conduct Regulations.

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## EXPLANATORY NOTE

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

These Regulations revoke and replace the Ministry of Defence Police (Conduct) Regulations 2015 (SI 2015/25) (“the 2015 Conduct Regulations”), the Ministry of Defence Police (Performance) Regulations 2012 (S.I. 2012/808) (“the 2012 Performance Regulations”) and the Ministry of Defence Police (Tribunals) Regulations 2009 (“the 2009 Tribunals Regulations”), subject to transitional provisions (see regulation 6). They make a number of changes, in part to reflect changes made to the equivalent legislation governing police forces in England and Wales (see the Police (Conduct) Regulations 2020 (S.I. 2020/4), the Police (Performance) Regulations 2020 (S.I. 2020/3), and the Police Appeals Tribunal Rules 2020 (S.I. 2020/1)), following changes to the handling of police complaints and police disciplinary matters made by the Policing and Crime Act 2017 (2017 c. 3) (“the 2017 Act”).

Regulation 3 introduces Schedules 1, 2 and 3 to the Regulations. Schedule 1 contains the Conduct Regulations, which replace the 2015 Conduct Regulations. Part 1 contains preliminary provisions, including interpretation provisions and the application of the Conduct Regulations, and provides for the Regulations to apply with the modifications set out in Schedule 1 to former officers. Part 2 contains general provisions including a statement of the harm test. Part 2 contains general provisions including a statement of the harm test.

Part 3 deals with investigations. Regulation 12 of the Conduct Regulations provides that this Part does not apply to cases investigated under external procedures (including investigations directed or undertaken by the Director General of the Independent Office for Police Conduct (“the Director General”). Regulation 13 of the Conduct Regulations provides for the relevant authority to make a severity assessment in relation to the conduct which is the subject matter of the allegation. There is new provision in this regulation for a matter to be referred to be dealt with under the reflective practice review process under Part 6 of the Regulations (see description below). Regulation 18 of the Conduct Regulations makes provision about the timeliness of investigations. Where an investigation is not completed within a period of 12 months, the relevant authority must provide specified information to the Secretary of State. This duty arises at the end of each 6 month period thereafter.

Part 4 makes provision about misconduct proceedings. New provisions in this Part include, in particular, regulation 24 of the Conduct Regulations, which provides for the Director General or the Police Ombudsman for Northern Ireland to present a case on behalf of the relevant authority; regulation 25 of the Conduct Regulations, which makes provision about joint misconduct proceedings, where 2 or more cases arise from the same matter or incident; regulation 28 of the Conduct Regulations, which specifies the role of the chair of the panel, in the case of a misconduct hearing, and regulation 32 of the Conduct Regulations, which, where a matter is referred to a misconduct hearing, makes provision for a misconduct pre-hearing.

Part 5 makes provision about accelerated misconduct hearings. Such hearings were previously referred to as special case hearings, under the 2015 Conduct Regulations.

Part 6 makes provision for a reflective practice review process. This process does not amount to disciplinary proceedings, as defined in regulation 2(1) of the Conduct Regulations. There is provision for a matter to be referred to be dealt with under this process by the relevant authority when making a severity assessment (under regulation 13(4) of the Conduct Regulations) or, following an investigation, under regulation 23(7) and by a person or persons conducting misconduct proceedings, under regulation 41(1)(b) of the Conduct Regulations. The reflective practice review process consists



of 2 stages; a fact-finding stage (dealt with in regulation 68) and a discussion stage (dealt with in regulation 69 of the Conduct Regulations). Following completion of the discussion stage, the reviewer must produce a reflective review development report, in accordance with regulation 70 of the Conduct Regulations.

Regulation 4 introduces Schedule 4 which contains the Performance Regulations, replacing the 2012 Performance Regulations. These Regulations establish procedures for proceedings in respect of unsatisfactory performance or attendance or gross incompetence of members of police forces of the rank of chief superintendent or below excluding constable probationers.

Regulations 11 (meeting following investigation by the Director General) and 12 (provision of information to the Director General) of the Performance Regulations reflect amendments of Schedule 3 to the Police Reform Act 2002 (c 30) (“the 2002 Act”) made by the 2017 Act. Regulation 13 of the Performance Regulations is a new provision for cases which are referred by the relevant authority under the Conduct Regulations to be dealt with under these Regulations. It applies regulation 11 with modifications to such cases.

Regulation 23 of the Performance Regulations is a new provision which enables the relevant authority to require a second stage meeting in circumstances where there has not been a first stage meeting. The regulation applies where a matter is referred under the Conduct Regulations to be dealt with under the Performance Regulations and the relevant authority (a) considers there are reasonable grounds to conclude that the officer concerned has demonstrated a serious inability or failure to perform the duties of the officer’s rank or role to a satisfactory standard such that referral to a second stage meeting is appropriate; and (b) having consulted, is satisfied that the officer concerned has been given a reasonable opportunity to address the issue but has failed to make a sufficient improvement.

Regulations 31 and 32 of the Performance Regulations also reflect amendments of Schedule 3 to the 2002 Act made by the 2017 Act and relate to cases where a third stage meeting may be required without a first or second stage meeting having been held.

Regulation 5 introduces Schedule 5 which contains the Appeals Tribunals Regulations, replacing the 2009 Tribunals Regulations. These Regulations set out the circumstances in which an MDP officer or former MDP officer may appeal to a police appeals tribunal. They also set out the procedures governing such an appeal. Regulation 10 of the Appeals Tribunals Regulations is a new provision, providing that where under the Conduct Regulations the Director General or the Ombudsman presented the case to which the appeal relates at the misconduct hearing or accelerated misconduct hearing, the Director General, or, as appropriate, the Ombudsman, must present the case for the respondent at the appeal.

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