Draft Regulations laid before Parliament under section 4(7) of the Ministry of Defence Police Act 1987, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2009 No. 0000

POLICE

The Ministry of Defence Police (Conduct) Regulations 2009

Made - - - -	*2009*
Coming into force - -	*1st December 2009*

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 3A and 4 of the Ministry of Defence Police Act 1987(**1**).

In accordance with section 4(7) of that Act, a draft of these Regulations was laid before Parliament and approved by a resolution of each House of Parliament.

PART 1

Preliminary

Citation and commencement

1. These Regulations may be cited as the Ministry of Defence Police (Conduct) Regulations 2009 and shall come into force on 1 December 2009.

Revocation and transitional provisions

2.—(1) Subject to paragraph (2), the Ministry of Defence Police (Conduct) Regulations 2004(**2**) and the Ministry of Defence Police (Conduct) (Senior Officers) Regulations 2004(**3**) (together "the 2004 Regulations") are revoked.

(2) Where an allegation in respect of conduct by a member of the Ministry of Defence Police came to the attention of the appropriate authority before 1 December 2009 nothing in these Regulations shall apply and the 2004 Regulations shall continue to have effect.

(**1**) 1987 c. 4, section 3A was inserted by the section 79(1) of the Police Reform Act 2002 (c. 30) and amended by paragraph 14 of Schedule 22 to the Criminal Justice and Immigration Act 2008 (c. 4); section 4 was substituted by paragraph 15 of Schedule 22 to the Criminal Justice and Immigration Act 2008 (c. 4).

(**2**) S.I. 2004/653, as amended by S.I. 2005/3389.

(**3**) S.I. 2004/654

Interpretation and delegation

3.—(1) In these Regulations—

"the 1987 Act" means the Ministry of Defence Police Act 1987;

"the 1996 Act" means the Police Act 1996(**4**);

"the 1998 Act" means the Police (Northern Ireland) Act 1998(**5**);

"the 2002 Act" means the Police Reform Act 2002(**6**);

"the 2006 Act" means the Police, Public Order and Criminal Justice (Scotland) Act 2006(**7**);

"the Complaints Regulations" means the Police (Complaints and Misconduct) Regulations 2004(**8**);

"Agency" means the Ministry of Defence Police and Guarding Agency;

"Agency staff member" means any person other than a police officer who is employed by the Secretary of State in the Agency;

"allegation" means an allegation relating to a complaint or conduct matter;

"appropriate authority" means—

(a) where the officer concerned is a senior officer, the Ministry of Defence Police Committee;

(b) in any other case, the chief constable;

"appeal hearing" means an appeal to the police appeals tribunal in accordance with the Ministry of Defence Police Appeals Tribunals Regulations 2009(**9**);

"appeal meeting" means a meeting held in accordance with regulation 39 following a misconduct meeting;

"bank holiday" means a day which is a bank holiday under the Banking and Financial Dealings Act 1971(**10**) in England and Wales, in Scotland or in Northern Ireland (as the case may be);

"chief constable" means the chief constable of the force;

"complainant" means—

(a) in relation to England and Wales, a person who would, in accordance with section 12(1)(a) to (c) (as the case may be) of the 2002 Act, constitute a complainant for the purposes of Part 2 of that Act;

(b) in relation to Scotland, a person who would, in accordance with section 34(6)(a) to (c) (as the case may be) of the 2006 Act, constitute a complainer for the purposes of Part 1 of that Act; or

(c) in relation to Northern Ireland, the person by, or on behalf of whom, a complaint is made;

"complaint" means—

(a) in relation to England and Wales, a matter which would, in accordance with section 12 of the 2002 Act, constitute a complaint for the purposes of Part 2 of that Act;

(b) in relation to Scotland, a matter which would, in accordance with section 34 of the 2006 Act, constitute a complaint for the purposes of Part 1 of that Act; or

(**4**) 1996 c. 16.
(**5**) 1998 c. 32.
(**6**) 2002 c. 30.
(**7**) 2006 asp 10
(**8**) S.I. 2004/643, as amended by S.I. 2008/2866
(**9**) S.I. 2009/xxxx
(**10**) 1971 c. 80.

