EXPLANATORY MEMORANDUM TO

THE MINISTRY OF DEFENCE POLICE (BARRED LIST AND ADVISORY LIST) REGULATIONS 2026

2026 No. 769

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 The Lord Coaker, Minister for Defence in the House of Lords, confirms that this Explanatory Memorandum meets the required standard.

2.2 Harvey Moore, Deputy Director, Defence 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.dudly991@mod.gov.ukcan 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 These Regulations provide for the processes, procedures and requirements for the maintenance by the Secretary of State of a barred list and an advisory list for the Ministry of Defence Police force ("MDP"), which are required to supplement the provisions set out in Schedule 25 to the Crime and Policing Act 2026 ("the 2026 Act").

Where does the legislation extend to, and apply?

4.2 The extent of this instrument is England and Wales and Scotland and Northern Ireland.

4.3 The territorial application of this instrument is England and Wales and Scotland and Northern Ireland.

5. Policy Context

What is being done and why?

5.1 These regulations support the establishment and operation of a MDP barred list and an advisory list, that are required to be maintained by the Secretary of State. These lists are modelled on the Home Office barred list and advisory list regime introduced in 2017. Any differences reflect the MDP's unique structure and operational context.

5.2 The Secretary of State oversees the MDP, the police force that protects Defence assets and personnel in the United Kingdom. The 2026 Act establishes the statutory framework requiring the Secretary of State to maintain a barred list and an advisory list. It also imposes an obligation on the Secretary of State to check other barred lists and prohibits them from appointing any barred person to be an MDP officer.

5.3 Any MDP constable who is dismissed from the force or where finding is made in relation to a former MDP constable that they would have been dismissed had they still been a member of the force becomes a barred person. Such dismissals and findings are made following proceedings carried out under Ministry of Defence Police (Conduct, Performance and Appeals Tribunals) Regulations 2020.

5.4 Any person whose name is placed on the MDP barred list will be prevented from being employed or appointed to a law enforcement position by any law enforcement employer. This includes becoming a member of a Home Office police force, the British Transport Police, the Civil Nuclear Constabulary, the National Crime Agency, local policing bodies, the Independent Office for Police Conduct (IOPC) and His Majesty Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) as well as the MDP. This supports public confidence and helps safeguard the integrity of policing.

5.5 Constables who either resign or retire while under investigation or having resigned or retired, a relevant allegation comes to the attention of the Secretary of State will be included in the advisory list. The allegation must relate to conduct, efficiency, or effectiveness and be serious enough that, if proven, it could have led to dismissal. If a person appears on an advisory list there is no bar on employing or appointing that person, but a law enforcement employer would be expected to take such information into account in deciding whether to proceed with the employment or appointment.

5.6 The MDP barred list and MDP advisory list have been introduced to increase transparency and accountability. The lists seek to improve public confidence in the police and ensure that those who do not meet the high standards required of the police service and have been dismissed (barred persons) cannot continue to work within policing.

What was the previous policy, how is this different?

5.7 Currently, the MDP and other forces rely on the Police National Database (PND) to identify flags on police officers and former police officers during vetting other than in relation to Home Office forces where a barred list has existed since 2017. However, the PND was not designed for this purpose, and there are risks that flags may be missed or not updated promptly. There was no dedicated barred list or advisory list for MDP constables and former constables for other forces to check against. There was also no prohibition on the Secretary of State from appointing a barred person as an MDP officer. This measure seeks to strengthen the robustness of the vetting process for police officers being employed by another police force as well as ensure confidence in the MDP.

6. Legislative and Legal Context

How has the law changed?

6.1 Schedule 25 to the 2026 Act requires that the Secretary of State maintains a barred list (paragraph 1 of Schedule 25) and an advisory list (paragraph 9 of Schedule 25) in relation to the MDP. Section 205 of the Act places a duty on the Secretary of State to check each barred list maintained by a law enforcement employer and prohibits them

from employing or appointing any individual on the barred list. Section 209 of the Act places a duty on the Secretary of State to check each advisory list maintained by a law enforcement employer before employing or appointing any person, to ascertain whether the proposed employee or proposed appointee is included in an advisory list. This instrument is made under the powers conferred in paragraphs 1(3), 6, 7(2) and (3), 9(2) and 11(3) of Schedule 25 to, and section 252(1) of the 2026 Act.

6.2 The regulations are necessary to supplement the provisions in Schedule 25 in relation to the MDP barred list and MDP advisory list that the Secretary of State is required to maintain. They provide for the information that needs to be included about a person included in the MDP barred list and the information that must be published in relation to them. They also set out the circumstances and processes for the removal of a person from the MDP barred list. They also provide for the information that needs to be included about a person in the MDP advisory list and the circumstances and processes for the removal of a person from that list.

Why was this approach taken to change the law?

6.3 The MDP barred list and MDP advisory list have been created as part of a series of reforms within the police discipline system, to increase transparency and accountability. The police barred list and advisory list which cover the Home Office forces were introduced by section 30 of the Crime and Policing Act 2017. A similar approach was needed for the MDP (as well as the British Transport Police, the Civil Nuclear Constabulary and the National Crime Agency) to ensure that persons that do not meet the standards required of the police service are not able to continue to work in law enforcement.

7. Consultation

Summary of consultation outcome and methodology

7.1 This instrument was not subject to public consultation.

7.2 During the passage of the Crime and Policing Bill in 2025, the Home Office consulted with the Information Commissioner's Office, in relation to the barred and advisory lists which will be maintained by the Secretary of State (for the MDP) as well as the Director General of the National Crime Agency, the British Transport Police Authority and the Civil Nuclear Police Authority as required by Article 36(4) of assimilated Regulation (EU) 2016/67933 (United Kingdom General Data Protection Regulation).

8. Applicable Guidance

8.1 The Secretary of State will be issuing guidance on the operation of the lists which will be published on the gov.uk website.

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 no, or no significant impact on the private, voluntary or public sector is foreseen.

Impact on businesses, charities and voluntary bodies

9.2 There is no impact on business, charities or voluntary bodies.

9.3 The legislation does not impact small or micro businesses.

9.4 The impact on the public sector is minimal and is limited to the Secretary of State

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The Secretary of State and the MDP will keep the operation of these regulations under review, including following subsequent inspections related to this issue undertaken by HMICFRS.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 Article 36(4) of assimilated Regulation (EU) 2016/67933 (United Kingdom General Data Protection Regulation) ("UK GDPR") requires the Secretary of State to consult the Information Commissioner when preparing a legislative measure to be adopted by Parliament. The Information Commissioner was consulted on all of the measures in this instrument. To the extent that Article 36(4) of the UK GDPR required the Secretary of State to consult the Information Commissioner on the measures in this instrument, that obligation has therefore been complied with.

11.2 Article 36(4) is not cited in the preamble to this instrument. Paragraph 3.11.28 of Statutory Instruments Practice states "The preamble should set out the fulfilment of any condition that the enabling Act requires before the SI can be made". The UK GDPR is not an enabling Act for this instrument.

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").