

EXPLANATORY MEMORANDUM TO
THE MINISTRY OF DEFENCE POLICE (CONDUCT, PERFORMANCE AND
APPEALS TRIBUNALS) (AMENDMENT) REGULATIONS 2024

2024 No. 603

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Defence and is laid before Parliament by Command of His Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

- 2.1 Earl Minto, Minister of State for Defence at the Ministry of Defence confirms that this Explanatory Memorandum meets the required standard.
- 2.2 Harvey Moore, SCS, Head of the Directorate of Security and Resilience, at the Ministry of Defence confirms that this Explanatory Memorandum meets the required standard.

3. Contact

- 3.1 Mark Dudley at the Ministry of Defence Telephone: 07947500744 or email: mark.dudley991@mod.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

- 4.1 This instrument amends the disciplinary procedures for the Ministry of Defence Police. The main change relates to the composition of panels that hear misconduct proceedings. It also allows the chief constable to delegate responsibility for chairing or conducting proceedings, requires the appointment of a legal adviser to advise a panel hearing a case and introduces rules to deal with conflicts of interest for those involved in conducting proceedings and those advising in relation to such cases.
- 4.2 For non-senior officers, the chair of the panel is the chief constable for cases that result in misconduct hearings. For all proceedings taken against the chief constable, the chair is His Majesty's Chief Inspector of Constabulary (HMIC) or His Majesty's Chief Inspector of Constabulary in Scotland (HMICS), or an inspector of constabulary they nominate, and for other senior officers the chair must be a more senior member of another police force.
- 4.3 It enables the chief constable to delegate responsibility for chairing or conducting proceedings to another senior police officer, a Ministry of Defence senior civil servant of equivalent rank, or a former senior police officer.
- 4.4 It also makes related changes to the procedures as a consequence.

Where does the legislation extend to, and apply?

- 4.5 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.
- 4.6 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. Policy Context

What is being done and why?

- 5.1 The Secretary of State is responsible for maintaining the Ministry of Defence Police force (“MDP”) and requires members of the MDP to meet the same standards of professional behaviour as members of the territorial police forces in England & Wales. To ensure such standards are maintained, there are statutory disciplinary procedures that apply to the MDP which mirror those that apply to the territorial police forces. The Home Office has recently amended the statutory procedures for those forces and the Secretary of State for Defence is therefore making the same changes to the statutory procedures that apply to members of the MDP.
- 5.2 In September 2023, following the Home Office’s comprehensive review, the Government published its report on the process of police officer dismissals¹. This review had been established to ensure that systems in place were fair and effective at removing those officers not fit to serve in policing.
- 5.3 In-part, the review considered the composition of the misconduct panels. Since 2016, those panels had been chaired by independent legally qualified chairs.
- 5.4 The Chief Constable is the head of the Ministry of Defence Police and is held to account for the standards in the force. The Government believes that the Chief Constable should therefore have greater responsibility in the disciplinary process and the ultimate determination of whether, in the case of non-senior officers, an officer should be dismissed or not. This was a recommendation of the Home Office review.
- 5.5 As a result, these provisions now ensure that for non-senior officers (i.e. those of the rank of Chief Superintendent or below), misconduct panels are chaired by the Chief Constable. Responsibility can be delegated to a senior officer, former senior officer or police staff member of equivalent grade, to ensure cases can be heard in a timely manner.
- 5.6 To ensure that the misconduct panels remain police-chaired where the officer concerned is a senior officer (i.e. above the rank of Chief Superintendent), misconduct panels are now chaired by a more senior officer selected from a separate force. However, where the officer concerned is the Chief Constable, the chair is now His Majesty’s Chief Inspector of Constabulary (HMCIC) or a nominated His Majesty’s Inspector (HMI) in England and Wales and in Scotland, His Majesty’s Chief Inspector of Constabulary Scotland (HMICS) or a nominated His Majesty’s Inspector Scotland (HMIS).
- 5.7 To ensure that the system retains necessary levels of independence and fairness, misconduct panels also now comprise of two independent panel members, appointed both to their role and individual panels by the Secretary of State for Defence. The misconduct panel will now be advised on legal and procedural issues by an independent legally qualified adviser. As part of its advisory role, the Ministry of

¹ <https://www.gov.uk/government/publications/police-officer-dismissals-home-office-review>

Defence Police Committee will scrutinise this information and advise the Secretary of State for Defence.

- 5.8 To avoid circumstances which would give rise to a conflict of interest, new provisions place a duty on those chairing or conducting misconduct meetings, appeal meetings or disciplinary proceedings, or acting as a legal adviser, not to do so where this would either give rise, or could reasonably be considered to give rise, to a conflict of interest. An equivalent duty is placed on the relevant appointing body, so that they do not appoint – or if already appointed, replace the individual - if they become aware of circumstances which give rise, or could reasonably be considered to give rise, to a conflict of interest.
- 5.9 The Director General of the Independent Office for Police Conduct (IOPC) and the Police Ombudsman for Northern Ireland (PONI) now have a statutory ability to make representations to the Chief Constable on the chair of a misconduct hearing. This occurs in circumstances where there has been an investigation under the applicable public complaints' procedures and the IOPC or PONI sought the views of the chief constable on the referral of an officer to a misconduct hearing and the chief constable disagreed with the view of the IOPC or PONI. This ensures additional oversight in decisions where the IOPC or PONI is concerned that there could be a conflict of interest if a chair is an officer selected from the Ministry of Defence Police.
- 5.10 The Ministry of Defence Police Committee, as part of its advisory role will scrutinise the information and advise the Secretary of State for Defence. New provisions support this scrutiny function, by requiring the chair of misconduct proceedings to provide the Ministry of Defence Police Committee with reasons for certain decisions, including where it decides to hold proceedings in private or where the panel determines that the officer has committed gross misconduct, but a decision is made not to dismiss the officer.

