
STATUTORY INSTRUMENTS

2015 No. 25

The Ministry of Defence Police (Conduct etc.) Regulations 2015

PART 1

Preliminary

Citation and commencement

1. These Regulations may be cited as the Ministry of Defence Police (Conduct etc.) Regulations 2015 and shall come into force on 23rd February 2015.

Revocation and transitional provisions

2.—(1) Subject to paragraph (2), the 2009 Regulations are revoked.

(2) Where any steps have been taken under the 2009 Regulations before 23rd February 2015 in relation to an allegation in respect of conduct of an MDP officer, nothing in Parts 1 to 7 of these Regulations applies in relation to that allegation and the 2009 Regulations continue to have effect.

(3) The amendments in Schedule 2 to these Regulations (amendments of the Appeal Regulations) do not apply to an appeal against a decision made under the 2009 Regulations.

(4) The amendments in Schedule 3 to these Regulations (amendments of the Performance Regulations) do not apply in any case where any steps have been taken in relation to unsatisfactory performance or attendance by a police officer before 23rd February 2015.

Interpretation

3.—(1) In these Regulations—

“the 1998 Act” means the Police (Northern Ireland) Act 1998⁽¹⁾;

“the 2002 Act” means the Police Reform Act 2002⁽²⁾;

“the 2009 Regulations” means the Ministry of Defence Police (Conduct) Regulations 2009⁽³⁾;

“the 2013 Order” means the Independent Police Complaints Commission (Forces Maintained Otherwise than by Local Policing Bodies) Order 2013⁽⁴⁾;

“allegation” means an allegation relating to a complaint or conduct matter;

“alternative police force” means—

(a) any force maintained under section 2 of the Police Act 1996⁽⁵⁾;

(b) the metropolitan police force;

(c) the City of London police force;

(1) 1998 c. 32.

(2) 2002 c. 30.

(3) S.I. 2009/3069 as amended by S.I. 2012/808.

(4) S.I. 2013/1779.

(5) 1996 c. 16.

(d) the British Transport Police Force;

(e) the Civil Nuclear Constabulary;

(f) the Police Service of Scotland; or

(g) the Police Service for Northern Ireland;

“appeal hearing” means an appeal to the police appeals tribunal in accordance with the Ministry of Defence Police Appeals Tribunals Regulations 2009(6);

“appeal meeting” means a meeting held in accordance with regulation 43 following a misconduct meeting;

“the assessment date” means—

(a) if Part 3 applies to the case, the date of the assessment of the conduct of the officer concerned under regulation 16(1); or

(b) if the case has been investigated under external procedures, the date that the case was referred for such investigation;

“the Commission” means the Independent Police Complaints Commission established under section 9 of the 2002 Act;

“chief constable” means the chief constable of the MDP;

“complainant” has the meaning given to it at section 12(1)(a) to (c) of the 2002 Act;

“complaint” has the meaning given to it by section 12(1) of the 2002 Act;

“conduct matter” has the meaning given to it by regulation 5;

“criminal proceedings” means—

(a) any prospective criminal proceedings;

(b) all criminal proceedings brought which have not been brought to a conclusion (apart from the bringing and determinations of any appeal other than an appeal against conviction);

“disciplinary action” has the meaning given to it by regulation 6;

“disciplinary proceedings” means any proceedings under these Regulations and any appeal from misconduct proceedings or a special case hearing dealt with under the Ministry of Defence Police Appeals Tribunals Regulations 2009;

“document” means anything in which information of any description is recorded and includes any recording of a visual image or images;

“external procedures” means—

(a) procedures established with the Commission in accordance with article 3 of the 2013 Order; or

(b) procedures established with the Ombudsman in accordance with an agreement made under section 60(1) of the 1998 Act;

“gross misconduct” means a breach of the Standards of Professional Behaviour so serious that dismissal would be justified;

“the harm test” has the meaning given to it by regulation 4;

“the Inspector of Constabulary” means;

(a) in relation to England and Wales and Northern Ireland, Her Majesty’s Chief Inspector of Constabulary appointed under section 54(1) of the Police Act 1996 (appointment and functions of inspectors of constabulary) or an inspector of constabulary nominated by the Chief Inspector of Constabulary; and

(b) in relation to Scotland, one of Her Majesty’s Inspectors of Constabulary appointed under section 71 of the Police and Fire Reform (Scotland) Act 2012(7) (inspectors of constabulary);

“informant” means a person who provides information to an investigation on the basis that the person’s identity is not disclosed during the course of the disciplinary proceedings;

“interested party” means a person whose appointment could reasonably give rise to a concern as to whether that person could act impartially under these Regulations;

“interested person” has the meaning given to it by section 21 of the 2002 Act;

“investigator” means a person—

(a) appointed under regulation 17; or

(b) appointed as an investigator under external procedures;

“management action” means action intended to improve the conduct of the officer concerned;

“management advice” means disciplinary action imposed following misconduct proceedings or an appeal meeting;

“MDP” means Ministry of Defence Police;

“MDP officer” means a member of the MDP;

“MOD Police Committee” means the committee appointed by the Secretary of State under section 1(5) of the Ministry of Defence Police Act 1987;

“misconduct” means a breach of the Standards of Professional Behaviour, but which does not amount to gross misconduct;

