EXPLANATORY MEMORANDUM TO

THE MINISTRY OF DEFENCE POLICE (CONDUCT) REGULATIONS 2009

2009 No. [DRAFT]

THE MINISTRY OF DEFENCE POLICE APPEALS TRIBUNALS REGULATIONS 2009

2009 No. [DRAFT]

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

These 2 instruments establish a new set of procedures for the Ministry of Defence Police (MDP) governing police disciplinary matters in response to the recommendations of the Taylor Review. The Ministry of Defence Police (Conduct) Regulations 2009 (the MDP Conduct Regulations) establish procedures for taking action in respect of misconduct by members of the MDP. The Ministry of Defence Police Appeals Tribunals Regulations 2009 (the PAT Regulations) provide for appeals to a Ministry of Defence Police Appeals Tribunals against the findings and specific outcomes from the MDP Conduct regulations.

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

None

4. Legislative Context

4.1 The MDP Conduct Regulations are made under sections Section 3A and 4 of the Ministry of Defence Police Act 1987 ("the 1987 Act"). A new section 4 was inserted into the 1987 Act by paragraph 15 of Schedule 22 to the Criminal Justice and Immigration Act 2008, and these Regulations are the first exercise of the powers in the new section 4.

4.2 The MDP Conduct Regulations will provide the new misconduct procedures for MDP officers of all ranks. These Regulations will revoke the Ministry of Defence Police (Conduct) Regulations 2004 (SI 2004/653) and the Ministry of Defence Police (Senior Officers) (Conduct) Regulations 2004 (SI 2004/654).

4.3 The PAT Regulations are made under section 4A of the 1987 Act. New section 4A was inserted into the 1987 Act by paragraph 16 of Schedule 22 to the Criminal Justice and Immigration Act 2008 and this is the first exercise of the new powers in that section. The PAT Regulations set out the procedures for an appeal to a Ministry of Defence Police Appeals Tribunal and

the grounds on which a member of the MDP can appeal against a finding and/or a particular outcome from the MDP Conduct Regulations. The PAT Regulations revoke the Ministry of Defence Police Appeal Tribunals Regulations 2004 (SI 2004/652).

5. Territorial Extent and Application

These instruments apply to all of the United Kingdom.

6. European Convention on Human Rights

5.2 Kevan Jones MP has made the following statement regarding Human Rights:

In my view the provisions of the Ministry of Defence Police (Conduct) Regulations 2009 and the Ministry of Defence Police Appeals Tribunals Regulations 2009 are compatible with the Convention rights.

7. Policy background

- ***What is being done and why***

7.1 In 2004 the then Home Secretary commissioned a review of the current arrangements for dealing with police misconduct and unsatisfactory performance.

7.2 The 'Taylor Review of Police Disciplinary Arrangements' was the review conducted by William Taylor (a former Commissioner of the City of London Police and former HM Inspector of Constabulary for Scotland) into the effectiveness of disciplinary arrangements for police officers.

7.3 The recommendations contained in his report, which was published in 2005, were accepted by Home Office Ministers and led to the Police Advisory Board for England and Wales (PABEW) being asked to take forward the process for implementing the recommendations.

7.4 The Taylor Review found that the current system of dealing with police misconduct is overly bureaucratic and legalistic with little or no encouragement for managers to swiftly and proportionately deal with low level misconduct matters. Disciplinary hearings were seen as being more akin to a criminal court hearing, and even low level misconduct matters were decided by a three person panel of senior police officers.

7.5 The Taylor Review proposed that the new misconduct procedures should be based on ACAS principles which would modernise the system and make it easier for individual officers and the police service generally to learn lessons and improve the service to the public. One of the key points to emerge was the need to shift the emphasis and culture in police misconduct matters towards an environment focussed on development and improvement as opposed to one focused on blame and punishment. In addition, the report

stressed the importance of carrying out a full assessment of the alleged conduct at an early stage with a view to then implementing a proportionate and non-bureaucratic response. The report also recommended a review of the existing unsatisfactory performance procedures that deal with individual poor performance and attendance of police officers.

7.6 In order to implement the recommendations of the Taylor Review it was necessary to amend the relevant primary legislation. The necessary changes were made in the Criminal Justice and Immigration Act 2008 which received royal assent in May 2008.

7.7 Accordingly, under the amended powers in the Police Act 1996, the Home Office made the Police (Conduct) Regulations 2008 (SI 2008/2864); the Police (Performance) Regulations 2008 (SI 2008/2862); and the Police Appeals Tribunals Rules 2008 (SI 2008/2863). These statutory instruments came into force on 1 December 2008.

7.8 The Ministry of Defence, under the amended powers in the 1987 Act, has since made equivalent regulations in respect of the MDP. The MDP Conduct Regulations and the PAT Regulations mirror the Home Office's Police (Conduct) Regulations 2008 and the Police Appeals Tribunals Rules 2008 in respect of the MDP. There is no MDP equivalent to the Police (Performance) Regulations 2008. Instead members of the MDP, as MOD employees and civil servants, will continue to be governed by MoD's "Restoring Efficiency" procedures.

