EXPLANATORY MEMORANDUM TO

THE JUDICIAL DISCIPLINE (PRESCRIBED PROCEDURES) REGULATIONS 2014

2014 No. 1919

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 revokes the Judicial Discipline (Prescribed Procedures) Regulations 2013 ("the 2013 Regulations") (S(2013/1674) and makes minor amendments.

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

3.1 This instrument corrects the issues flagged in the letter sent to the Ministry of Justice on 23rd October 2013 from the Joint Committee on Statutory Instruments ("JCSI"). The JCSI queried why section 116 and 117 of the Constitutional Reform Act 2005 ("the Act") were not cited as a source of vires, why a regulation was included which purported to allow rules to be made relating to how the Lord Chief Justice should exercise his powers under section 108(7) of the Act, and the formulation of the definition of "bank holiday".

4. Legislative Context

4.1 In respect of the issues raised by the JCSI the Ministry of Justice accepts that there may be doubtful vires due to the failure to cite sections 116 and 117 of the Act. While the Department does not think that this renders the 2013 Regulations defective, to address the concerns of the JSCI and take the matter beyond doubt, we have re-made the Regulations.

4.2 This instrument corrects the issues raised by the JCSI. It revokes the 2013 Regulations, cites sections 116 and 117 as a source of vires, does not contain a provision akin to regulation 7(4)(i) of the 2013 Regulations and has the correct definition of "bank holiday".

4.3 Additionally this Instrument makes the following additional provision:
It makes clear in regulation 7 that a matter can be investigated whether it arises by complaint or otherwise - for example through media reports.

It clarifies regulation 17 so that it is clear that a judicial office holder can be suspended with immediate effect.

This instrument does not contain provision akin to regulation 18 of the 2013 Regulations which dealt with publication. Regulation 18 was not needed because it did not add anything to the provision already made in section 139(6) of the Act.

5. Territorial Extent and Application

5.1 This instrument applies to the whole 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

7.1 The Lord Chancellor and the Lord Chief Justice supported by the Judicial Conduct Investigations Office ("JCIO") exercise powers under the Act in relation to the discipline of judicial office holders. This includes setting prescribed procedures that must be followed when an office holder is investigated for misconduct.

7.2 The 2013 Regulations came into effect in October 2013. In addition to correcting the JSCI's concerns, the regulations have been clarified so that the intention and purpose of the regulations is clear. Specifically that all cases of misconduct whether or not they initially arise from a formal complaint can be investigated, that an office holder can be suspended with immediate effect, and that it is unnecessary to have provision relating to publication in the regulations because that provision broadly replicates provision in the Act.

8. Consultation outcome

8.1. There was a full public consultation prior to the implementation of the 2013 Regulations. It is not considered necessary for there to be further consultation in respect of the minor, clarificatory changes that this instrument makes.

9. Guidance

9.1 The JCIO provides advice and guidance to the public, judicial office holders and those administering the disciplinary process. The JCIO will bring this Instrument to the attention of those administering the system and will publish the amended regulations on the JCIO website.

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 JCIO, judges, and magistrates' Advisory Committees. The JCIO will ensure that these changes are published on its website and will draw the changes to the attention of Tribunal Presidents and Advisory Committees who are responsible for investigating allegations of misconduct for tribunal judges and the magistracy respectively.

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 in the Autumn of 2014.

13. Contact

Judy Anckorn at the Judicial Conduct Investigations Office Tel: 020 7073 4740 or email: inbox@jcio.gsi.gov.uk can answer any queries regarding the instrument.