

EXPLANATORY MEMORANDUM TO
THE JUDICIAL DISCIPLINE (PRESCRIBED PROCEDURES) REGULATIONS
2023

2023 No. 1005

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 This instrument replaces the Judicial Discipline (Prescribed Procedures) Regulations 2014 for any complaints made on or after the date that the regulations come into force. The new regulations will, in conjunction with rules made by the Lord Chief Justice, deliver a more streamlined, proportionate and effective process for dealing with complaints about misconduct by judicial office-holders.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

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 This instrument is being made following a review of the current regulations and rules which govern how complaints of misconduct against judicial office-holders are investigated. The review was undertaken at the request of the Lord Chancellor and Lord Chief Justice by a senior judge-led working group. The recommendations arising from the review were the subject of a public consultation.

7. Policy background

What is being done and why?

7.1 This instrument replaces the current regulations: The Judicial Discipline (Prescribed Procedures) Regulations 2014, for complaints made on or after the date that the new instrument comes into force. This instrument provides the statutory basis for the roles and functions of the Judicial Conduct Investigations Office (JCIO) and of the judges and lay people who carry out roles in the process for considering complaints of misconduct against judicial office-holders.

- 7.2 Under the Constitutional Reform Act 2005, the Lord Chancellor and Lord Chief Justice of England and Wales are responsible for judicial discipline in England and Wales. The Lord President and the Lord Chancellor are responsible for judicial discipline in Scotland. The Lady Chief Justice of Northern Ireland and the Lord Chancellor are responsible for judicial discipline in Northern Ireland.
- 7.3 In 2013, following a comprehensive review led by the late Lord Justice Toulson, the first regulations and rules which govern the investigation of complaints about misconduct on the part of judicial office holders were made. The Judicial Conduct Investigations Office (JCIO) came into being at the same time, replacing the Office for Judicial Complaints. The 2013 regulations and rules were replaced in 2014 by new regulations and rules.
- 7.4 The JCIO is an operationally independent part of the Judicial Office (an arms-length body of the Ministry of Justice). The JCIO supports the Lord Chancellor and Lord Chief Justice in the exercise of their disciplinary functions. This includes managing the consideration of around 2,000 complaints about judicial office-holders a year.
- 7.5 In 2019, the Lord Chancellor and Lord Chief Justice who, since the enactment of the Constitutional Reform Act 2005 have shared responsibility for judicial discipline, agreed with advice from the JCIO that the time was right to review the operation of the disciplinary system.
- 7.6 A working group of judges and officials was established, chaired initially by Lady Justice Rafferty and, following her retirement in July 2020, by Lady Justice Carr. The working group's aim was:
- To review the judicial disciplinary system in England and Wales, and to make recommendations to ensure that the consideration of complaints about misconduct is proportionate, efficient, fair and strikes the right balance between confidentiality and transparency.
- 7.7 In August 2022, following a public consultation on approximately 40 proposals resulting from the review, the Lord Chancellor and Lord Chief Justice published their joint decision to implement a range of improvements to the disciplinary system.
- 7.8 This instrument will give effect to a number of those changes, the others being made by either rules or policy measures which do not require rules or regulations, and in one instance (a new sanction for misconduct) by primary legislation when Parliamentary time is available.

What did any law do before the changes to be made by this instrument?

- 7.9 The statutory framework for considering complaints of misconduct is underpinned by the Judicial Discipline (Prescribed Procedures) Regulations 2014. Three sets of rules were made at the same time:
- The Judicial Conduct (Judicial and other office holders) Rules 2014 govern the consideration of complaints about coroners and salaried and fee-paid courts judiciary (approx. 2,000 complaints per year). Complaints are made to, and initially considered by, the JCIO.
 - The Judicial Conduct (Tribunals) Rules 2014 govern the consideration of complaints about tribunals judiciary (averaging 15 complaints per year, within each of the thirteen First Tier and Upper Tribunal chambers). Complaints are made to, and initially considered by, the relevant chamber president.

- The Judicial Conduct (Magistrates) Rules 2014 govern the consideration of complaints about magistrates (approx. 300 complaints per year). Complaints are made to, and initially considered by, one of seven regional conduct advisory committees.

Why is it being changed?

- 7.10 The new instrument will give effect to the August 2022 decision of the Lord Chancellor and Lord Chief Justice to make improvements to the judicial disciplinary system.

What will it now do?

