Draft Regulations laid before Parliament under section 4A(6) of the Ministry of Defence Police Act 1987, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2009 No. XXXX

POLICE

The Ministry of Defence Police Appeals Tribunals Regulations 2009

Made - - - -	*xx 2009*
Coming into force - -	*1st December 2009*

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 4A of the Ministry of Defence Police Act 1987(**1**).

In accordance with section 4A(6) of the Ministry of Defence Police Act 1987, a draft of these Regulations were laid before Parliament and approved by a resolution of each House of Parliament.

Citation, commencement and extent

1. These Regulations may be cited as the Ministry of Defence Police Appeals Tribunals Regulations 2009 and shall come into force on 1st December 2009.

Revocation and transitional provisions

2.—(1) Subject to paragraph (2), the Ministry of Defence Police Appeal Tribunal Regulations 2004(**2**) ("the 2004 Regulations") are revoked.

(2) In relation to an appeal against a decision made in accordance with the Ministry of Defence Police (Conduct) Regulations 2004(**3**) or the Ministry of Defence Police (Conduct) (Senior Officers) Regulations 2004(**4**) (as the case may be), nothing in these Regulations shall apply and the 2004 Regulations shall continue to have effect.

Interpretation

3.—(1) In these Regulations—

(**1**) 1987 c.4, section 4A was substituted by paragraph 16 of Schedule 22 to the Criminal Justice and Immigration Act 2008 (c.4).
(**2**) S.I. 2004/ 652 as amended by S.I. 2008/2059
(**3**) S.I. 2004/653, as amended by S.I. 2005/3389, and as revoked by S.I. 2009/XXXX.
(**4**) S.I. 2004/654, as revoked by S.I. 2009/XXXX.

"the 1967 Act" means the Police (Scotland) Act 1967(**5**);

"appellant" means a police officer who has given a notice of appeal in accordance with regulation 6 or 7;

"chair" for the purposes of regulations 6 to 11 means the chair appointed under regulation 5(3) or 5(5) (as the case may be); and for the purposes of regulations 12 to 22 means the chair of the tribunal;

"Conduct Regulations" means the Ministry of Defence Police (Conduct) Regulations 2009(**6**);

"original hearing" means the misconduct meeting, misconduct hearing or special case hearing under the Conduct Regulations, at or following which the relevant decision was made;

"panel" includes a person who conducted a special case hearing under the Conduct Regulations;

"relevant decision" means the finding, disciplinary action or outcome which may be appealed or is being appealed to a tribunal in accordance with regulation 4, and related expressions shall be construed accordingly;

"head of HR" means the head of Human Resources in the Agency or, if there ceases to be such an office, the person who in the opinion of the Ministry of Defence Police Committee for the time being exercises comparable functions to those exercisable by the holder of that office;

"respondent" has the meaning given by regulation 8;

"specified appeal" means an appeal where the relevant decision arose from a complaint or conduct matter to which—

(a) in relation to England and Wales, paragraph 17, 18 or 19 of Schedule 3 to the 2002 Act (investigations)(**7**), or

(b) in relation to Northern Ireland, section 54, 56 or 57 of the 1998 Act,

applies; and

"tribunal", in relation to a case or appeal, means the police appeals tribunal appointed to determine the case or appeal;

(2) In these Regulations, any expression which is also used in the Conduct Regulations shall have 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 shall be—

(a) given to the appellant in person; or

(b) left with some person at, or sent by recorded delivery to, the appellant's last known address.

Circumstances in which a police officer may appeal to a tribunal

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

(a) the finding referred to in paragraph (2)(a), (b) or (c) made under the Conduct Regulations; or

(b) the disciplinary action, if any, imposed under the Conduct Regulations in consequence of that finding,

(**5**) 1967 c.77.
(**6**) S.I. 2009/XXXX.
(**7**) Paragraph 17 was amended by paragraph 11(3) of Schedule 2 to and paragraph 15 of Schedule 12 to the Serious Organised Crime and Police Act 2005, paragraph 89 of Schedule 1 to the Police and Justice Act 2006. Paragraph 18 was amended by paragraph 16 of Schedule 12 to the Serious Organised Crime and Police Act 2005. Paragraph 19 was amended by paragraph 17 of Schedule 12 to the Serious Organised Crime and Police Act 2005.

or both.

(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; or

(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 a special case hearing.

(3) A police officer may not appeal to a tribunal against the finding referred to in paragraph (2)(a), (b) or (c) where that finding was made following acceptance by the officer that the 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 disciplinary action imposed was unreasonable; or

(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, the Police (Complaints and Misconduct) Regulations 2004(**8**), Schedule 3 to the 2002 Act(**9**), part VII of the 1998 Act, or other unfairness which could have materially affected the finding or decision on disciplinary action.

Appointment and composition of police appeals tribunal

5.—(1) The composition of the tribunal differs according to—

(a) whether the appellant was a senior officer immediately before the original hearing; and

(b) whether the appellant was a member of the force 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, the tribunal is to consist of three members appointed by the head of HR, of whom—

(a) if the appellant was serving in England and Wales or in Northern Ireland —

(i) one shall be a person chosen from a list of persons who satisfy the judicial-appointment eligibility condition within the meaning of section 50 of the Tribunals, Courts and Enforcement Act 2007(**10**) on a 5-year basis and who have been nominated by the Lord Chancellor for the purposes of this regulation;

(ii) one shall be HMCIC or an inspector of constabulary nominated by HMCIC; and

(iii) one shall be the chair of the Ministry of Defence Police Committee or another member of that Committee nominated by that chair;

(b) if the appellant was serving in Scotland—

(i) one shall 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 1967 Act;

(ii) one shall be the chair of the Ministry of Defence Police Committee or another member of that Committee nominated by that chair; and

(**8**) S.I. 2004/643, as amended by S.I. 2005/3389, 2006/594, 2006/1406, and 2008/2866.

