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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations revoke and re-enact with modifications the Ministry of Defence Police (Conduct) Regulations 2009, and also make amendments to the Ministry of Defence Appeals Tribunals Regulations 2009 (“the Appeal Regulations”) (see Schedule 2), and to the Ministry of Defence (Performance) Regulations 2012 (“the Performance Regulations”) (see Schedule 3). The purpose of the modifications and amendments is to reflect, to the extent possible, changes made to equivalent legislation which governs police forces in England and Wales. That equivalent legislation is the Police Appeals Tribunals Rules 2012(1), the Police (Performance) Regulations 2012(2), and the Police (Conduct) Regulations 2012(3). In particular, the amendments make further provision for the role of the Independent Police Complaints Commission (“the Commission”).

These Regulations establish procedures for the taking of disciplinary proceedings in respect of the conduct of members of the Ministry of Defence Police (“MDP officers”). They apply to all MDP officers, although for senior officers (an MDP officer above the rank of chief superintendent), the persons dealing with some of the proceedings differ. These Regulations apply (see regulation 9) where an allegation comes to the attention of a relevant authority which indicates that the conduct of an MDP officer may amount to misconduct or gross misconduct .

Serious cases of misconduct may be investigated either by the Commission, under procedures established between the Commission and the Secretary of State in accordance with article 3 of the Independent Police Complaints Commission (Forces Maintained Otherwise than by Local Policing Bodies) Order 2013(4), or by the Police Ombudsman for Northern Ireland (“the Ombudsman”) under procedures established between the Secretary of State and the Ombudsman under section 60(1) of the Police (Northern Ireland) Act 2013. These Regulations apply to cases made under these external procedures, but specific provision is made with regard to them.

Part 1 deals with preliminary matters, including transitional provisions and the definition of terms used in the Regulations. Regulation 8 also makes provision in relation to the delegation of the functions of the chief constable for the Ministry of Defence Police and the Ministry of Defence Police Committee under these Regulations.

Part 2 deals with general matters. Regulation 10 makes provision about the role of the police friend and the right to legal representation. Regulation 12 deals with the provision of notices or documents. Regulation 13 provides that disciplinary or special case proceedings should proceed notwithstanding any criminal proceedings unless the relevant authority considers they would prejudice such criminal proceedings. Regulation 14 makes provision in relation to the suspension of an MDP officer.

Part 3 deals with the investigation of conduct allegations. It does not apply to those cases which are investigated under procedures established with the Commission or the Ombudsman. Regulation 16 provides that the relevant authority must make a preliminary assessment as to whether the conduct, if proved, would amount to misconduct, gross misconduct or neither, and sets out what action must or may be taken as a consequence of that assessment. Regulation 17 deals with the appointment of an investigator who, subject to conditions, may be an MDP officer, another person employed in the Ministry of Defence Police or any other person. Regulation 18 sets out the purpose of the investigation. Regulation 19 provides for notice to be given to the officer concerned that there is to

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(1) [S.I. 2012/2630](#).  
(2) [S.I. 2012/2631](#).  
(3) [S.I. 2012/2632](#).  
(4) [S.I. 2013/1779](#).

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be an investigation and describes what must be set out in that notice. Regulation 20 provides that the investigator must consider any suggestions as to lines of inquiry made by the officer concerned within the given time limit. Regulation 21 deals with interviews and regulation 22 with the investigation report.

Part 4 deals with the conduct of proceedings. Regulation 23 provides that on receipt of the investigator's report (made under regulation 22) or a report of an investigation made under procedures established with the Commission or the Ombudsman, the relevant authority must determine whether or not there is a case to answer in respect of misconduct or gross misconduct, and makes provision about the referral of a case to a misconduct meeting or misconduct hearing. Where there is no case to answer, the relevant authority may take no further action, may take management action or may refer the matter to be dealt with under the Performance Regulations. Where there is a case to answer for gross misconduct, the relevant authority must refer the case to a misconduct hearing. Where there is a case to answer for misconduct, the relevant authority may refer the case to misconduct proceedings (either a hearing or, more normally, a meeting) or take management action.

Regulation 24 deals with when and how cases may be withdrawn before the start of misconduct meetings; and what action may be taken. Regulation 25 provides that notice must be given to the officer concerned of the referral of their case to misconduct proceedings and provides that the officer may object to the persons appointed to deal with the case. Regulation 26 sets out the information to be provided by the officer concerned on receipt of a notice under regulation 25. Regulation 27 provides that the person conducting or chairing the misconduct proceedings will decide whether any witnesses will attend the proceedings, and that a witness may only attend where it is reasonably believed to be necessary. Regulation 28 deals with the timing and notice of the misconduct proceedings. Regulations 29 and 30 set out the person(s) who will conduct the misconduct proceedings. Regulations 32 to 36 deal with who must and who may attend those proceedings. Regulation 37 covers the procedure at the proceedings.

Regulation 39 deals with the outcomes following misconduct proceedings. At a misconduct meeting the disciplinary action that may be imposed is management advice, a written warning or a final written warning. Such action is also available at a misconduct hearing, along with dismissal with or without notice or, in exceptional circumstances, the extension of a final written warning. Regulation 40 deals with the notice to be provided to the officer of the outcome of the misconduct proceedings. Regulation 41 makes provision for the record of the proceedings, which the officer must on request be supplied with. Regulations 42 to 44 deal with an appeal by a non senior officer from a misconduct meeting.

Part 5 deals with the procedures for special case hearings for those cases where there is written or documentary evidence to establish gross misconduct on the balance of probabilities and it is in the public interest for the officer concerned to cease to be an MDP officer without delay if the case is proven. Procedures for these cases are fast tracked and there are no witnesses at the hearing.

Part 6 requires that a record be kept for seven years of all proceedings under these Regulations and related appeals.

Part 7 gives effect to the amendments in Schedule 2 and 3.

Schedule 1 sets out the standards of professional behaviour expected of MDP officers, breach of which constitutes misconduct and a breach of which so serious that dismissal would be justified, constitutes gross misconduct.

Schedule 2 makes amendments to the Ministry of Defence Appeal Tribunals Regulations 2009.

Schedule 3 makes amendments to the Ministry of Defence Police (Performance) Regulations 2012.

The Ministry of Defence Police Statement of Civilian Personnel Policy Extended Special Unpaid Leave may be viewed or downloaded from: <https://www.gov.uk/government/publications/mdp-civilian-personnel-policy-extended-special-unpaid-leave-exsul> or obtained by writing to HR Department, MOD Police HQ, Wethersfield, Braintree, Essex CM7 2AZ.

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