EXPLANATORY MEMORANDUM TO

THE JUDICIAL DISCIPLINE (PRESCRIBED PROCEDURES) REGULATIONS 2013

2013 No. 1674

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

2. Purpose of the instrument

2.1 This instrument replaces the Judicial Discipline (Prescribed Procedure) Regulations 2006 (as amended). The new regulations will deliver a more streamlined process for dealing with complaints about judicial conduct.

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

3.1 None

4. Legislative Context

4.1 This instrument is made following a review of the current regulations and rules governing judicial discipline. The review was undertaken at the request of the Lord Chancellor and the Lord Chief Justice with the aim of developing a more streamlined and efficient process for dealing with complaints about judicial conduct.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom

6. European Convention on Human Rights

6.1 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 The Lord Chancellor and the Lord Chief Justice of England and Wales are responsible for judicial discipline under the Constitutional Reform Act 2005 in England and Wales. The Lord President together with the Lord Chancellor is responsible for judicial discipline in relation to specified judicial office holders who exercise their functions wholly or mainly in Scotland; and the Lord Chief

Justice in Northern Ireland and the Lord Chancellor are responsible for judicial discipline in relation to specified judicial office holders who exercise their functions wholly or mainly in Northern Ireland. The Judicial Discipline (Prescribed Procedures) Regulations 2006 (as amended) provide for one procedure to be followed regardless of whether the allegation of misconduct is serious or relatively minor.

7.2 The Lord Chief Justice of England and Wales and the Lord Chancellor asked the Office for Judicial Complaints (OJC) to undertake a review of the rules and regulations governing judicial discipline with a view to developing a more streamlined and effective process. There are 3,600 members of the full and part time judiciary, approximately 29,000 Magistrates and 7,000 Tribunal members, all of whom are subject to the disciplinary regulations.

7.3 In July 2011 a working group chaired by Lord Justice Toulson (as he then was) was formed of representatives from of a cross section of the judiciary, together with representatives for the public perspective, and officials from the Ministry of Justice.

7.4 The working group formulated twenty one recommendations for improvement to the procedure for dealing with complaints. In particular, the Working Group recommended the introduction of different procedures according to the nature of the alleged misconduct to facilitate a more streamlined process. The working group reported regularly to the Judges' Council[1] and the recommendations were published for the statutory 12 week consultation period by the Office for Judicial Complaints from February to May 2012. There has been little public interest with only four members of the public responding to the consultation. However responses were received from each of the associations representing the different judicial office holders, magistrates Advisory Committees, individual judges, and officials involved with the judicial complaints process.

- Consolidation

7.5 The instrument will replace the existing regulations governing judicial discipline and will be available to judicial office holders and members of the public via the Office for Judicial Complaint's website.

8. Consultation outcome

8.1. There has been ongoing consultation throughout the development of the recommendations, as the working group was comprised of representatives from the range of judicial offices, representatives for the public and officials. A public consultation ran from 29 February to 23 May 2012.

[1] The Judges' Council is a body broadly representative of the judiciary as whole, which will inform and advise the Lord Chief Justice of England and Wales on matters as requested from time to time.

8.2 Forty two organisations or individuals responded to the public consultation. The majority of responses were on behalf of the judiciary with only four responses from members of the public.

8.3 An evaluation of the consultation was published in September 2012 with details of how the recommendations would be amended as a result of the comments received. Two main areas were amended as a result of the feedback received from the consultation:

i) where a disciplinary sanction is recommended the judicial office holder will receive a copy of the report and recommendation before it is sent to the Lord Chancellor and the Lord Chief Justice.

ii) where there is a recommendation for removal or suspension from office, the right to a disciplinary hearing panel will not be subject to a merit test.

8.4 The working group members and the Judicial Appointment and Conduct Ombudsman have been consulted in the drafting the new rules and regulations., The Lord Chief Justice for England and Wales, the Lord President of the Court of Session and the Lord Chief Justice for Northern Ireland were also consulted during the drafting period and have indicated they are content with the proposed new Regulations

9. Guidance

9.1 The OJC provides advice and guidance to the public and judicial office holders through its website and leaflets which will be amended to reflect the changes brought about by this instrument.

10. Impact

10.1 There is no impact on private business or the voluntary sector as this instrument relates only to the administration of judicial complaints.

10.2. The impact on the public sector is limited to the Office for Judicial Complaints, judges, and magistrates' Advisory Committees, all of whom have been fully engaged with the development of the proposed new rules and regulations. The instrument will provide for more efficient administration of the disciplinary process.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The instrument will enable the complaints process to operate more efficiently and effectively. The operation of the new regulations and rules will be subject to an internal review after 12 months and the legislation may be amended accordingly.

13. Contact

Judy Anckorn at the Office for Judicial Complaints Tel: 020 3334 0145 or email: inbox@ojc.gsi.gov.uk can answer any queries regarding the instrument.