“misconduct hearing” means a hearing to which the officer concerned is referred under regulation 23 and at which the officer may be dealt with by disciplinary action up to and including dismissal;

“misconduct meeting” means a meeting to which the officer concerned is referred under regulation 23 and at which the officer may be dealt with by disciplinary action up to and including a final written warning;

“misconduct proceedings” means a misconduct meeting or misconduct hearing;

“the officer concerned” has the meaning given in regulation 9(1);

“the Ombudsman” means the Police Ombudsman for Northern Ireland established under section 51 of the 1998 Act;

“the Performance Regulations” means the Ministry of Defence Police (Performance) Regulations 2012(8);

“police friend” means a person chosen by the officer concerned in accordance with regulation 10;

“proposed witness” means a witness whose attendance at the misconduct proceedings the officer concerned or the relevant authority wishes to request of the person conducting or chairing those proceedings;

“special case hearing” means a hearing to which the officer concerned is referred under regulation 45 after the case has been certified as a special case;

“special case proceedings” means the referral of a case to a special case hearing and any proceedings at or in connection with such a referral;

“the special conditions” has the meaning given to it by regulation 22(4);

(7) 2012 asp. 8.
(8) S.I. 2012/808.

“staff association” means—

- (a) in relation to an MDP officer other than a senior officer, the Defence Police Federation; and
- (b) in relation to a senior officer, the Chief Police Officers’ Staff Association;

“staff member” means any person other than an MDP officer who is employed by the Secretary of State for Defence;

“Standards of Professional Behaviour” means the standards of professional behaviour contained in Schedule 1;

“working day” means any day other than—

- (a) a Saturday or Sunday;
- (b) a day which is a bank holiday in accordance with section 1 of the Banking and Financial Dealings Act 1971⁽⁹⁾ in England and Wales, Scotland or Northern Ireland; or
- (c) a day which is a public holiday in England, Wales, Scotland or in Northern Ireland.

(2) In these Regulations a reference to a copy of a statement shall, where the statement was not made in writing, be construed as a reference to a copy of an account of that statement.

The harm test

4.—(1) Information in documents which are stated to be subject to the harm test may not be supplied to the officer concerned in so far as the relevant authority considers that preventing disclosure is—

- (a) necessary for the purpose of preventing the premature or inappropriate disclosure of information that is relevant to, or may be used in, any criminal proceedings;
- (b) necessary in the interests of national security;
- (c) necessary for the purpose of the prevention or detection of misconduct by other MDP officers or staff members or their apprehension for such matters;
- (d) necessary for the purpose of the prevention or detection of misconduct by police officers from alternative police forces or their apprehension for such matters;
- (e) justified on the grounds that providing the information would involve disproportionate effort in comparison to the seriousness of the allegations against the officer concerned;
- (f) necessary and proportionate for the protection of the welfare and safety of any informant or witness; or
- (g) otherwise in the public interest.

(2) Where the harm test is satisfied in relation to any information, the relevant authority—

- (a) may not supply that information to the officer concerned; and
- (b) must inform the person conducting or chairing misconduct proceedings that the harm test is satisfied in relation to that information.

Conduct matters

5.—(1) A conduct matter is any matter which is not and has not been the subject of a complaint but in the case of which there is an indication that an MDP officer may have—

- (a) committed a criminal offence;
- (b) behaved in a manner which would justify the bringing of disciplinary proceedings;

(9) 1971 c. 80.

- (c) failed to attend an interview when given written notice to do so under regulation 21(5) (or any equivalent notice given under external procedures); or
- (d) failed to attend misconduct proceedings (regulation 32(1)) or a special case hearing (regulation 53(1)).

(2) In this regulation, “conduct” includes acts, omissions, statements and decisions (whether actual, alleged or inferred).

Disciplinary action

6. Disciplinary action means, in order of seriousness starting with the least serious action—
- (a) management advice;
 - (b) a written warning;
 - (c) a final written warning;
 - (d) an extension to a final written warning;
 - (e) dismissal with notice; or
 - (f) dismissal without notice.

Written warnings

- 7.—(1) For the purposes of these Regulations—
- (a) a written warning remains in force for a period of 12 months beginning on the day after it was given; and
 - (b) subject to regulations 39(7)(b) and 59(3)(b), a final written warning remains in force for a period of 18 months beginning on the on the day after it was given.
- (2) The reference to the period of—
- (a) 12 months in paragraph (1)(a), and
 - (b) 18 months in paragraph (1)(b) and regulations 39(8) and 59(4),

does not include any time when the officer concerned is taking “Extended Special Unpaid Leave” under the Ministry of Defence Police Statement of Civilian Personnel Policy Extended Special Unpaid Leave issued on 31st October 2011⁽¹⁰⁾.

Delegation

- 8.—(1) The relevant authority may delegate any of its functions under these Regulations—
- (a) subject to paragraph (2), where it is the chief constable, to an MDP officer of at least the rank of chief inspector; or
 - (b) where it is the MOD Police Committee, to a sub-committee of no fewer than three persons appointed by the MOD Police Committee.
- (2) Where a function under regulation 14 or 45 has been delegated under paragraph (1)(a), any decision taken under those regulations shall be authorised by a senior officer.

⁽¹⁰⁾ <https://www.gov.uk/government/publications/mdp-civilian-personnel-policy-extended-special-unpaid-leave-exsul>.