STATUTORY INSTRUMENTS

2017 No. 84

POLICE

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

Made - - - -	*31st January 2017*
Laid before Parliament	*3rd February 2017*
Coming into force - -	*1st March 2017*

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

PART 1

Preliminary matters

Citation and commencement

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

PART 2

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

Introductory

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

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

(**2**) S.I. 2015/25.

Amendment of regulation 3

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

(2) In paragraph (1)—

(a) omit the definition of "the 2013 Order";

(b) omit the definition of "alternative police force";

(c) after the definition of "the Commission", insert—

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

(d) for the definition of "complainant", substitute—

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

(e) for the definition of "complaint", substitute—

> ""complaint" means an expression of dissatisfaction about the conduct of an MDP officer;";

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

(g) in the definition of "external procedures"—

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

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

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

> "(c) procedures—
>
> (i) established with the Commissioner in accordance with an agreement under article 4 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007(**5**);
>
> (ii) established with the Commissioner in accordance with an agreement under article 3(5) of the Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013(**6**); or
>
> (iii) which apply where the Commissioner has been directed to investigate by an appropriate prosecutor, and for this purpose "appropriate prosecutor" has the meaning given by section 47 of the Police, Public Order and Criminal Justice (Scotland) Act 2006(**7**);";

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

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

(**3**) 2006 asp 10. Section 33 was substituted by section 61 of the Police and Fire Reform (Scotland) Act 2012 (asp 8).
(**4**) Section 26(1) of the Police Reform Act 2002 was amended by section 99 of, and Schedule 16 to, the Police Reform and Social Responsibility Act 2011 (c. 13).
(**5**) S.I. 2007/1098. Article 4 was amended by section 11 of, and Schedule 6 to, the Crime and Courts Act 2013 (c. 22).
(**6**) S.I. 2013/602, to which there are amendments which are not relevant to these Regulations.
(**7**) Section 47 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 was substituted by section 128 of, and Schedule 7 to, the Police and Fire Reform (Scotland) Act 2012.

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

(i) in the definition of "MOD Police Committee", for "Ministry of Defence Police Act 1987" substitute "1987 Act";

(j) in the appropriate places, insert—

""the 1987 Act" means the Ministry of Defence Police Act 1987;";

""relevant authority" has the meaning given in section 4(4) of the 1987 Act;";

""relevant force" has the meaning given in section 2B(3) of the 1987 Act(**8**);";

""relevant lawyer" has the meaning given in section 4(4) of the 1987 Act;".

(3) After paragraph (2), insert—

"(3) For the purposes of these Regulations, the making by an MDP officer of a protected disclosure is not a breach of the Standards of Professional Behaviour, and for this purpose "protected disclosure" has the meaning given by section 43A of the Employment Rights Act 1996(**9**).".

Amendment of regulation 4

4.—(1) Regulation 4 (the harm test) is amended as follows.

(2) In paragraph (1)—

(a) for "are", substitute "is";

(b) for sub-paragraph (c), substitute—

"(c) necessary for the purpose of the prevention or detection of crime, or the apprehension or prosecution of offenders;";

(c) for sub-paragraph (d), substitute—

"(d) necessary for the purpose of the prevention or detection of misconduct by—

(i) other MDP officers;

(ii) persons under the direction and control of the chief constable;

(iii) persons under the direction and control of a chief officer of a relevant force,

or their apprehension for such matters;".

Amendment of regulation 5

5. In regulation 5(1) (conduct matters)—

(a) after the end of sub-paragraph (a), insert "or";

(b) omit sub-paragraphs (c) and (d).

Amendment of regulation 7

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

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

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

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

(3) After paragraph (2), insert—

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

Amendment of regulation 10

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

Insertion of regulation 24A

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

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

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

(a) that all or part of the hearing must be conducted in private;

(b) that a specified person must be excluded from all or part of the hearing;

(c) that steps must be taken to conceal the identity of a witness;

(d) that specified information must be excluded from any notice published under regulation 30A (notification of misconduct hearings) or 40A (publication of information in relation to outcome).

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

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

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

Amendment of regulation 29

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

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

Amendment of regulation 30

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

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

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

Insertion of regulation 30A

11. After regulation 30, insert—

"**Notification of misconduct hearings**

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

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

(a) specify the date ("the specified date") by which written representations under paragraph (4) must be provided;

(b) inform the relevant authority of the specified date; and

(c) consider any representations made under paragraph (4).

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

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

(a) whether, and (if so) the extent to which, the chair should exclude any person from the whole or part of the hearing under regulation 35(6)(a);

(b) whether the chair should impose any conditions under regulation 35(6)(b); and

(c) whether the chair should require notice to be published under paragraph (1) and, if so, which information relating to the matters in paragraph (6) should be included in any such notice.

(5) The persons are—

(a) the officer concerned;

(b) the relevant authority;

(c) the complainant;

(d) any interested person;

(e) any witness;

(f) if the case was investigated under external procedures, the Commission or the Ombudsman.

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

(a) the name of the officer concerned;

(b) the date of the hearing;

(c) the time of the hearing;

(d) the place at which the hearing will take place;

(e) the conduct that is the subject matter of the case and how that conduct is alleged to amount to misconduct or gross misconduct, as set out in the notice given in accordance with regulation 25(1)(a).