EXPLANATORY MEMORANDUM TO

THE AUTHORISED INVESTIGATORS (COMPLAINTS AND MISCONDUCT) REGULATIONS 2026

2026 No. 1098

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Cabinet Office (CO) and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Secondary Legislation Scrutiny Committee.

2. Declaration

2.1 Mark Ferguson MP, Parliamentary Secretary at the CO confirms that this Explanatory Memorandum meets the required standard.

2.2 Tom Etheridge, Deputy Director for Policy and Communications in the Public Sector Fraud Authority (PSFA) at the CO confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Parveen Akhtar at the CO can be contacted by email at the following address with any queries regarding the instrument: PSFA@cabinetoffice.gov.uk. Alternatively, the department can be contacted by telephone: 020 7276 1234.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The instrument establishes the necessary structures and processes for the Independent Office for Police Conduct (IOPC) to independently investigate a complaint, conduct matter or other matter involving the exercise by an authorised investigator of the provisions of the Police and Criminal Evidence Act 1984 (PACE) listed in section 7(2) of the Public Authorities (Fraud, Error and Recovery) Act 2025 (PAFER) (authorised functions). This includes granting the IOPC Director General (DG) powers to investigate incidents where a death or serious injury has occurred that involved the exercise by an authorised investigator of their authorised functions. Authorised investigators will be employed as civil servants and will work exclusively within the PSFA.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales.

5. Policy Context

What is being done and why?

5.1 Section 7 of PAFER applies specified powers (authorised functions) contained in PACE to authorised investigators, subject to necessary modifications to adapt these police powers for civil servants (for example, substituting references to 'constables' with 'authorised investigators'). The enabling provisions for this instrument are sections 26G(1), (2) & (6)[1] and 105(4) & (5)[2] of the Police Reform Act 2002 (PRA). Authorised investigators are new roles created by PAFER. They will be civil servants trained and qualified to use the PACE powers applied to them by PAFER to investigate fraud. The exercise by authorised investigators of these authorised functions supports the Minister for the Cabinet Office's (MCO) function under PAFER to investigate suspected fraud against public authorities. The authorised functions include the ability, in prescribed circumstances, to apply for and execute court-issued warrants in order to enter and search premises, and to seize relevant material. They also include functions regarding the granting of access to, and the copying and retention of, evidence.

5.2 Given the investigatory nature of these authorised functions, section 9 of PAFER amended the PRA to confer regulation-making powers on the MCO to establish a framework for independent oversight by the IOPC in relation to public sector fraud investigators (a term synonymous with "authorised investigators") exercising their authorised functions. This instrument provides that oversight framework.

5.3 This instrument sets out the respective roles and responsibilities of the IOPC, the IOPC DG and the MCO in relation to the handling of complaints, conduct matters and death or serious injury matters arising from the exercise by authorised investigators of their authorised functions. It sets out the circumstances in which complaints and matters must be referred to the IOPC and provides for the IOPC DG to determine the form of any resulting investigation, thereby ensuring appropriate independent scrutiny and accountability in relation to the use of the authorised functions.

What was the previous policy, how is this different?

5.4 Before this instrument, there was no framework for IOPC oversight of authorised investigators exercising their authorised functions. Where public officials are given powers analogous to those available under PACE, government policy has been that the use of those powers should be subject to independent scrutiny to provide public confidence, accountability and appropriate safeguards.

5.5 This instrument therefore implements the policy that the exercise of the authorised functions should be subject to independent IOPC oversight, which is consistent with comparable arrangements already in place for other public bodies whose officials exercise similar powers.

5.6 This ensures that individuals affected by the use by authorised investigators of their authorised functions have access to clear and independent scrutiny arrangements, strengthening accountability and public confidence in how the authorised functions are exercised.

[1] S26G Police Reform Act 2002 https://www.legislation.gov.uk/ukpga/2002/30/section/26G
[2] S105 Police Reform Act 2002 https://www.legislation.gov.uk/ukpga/2002/30/section/105

6. Legislative and Legal Context

How has the law changed?

6.1 Section 9 of PAFER amended the PRA by inserting the new section 26G. This enables the MCO to make regulations conferring functions on the IOPC DG in relation to the exercise by authorised investigators of their authorised functions.

6.2 Accordingly, this instrument makes provision for the application of the PRA framework to complaints, recordable conduct matters, and death or serious injury matters arising from the exercise by authorised investigators of their authorised functions with appropriate modifications for the context in which authorised investigators will be exercising the functions. The instrument confers functions on the IOPC DG and imposes corresponding duties on the MCO in relation to the referral, handling and investigation of such complaints or matters.

6.3 The instrument gives legal effect to the oversight arrangements envisaged when Parliament enacted section 9 of PAFER. The PRA provides the power to make regulations and so it would not make sense to implement the oversight arrangements through administrative or non-statutory arrangements.

Why was this approach taken to change the law?

6.4 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 A targeted non-statutory consultation was held between 30 March 2026 and 24 April 2026. The consultation sought views on the proposed oversight arrangements established by the instrument, including the operation of the complaints and misconduct framework and the interaction between the IOPC, police forces and other relevant bodies where assistance may be required. The specific organisations consulted were the Welsh Government, the City of London Police, National Crime Agency, National Police Chiefs Council, and Police Advisory Board for England and Wales.