(**9**) Schedule 3 was amended by paragraph 11 of Schedule 2, Schedule 11 and paragraphs 11 to 24 of Schedule 12 to the Serious Organised Crime and Police Act 2005 and by paragraph 89 of Schedule 1 to the Police and Justice Act 2006. It is also amended by paragraphs 3 to 19 of Schedule 23 and part 8 of Schedule 28 to the Criminal Justice and Immigration Act 2008.

(**10**) 2007 c.15.

(iii) one shall be a person who is (or has within the previous five years been) an inspector of constabulary for the purposes of section 33 of the 1967 Act.

(3) The member of the tribunal within paragraph (2)(a)(i) or (b)(i) shall be the chair.

(4) If the appellant was a police officer (other than a senior officer) immediately before the original hearing, the tribunal is to consist of four members appointed by the head of HR, of whom—

(a) if the appellant was serving in England and Wales or in Northern Ireland—

(i) one shall be a person chosen from the list referred to in paragraph (2)(a)(i);

(ii) one shall be a senior officer;

(iii) one shall be a member of the Ministry of Defence Police Committee; and

(iv) one shall be a retired member of the force or an alternative police force who, at the time of the retirement, was a member of an appropriate staff association;

(b) if the appellant was serving in Scotland—

(i) one shall be a person chosen from the list referred to in paragraph (2)(b)(i);

(ii) one shall be a member of the Ministry of Defence Police Committee;

(iii) one shall be a person chosen from a list maintained by the Secretary of State for the purposes of paragraph 2(1)(c) of Schedule 3 to the 1967 Act of persons who are (or have within the last five years been) chief constables, other than a person who is (or has at any time been) chief constable of the force; and

(iv) one shall be a retired member of the force or an alternative police force who, at the time of the retirement, was of an appropriate rank.

(5) The member of the tribunal within paragraph (4)(a)(i) or (b)(i) shall be the chair.

(6) For the purposes of this regulation "appropriate staff association" means—

(a) the Defence Police Federation, where the panel member was, at the time of the retirement, a member of the force other than a senior officer;

(b) the Police Superintendents' Association of England and Wales, where the panel member was, at the time of the retirement, a member of a police force maintained under section 2 of the 1996 Act of the rank of chief superintendent or superintendent; or

(c) the Police Federation of England and Wales, where the panel member was, at the time of the retirement, a member of a police force maintained under section 2 of the 1996 Act below the rank of superintendent; or

(d) the Police Federation for Northern Ireland, where the panel member was, at the time of the retirement a member of the Police Service for Northern Ireland..

(7) For the purposes of this regulation "appropriate rank" means—

(a) where the appellant was, immediately before the original hearing, of the rank of chief superintendent or superintendent, the same rank (as the case may be); or

(b) in any other case, the rank of chief inspector or below.

(8) If at any time that is relevant for the purposes of this regulation, the appellant was serving outside 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 that station at that time.

Notice of appeal

6.—(1) Subject to regulation 7, a police officer who wishes to appeal to a tribunal shall 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 supplied with a written copy of the relevant decision.

(2) The notice of appeal shall be given in writing to the head of HR.

(3) The officer may request a transcript of the proceedings (or part of the proceedings) at the original hearing in the notice of appeal.

7.—(1) This regulation applies where a police officer who wishes to appeal to a tribunal wishes to give notice of the appeal after the end of the period mentioned in regulation 6(1).

(2) A police officer may give notice of the appeal within a reasonable time after the end of such period and the notice shall be accompanied by a statement of the reasons why it was not served within such period and the reasons for the officer's view that it has been served within a reasonable time after such period.

(3) Upon receipt, the head of HR shall supply a copy of the notice and the reasons to the chair who shall determine—

(a) whether it was reasonably practicable for the notice to be given within the period mentioned in regulation 6(1); and

(b) whether the notice has been given within a reasonable time after the end of such period.

(4) If the chair determines either that it was reasonably practicable for the notice to be given within such period or that the notice has not been given within a reasonable time after the end of such period, the appeal shall be dismissed.

(5) Where the appeal is not dismissed under paragraph (4), the appeal shall proceed and the chair shall give directions for the application of regulation 9 to the appeal.

The respondent

8.—(1) Where the appellant is a senior officer, the respondent shall be a person designated by the Ministry of Defence Police Committee.

(2) Where the appellant is any other police officer, the respondent shall be the chief constable.

Procedure on notice of appeal

9.—(1) As soon as reasonably practicable, the head of HR shall supply a copy of the notice of appeal—

(a) to the respondent; and

(b) where the appeal is a specified appeal, to the Commission or Ombudsman (as the case may be).

(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 shall supply to the head of HR—

(a) a copy of the relevant decision made at or following the original hearing provided under regulation 36 or 56 of the Conduct Regulations;

(b) any documents which were made available to the panel conducting the original hearing; and

(c) a copy of any transcript requested under regulation 6(3).

(3) A copy of any such transcript shall at the same time be given to the appellant.

(4) The appellant shall 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;