

**EXPLANATORY MEMORANDUM TO**  
**THE MINISTRY OF DEFENCE POLICE (CONDUCT, PERFORMANCE AND**  
**APPEALS TRIBUNALS) REGULATIONS 2020**

**2020 No. 1087**

**1. Introduction**

- 1.1 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 This instrument revokes and replaces, in a single instrument, the Ministry of Defence Police (Conduct etc.) Regulations 2015, the Ministry of Defence Police (Performance) Regulations 2012 and the Ministry of Defence Police Tribunals Regulations 2009, which set out the conduct procedures, poor performance procedures and related appeals procedures applicable to Ministry of Defence Police (MDP) officers.
- 2.2 The new Regulations reflect reforms to the system to improve the procedures for dealing with allegations of police misconduct and underperformance.

**3. Matters of special interest to Parliament**

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

- 3.1 None.

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

**4. Extent and Territorial Application**

- 4.1 The territorial extent of these instruments is England, Wales, Scotland and Northern Ireland.
- 4.2 The territorial application of this instrument is England, Wales, Scotland and Northern Ireland.

**5. European Convention on Human Rights**

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

**6. Legislative Context**

- 6.1 Sections 3A, 4 and 4A of the Ministry of Defence Police Act 1987 confers powers on the Secretary of State to make provision for disciplinary procedures to be established for MDP officers, and former MDP officers, including appeals to tribunals from certain decisions made under the disciplinary procedures.

- 6.2 Schedules 1, 2 and 3 of this instrument revoke and replace the Ministry of Defence Police (Conduct etc) Regulations 2015, as amended, in part to reflect changes made to the handling of police complaints and disciplinary matters made by the Policing and Crime Act 2017 (“the 2017 Act”). These Regulations deal with investigation of conduct matters brought to the attention of the MDP otherwise than under the complaints procedures that apply to MDP officers across the UK.
- 6.3 Schedule 4 of this instrument revokes and replaces the Ministry of Defence Police (Performance) Regulations 2012, as amended. These Regulations make new provisions to reflect changes to the handling of police complaints and discipline matters made by the 2017 Act.
- 6.4 Schedule 5 of this instrument revokes and replaces the Ministry of Defence Police Appeals Tribunals Regulations 2009 and set out the circumstances in which a member, or former member of the MDP may appeal to a tribunal and the procedures governing such an appeal. The changes to the procedures reflect changes made to the conduct and performance procedures set out in the other Schedules as well as a change to the composition of panel members for non-senior officers.

## **7. Policy background**

### *What is being done and why?*

- 7.1 In March 2015, the Government published a report as a summary of consultation responses on reforms to the police complaints and discipline systems in England & Wales (*‘Improving police integrity: reforming the police complaints and disciplinary systems’*), many of the proposals of which followed the recommendations made by Major-General Chip Chapman in his review of the police discipline system (*‘the Chapman Review’*). A number of changes have already been made to the system as a result of the 2017 Act, including the extension of the discipline system to former officers and the introduction of the police barred list.
- 7.2 The Government’s report focussed on making the system clearer and more robust and objective. Specifically, it identified a recommendation of the Chapman Review, to introduce a principle of rehabilitation for lower level cases, with a focus on development and improvement. The consultation feedback noted that care was needed not to lose the distinction between misconduct and underperformance.
- 7.3 Building on this, and the remaining recommendations set out in the Chapman Review, the reforms reflected in these instruments are wide-ranging and provide for greater efficiency and transparency in the way police discipline and performance issues are dealt with. There is a more proportionate approach, and an emphasis on learning and improvement in lower level conduct cases in preference to an obstructive blame culture. Misconduct has been redefined to allow only cases which may result in disciplinary action (at least a written warning) to be dealt with via the formal disciplinary process.
- 7.4 Changes have been made to the investigation processes to make them simpler and therefore quicker. They include a requirement to provide an explanation where investigations take longer than 12 months. There are also new provisions to ensure the transparency of investigations, including sharing terms of references and investigation reports. The Standards of Professional Behaviour have been amended to include a provision that police officers, where they are witnesses, have a duty of cooperation in all investigations.

- 7.5 The misconduct hearings process has also undergone reform, including the introduction of a wider case management role for the legally-qualified chair. Chairs will be responsible for the overall timescales of misconduct hearings and will chair pre-hearings to allow for a shorter and more focused full hearing.
- 7.6 The sanctions following a misconduct hearing have also been amended to reintroduce the sanction of reduction in rank, to allow for a more proportionate response to serious misconduct which does not justify dismissal, but which requires a harsher penalty than a final written warning.
- 7.7 The provisions covering the decision under the procedures as to whether a police officer has a case to answer for gross misconduct or misconduct have been changed to provide for greater consistency between the processes followed under the complaints system in England & Wales and Northern Ireland.
- 7.8 Within the performance system, simplifications have been made by introducing clearer entrance and referral points to the Performance regime at key stages in the investigatory and misconduct process.

The appeals procedures have also been amended to reflect changes to the conduct and the performance procedures. They also provide for the replacement of a retired officer on the 3-person appeal tribunal panel with an independent layperson where the appeal relates to a non-senior officer.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act

## **9. Consolidation**

- 9.1 None.

## **10. Consultation outcome**

- 10.1 This instrument has not been subject to public consultation.
- 10.2 The changes made for MDP officers follow those already made by the Home Office for police officers in England & Wales. Whilst not subject to public consultation, the Home Office consulted the Police Advisory Board of England and Wales before making those changes.
- 10.3 Representations from PABEW were assessed and taken into consideration in finalising the regulations. A number of drafting changes were made as a result of PABEW's comments including strengthening the duties of the appropriate authority or, as the case may be, the Director General of the IOPC under Regulation 19 (timeliness of investigations) if an investigation is not completed promptly and removing the ability to extend written warnings.

## **11. Guidance**

- 11.1 The MOD will be updating its statutory guidance on Professional Standards, Performance and Integrity in Policing to reflect the updated instruments. The Independent Office for Police Conduct, the National Police Chiefs Council, the Association of Police and Crime Commissioners and the Police Advisory Board for

England and Wales have been consulted by the Home Office on changes to the guidance.

## **12. Impact**

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 The impact on the public sector is minimal. We expect the cost to the MOD police of operating the provisions in this instrument to be similar to the costs of operating under previous related legislation, and to be met from within existing budgets.
- 12.3 An Impact Assessment has not been prepared for this instrument because no impact on the private or voluntary sector is foreseen.

## **13. Regulating small business**

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

## **14. Monitoring & review**

- 14.1 The approach to monitoring of this legislation is that the MOD will keep the operation of these instruments under review.

## **15. Contact**

- 15.1 Mark Dudley, Policing Policy at the Directorate of Security and Resilience at the MOD telephone: 07947500744 or email: mark.dudley991@mod.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Louise Stanton OBE, Head of DSR and Chief Security Adviser at the Directorate of Security and Resilience at the MOD can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Baroness Annabel Goldie Min(Lords) can confirm that this Explanatory Memorandum meets the required standard.