



POLICE (APPEALS TRIBUNAL) REGULATIONS 2014

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Statutory Document No. 20XX/XX

*Police Act 1993*

POLICE (APPEALS TRIBUNAL) REGULATIONS 2014

*Laid before Tynwald:**Coming into Operation:*

The Department of Home Affairs makes the following Regulations under sections 8, 8A, 8D, 8F, and 8G of the *Police Act 1993*.

PART 1

INTRODUCTORY PROVISIONS

1 Title

These Regulations are the Police (Appeals Tribunal) Regulations 2014.

2 Commencement

These Regulations come into operation on *****.

3 Interpretation

(1) In these Regulations—

“**the Act**” means the *Police Act 1993*;

“**appellant**” means a police officer who has given a notice of appeal in accordance with regulation 5 or 6;

“**conduct regulations**” means the regulations relating to conduct from time to time in force under sections 8, 8A, 8D, 8F and 8G of the Act;

“**original hearing**” means—

(a) the misconduct meeting, misconduct hearing or special case hearing under the conduct regulations; or

(b) the third stage meeting under the performance regulations, at or following which the relevant decision was made;

“**panel**” includes a person who conducted a special case hearing under the conduct regulations;

“**performance regulations**” means the regulations relating to performance from time to time in force under sections 8, 8A, 8D, 8F and 8G of the Act;

“**relevant decision**” means the finding, disciplinary action or outcome which may be appealed or is being appealed to a tribunal in accordance with regulation 5 or 6, and related expressions must be construed accordingly;

“**police force**” means—

- (a) where the appellant is a member of a police force, the Isle of Man Constabulary; and
- (b) where the appellant is a special constable, the Isle of Man Constabulary;

“**respondent**” means -

- (a) where the appellant is a senior officer, a person designated by the Department.
- (b) where the appellant is any other police officer, the Chief Constable.

“**retired officer of appropriate rank**” means—

- (a) where the appellant was, immediately before the proceedings, a senior officer, a retired member of a police force who at the time of his or her retirement was of the same rank or higher;
- (b) in any other case a retired member of a police force who at the time of his or her retirement was of the rank of chief inspector or below; and
- (c) for the purpose of this definition, “**police force**” means a police force anywhere in the British Isles.

“**senior officer**” means an officer of the rank of superintendent or above;

“**specified appeal**” means an appeal against a conduct matter arising due a complaint;

“**tribunal**” means a police appeals tribunal appointed under these Regulations to determine appeals.

- (2) In these Regulations, any expression which is also used in the conduct regulations or the performance regulations must, unless that expression is given a different meaning in paragraph (1), 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 must 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.

PART 2

APPOINTMENT OF A POLICE APPEALS TRIBUNAL

4 Police appeals tribunals

In the case of an appeal by any officer the police appeals tribunal is a relevant lawyer, appointed by the Department, who has seven, or more, years' general experience as a relevant lawyer.

PART 3

CIRCUMSTANCES OF APPEAL

5 Circumstances in which a police officer may appeal to a tribunal – conduct and discipline

- (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) any finding under the conduct regulations that results in a disciplinary action of dismissal, with or without notice being imposed; or
 - (b) the disciplinary action of dismissal, with or without notice, imposed under the conduct regulations in consequence of that finding,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 which has consequently lead to the outcome of dismissal with notice or dismissal without notice being imposed under the conduct regulations; or
 - (b) a senior officer or Chief Constable 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 which has consequently lead to the

outcome of dismissal with notice or dismissal without notice being imposed under the conduct regulations.

- (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 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 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 or other unfairness which could have materially affected the finding or decision on disciplinary action.

6 Circumstances in which a police officer may appeal to a tribunal – performance

- (1) Subject to paragraph (2), a police officer may appeal to a tribunal in reliance on one or more of the grounds of appeal referred to in paragraph (6) against—
 - (a) a finding made under the performance regulations that results in a disciplinary action of dismissal, with or without notice being imposed; or
 - (b) an outcome or dismissal with notice or dismissal without notice that was imposed under the performance regulations as a consequence of such a findingor both.
- (2) A police officer may not appeal to a tribunal against a finding referred to in paragraph (1) 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).
- (3) The grounds of appeal under this regulation are—
 - (a) that the finding or outcome 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 the outcome; or

- (c) that there was a breach of the procedures set out in the performance regulations, or other unfairness which could have materially affected the finding or decision on the outcome; or
- (d) that, where the police officer was required to attend the third stage meeting under the performance regulations, the officer should not have been required to attend that meeting as it did not concern unsatisfactory performance or attendance similar to or connected with the unsatisfactory performance or attendance referred to in the final written improvement notice.

PART 4

NOTICE OF APPEAL

7 Notice of appeal

- (1) Subject to regulation 8, a police 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 Department.
- (3) The officer may request a transcript of the proceedings (or part of the proceedings) at the original hearing in the officer's notice of appeal.

