

**EXPLANATORY MEMORANDUM TO**  
**THE MINISTRY OF DEFENCE POLICE (CONDUCT ETC) REGULATIONS**

**2015 No. 25**

**1.** This explanatory memorandum has been prepared by the Ministry of Defence and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 These regulations revoke and replace the Ministry of Defence Police (Conduct) Regulations 2009 (“the 2009 Regulations”) (S.I. 2009/3069, as amended by the Ministry of Defence Police (Performance) Regulations 2012 (S.I. 2012/808)). They also reflect changes made by the Police Reform and Social Responsibility Act 2011 (“the 2011 Act”) in relation to complaints against the police, and improve the procedure for dealing with unsatisfactory conduct in the Ministry of Defence Police (“MDP”).

2.2 These regulations also amend the MOD Police (Performance) Regulations 2012 (S.I. 2012/808) (“the Performance Regulations”) and the MOD Police Appeal Tribunals Regulations 2009 (S.I. 2009/3070) (“the Appeal Regulations”).

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None

**4. Legislative Context**

4.1 Section 3A of the Ministry of Defence Police Act 1987 (“the 1987 Act”), which was inserted by s.79 of the Police Reform Act 2002 (“the 2002 Act”), makes provision for the Secretary of State to prescribe procedures to deal with the conduct, efficiency and effectiveness of members of the MOD Police and the maintenance of discipline.

4.2 The Police Act 2011 makes changes to Part 2 of the 2002 Act relating to the handling of complaints and conduct matters against the police and the appeals procedure. This Home Office primary legislation has been amended, and so the regulations under that legislation have been updated. In order to ensure that the disciplinary process for the MDP continues to reflect the procedures for the Home Office Police Forces, changes to the 2009 Regulations are required.

**5. Territorial Extent and Application**

5.1 This instrument has the same extent and application as section 3A of the 1987 Act (England and Wales, Scotland and Northern Ireland).

5.2 MDP officers have jurisdiction to exercise constabulary powers in the United Kingdom in accordance with section 2 of the 1987 Act.

## 6. European Convention on Human Rights

As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

## 7. Policy background

- *What is being done and why*

### *Conduct*

7.1 These Regulations set out a detailed procedure for the investigation of allegations of misconduct against MDP officers of all ranks, for the taking of disciplinary proceedings and for the imposition of sanctions. They include provision as to matters such as suspension, representation, the service of notices and evidence and the composition of panels to hear proceedings. Serious cases of misconduct by MDP officers may be investigated by either the Independent Police Complaints Commission (“the Commission”) (see article 3 of the Independent Police Complaints Commission (Forces Maintained otherwise than by Local Policing Bodies) Order 2013 (S.I. 2013/1779)) or the Police Ombudsman for Northern Ireland (“the Ombudsman”) (see section 60(1) of the Police (Northern Ireland) Act 2013). The Regulations provide for the involvement of the Commission and the Ombudsman, as well as the complainant or other interested persons, in proceedings under these Regulations.

These Regulations reflect changes to the procedure set out in the Police (Conduct) Regulations 2012 (S.I. 2012/2632) made pursuant to amendments to Part 2 of the 2011 Act (in relation to complaints against the police) and to improve the procedure for MDP officers.

Regulation 9(2) allows multiple allegations of misconduct to be considered together when deciding how the case should be handled and what disciplinary action should be imposed.

Regulations 30 and 51 require misconduct proceedings or special case hearings concerning senior MDP officers to be conducted by a panel composed of a legally qualified chair, Her Majesty’s Chief Inspector of Constabulary (or one of his Inspectors) and a lay person selected from a list maintained for these purposes. A special case hearing is a disciplinary meeting held in a case where the relevant authority determines there is sufficient written evidence to establish on balance of probabilities, without the need for further evidence, that the conduct of the officer concerned constitutes gross misconduct, and it is in the public interest for the officer to cease to be a police officer without delay. A special case hearing may also be held on the recommendation or at the direction of the Commission or Ombudsman.

Regulations 38 and 58 apply where there have been misconduct proceedings or a special case hearing and the officer concerned is a senior MDP officer. They provide for a report to be made to the MOD Police Committee as to the findings of those proceedings. The MOD Police Committee must then meet to decide what disciplinary action (if any) should be imposed.

Regulations 34 and 55 permit a complainant or interested person to attend the misconduct proceedings or special case hearing and to be notified of the outcome of those proceedings.

There are also minor procedural changes to improve the procedure.

### *Appeals*

Schedule 2 makes amendments to the Appeal Regulations.

