
THE POLICE AND PRISON OFFICERS
(DISCIPLINE) (AMENDMENT) REGULATIONS 2017

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THE POLICE AND PRISON OFFICERS
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With the approval of the Administrator, the Chief Constable and Superintendent of Prisons makes the following Regulations, in exercise of the powers under sections 11 of the Prisons Ordinance 1971(a) and section 9 of the Police Ordinance 2007(b):

Citation and commencement

- 1.—(1) These Regulations may be cited as the Police and Prison Officers (Discipline) (Amendment) Regulations 2017.
(2) They come into force on 1 March 2017.

Police and Prison Officers (Discipline) Regulations 2013 amended

2. The Police and Prison Officers (Discipline) Regulations 2013(c) are amended as follows.

Regulation 2 amended

- 3.—(1) Regulation 2 (interpretation) is amended as follows.
(2) In paragraph (1), in the definition of—
(a) “Discipline Appeal Panel” after “regulation 27(5)” insert “, or a Panel constituted in accordance with arrangements made under regulation 27A,”;
(b) “Divisional Commander” omit “in the absence of that person”;
(c) “relevant lawyer” for “represent that officer in proceedings” substitute “advise that officer in relation to proceedings”.
(3) At the end of the regulation insert—
“(3) In these Regulations “live link” means a live television link or other arrangement by which a person, when not at the place where a hearing before a Discipline Panel or Discipline Appeal Panel is taking place, is able to participate in the hearing and is able—
(a) to see and hear the hearing; and
(b) to be seen and heard by the persons present at the place where the hearing is taking place.”.

Insertion of regulation 5A (rules of evidence)

4. After regulation 5 insert—

“Rules of evidence

5A. Any rule of law relating to the admissibility of evidence in criminal or civil proceedings before a court does not apply to proceedings under these Regulations.”.

(a) Ordinance 11/1971; section 11 was amended by section 5 of Ordinance 14/2005. There are other amendments but they are not relevant.
(b) Ordinance 6/2007, to which there are amendments but they are not relevant.
(c) P.I. 16/2013.

Regulation 19 amended

5. In regulation 19 (misconduct meeting) for paragraph (10) substitute—

“(10) Where the officer concerned does not attend the meeting, a police friend may attend and may make representations on behalf of the officer.”.

Regulation 21 amended

6. In regulation 21 (application and interpretation of Part 5) for paragraph (2) substitute—

“(2) In this Part, “presiding officer” means the person who presides over the Discipline Panel in accordance with regulation 23(2), (3) or (3A).”.

Regulation 23 amended

7.—(1) Regulation 23 (composition of Discipline Panel) is amended as follows.

(2) For paragraph (3) substitute—

“(3) If the Deputy Chief Constable is unable to act as presiding officer for any reason, the Chief Constable must make arrangements for a person from outside the Service to act as presiding officer.

(3A) The Chief Constable must be satisfied that a person acting as presiding officer under paragraph (3)—

- (a) has sufficient seniority, skills and experience to decide the case; and
- (b) has had no previous involvement in the case.”.

(3) In paragraph (4) omit “or (3)”.

(4) In paragraphs (5) and (6) for “Deputy Chief Constable” substitute “presiding officer”.

Regulation 24 amended

8. For paragraph (4)(b)(ii) of regulation 24 (notice of hearing by Discipline Panel) substitute—

“(ii) the presiding officer has discretion to permit a police friend to represent the officer at the hearing.”.

Regulation 25 amended

9.—(1) Regulation 25 (procedure at hearing by Discipline Panel) is amended as follows.

(2) After paragraph (1) insert—

“(1A) The presiding officer must—

- (a) conduct the hearing in a manner which is fair; and
- (b) seek to avoid undue formality.”.

(3) For paragraphs (5) to (9) substitute—

“(5) Where the officer concerned does not attend the hearing a police friend, a relevant lawyer, or both, may attend the hearing and, at the discretion of the presiding officer, the police friend may make representations on behalf of the officer.