8 Notice of appeal after the expiry of the time limit in 7(1)

- (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 7(1).
- (2) A police officer may give notice of the appeal within a reasonable time after the end of such period and the notice must be accompanied by 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 Department must supply a copy of the notice and the reasons to the tribunal 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 such period.
- (4) If the tribunal 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 must be dismissed.

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

9 Procedure on notice of appeal

- (1) As soon as reasonably practicable, the Department must supply a copy of the notice of appeal—
 - (a) to the respondent; and
 - (b) where the appeal is a specified appeal, to the Commissioner.
- (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 Department—
 - (a) a copy of the relevant decision made at or following the original hearing under the conduct regulations or 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 Department in accordance with paragraph (6)—
 - (a) a statement of the relevant decision and the appellant's 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 in writing that the appellant so consents.
- (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 5(4)(b) or 6(3)(b);
 - (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) 28 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 Department.
- (7) The Department must give a copy of the documents supplied under paragraph (4) to the respondent as soon as practicable following receipt.
- (8) The respondent must, before the end of 28 days beginning with the first working day after the day on which he or she receives the documents given to the respondent under paragraph (7), supply to the Department—
 - (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 that the respondent so consents.
- (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 5(4)(b) or 6(3)(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 5(4)(b) or 6(3)(b).

- (10) The respondent must at the same time as supplying the documents referred to in paragraph (8), 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 Department must give to the tribunal a copy of the documents supplied under paragraphs (4) and (8).

10 Power to request disclosure of documents

- (1) At any time following the provision of the documents mentioned in regulation 9(4) and (8), the appellant or the respondent (the “**requesting party**”) may apply to the tribunal for disclosure of any document by the other party which is relevant to the appeal.
- (2) The tribunal may request the disclosure of any such document by the other party and where it is disclosed, a copy must be given to the tribunal and to the requesting party.
- (3) Where a party does not comply with a request to disclose under paragraph (2), he or she must give the tribunal and the requesting party his or her reasons for non-disclosure in writing.

11 Extensions of time limits

- (1) The appellant or the respondent may apply to the Department 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 practicable after receipt of an application under paragraph (1), the Department 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 he or she 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 9 must have 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 tribunal who must determine whether the relevant period should be extended and if so by how long; and where he or she extends the relevant period, regulation 9 must have 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 9(6)(a) or (b) and, in

relation to an application by the respondent, the period referred to in regulation 9(2) or (8).

PART 6

CONSIDERATION OF APPEAL

12 Review of appeal

- (1) Upon receipt of the documents mentioned in regulation 9(4) and (8), the tribunal must determine whether the appeal should be dismissed under paragraph (2).
- (2) An appeal must be dismissed under this paragraph if the tribunal considers that—
 - (a) the appeal has no real prospect of success; and
 - (b) there is no other compelling reason why the appeal should proceed.
- (3) If the tribunal considers that the appeal should be dismissed under paragraph (2), before making his or her determination, the tribunal must give the appellant and the respondent notice in writing of the tribunal's view together with the reasons for that view.
- (4) The appellant and the respondent may make written representations in response to the tribunal before the end of 10 working days beginning with the first working day after the day of receipt of such notification; and the tribunal must consider any such representations before making his or her determination.
- (5) The tribunal must give the appellant, the respondent and the Department notice in writing of his or her determination.
- (6) Where the tribunal determines that the appeal should be dismissed under paragraph (2)—
 - (a) the notification under paragraph (5) must include the reasons for the determination; and
 - (b) the appeal must be dismissed.

13 Determination of an appeal

- (1) Where an appeal has not been dismissed under regulation 12, the tribunal must determine whether the appeal should be dealt with at a hearing.
- (2) The tribunal may determine that the appeal must be dealt with without a hearing, but only if

- (a) the appellant and the respondent have been afforded an opportunity to make written or, if either so requests, oral representations and any such representations have been considered; and
 - (b) the appellant has so consented.
- (3) Where the appeal is to be dealt with at a hearing, regulation 14 to 25 must apply and the tribunal must give the appellant and the respondent the tribunal's name and contact address.

PART 7

APPEAL HEARING

14 Notice of the hearing

- (1) The tribunal must cause the appellant and the respondent to be given written notice of the date, time and place of the hearing at least 28 days, or such shorter period as may with the agreement of both parties be determined, before the date of the hearing.
- (2) Where—
 - (a) the appellant is relying on the ground of appeal set out in regulation 5(4)(b) or 6(3)(b); and
 - (b) either the appellant or the respondent (or both) have proposed witnesses under regulation 9,the tribunal must determine which, if any, witnesses must give evidence at the hearing.
- (3) No witness must give evidence at the hearing unless the tribunal reasonably believes that it is necessary for the witness to do so, in which case the tribunal must—
 - (a) where the witness is a police 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 his or her attendance is necessary and of the date, time and place of the hearing.

15 Legal and other representation

- (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 him or her being represented.
- (4) The respondent has the right to be represented at a hearing by a relevant lawyer or by an officer of the police force or by the chief executive or other officer or employee of the Department.
- (5) Where a police friend is a police officer or a police staff member, the chief officer of police of the force of which the police friend is a member must permit him or her to use a reasonable amount of duty time for the purposes referred to in this regulation.
- (6) The reference in paragraph (5) to the force of which the police friend is a member must include a reference to the force maintained for the police area for which a special constable is appointed and the force in which a police staff member is serving.