7.9 The MDP Conduct Regulations will create a conduct environment for police officers that more closely reflect those which operate in normal employment practice. The new procedures provide a fair, open and proportionate method of dealing with alleged misconduct. They are intended to encourage a culture of learning and development for individuals and/or the organisation. Sanction has a part, when circumstances require this, but improvement will always be an integral dimension of any outcome (even in the case where an individual has been dismissed there can be learning opportunities for the MDP). The PAT Regulations provide for appeals against the finding and/or a particular outcome from the Conduct to be dealt with in a timely manner with the PAT chair having the power to dismiss appeals at an early stage where there is no real prospect of success and no other compelling reason why the appeal should proceed.

- ***Consolidation***

7.9 These instruments revoke and replace the existing regulations (SIs 2004/652; 2004/653; and 2004/654) and are therefore consolidated.

8. Consultation outcome

Home Office Consultation

8.1 The key recommendations of the Taylor Review were accepted by Ministers, who asked PABEW to take forward the detailed work. PABEW set up a working party comprising representatives from the Association of Chief Police Officers (ACPO), the Association of Police Authorities (APA), police staff associations, the Independent Police Complaints Commission, Her Majesty's Inspectors of Constabulary (HMIC) and the Home Office to draw up a proposed set of standards, improved misconduct and unsatisfactory performance procedures and associated guidance. This working party has met 29 times over a period of 33 months to take forward the implementation of the Taylor recommendations. The working party has overseen the various consultation exercises set out below. It has fully approved the policy underlying the new procedures.

8.2 A draft set of standards (known as the Standards of Professional Behaviour) underwent public and stakeholder consultation from 27th February 2006 to 19th May 2006. Key stakeholder groups within the police service, including ACPO, staff associations and the APA were consulted as part of this, as were other organisations such as the Commission for Racial Equality, the Independent Police Complaints Commission, the Equal Opportunities Commission and Liberty. The new standards are intended to make clear the standards of behaviour expected of all police officers (regardless of rank).

8.3 Policy proposals for the new misconduct and unsatisfactory performance procedures were prepared by the Home Office with the full support and agreement of the PABEW and were subject to a two month consultation, from 28th July 2006 to 30th September 2006.

8.4 A wider six week consultation on the draft regulations ran from 9th March 2007 to 20th April 2007. There were around 80 responses to the Conduct and Performance Regulations, some in detail, from a range of stakeholders. The PAT Rules were subject of a six week consultation, from 28th January 2008 to 19th March 2008.

8.5 In addition, advice has been provided by the Advisory Conciliation and Arbitration Service (ACAS) and the procedures set out in these regulations are based on the ACAS Code of Practice on Disciplinary and Grievance procedures.

8.6 The responses to each consultation have been broadly supportive of both the policy behind the changes to the misconduct and performance procedures and the detail of the Regulations and Rules themselves. Stakeholders and other organisations are keen to move to a system which deals with misconduct and poor performance in a more timely and proportionate way. The Home Office and the PABEW has considered each of the responses received in the consultations and has made changes to the policy and the instruments as a result. These changes have been made with the approval of all those organisations represented at the PABEW working party.

Ministry of Defence Consultation

8.7 The Ministry of Defence, in respect of the MDP, has adopted the Home Office policy and the proposals, taking into account the extensive Home Office

consultation. Additionally, the Ministry of Defence has carried out its own consultation with the Defence Police Federation and the Chief Police Officers' Staff Association who were also supportive of both the policy behind the changes to the misconduct and appeals procedures and the detail of the Regulations themselves.

9. Guidance

9.1 The Secretary of State for the Home department may issue guidance to the Home Office police forces under section 87 of the Police Act 1996 in so far as it relates to the discharge of functions by police authorities, chief officers of police and other police officers, special constables and police staff under the Performance and Conduct Regulations. Although the Home Office Guidance does not apply to the MDP, the HO guidance has been fully reflected in the MDP policy and guidance: "Police Officer Misconduct and Appeals Procedures". The MDP has also arranged training on the new procedures to all its officers.

10. Impact

10.1 A Regulatory Impact Assessment has not been prepared for these instruments as they have no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is that there is potentially significant non cashable savings to be made by the Ministry of Defence, in respect of the Ministry of Defence Police, once these new procedures are fully implemented. Additionally, independent research conducted by CRG research in respect of Home Office police forces indicates that the new procedures have considerable scope to bring about improvement in police conduct and public and police confidence by being quicker, fairer, more transparent and better value.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring and review

12.1 The Ministry of Defence Professional Standards Department will monitor and review all formal sanctions to ensure that the new regulations are being understood, and applied fairly and consistently across the force. The Ministry of Defence Police Committee will provide a quarterly external review and offer advice and guidance where necessary.

13. Contact

Nick Shaw at the Ministry of Defence (telephone: 020 7218 0564 or email: Nick.Shaw460@mod.uk) can answer any queries regarding these instruments.