These amendments reflect changes (save for those relating to elected police and crime commissioners) that were made to the Police Appeal Tribunal Rules (S.I. 2012/2630). They also make changes to the composition of appeals tribunals.

In Regulation 3 (paragraph 2(4) of Schedule 2) the definition of “specified appeal” is changed to ensure consistency with the Police Misconduct Regulations 2012 and the Police Performance Regulations 2012. This means that, in the case of a specified appeal, the Commission or Ombudsman will be supplied with the notice of appeal, notified of the hearing, allowed to attend as an observer, and notified of the tribunal decision.

In Regulation 5 (paragraph 5 of Schedule 2) some changes have been made to the composition of appeal tribunals. For officers other than senior officers, the number of persons on the tribunal is reduced from 4 to 3. For MDP officers other than senior officers serving in England and Wales or Northern Ireland, the composition of the tribunals follows the model set out in the Police Appeals Tribunals Rules 2012. This is also the case for senior MDP officers. For those officers serving in Scotland, the composition of the tribunals has been aligned to that provided for officers of the Police Service of Scotland.

A new provision has been inserted (paragraph 10 of Schedule 2) into regulation 22 in relation to the situation where a tribunal determines there is fresh evidence or that there was a procedural fault or other unfairness that could have materially affected the decision appealed against. It allows a tribunal to remit a matter back for a fresh hearing or meeting. In this situation, the tribunal may deal with the appellant in any way that he could have been dealt with by the maker of the decision appealed against. But the tribunal, which will not have heard all of the evidence, will not be well placed to determine how the matter should have been decided had the fresh evidence been available in the original proceedings or the procedural failure or other unfairness had not occurred. This allows the tribunal to remit the

matter for re-hearing in these circumstances. Where this happens, the tribunal or person conducting the fresh hearing or meeting must not have been involved in making the original decision.

### ***Performance***

Schedule 3 makes amendments to the Performance Regulations.

These reflect amendments made to the Police Performance Regulations 2012 (S.I. 2012/2631). The amendments allow the Commission to recommend, and ultimately direct, the institution of procedures under the Performance Regulations in a case where there has been an investigation of a complaint or conduct matter by the Commission.

New regulations 11A and 11B (paragraph 4 of Schedule 3) reflect regulations 12 and 13 of the Police (Performance) Regulations 2012 (S.I. 2012/2631). New regulation 11A makes provision enabling the Commission to recommend and direct unsatisfactory performance procedures in relation to a death or serious injury matter.

New regulation 11B ensures that the Commission is notified of the outcome of procedures under the Performance Regulations in cases in which it has had prior involvement.

A new regulation 28(1) (paragraph 6 of Schedule 3) allows the Commission, in a case which has been investigated by the Commission and where the Commission is of the view that the performance of the officer concerned constitutes gross incompetence, to recommend or direct that procedures under the Performance Regulations commence at the third or final stage, without having to pass through the preceding two stages.

New regulations 35A to 35C (paragraph 10 of Schedule 3) allow the Commission, complainants and other persons to attend a third stage meeting in which they have an interest, along the lines of the provisions applying to proceedings for misconduct.

A new regulation 38(4A) (paragraph 12 of Schedule 3) makes further provision about the process to be followed and matters to be taken into account in reaching a decision in a third stage meeting.

There are further minor changes to improve the procedure.

- ***Consolidation***

7.2 These Regulations replace the 2009 Regulations, and amend the Performance Regulations and the Appeal Regulations.

## **8. Consultation outcome**

8.1 The Ministry of Defence consulted the Defence Police Federation, the MDP Chief Officers' Association, the Home Office, the Independent Police

Complaints Commission, the Police Ombudsman for Northern Ireland and the Scottish Government. Generally all were supportive of the new regulations which reflect the current procedures for Home Office police forces in the MOD Police as far as practicable.

**9. Guidance**

9.1 The MOD Police will update its non-statutory guidance concerning conduct, performance and appeals to reflect the changes made to the procedures.

**10. Impact**

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is minimal. The costs of these regulations for the MDP will be limited and met from existing MDP budgets.

10.3 An Impact Assessment has not been prepared for this instrument because no impact on the private or voluntary sector is foreseen.

**11. Regulating small business**

11.1 The legislation does not apply to small business.

**12. Monitoring and review**

12.1 The Ministry of Defence will keep the operation of these Regulations under review.

**13. Contact**

Karen Feather at the Ministry of Defence (telephone: 020 7807 8245 email: [karen.feather384@mod.uk](mailto:karen.feather384@mod.uk)) can answer any queries regarding this instrument.