16 Procedure and oral evidence at hearing

- (1) Subject to these Regulations, the procedure at a hearing must be determined by the tribunal.
- (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 Department must keep such record for a period of not less than two years from the date of the end of the hearing.

17 Statements in lieu of oral evidence

- (1) Subject to the provisions of this regulation, the tribunal may admit as evidence a witness statement of a proposed witness supplied under regulation 9(4) or (8), notwithstanding that he or she is not to be called as a witness at the hearing.
- (2) Evidence must not be 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 be shown.

- (4) Nothing in this regulation must prejudice the admission of written evidence which would be admissible apart from the provisions of this regulation.

18 Hearing to be in private

- (1) Subject to paragraph (2) and regulations 19 and 20, the hearing must be held in private.
- (2) The tribunal may allow a person to attend all or part of the hearing as an observer for the purposes of training.

19 Attendance of complainant at hearing

- (1) This regulation must apply in relation to a hearing where the relevant decision arose from a complaint.
- (2) The tribunal 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 such notice is given to the appellant and the respondent under regulation 14(1).
- (3) Subject to the provisions of this regulation and regulation 21, the complainant or any interested person (or both) may attend the hearing as an observer.
- (4) Subject to the provisions of this regulation and regulation 21, 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) a complainant,
 - (b) an interested person, or
 - (c) any person accompanying a complainant or an interested personis a proposed witness (of either party) and is to give evidence at the hearing, none of the persons mentioned in subparagraphs (a) to (c) must be allowed to attend the hearing before that evidence is given.
- (6) The tribunal may, at the tribunal's discretion, put any questions to the appellant that the complainant or interested person request be put to him or her.

20 Attendance of Commissioner at hearing

- (1) This regulation must apply to a hearing where the relevant decision arose from a complaint.

- (2) The tribunal must cause notice of the date, time and place of the hearing to be given to the Commissioner at the same time as such notice is given to the appellant and the respondent under regulation 14(1).
- (3) The Commissioner may make written representations to the tribunal

21 Exclusion from hearing

- (1) On the application of the appellant or the respondent or otherwise, the tribunal may require any observer to withdraw from all or any part of the hearing.
- (2) The tribunal may impose such conditions as the tribunal sees fit relating to the attendance of an observer (or any person accompanying a complainant or interested person) at the hearing in order to facilitate the proper conduct of the hearing.

22 Statement of tribunal's determination

- (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 5(4)(b) or (c) or regulation 6(3)(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 tribunal must prepare a written statement of the tribunal's determination of the appeal and of the reasons for the decision.
- (5) As soon as reasonably practicable after the determination of the appeal the tribunal must cause the appellant, the respondent and the Department to be given a copy of such 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.
- (6) Where the relevant decision arose from a specified appeal, the Department must notify the complainant and any interested party of the decision of the tribunal.
- (7) Where the appeal is a specified appeal, the Department must notify the Commissioner of the decision of the tribunal.

23 Effect of orders

- (1) Where an appeal is allowed, the order made by the tribunal must take effect by way of substitution for the decision appealed against, and as from the date of that decision or, where that decision was itself a decision on appeal, the date of the original decision appealed against.
- (2) Where the effect of the order made by the tribunal is to reinstate the appellant in the force or in the appellant's rank, the appellant must, for the purpose of reckoning service for pension and, to such extent (if any) as may be determined by the order, for the purpose of pay, be deemed to have served in the force or in the appellant's rank continuously from the date of the original decision to the date of the appellant's reinstatement.
- (3) Where the effect of the order made by the tribunal is to reinstate the appellant in the force and the appellant was suspended for a period immediately preceding the date of the original decision or any subsequent decision, the order must deal with the suspension.

24 Remuneration and expenses

The tribunal must be—

- (a) paid such remuneration; and
- (b) reimbursed for such expenses;

as the Department may determine.

25 Costs

- (1) An appellant must pay the whole of the appellant's own costs unless the tribunal directs that the whole or any part of the appellant's costs are to be defrayed by the Department.
- (2) The tribunal may, if it considers the submission of a notice of appeal by an appellant—
 - (a) was malicious;
 - (b) was vexatious; or
 - (c) had not met the circumstances required under regulation 4;direct that whole or part of the costs and expenses of any appeal, including the costs of the respondent and any remuneration or expenses paid by virtue of regulation 24, must be defrayed by the appellant.
- (3) Subject to sub-paragraph (1) and (2), all the costs and expenses of an appeal, including the costs of the respondent and any remuneration or expenses paid by virtue of regulation 24, must be defrayed by the Department.

MADE

JUAN WATTERSON
Minister for Home Affairs

Consultation draft

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set out the constitution of, and procedures for, an appeals tribunal for police officers who wish to appeal against their dismissal from the police force

Consultation draft