7.2 The consultation was conducted by email and invited a written response from 11 organisations. Respondents did not raise objections to the principle of independent oversight. The main issues raised concerned the practical operation of the framework, in particular the operational considerations and safeguards where assistance with an investigation is requested from a police force or the National Crime Agency, and arrangements for the recovery of costs in those circumstances.

7.3 The CO will continue to work with the IOPC and relevant stakeholders during implementation of the instrument, including through the development of relevant operational guidance and consideration of any emerging training needs where an investigation is conducted by bodies outside the PSFA or IOPC.

7.4 The consultation did not result in changes to the legal framework established by the instrument, but it will inform operational clarification and implementation planning.

8. Applicable Guidance

8.1 The instrument references statutory guidance issued in 2020 by the IOPC DG under section 22 of the PRA, to which the PSFA and authorised investigators will be

expected to have regard. Any person to whom this guidance[3] is issued must have regard to it in exercising or performing the powers and duties to which the guidance relates. The guidance is intended to ensure consistent practice in the handling of complaints and related matters. Where it is necessary to depart from the guidance, any such departure should be clearly justified in the circumstances and recorded at the time.

8.2 The PSFA will also set out what an external complainant must do if they wish to make a complaint about the conduct of an authorised investigator.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because, under the UK Government's Better Regulation Framework,[4] a regulatory impact assessment is only required to be prepared for all Regulatory Provisions where impacts are greater than ± £10m Equivalent Annual Net Direct Cost to Business (EANDCB). The CO has assessed and self-certified the monetised regulatory impact of this instrument to be below the +/- £10m EANDCB. An impact assessment for PAFER was published when it was introduced as a Bill to Parliament.[5] It remains an accurate summary of the impacts that apply to this instrument. Specifically, the costs associated with IOPC oversight relating to the provisions introduced by this instrument are detailed in paragraphs 31, 32, and 33 of the previously published Impact Assessment.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because the instrument establishes oversight arrangements for the handling and investigation of complaints and related matters arising from the exercise of authorised investigators within the public sector of their authorised functions (which, as discussed above, are PACE-related investigatory powers). The instrument does not impose regulatory requirements, compliance obligations or direct costs on businesses, charities or voluntary bodies, nor does it alter the legal obligations of such organisations.

9.3 The legislation does not impact small or micro businesses.

9.4 The impact on the public sector is limited and is expected to fall primarily on the IOPC and the MCO. The instrument establishes oversight and investigation arrangements for complaints and related matters arising from the exercise by authorised investigators of their authorised functions. The impact assessment published alongside PAFER estimated a cost of £50k for an IOPC investigation.[6] Analysis in the impact assessment estimated that there would be only one IOPC

[3] Independent Office for Police Conduct, *Statutory Guidance issued under section 22 of the Police Reform Act 2002*, published on 1 February 2020, available on the IOPC website: https://www.policeconduct.gov.uk/publications/statutory-guidance-2020

[4] Department for Business and Trade, *Better Regulation framework guidance*, published in September 2023 available on GOV.UK: https://www.gov.uk/government/publications/better-regulationframework

[5] Department for Work and Pensions (2025) *Public Authorities (Fraud, Error and Recovery) Bill Impact Assessment*, published on 22 January 2025, available on GOV.UK: https://publications.parliament.uk/pa/bills/cbill/59-01/0167/ImpactAssessment.pdf

[6] Department for Work and Pensions (2025) *Public Authorities (Fraud, Error and Recovery) Bill Impact Assessment*, published on 22 January 2025, available on GOV.UK: https://publications.parliament.uk/pa/bills/cbill/59-01/0167/ImpactAssessment.pdf

investigation per 10-year assessment period because the IOPC only investigates the most serious complaints or matters that have the potential to affect public confidence in the police or the other organisations it oversees, such as deaths and serious injuries. Where the MCO requests an investigation or assistance outside the mechanism for referral to the IOPC that is set out in the instrument, separate cost arrangements are expected to be manageable within existing operational structures and were also considered as part of the impact assessment published alongside PAFER.[7]

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is as part of normal ongoing business of the government, including through operational engagement with the IOPC and other stakeholders involved in the operation of the oversight framework set out in the instrument.

10.2 The instrument does not include a statutory review clause. It does not make or amend provisions that relate to business activity (including voluntary and community bodies) and is not subject to the statutory review provisions which were introduced by the Small Business, Enterprise and Employment Act 2015.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 On 21 July 2026, the Prime Minister made a number of changes to the machinery of government.[8] This included a transfer of ministerial responsibility for the counterfraud portfolio to the Department of Work and Pensions (DWP).

11.2 As per the standard legal process of a machinery of government change, policy and legal officials are working to scope the requirements of the transfer in relation to PAFER, and other legislation underpinning the work of the PSFA. This transfer has not yet taken place.

11.3 To give legal effect to the transfer of the PSFA, a Transfer of Functions Order (TFO) will be made under the Ministers of Crown Act 1975. We anticipate that this instrument will be included in the TFO.

12. European Convention on Human Rights

12.1 As the instrument is subject to negative 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”).

[7] Department for Work and Pensions (2025) *Public Authorities (Fraud, Error and Recovery) Bill Impact Assessment*, published on 22 January 2025, available on GOV.UK: https://publications.parliament.uk/pa/bills/cbill/59-01/0167/ImpactAssessment.pdf

[8] Baroness Smith of Basildon, *Machinery of Government Changes* (HLWS298), made on 21 July 2026, available at: https://questions-statements.parliament.uk/written-statements/detail/2026-07-21/hlws298