EXPLANATORY MEMORANDUM TO

THE MINISTRY OF DEFENCE POLICE (CONDUCT, PERFORMANCE AND APPEALS TRIBUNALS) (AMENDMENT) REGULATIONS 2025

2025 No. 1263

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 Lord Vernon Coaker, Minister of State at the Ministry of Defence confirms that this Explanatory Memorandum meets the required standard.

2.2 Harvey Moore, Deputy Director for 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 can be contacted by email at the following address with any queries regarding the instrument: DOS-DSR-SecretariatOffice@mod.gov.uk. Alternatively, the department can be contacted by telephone: 03001560728.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This Instrument makes changes to a number of regulations which determine the processes for police officer dismissals, strengthening the frameworks for dealing with police misconduct and unsatisfactory performance and attendance. This reflects recommendations made by the Home Office's review into the process of police officer dismissals and follows a series of high-profile police misconduct cases in recent years which have impacted trust and confidence in the police service.

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, Scotland and Northern Ireland.

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

5. Policy Context

What is being done and why?

5.1 The package of changes included in this Instrument aims to strengthen the police misconduct and performance systems, acting on recommendations made by the Home

Office's review into police dismissals. Overall, they aim to improve public trust and confidence in policing.

5.2 Gross misconduct is defined as a breach of the Standards of Professional Behaviour so serious as to justify dismissal. However, notwithstanding a finding of gross misconduct, police officers have sometimes been issued with lesser forms of disciplinary action such as written warnings, instead of being dismissed. This can damage the confidence of both the public and police workforce and therefore this Instrument introduces a presumption of dismissal where gross misconduct is found proven at misconduct proceedings, unless it is determined that there are exceptional circumstances.

5.3 Convictions of serious (indictable only) criminal offences are incompatible with being a police officer, damaging the trust and confidence of the public and wider policing workforce. Therefore, this Instrument now means that any such conviction will always lead to a finding of gross misconduct, reducing unnecessary delays in the misconduct process.

5.4 This Instrument also sets a presumption that where an officer resigns or retires, their case will be heard at an accelerated misconduct hearing conducted (if the individual was not a senior officer) by the chief officer or their senior delegate, removing the requirement for lengthier and more complex misconduct hearings which are heard by misconduct panels. This will occur unless the officer opts for a misconduct hearing within 10 working days of the notice of referral, or the appropriate authority deems that a 'standard' hearing is required.

5.5 The relevant authority (the chief constable, unless the officer concerned is a senior officer in which case the Ministry of Defence Police Committee) has only been able to refer an officer to an accelerated misconduct hearing where the investigator has recommended to it that the 'special conditions' are satisfied, namely that there is sufficient evidence of gross misconduct and it is in the public interest for the individual to cease to be an officer without delay. This therefore meant that it was impermissible for the appropriate authority to do so, in circumstances such as evidence or admissions coming to light after the investigation had concluded. This Instrument provides the MDP with a wider power to be able to refer an officer to an accelerated misconduct hearing in those circumstances.

5.6 This Instrument also makes changes to the police performance procedures. Police officers are subject to a regulated performance process which allows line managers and the chief constable to deal with officers who have displayed unsatisfactory performance or attendance or gross incompetence. The Instrument removes the previous second stage of this process, and the appeal which followed it, as it is considered that the previous number of stages meant the system was unwieldy and overly long. This means that a three-stage process will become a two-stage process. Removing the second stage intends to make the overall process shorter and therefore more streamlined. The Instrument also makes changes to the period within which officers must show improvement, taking this from a maximum 12 months to a default three months. Taken together, these changes will mean that officers who do not meet the required standard of performance or attendance are taken swiftly through the stages and dismissed from policing, where this is appropriate.

What was the previous policy, how is this different?

5.7 The police misconduct and performance systems are already well-established and set out in detailed regulations. The changes in this Instrument make adjustments to the

previous processes to ensure that they are robust enough to root out officers who should be dismissed. This is achieved through amendments which introduce requirements that officers who are found to have committed gross misconduct are dismissed, unless there are exceptional circumstances. Likewise, changes to regulations mean that a criminal conviction for an indictable-only offence will always amount to gross misconduct. A new presumption has been introduced that former officers will be referred to accelerated misconduct hearings to deal with their cases more swiftly. Some more technical changes have been made to the accelerated misconduct hearing process, by extending the previous limited ability of the relevant authority to refer an officer to an accelerated hearing.

5.8 Changes to the police performance process have removed the second stage, and the appeal which followed it, to streamline the system. Additionally, officers will now have a default period of three months to show improvement in their performance or attendance, rather than the previous 12-month period.

6. Legislative and Legal Context

How has the law changed?

6.1 Regulation 2 of the Conduct Regulations set out in Schedule 1 to the Ministry of Defence Police (Conduct, Performance and Appeals Tribunals) Regulations 2020 (the 2020 Regulations") has been amended so that the definition of gross misconduct includes conduct which has resulted in the conviction of an indictable-only offence (i.e. one which is only triable in the Crown Court in England and Wales or Northern Ireland, or the High Court of Justiciary in Scotland).