(6) The supervising officer may appoint a person to present the factual background to the allegation to the Discipline Panel.

(7) The person appointed under paragraph (6) must not be the investigating officer, the supervising officer, an interested party or a witness.

(8) Unless the hearing proceeds in the absence of the officer concerned, the officer must be given the opportunity—

- (a) to make oral representations;
- (b) to respond to any view expressed during the hearing;

- (c) subject to paragraph (10)(a), to ask questions of a witness; and
- (d) to confer with a police friend or a relevant lawyer during the hearing.

(9) The presiding officer may permit a police friend, but not a relevant lawyer, to make representations on behalf of the officer concerned.”.

(4) At the end insert—

“(14) The presiding officer may permit any person (including a member of the Discipline Panel) to participate in a hearing via a live link, whether from inside the Areas or elsewhere.”.

Regulation 27 amended

10. In regulation 27 (appeal from a decision of a Divisional Commander or a Discipline Panel) after paragraph (7) insert—

“(7A) Paragraphs (4), (5) and (6) are subject to regulation 27A.”.

Insertion of regulation 27A (Chief Officer, Chief Constable or Deputy Chief Constable unable to hear appeal)

11. After regulation 27 insert—

“Chief Officer, Chief Constable or Deputy Chief Constable unable to determine appeal

27A.—(1) This regulation applies if the Chief Officer, Chief Constable or Deputy Chief Constable is unable to determine an appeal for any reason.

(2) The Chief Officer or Chief Constable, as is appropriate to the case, must make arrangements for the appeal to be determined.

(3) But if both the Chief Officer and the Chief Constable are unable to make arrangements for any reason, the Administrator must make arrangements for the appeal to be heard.

(4) Without limiting the generality of paragraphs (2) and (3)—

- (a) if an appeal is against the decision of a Divisional Commander, the appeal may be determined by—
 - (i) the Chief Constable; or
 - (ii) a person from outside the Service with sufficient seniority, skills and experience, and with no previous involvement in the case;
- (b) if an appeal is against the decision of the Discipline Panel, the Discipline Appeal Panel may comprise a person from outside the Service with sufficient seniority, skills and experience, and with no previous involvement in the case, sitting with one or more of the following—
 - (i) the Chief Constable;
 - (ii) the Chief Officer; or
 - (iii) another person from outside the Service who satisfies the criteria in this sub-paragraph.”.

Regulation 28 amended

12.—(1) Regulation 28 (appeal: procedure) is amended as follows.

(2) In paragraph (3) for “Deputy Chief Constable or the Discipline Panel, as the case may be,” substitute “person or panel determining the appeal”.

(3) In paragraph (5)(a) for “Deputy Chief Constable” substitute “person determining the appeal”.

(4) At the end of the regulation insert—

“(8) The presiding officer may permit any person (including a member of the Discipline Appeal Panel) to participate in a hearing via a live link, whether from inside the Areas or elsewhere.”.

Regulation 29 amended

13.—(1) Regulation 29 (decision on appeal) is amended as follows.

(2) In paragraph (1) for “Deputy Chief Constable or the Discipline Panel, as the case may be,” substitute “person or panel determining the appeal”.

(3) In paragraph (3) for “The Deputy Chief Constable may only” substitute “In an appeal against a decision under the misconduct procedure, the person determining the appeal may only”.

(4) In paragraph (4) omit “(in the case of a Panel of 2, the Chief Officer is to have the casting vote, if necessary)”.

(5) After paragraph (4) insert—

“(4A) In the case of a Discipline Appeal Panel of an even number of persons which is unable to reach a decision unanimously, the casting vote is held by—

- (a) the Chief Officer, where the Panel is constituted under regulation 27(5);
- (b) the person who chairs the Panel, where it is constituted in accordance with arrangements under regulation 27A.”.

(6) In paragraph (7) for “the Deputy Chief Constable or the Discipline Appeal Panel, as the case may be,” substitute “person or panel determining the appeal”.