(c) in relation to Northern Ireland, a matter which would, in accordance with section 52 of the 1998 Act, constitute a complaint for the purposes of Part 7 of that Act;

"conduct" includes acts, omissions and statements (whether actual, alleged or inferred);

"conduct matter" means any matter which is not and has not been the subject of a complaint but in the case of which there is an indication (whether from circumstances or otherwise) that a member of the force may have—

(a) committed a criminal offence; or

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

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

"counsel" means—

(a) in England and Wales, a relevant lawyer;

(b) in Scotland, an advocate; and

(c) in Northern Ireland, a barrister in independent practice;

"criminal proceedings" means—

(a) any prospective criminal proceedings; or

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

"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 as described in regulation 35(6)(b);

(e) dismissal with notice; or

(f) dismissal without notice;

"disciplinary proceedings" means, other than in paragraph (7) of this regulation, 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;

"the force" means the Ministry of Defence Police;

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

"harm test" has the meaning given to it in regulation 4;

"HMCIC" 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 1996 Act (appointment and functions of inspectors of constabulary); and

(b) in relation to Scotland, Her Majesty's Chief Inspector of Constabulary Scotland appointed under section 33(1) of the Police (Scotland) Act 1967(**11**) (Inspectors of Constabulary);

(**11**) 1967 c. 77.

"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 he or she could act impartially under these Regulations;

"interested person" means a person who has an interest in being kept properly informed about the handling of a complaint or conduct matter;

"investigator" means a person—

(a) appointed under regulation 13;

(b) in relation to England and Wales, appointed or designated under paragraph 16, 17, 18 or 19 of Schedule 3 (handling of complaints and conduct matters) to the 2002 Act (investigations); or

(c) in relation to Northern Ireland, appointed or designated under section 54, 56 and 57 of the 1998 Act;

as the case may be;

"management action" means action or advice intended to improve the conduct of the officer concerned;

"management advice" means management action imposed following misconduct proceedings or an appeal meeting;

"Ministry of Defence Police Committee" means the committee appointed by the Secretary of State under section 1(5) of the 1987 Act or, in relation to any function under these Regulations that that committee has determined is to be delegated to a sub-committee appointed by the committee, the sub-committee to which it is so delegated;

"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 19 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 19 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" means the police officer in relation to whose conduct there has been an allegation;

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

"alternative police force" means one of the police forces in paragraph (2)(c) of this regulation;

"other police officer" means a police officer from an alternative police force;

"personal file" means the personal file maintained in accordance with the Ministry of Defence Statement of Civilian Personnel Policy Handling Personal Data;

"police friend" means a person chosen by the officer concerned in accordance with regulation 6;

"police officer" means a member of the force;

"proposed witness" means a witness whose attendance at the misconduct proceedings the officer concerned or the appropriate authority (as the case may be) wishes to request of the person conducting or chairing those proceedings;

"relevant lawyer" has the same meaning as in section 4(4) of the 1987 Act, subject to the provisions of paragraph 35 of Schedule 27 to the Criminal Justice and Immigration Act 2008(**12**);

"the Restoring Efficiency Procedures" means the Ministry of Defence 'Restoring Efficiency Unsatisfactory work performance' and the 'Restoring Efficiency Procedures for unsatisfactory attendance due to excessive sick absence';

"senior officer" means a member of the force holding a rank above that of chief superintendent;

"special case hearing" means a hearing to which the officer concerned is referred under regulation 41 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 hearing;

"special conditions" means the conditions in paragraph (2)(b) of this regulation;

"staff association" means—

(a) in relation to a member of the force other than a senior officer, the Defence Police Federation; and

(b) in relation to a senior officer, the Chief Police Officers' Staff Association;

"Standards of Professional Behaviour" means the standards of professional behaviour contained in the Schedule; and

"working day" means any day other than a Saturday or Sunday or a day which is a bank holiday or a public holiday in England and Wales, in Scotland or in Northern Ireland (as the case may be);

(2) In these Regulations—

(a) a reference to a copy of a statement shall, where it was not made in writing, be construed as a reference to a copy of an account of that statement;

(b) the "special conditions" are that—

(i) there is sufficient evidence, in the form of statements, documents or other material, without the need for further evidence, whether written or oral, to establish on the balance of probabilities that the conduct of the officer concerned constitutes gross misconduct; and

(ii) it is in the public interest for the officer concerned to cease to be a police officer without delay;

(c) the police forces are—

(i) any force maintained under section 2 of the 1996 Act;

(ii) the metropolitan police force;

(iii) the City of London police force;

(iv) the British Transport Police Force;

(v) the Civil Nuclear Constabulary;

(vi) any force maintained under section 1 of the 1967 Act; or

(vii) the Police Service for Northern Ireland;

(3) For the purposes of these Regulations—

(a) a written warning shall remain in force for a period of 12 months beginning on the day on which the warning takes effect; and

(**12**) 2008 c. 4.