

**AN AGREEMENT**

under section 26 of the Police Reform Act 2002

**BETWEEN**

**THE SECRETARY OF STATE FOR DEFENCE**

**AND**

**THE DIRECTOR GENERAL OF THE INDEPENDENT OFFICE FOR  
POLICE CONDUCT**

## **I. Preamble**

1. The Director General of the Independent Office for Police Conduct (“the Director General”) is appointed under the *Police Reform Act 2002*<sup>1</sup> (“the 2002 Act”). The Director General’s statutory function is to secure suitable, efficient and effective arrangements for the handling of complaints, conduct matters and death or serious injury (“DSI”) matters involving persons serving with the police, with an appropriate degree of independence, and in which the public have confidence in relation to police forces in England and Wales. Part 2 of the 2002 Act provides for the handling of complaints, conduct matters and DSI matters involving persons serving with the police.
2. By virtue of the Ministry Of Defence Police Act 1987 (“the 1987 Act”) the Secretary of State for Defence (“Secretary of State”) maintains a police force known as the Ministry of Defence Police Force (“the MDP”). The MDP has jurisdiction throughout the United Kingdom.
3. The force is supported by civilian staff employed by the Secretary of State who are under the direction and control of the chief constable of the MDP.
4. Pursuant to section 3A of the 1987 Act the Secretary of State for Defence has made regulations about the conduct, efficiency and effectiveness and the maintenance of discipline of both former and serving members of the MDP; the suspension of members of the MDP; the establishment of procedures for the taking of disciplinary proceedings in respect of both former and serving members of the MDP, including procedures for cases in which such persons may be dealt with by dismissal.
5. The Secretary of State maintains internal procedures for dealing with misconduct and other disciplinary matters, performance and to support attendance for civilian members of staff. Such staff are subject to the Ministry of Defence code of conduct which incorporates the civil service code.
6. Article 3 of the *Independent Police Complaints Commission (Forces Maintained Otherwise than by Local Policing Bodies) Order 2013* (“the 2013 Order”) requires the establishment and maintenance of procedures similar to the procedures provided for by or under Part 2 of the 2002 Act in relation to any person nominated by the Secretary of State under section 1(1)(a) of the 1987 Act and any person who is employed by the Secretary of State and who is under the direction and control of the chief constable of the MDP.
7. The Director General and the Secretary of State (“the parties”) each has the power to enter into an agreement under section 26(1) of the 2002 Act to establish and maintain such procedures.

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<sup>1</sup> As amended by the Serious Organised Crime and Police Act 2005, the Police and Justice Act 2006, the Criminal Justice and Immigration Act 2008, the Police Reform and Social Responsibility Act 2011, the Police (Complaints and Conduct) Act 2012, the Crime and Courts Act 2013, the Anti-Social Behaviour, Crime and Policing Act 2014 and the Policing and Crime Act 2017.

8. IN PURSUANCE of section 26(1) of the 2002 Act and the 2013 Order, and with the approval of the Secretary of State for the Home Department given under section 26(4) of the 2002 Act, the parties agree as follows:

## **II. Commencement, extent and interpretation**

9. This agreement comes into effect on the 2 November 2020.
10. In accordance with sections 26(8) and 29(8) of the 2002 Act, this agreement extends to England and Wales only, including the sea and other waters within the seaward limits of the territorial sea adjacent to England and Wales.

11. In this agreement—

“civilian staff member” means a person employed by the Secretary of State for Defence and who is under the direction and control of the chief constable of the MDP;

“complaint” has the meaning given to it in section 12 of the 2002 Act;

“conduct matter” has the meaning given to it section 12 of the 2002 Act;

“DSI matter” has the meaning given to it section 12 of the 2002 Act;

“former MDP officer” means a person to whom Regulation 3(2) of Schedule 1 to the Ministry of Defence Police (Conduct, Performance and Appeals Tribunals) Regulations 2020 applies;

“the old disciplinary procedures” means the Ministry of Defence Police (Conduct) Regulations 2015, the Ministry of Defence Police (Performance) Regulations 2012 and the Ministry of Defence Police Appeals Tribunals Regulations 2009;

“the old agreement” means the agreement made pursuant to section 26 of the 2002 Act between the Director General and the Secretary of State signed on 5 March 2018;

“the Complaints Regulations” means the Police (Complaints and Misconduct) Regulations 2020;

“person serving with the MDP” means a member of the MDP or a civilian staff member;

“police barred list” means the list referred to in section 88B(2) of the Police Act 1996;

“relevant officer” has the meaning given to it in section 29 of the 2002 Act subject to the modification in paragraph 18 of this Agreement;

“senior officer” means a member of the MDP holding a rank above that of chief superintendent;

“the statutory guidance” means the guidance issued by the Director General under section 22 of the 2002 Act in February 2020 and any applicable supplementary or replacement guidance issued under that section.