What was the previous policy, how is this different?

- 5.11 Previous legislation set out that the chair of a misconduct hearing was a legally qualified chair. Misconduct panels for non-senior officers also comprised of a police officer of at least Superintendent rank and an independent panel member. For senior officers, the chair was supported by HMCIC or a nominated HMI or in Scotland, HMICS or a nominated HMIS, instead of a police officer.
- 5.12 The Government believes that, as the Chief Constable is the head of the workforce and is held to account on the standards in the force, they should have greater responsibility in the disciplinary process, including the determination of whether an officer should be dismissed or not. For this reason, the Chief Constable will now chair misconduct hearings for non-senior officers.
- 5.13 The Chief Constable is however able to delegate this responsibility, either to another senior officer, an individual who has been a senior officer of a relevant police force in the five years preceding their appointment as chair or a member of the civil service of equivalent grade to a senior officer.
- 5.14 For non-senior officers, the chair of an accelerated hearing had to be the Chief Constable. Under the new legislation, the Chief Constable is also permitted to delegate this role in the same way as in the previous paragraph.
- 5.15 Under previous legislation, the chair of a misconduct hearing for senior officers was also a legally-qualified chair. The Government believes that misconduct proceedings should be police-chaired and so, changes introduced in respect of senior officers align

with that principle for non-senior officers. The chair for a senior officer is now either a more senior officer from a separate force or, if the officer concerned is the Chief Constable, it is HMCIC or a nominated HMI or in Scotland HMICS or a nominated HMIS. The instrument also introduces a requirement for a legal advisor to the chair. The chair will be supported by two lay persons, who will complete the panel.

- 5.16 The previous legislation did not include any specific provisions on conflicts of interest. To ensure fairness in proceedings, new legislation has introduced specific provisions on conflicts of interest.
- 5.17 Now that misconduct proceedings for non-senior officers are chaired by a senior individual in the same force, a new provision has been introduced to ensure that the IOPC can make representations on whether the chair should be delegated outside of the force, to ensure fairness and appropriate oversight.

6. Legislative and Legal Context

How has the law changed?

- 6.1 This instrument amends the Ministry of Defence Police (Conduct, Performance and Appeals Tribunals) Regulations 2020 (“the 2020 Regulations”) - which sets out the disciplinary procedures that apply to the MDP - to give effect to these changes.

Why was this approach taken to change the law?

- 6.2 This is the only possible approach to make the necessary changes to the statutory disciplinary procedures.

7. Consultation

Summary of consultation outcome and methodology

- 7.1 This instrument has not been subject to public consultation.
- 7.2 Changes primarily stem from those recommended within the Home Office’s review into the process of police officer dismissals, within which the Government heard wide-ranging evidence from across the policing sector. Summaries of some of the evidence provided is incorporated within the review’s published report.
- 7.3 The Home Office consulted with the Police Advisory Board and took account of their recommendations when drafting the changes to the disciplinary procedures that apply to members of the territorial forces in England and Wales, and this instrument makes the same changes to the disciplinary procedures that apply to members of the MDP.

8. Applicable Guidance

- 8.1 Guidance to reflect the updated statutory procedures is expected to be issued in due course. As the Home Office intends to lay further statutory instruments which will make amendments to the police disciplinary system in the near future, and the Ministry of Defence will make similar changes, the timing of such guidance has not yet been determined. In the interim, the supporting guidance issued by the Home Office that covers the changes to the disciplinary procedures should be referred to.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

- 9.1 A full Impact Assessment has not been prepared for this instrument, as we consider there to be no, or no significant, impact on businesses as the instrument relates to the maintenance of the existing regulatory system governing police discipline.

Impact on businesses, charities and voluntary bodies

- 9.2 There is no, or no significant, impact on business, charities or voluntary bodies, as the instrument relates to the maintenance of the existing regulatory system governing police discipline.
- 9.3 The legislation does not impact small or micro businesses.
- 9.4 There is no significant, impact on the public sector because this statutory instrument amends existing regulatory procedures limited to policing.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

- 10.1 The approach to monitoring this legislation is that the Ministry of Defence will keep the operation of these instruments under review, including through an annual statistics publication on police misconduct.
- 10.2 The instrument does not include a statutory review clause.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

- 11.1 This instrument is of interest to the JCSI as it amends the 2020 Regulations to remove superfluous words from regulation 35(5) so that it is consistent with the wording of regulation 53(5). The 2020 Regulations were reported by the JCSI in the 32nd Report of Session 2019-21² for defective drafting and this is the first opportunity to correct the drafting.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

- 13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).

² <https://publications.parliament.uk/pa/jt5801/jtselect/jtstatin/179/17902.htm>