6.2 Regulation 41 of the Conduct Regulations has been amended to require the person or panel conducting misconduct proceedings to impose dismissal without notice where gross misconduct is proven, unless the persons or panel is satisfied that exceptional circumstances apply. In such circumstances, a final written warning or reduction in rank may be imposed as an alternative.

6.3 Part 3A has been inserted into the former officer modifications of the Conduct Regulations set out in Schedule 2 to the 2020 Regulations setting out that, where a former police officer has a case to answer for gross misconduct, that individual will be referred to an accelerated misconduct hearing unless either the relevant authority decides that it requires a misconduct hearing or the individual requests a misconduct hearing within 10 working days of them being notified they are being referred.

6.4 Regulation 49 of the Conduct Regulations 2020 has been amended to give the MDP a broader power to determine whether the special conditions for referral to an accelerated misconduct hearing are satisfied.

6.5 The Instrument amends the Performance Regulations set out in Schedule 4 to the 2020 Regulations to remove what was the second stage of the performance process and the appeal which followed it, in all places where this is referenced. In addition, references throughout the Regulations to the 'specified period' within which an officer must show sufficient improvement have been amended from 12 months to three months. In several other places, consequential changes have been made to reflect wider changes in the police conduct regime.

6.6 Consequential changes have also been made to the Appeals Tribunals Regulations set out in Schedule 5 to the 2020 Regulations.

6.7 This Instrument also corrects errors and clarifies the drafting of one rule.

Why was this approach taken to change the law?

6.8 This is the only possible approach to make the necessary changes. MDP officers are subject to a regulated discipline system and therefore changes to the regulations was the only way to achieve these changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 This Instrument has not been subject to public consultation. Changes primarily stem from those recommended following the Home Office's review[1] into the process of police officer dismissals, during which the Government heard wide-ranging evidence from across the policing sector including national policing bodies and police staff networks.

7.2 The review made a number of key findings. Its recommendations, as a package of reforms, are expected to preserve crucial independence in the system through the widening of cases heard at accelerated hearings and a streamlined performance system. As a package, this is intended to deliver improvements across two key areas - misconduct, and performance. Summaries of some of the evidence provided is incorporated within the review's published report.

7.3 The changes made by this Instrument mirror changes made to the disciplinary procedures for the territorial police forces in England and Wales made by S.I 2025/558. That Instrument was approved following consultation with the College of Policing and the Police Advisory Board for England and Wales (PABEW) and other partners.

8. Applicable Guidance

8.1 There is no separate statutory guidance for the disciplinary procedures that apply to the MDP. However, insofar as the regime is identical to the regime for territorial police officers in England and Wales, the statutory guidance issued by the Home Office (Conduct, Efficiency, and Effectiveness: Statutory Guidance on Professional Standards, Performance, and Integrity in Policing[2]) is relied on. It provides detailed guidance on the operation of the procedures. That guidance is in the process of being updated to take account of the changes made by SI 2025/558. In the interim, MOD will produce guidance on the changes which will be made available to those impacted by them. It will also produce a version of the Conduct Regulations that has been modified for former officers which will be placed on gov.uk[3].

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 it is not a regulatory provision. There is not expected to be an impact on businesses.

9.2 Non-monetised costs include any costs related to dismissal, and potential operational costs from the short term loss of officers via dismissal.

---

[1] https://www.gov.uk/government/publications/police-officer-dismissals-home-office-review
[2] https://www.gov.uk/government/publications/policing-professional-standards-performance-and-integrity
[3] https://www.gov.uk/government/publications/ministry-of-defence-police-conduct-performance-and-appeals-tribunals-regulations-2020

9.3 As with the changes made by S.I. 2025/558 there are expected to be some cost saving benefits due to the presumption of accelerated misconduct hearings for former officers. Based on Home Office figures, each accelerated hearing is estimated to save between £5,000 and £7,400, with a central estimate of £6,200.

9.4 Other non-monetised benefits include improved efficiency and consistency in the dismissals process and improved public confidence.

Impact on businesses, charities and voluntary bodies

9.5 There is no, or no significant, impact on business, charities or voluntary bodies. The changes will not result in any increased costs for these bodies.

9.6 There is no, or no significant, impact on the public sector because the changes only impact the Ministry of Defence police which is part of the Ministry of Defence. The changes will not result in any net increased costs and are likely to reduce the overall cost of operating the disciplinary process.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is to ensure that any changes that are made by the Home Office are also made to the equivalent procedures for the MDP. The Home Office keeps the operation of the disciplinary procedures for police officer under review, including through annual statistics and publications on police misconduct and complaints.

10.2 The instrument does not include a statutory review clause.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This Instrument corrects various errors in the Conduct Regulations and the modifications for former officers that were identified during the drafting process 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”).