**EXPLANATORY MEMORANDUM TO**

**THE MINISTRY OF DEFENCE POLICE (COMMITTEE) (AMENDMENT) REGULATIONS 2022**

**2022 No. 1060**

## 1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Defence ("MOD") and is laid before Parliament by Command of His Majesty.

## 2. Purpose of the instrument

2.1 The instrument establishes the new membership of the Ministry of Defence Police Committee ("the Committee").

2.2 The Committee provides independent advice and assurance to the Secretary of State for Defence and the Ministry of Defence Police ("MDP") Board on MDP policing matters in accordance with the Ministry of Defence Police Act 1987 ("the 1987 Act").

## 3. Matters of special interest to Parliament

***Matters of special interest to the Joint Committee on Statutory Instruments***

3.1 None.

## 4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is all of the United Kingdom.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is all of the United Kingdom.

## 5. European Convention on Human Rights

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

## 6. Legislative Context

6.1 The original membership of the Committee was set out in the Ministry of Defence Police (Police Committee) Regulations 1988 (SI 1988/1098), as amended by the Ministry of Defence Police (Police Committee) (Amendment) Regulations 1994 (SI 1994/1102), before being revoked by the Ministry of Defence Police (Police Committee) Regulations 1995 (SI 1995/939) ("1995 Regulations").

6.2 In 2003 the House of Commons Defence Committee ("HCDC") and the Privy Council Team ("PCT") reviewed the use of the Anti-Terrorism, Crime and Security Act 2001, which amended the 1987 Act. Both HCDC and PCT made the case for independent oversight of the MDP.

6.3 In October 2007 the MOD made changes to the governance arrangements of the MDP. These changes included a restructuring of the Committee. The Ministry of Defence (Committee) Regulations 2009 (SI 2009/1609) ("2009 Regulations") gave

effect to these policy changes by revoking the 1995 Regulations and providing for the new membership of the Committee.

6.4 In December 2021 further changes to the Committee's membership were introduced as part of the wider MDP governance reform, as explained at paragraphs 7.1 – 7.10 below. This instrument gives legislative effect to the revised Committee membership by amending the 2009 Regulations.

## 7. Policy background

***What is being done and why?***

7.1 In 2019 the MOD undertook a review to determine the optimal relationship between MDP, its customers and the MOD, and the most appropriate governance structure to underpin these relationships.

7.2 The MOD governance model developed from this review follows UK Government guidance on best practice in establishing Boards. This included introducing a new MDP Board to provide strategic oversight and challenge which would include existing members of the Committee and supplemented by additional business focused non-executive members. It recommended clarifying the status of the Committee so that it could take a stronger role in providing independent advice and assurance on MDP policing matters. It also recommended the Committee is separate from the new MDP Board.

7.3 In Spring 2021, following the review, the independently chaired MDP Board was introduced. The MDP Board is responsible for providing support and challenge on behalf of the MOD to ensure MDP is delivering its key objectives effectively and efficiently. The Board is chaired by an independent Non-Executive Director ("NED") with lay policing experience, and includes members made up of NEDs with senior policing experience and relevant expertise in people and risk/audit matters, senior MOD officials, and the MDP Chief Constable.

7.4 As part of the Spring 2021 changes, the role of the Committee was refined to provide independent advice and assurance on MDP policing matters, including: providing advice to the MDP Board on MDP performance and risk through a specialist policing lens; and, assuring the MOD and Secretary of State on specific policing functions, for example police standards, police powers, complaints against Chief Officers and MDP and dispute resolution. Membership was restricted to independent policing experts only.

7.5 In December 2021, the role of the Committee was further refined to focus on matters that require independent policing expertise and responsibilities referenced in legislation. In practice, this includes complaints against Chief Officers, dispute resolution, and reviews of the handling of complaints made against the MDP. The MDP Board took responsibility from the Committee in December 2021 to provide assurance that the MDP is exercising its policing powers and authority lawfully and impartially and is meeting the standards required of a UK police force.

7.6 In summary the Committee's refined purpose in December 2021 settled on providing independent advice and assurance on MDP policing matters to the Secretary of State (in accordance with the 1987 Act), the MDP Board, and the Chief Operating Officer of the MOD. Accordingly, changes to the Committee's membership were required to best reflect that refinement of purpose.

7.7 In addition, it is considered that it is no longer necessary for the Clerk to the Committee to be listed as a formal member as currently provided for in the 2009 Regulations. A clerk will continue to provide administrative services to the Committee as appropriate, but will no longer serve as a formal member. Accordingly, the removal of that role is provided for in these amendments.

***Explanations***

*What did any law do before the changes to be made by this instrument?*

7.8 Section 1(5) of the 1987 Act requires the Secretary of State to appoint a committee, to be known as the Ministry of Defence Police Committee, and confers a power on him to make regulations concerning the membership and the procedure of the Committee. The previous membership of the Committee is set out in the 2009 Regulations.

*Why is it being changed?*

7.9 The 2009 Regulations are being amended to reflect the revised membership of the Committee, following wider changes to MDP governance arrangements implemented in December 2021 (as set out above).

*What will it now do?*

7.10 The instrument amends the Committee membership by the removal of five roles. The revised Committee now comprises the Committee Chair and three independent members only.

## 8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

## 9. Consolidation

9.1 This instrument amends the 2009 Regulations. This instrument does not consolidate any relevant legislation. As set out below, information on the revised membership of the Committee can be accessed via the MOD website at https://www.gov.uk/government/collections/mod-police-committee.

## 10. Consultation outcome

10.1 Internal consultation took place with key MOD stakeholders, the Defence Police Federation, the Chair of the Police Committee and the MDP. As the instrument puts into legislative effect changes to internal governance arrangements, no public consultation was required.

## 11. Guidance

11.1 The MOD website has been updated to include the changes and to give details of the new membership of the Committee. The Terms of Reference of the Committee and associated guidance are also available, copies of which may be obtained from https://www.gov.uk/government/collections/mod-police-committee.

## 12. Impact

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

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because the SI relates to maintenance of existing regulatory standards.

## 13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

## 14. Monitoring & review

14.1 The Committee membership will be subject to internal review after 36 months and the instrument may be amended accordingly.

## 15. Contact

15.1 The Directorate of Security and Resilience (DSR), Policing & Physical Security Assistant Head, email: coo-dsr-modpolicecommittee@mod.gov.uk, can be contacted with any queries regarding the instrument.

15.2 Harvey Moore, Deputy Director for Directorate of Security and Resilience (DSR) at the Ministry of Defence can confirm that this Explanatory Memorandum meets the required standard.

15.3 Baroness Goldie, Minister of State at the Ministry of Defence can confirm that this Explanatory Memorandum meets the required standard.