
EXPLANATORY NOTE

(This note is not part of the Regulations)

The Regulations establish procedures for the taking of disciplinary proceedings in respect of the conduct of members of the Ministry of Defence Police (“police officers”). They apply to all police officers, although for senior officers (a police officer above the rank of chief superintendent), the persons dealing with some of the proceedings differ. These Regulations also make provision in relation to the representation of police officers by a police friend at any misconduct proceedings and representation by a lawyer at a misconduct hearing or special case hearing at which the officer concerned may be dismissed.

These Regulations apply where an allegation comes to the attention of an appropriate authority (as defined in regulation 3) which indicates that the conduct of a police officer may amount to misconduct or gross misconduct (as defined in regulation 3). This includes an allegation contained within a complaint or conduct matter referred to:

- the Independent Police Complaints Commission in accordance with the Police Reform Act 2002 (“the 2002 Act”), or
- the Police Ombudsman for Northern Ireland in accordance with the Police (Northern Ireland) Act 1998 (“the 1998 Act”)

except that Part 3 of these Regulations (Investigations) does not apply in such cases where Schedule 3 to the 2002 Act or section 54, 56 or 57 of the 1998 Act deal with the investigation of such cases. These are cases where the Commission (under Schedule 3 to the 2002 Act) or the Ombudsman (under section 54, 56 or 57 of the 1998 Act) is involved in the investigation.

Part 1 deals with preliminary matters. Regulation 2 revokes the Ministry of Defence Police (Conduct) Regulations 2004 and the Ministry of Defence Police (Conduct) (Senior Officers) Regulations 2004 save in relation to proceedings outstanding at 1 December 2009. Regulation 3 provides definitions of terms used in these Regulations, including the ‘special conditions’ which trigger the fast track procedure set out in Part 5. Regulation 3 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. Regulation 4 sets out the harm test, which mirrors provisions in the Police (Complaints and Misconduct) Regulations 2004, placing restrictions on the disclosure of information to the officer concerned in the public interest.

Part 2 deals with general matters. Regulations 6 and 7 make provision about the role of a police friend under these Regulations and the right to legal representation. Regulation 8 deals with the provision of notices or documents to the officer concerned. Regulation 9 provides that disciplinary or special case proceedings should proceed notwithstanding any criminal proceedings unless the appropriate authority considers they would prejudice such criminal proceedings. Regulation 10 makes provision in relation to the suspension of a police officer.

Part 3 deals with the investigation of conduct allegations other than those dealt with under Schedule 3 to the 2002 Act or section 54, 56 or 57 of the 1998 Act. Regulation 12 provides that the appropriate 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 13 deals with the appointment of an investigator who, subject to conditions, may be a police officer, another person employed in the Ministry of Defence Police and Guarding Agency or any other person. Regulation 14 sets out the purpose of the investigation. Regulation 15 provides for notice to be given to the officer concerned that there is to

be an investigation and describes what must be set out in that notice. Regulation 16 provides that the investigator must consider any suggestions as to lines of inquiry made by the officer concerned within the given time limit. Regulation 17 deals with interviews and regulation 18 with the investigation report.

Part 4 relates to misconduct proceedings. Regulation 19 provides that on receipt of the investigator's report (under these Regulations, Schedule 3 to the 2002 Act or section 56 or 57 of the 1998 Act) the appropriate 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 appropriate authority may take no further action, may take management action or may refer the matter under the Ministry of Defence 'Restoring Efficiency Procedures'. Where there is a case to answer for gross misconduct, the appropriate authority must refer the case to a misconduct hearing. Where there is a case to answer for misconduct, the appropriate authority may refer the case to misconduct proceedings (either a hearing or, more normally, a meeting) or take management action.

Regulation 20 deals with when and how cases may be withdrawn before the start of misconduct meetings; and what action may be taken. Regulation 21 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 22 sets out the information to be provided by the officer concerned on receipt of a notice under regulation 21. Regulation 23 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 24 deals with the timing and notice of the misconduct proceedings. Regulations 25 to 27 set out the person(s) who will conduct the misconduct proceedings. Regulations 29 to 33 deal with who must and who may attend those proceedings. Regulation 34 covers the procedure at the proceedings.

Regulation 35 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 36 deals with the notice to be provided to the officer of the outcome of the misconduct proceedings. Regulation 37 makes provision for the record of the proceedings, which the officer must on request be supplied with. Regulations 38 to 40 deal with an appeal by a non senior officer from a misconduct meeting. Non senior officers have a right to appeal from a misconduct hearing to a police appeals tribunal (PAT) under the Ministry of Defence Police Appeals Tribunal Regulations 2009 (the PAT Regulations); senior officers have a right of appeal from a misconduct meeting or a misconduct hearing to a PAT under the PAT Regulations.

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 a police 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 deals with the record to be kept of all proceedings and appeals under these Regulations. Any officer has the right of appeal from a special case hearing to a PAT under the PAT Regulations.

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

These Regulations were laid before Parliament in draft as they are Regulations under section 4 of the Ministry of Defence Police Act 1987 coming into force at a time that is the earliest time at which any Regulations under section 4 are to come into force after the commencement of paragraph 15 of Schedule 22 to the Criminal Justice and Immigration Act 2008 (see section 4(7) of the Ministry of Defence Police Act 1987).

Document Generated: 2023-05-28

Draft Legislation: *This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: The Ministry of Defence Police (Conduct) Regulations 2009 No. 3069*

Copies of the Restoring Efficiency Procedures and the Ministry of Defence Police Statements of Civilian Personnel Policy Extended Special Unpaid Leave and Civilian Personnel Policy Handling Personal Data referred to in regulation 3 of these Regulations may be obtained from the People, Pay and Pensions Agency (PPPA) at People Service Centre PPPA, Foxhill, Bath BA1 5AB (telephone: 0800 345 7772).