Transitional provisions

14.—(1) The amendments made by these Regulations apply to all hearings under the Police and Prison Officers (Discipline) Regulations 2013 (“the 2013 Regulations”) which commence on or after the day these Regulations come into force, irrespective of the date an allegation was made or proceedings commenced.

(2) For the purpose of paragraph (1), a “hearing” is—

- (a) a misconduct meeting under regulation 19 (misconduct meeting) of the 2013 Regulations;
- (b) a hearing by the Discipline Panel under regulation 25 (procedure at hearing by Discipline Panel) of the 2013 Regulations; and
- (c) an appeal under regulation 28 (appeal: procedure) of the 2013 Regulations.

Dated this 23rd day of February 2017.

Christopher Eyre,
Chief Constable and Superintendent of Prisons,
Sovereign Base Areas.

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. This explanatory note relates to the Police and Prison Officers (Discipline) (Amendment) Regulations 2017 (“the Regulations”). It has been prepared by the Office of the Attorney General and Legal Adviser in order to assist the reader of the Regulations. It does not form part of the Regulations.
2. The note should be read in conjunction with the Regulations. It is not meant to be a comprehensive description of the Regulations. Accordingly, not all regulations are referred to in the note.
3. The Regulations amend the Police and Prison Officers (Discipline) Regulations 2013 (“the 2013 Regulations”), which set out the legal framework for internal disciplinary proceedings for locally engaged police officers.
4. Regulation 3 amends definitions in regulation 2 of the 2013 Regulations. It expands the definition of Discipline Appeal Panel to include a Panel constituted under new regulation 27A of the 2013 Regulations (see below). The definition of Divisional Commander is changed so that it includes a police officer authorised to act on behalf of a Divisional Commander for any reason, not just during the absence of that person. The definition of “relevant lawyer” is changed to reflect that the role of a lawyer under the Regulations is to advise an officer during disciplinary proceedings, not to represent him or her.
5. Regulation 4 inserts new regulation 5A in the 2013 Regulations. This puts beyond doubt that the rules relating to the admissibility of evidence in criminal or civil proceedings before a court do not apply to disciplinary proceedings.
6. Regulation 5 amends regulation 19 of the 2013 Regulations, providing that where an officer does not attend a hearing, representations can be made on his or her behalf by another police officer.
7. Regulation 7 amends regulation 23 of the 2013 Regulations putting in place procedures for another person to act as presiding officer if the Deputy Chief Constable recuses him or herself or is unable to act. The Chief Constable must make arrangements for a person from outside the service to act as presiding officer. (Regulation 6 makes consequential amendments to the definition of presiding officer in regulation 21 of the 2013 Regulations.)
8. Regulation 9 amends regulation 25 of the 2013 Regulations relating to the procedure at a hearing by a Discipline Panel. The amendments provide the framework for inquisitorial, as opposed to adversarial hearings and place a requirement on the presiding officer to avoid undue formality. The duty of the presenting officer is to present the factual background to the allegation of misconduct to the Panel, not to present the case against the officer. A police officer may be accompanied by a police friend, a lawyer (appointed at the officer’s expense), or both. The officer may confer with the police friend or the lawyer during the hearing, but the lawyer may not make representations to the Panel. Regulation 9 also allows the presiding officer of the Discipline Panel to permit persons to participate via a live link. Regulation 8 amends regulation 24 of the 2013 Regulations as a consequence.
9. Regulation 11 inserts new regulation 27A and puts in place procedures for appeals to be heard by other persons if the Chief Officer, Chief Constable or Deputy Chief Constable is unable to hear the appeal. Regulations 10, 12 and 13 make the consequential amendments to the 2013 Regulations required following the insertion of new regulation 27A. Regulation 12 also allows the presiding officer of the Discipline Appeal Panel to permit persons to participate via a live link.

10. Regulation 14 makes transitional provisions. The amendments to the 2013 Regulations apply to all hearings under the misconduct or serious misconduct procedure which commence on or after the day the Regulations come into force.

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