- 7.11 The new instrument will have the same purpose as the Judicial Discipline (Prescribed Procedures) Regulations 2014. The changes made in the 2023 Regulations include the following:

- Removal of references to ‘Tribunal Member’ and ‘Relevant President’ to reflect the transfer of responsibility for investigating complaints about tribunal judges and lay members from tribunal presidents chamber presidents to the JCIO.
- Revised composition of disciplinary panels (bodies which consider some of the most serious complaints of misconduct) from four to three members with a lay majority and a judicial chair.
- Creation of a new role in the process for dealing with complaints about magistrates: nominated committee member.
- An enhanced role for regional conduct advisory committee secretaries and their deputies in carrying out a filtering role for new complaints about magistrates, which is analogous to the filtering role of the JCIO.

- 7.12 These changes are part of a wider package of improvements to the judicial disciplinary system, which include:

- A more streamlined and proportionate process for investigating complaints of misconduct which includes an expedited procedure for lower-level cases of misconduct in which the facts are agreed
- Transferring responsibility for investigating complaints about tribunal judges and non-legal members from chamber presidents to the JCIO.
- Giving the Lord Chancellor and Lord Chief Justice a wider range of sanctions by including a power to impose a period of suspension (without pay for salaried office-holders) as a sanction for misconduct. This would be in addition to the current sanctions of formal advice, formal warning, reprimand and removal.
- Increasing transparency by publishing more information about the disciplinary process and decisions.
- Encouraging a more diverse range of judges and lay people to take on roles in the system.

8. European Union Withdrawal and Future Relationship

- 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 The new instrument will replace the 2014 instrument for complaints made on or after the date that the new instrument comes into force. There are no plans to consolidate the legislation.

10. Consultation outcome

- 10.1 In November 2021, a joint public consultation was launched on behalf of the Lord Chancellor and Lord Chief Justice about proposals to improve the disciplinary system. The consultation was open to anyone who wished to respond. Additionally, key interests, including bodies representing different branches of the judiciary, were engaged during the working group's review and were sent a link to the consultation document, and encouraged to respond.
- 10.2 The consultation closed on 7 February 2022 with 57 responses, including from members of the public, individual judicial office-holders, judicial associations and other bodies. There was overall support for the substantial majority of proposals. The formal response of the Lord Chancellor and Lord Chief Justice was published on 8 August 2022.¹
- 10.3 Regarding substantive proposals that are directly relevant to the new instrument:
- There was strong support (70%+) for rebalancing disciplinary panels (currently two judges and two lay members) to a lay majority (one judge and two lay members).
 - Approximately half of those who responded to the proposed replacement of three-person conduct panels (which consider complaints about magistrates) with a single role analogous to nominated judge agreed with it. Common themes in responses objecting to this proposal tended to be that “three minds are better than one” and conduct advisory committee members would lack the skills needed for the role. The Lord Chancellor and Lord Chief Justice were not persuaded by these objections, which largely failed to recognise the range of relevant skills and experience held by the conduct advisory committee members who will fulfil the new role, and the benefits that it will bring in making the process for dealing with complaints about magistrates more proportionate, straightforward, and efficient.
 - There was strong support (70%+) for an enhanced role for regional conduct advisory committee secretaries and their deputies in carrying out a filtering role for new complaints about magistrates, which is analogous to the filtering role of the JCIO.

11. Guidance

- 11.1 The JCIO publishes guidance about its remit and procedures on its website. Updated guidance will be published alongside the new regulations and the new rules.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1095699/judicial-discipline-consultation-response.pdf

12.2 Apart from the JCIO itself, impact on the public sector is confined to the seven regional conduct advisory committees which deal with complaints about magistrates and a small number of civil servants who support chamber presidents in dealing with complaints about tribunal judges and non-legal members. All have been consulted and kept informed about the changes flowing from the new instrument.

12.3 A full impact assessment has not been prepared for this instrument.

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 ongoing internal review by the JCIO's senior management and a comprehensive internal review after 12 months.

14.2 The instrument does not include a statutory review clause.

15. Contact

15.1 Simon Parsons at the Judicial Conduct Investigations Office. Telephone: 020 7073 4811 or email: simon.parsons1@judicialconduct.gov.uk can be contacted with any queries regarding the instrument.

15.2 Amy Shaw, Deputy Director for Communications, Information and Library Services, International and Head of the Judicial Conduct Investigation Office at the Judicial Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Lord Chancellor and Secretary of State for Justice, Alex Chalk KC at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.