

EXPLANATORY MEMORANDUM TO
THE POLICE APPEALS TRIBUNALS RULES 2012

2012 No. 2630

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Rules revoke and re-enact (with some modifications) the Police Appeals Tribunals Rules 2008 (S.I. 2008/2863 – “the 2008 Rules”), as amended by the Police Appeals Tribunals (Amendment: Metropolitan Police) Rules 2011 (S.I. 2011/3029 – “the 2011 Rules”).

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

3.1 None.

4. Legislative Context

4.1 Section 85 of the Police Act 1996 (“the 1996 Act”) makes provision for appeals to Police Appeals Tribunals against decisions taken under the Regulations governing police conduct and performance. Schedule 6 to the 1996 Act provides for the composition of Tribunals. The 2008 Rules, made under section 85 of the 1996 Act, set out the procedure for appeals. They include provision as to matters such as the identity of the respondent to an appeal, time limits for appealing, representation and the conduct of appeal hearings.

4.2 The Police Reform and Social Responsibility Act 2011 (“the 2011 Act”) makes changes to policing governance in England and Wales, including the replacement of police authorities with directly elected Police and Crime Commissioners.

4.3 These changes include giving the Chief Officer of Police the power to appoint and dismiss the senior officers of the police force (those above the rank of Chief Superintendent). Previously this was the responsibility of the police authority. The Police and Crime Commissioner will have the power to appoint and dismiss the Chief Officer, as the police authority does now. Comparable changes are being made to the Regulations governing police conduct. The Chief Officer of Police is to be the “appropriate authority” responsible for taking disciplinary action against senior officers of the police force - the Police and Crime Commissioner will be the appropriate authority only in respect of disciplinary action against the Chief Officer.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

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

7. Policy background

- What is being done and why

7.1 Where the 2008 Rules referred to police authorities, these Rules refer to local policing bodies. Section 1 of the Police Reform and Social Responsibility Act 2011 (“the 2011 Act”) abolishes police authorities outside London and replaces them with police and crime commissioners. These commissioners, together with the Mayor’s Office for Policing and Crime (which replaced the Metropolitan Police Authority as the body responsible for maintaining the Metropolitan Police, with effect from 16th January 2012) and the Common Council (which retains its functions as the police authority for the City of London police area), are known collectively as local policing bodies (see section 97(2) of the 2011 Act, which amends Schedule 1 to the Interpretation Act 1978).

7.2 The definition of “specified appeal” in rule 3(1) of these Rules is changed in order to create consistency with the regulations governing police misconduct and performance proceedings. The significance of this is that, in the case of a specified appeal, the Independent Police Complaints Commission is supplied with the notice of appeal, notified of the hearing, allowed to attend as an observer and notified of the tribunal’s decision.

7.3 Rule 8 of these Rules provides for the local policing body to designate a person to act as respondent in a case where the appellant is a chief officer of police, or a person carrying out the duties of the chief officer under specified statutory provisions. Under rule 8 of the 2008 Rules, the police authority designated a person to act as respondent in any appeal by a senior officer. The effect of this change is that the chief officer becomes the respondent in relation to an appeal by any police officer other than the chief officer himself or an acting chief officer (the chief officer is already the respondent in appeals by police officers other than senior officers).

7.4 Rule 2 of these Rules ensures that action taken by a person designated by a police authority as respondent before the coming into force of these Rules remains valid when the person is replaced as respondent by the chief officer of police by virtue of the new Rule 8. The 2011 Act itself contains provision to ensure the validity of action taken by police authorities on their replacement by the new policing bodies, so there is no need for these Rules to make provision in that regard (see paragraph 21 of Schedule 15 to the 2011 Act).

7.5 Rule 22(2) and (3) of these Rules make new provision in relation to the situation where a Tribunal determines that there is fresh evidence, or that there was a procedural default or other unfairness, that could have materially affected the decision appealed against. In this situation, under section 85(2) of the Police Act 1996 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. Rule 22(2) and (3) allows the Tribunal to remit the matter for re-hearing in these circumstances. Where the original decision was made by a panel, the re-hearing will be before a fresh panel.

7.6 Further minor changes are made to the content of the 2008 Rules to reflect the making of new Regulations in respect of police complaints, conduct and performance and to correct some errors.

- Consolidation

7.7 These Rules consolidate the 2008 Rules and the 2011 Rules.

8. Consultation outcome

8.1 The Secretary of State consulted with the Independent Police Complaints Commission, the Association of Chief Police Officers, the Association of Police Authorities and the Police Advisory Board of England and Wales on this instrument and reflected comments made by these bodies.

9. Guidance

9.1 The Home Office will be updating its statutory guidance to reflect the updated rules. The Independent Police Complaints Commission, the Association of Chief Police Officers, the Association of Police Authorities and the Police Advisory Board of England and Wales will be consulted on changes to the guidance.

10. Impact

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

10.2 The impact on the public sector is minimal. We expect the cost of the Regulations for bodies including the police to be limited and to be met from within existing 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 & review

12.1 The Home Office will keep the operation of these rules under review.

13. Contact

Steve Newby at the Home Office (tel: 020 7035 0715 or email: steve.newby@homeoffice.gsi.gov.uk) can answer any queries regarding the instrument.