## **III. Transitional Provisions**

12. Subject to paragraph 13, the old agreement is terminated.

13. Nothing in this agreement shall apply and the old agreement shall continue to have effect in circumstances where:
- (a) a complaint, conduct matter or DSI matter came to the attention of the appropriate authority before the date on which this agreement comes into effect and which on that date is the subject of ongoing procedures under Part 2 of the 2002 Act in accordance with the old agreement (“a pre-commencement matter”) or **is the subject of ongoing proceedings under the old disciplinary procedures;**
  - or**
  - (b) a complaint, conduct matter or DSI matter comes to the attention of the appropriate authority after the date on which this agreement comes into effect but is related to a pre-commencement matter.
14. But this agreement will apply where, on or after the date this agreement comes into effect, the Director General:
- (a) determines under section 13B of the 2002 Act (as applied by this agreement) that a complaint, conduct matter or DSI matter is to be re-investigated; or
  - (b) makes a direction under section 28A of the 2002 Act (as applied by this agreement) in relation to a matter.

**IV. Application of Part 2 of the 2002 Act, the Police (Complaints and Misconduct) Regulations 2020 and the statutory guidance to persons serving with the MDP**

15. Part 2 of the 2002 Act (including Schedule 3) except for section 13A, the Complaints Regulations and the statutory guidance apply to persons serving with the MDP and to former MDP officers, subject to the modifications set out in paragraphs 18 - 19 below.
16. The statutory guidance shall be treated as having been issued to –
- (a) the Secretary of State for Defence, where such guidance is issued to local policing bodies;
  - (b) the chief constable of MDP, where such guidance is issued to chief officers.
17. For the purposes of section 26(5) of the 2002 Act, proceedings under the following are identified as disciplinary proceedings for the purposes of this agreement—
- (a) the Ministry of Defence Police Conduct Regulations set out in Schedule 1 to the Ministry of Defence Police (Conduct, Performance and Appeals Tribunals) Regulations 2020 other than Part 6 thereof, and the modifications to those regulations set out in Schedule 2 (former officers);

(b) the Ministry of Defence Police Performance Regulations set out in Schedule 4 to the Ministry of Defence Police (Conduct, Performance and Appeals Tribunals) Regulations 2020.

And the Director General may bring and conduct or otherwise participate or intervene in such proceedings in accordance with the provisions of those regulations.

### Modifications

#### 18. References to—

“appropriate authority” –

- (a) In relation to a person serving with the MDP or in relation to any complaint, conduct matter or investigation relating to such a person, are read as –
  - i. the Secretary of State for Defence, in the case of a senior officer;
  - ii. the chief constable of the MDP, in the case of all other persons serving with the MDP;
- (b) In relation to any other complaint in which the complaint expresses dissatisfaction with the MDP, are read as the chief constable of the MDP;
- (c) In relation to any DSI matter, are read as –
  - i. the Secretary of State for Defence, where the relevant officer is a senior officer;
  - ii. the chief constable of MDP, where the relevant officer is a person serving with the MDP who is not a senior officer.

“chief officer” is read as chief constable of the MDP

“disciplinary proceedings” for the purposes of section 29(1) of the 2002 Act –

- (a) In relation to a member of the MDP, are read as the procedures identified in paragraph 17 of this agreement, but in relation to the proceedings identified in paragraph 17(b), only for the purposes of the following provisions of that Act -
  - i. section 22(8);
  - ii. paragraphs 2(6B), 6(2E), 6A(10), 19ZG(2), 19ZH(6), 20(1), 22(10), 23(5A), 24(6B), 25(4C), 25(4E), 25(14) and 27(2) of Schedule 3;
- (b) In relation to a person serving with the MDP who is not a member of the MDP, have the meaning given in regulations 1 and 47 of the Complaints Regulations

“local policing body” are read as references to the Secretary of State for Defence

“person serving with the police” are read as reference to a member of the MDP or civilian staff member

“the Police (Conduct) Regulations 2020” in the definition of “the Conduct Regulations” in regulation 1(2) of the Complaint Regulations is read as a reference to the regulations identified in paragraph 17(a) of this agreement;

“police force” are read as references to ‘the MDP’

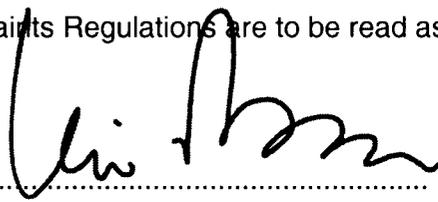
“police officer” or “member of a police force” are read as references to ‘a member of the MDP’

“the Police (Performance) Regulations 2020” in the definition of “performance proceedings” in regulation 1(2) of the Complaint Regulations is read as a reference to the regulations identified in paragraph 17(b) of this agreement

“police staff member” are read as references to a civilian staff member as defined in paragraph 11 of this agreement

“Standards of Professional Behaviour” are read as references to the standards set out in Schedule 3 to the Ministry of Defence Police (Conduct, Performance and Appeals Tribunals) Regulations 2020

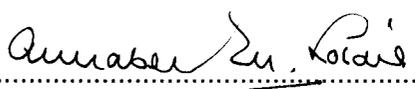
19. The Complaints Regulations are to be read as if any references to the police barred list are omitted.

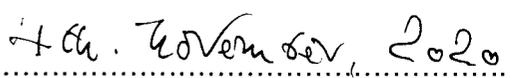
Approved by.....

Date: .....

On behalf of the Secretary of State for the Home Department

**Signatures of the parties**

Signed by.....

Date: .....

On behalf of the Secretary of State for Defence

Signed: .....

10 November 2020

Date: .....

By/~~on behalf of (delete as appropriate)~~ the Director General of the Independent Office for Police Conduct