EXPLANATORY MEMORANDUM TO

THE MINISTRY OF DEFENCE POLICE (VETTING) REGULATIONS 2026

2026 No. 428

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 AND the Secondary Legislation Scrutiny Committee.

2. Declaration

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

2.2 Harvey Moore, Head of Policy for Directorate of Security and Resilience, at the Department of State in the Ministry of Defence confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Mark Dudley at the Ministry of Defence Police 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 introduces a legal duty for Ministry of Defence Police ("MDP") officers to hold and maintain police vetting clearance and creates a procedure for the MDP to consider the withdrawal of vetting and dismiss an officer whose vetting is withdrawn. It progresses recommendations made by the Home Office's review into police officer dismissals[1] in relation to vetting clearance. Similar legislation has been introduced for the territorial police forces in Great Britain.

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.

[1] Police officer dismissals: Home Office review - GOV.UK https://www.gov.uk/government/publications/police-officer-dismissals-home-office-review

5. Policy Context

What is being done and why?

5.1 MDP officers are required to obtain police vetting clearance before joining the force. Since 2017, the College of Policing's authorised professional practice (APP) guidance on vetting[2] has advised that officers who are unable to hold the minimum level of vetting clearance could be considered to be 'grossly incompetent' under the Police (Performance) Regulations 2020 and dismissed as a result. Gross incompetence means a serious inability or serious failure of an officer to perform the duties of their rank or current role. However, this is not explicitly set out within Police Performance Regulations 2020 and there is no regulatory requirement that officers must maintain vetting clearance throughout the length of their policing career. MDP are not bound to follow the College of Policing APP but do so to maintain public and government confidence that their professional standards match those applied to territorial forces in England and Wales, and had been using the procedure set out in the MDP Performance Regulations to dismiss officers who could not hold the minimum level of vetting clearance.

5.2 The Home Office's review recommended that there should be a statutory duty for officers to hold and maintain vetting clearance as well as clarification of the route by which officers can be dismissed for being unable to maintain vetting clearance.

5.3 Further, in the case of Di Maria v Met Police & Ors [2025] EWHC 275 (Admin), the High Court found that the decision to withdraw the vetting of Lino di Maria and their dismissal for gross incompetence under the performance procedures was unlawful.

5.4 The outcome of this High Court case, led to the introduction of a regulatory framework to enable vetting-based dismissals (the Police (Vetting) Regulations 2025[3]) for territorial police forces in England and Wales to ensure that officers who are unfit to serve through an inability to maintain vetting clearance can be removed.

5.5 The absence of a similar statutory framework to dismiss MDP officers who have had their vetting clearance withdrawn means that officers are removed from duties and are still being paid despite being assessed to be unsuitable to work in the force.

5.6 This instrument introduces a duty for MDP officers to hold and maintain vetting clearance and provides a statutory mechanism by which they can be dismissed should they fail to do so. It sets out the procedures to be followed when a matter comes to the attention of the vetting authority (which in most cases is the chief constable of the MDP) that indicates that an MDP officer may no longer be suitable to hold vetting clearance in accordance with the College of Policing's vetting code.

5.7 As part of the vetting clearance withdrawal assessment, relevant notices must be served by the vetting authority on the officer to inform them that their vetting clearance is under review, that the officer must have access to a police friend, who supports and advises the officer through the process, as well as legal representation and must have an opportunity to make their own representations in respect of the matter which is under consideration. The officer can also be suspended at any point from when the matter comes to the attention of the vetting authority, provided the suspension conditions are satisfied. The outcomes available to the vetting authority are to maintain the officer's clearance but place conditions on it, downgrade the

[2] Vetting | College of Policing https://www.college.police.uk/app/professional-standards/vetting#08c1d458-d1b8-4669-ab6e-5b93250edadf

[3] S.I. 2025/502.

clearance with or without conditions or withdraw it from the officer. An officer who has had their clearance withdrawn must be dismissed without notice.

5.8 There is a two-stage appeal process should the officer wish to challenge a decision to dismiss them. The initial appeal will be handled by a panel as constituted by the vetting authority. The panel will consider the case and may confirm the original decision or decide to handle it in a manner that the original decision maker could have dealt with the case. If the officer is unsuccessful with this appeal, they will have a right to appeal to a Ministry of Defence Police Appeals Tribunal.

What was the previous policy, how is this different?

5.9 The previous policy was for an MDP officer who had their vetting clearance withdrawn under the force's internal vetting procedures to be dismissed under the statutory MDP Performance procedures. However, the Di Maria judicial review referred to above cast the lawfulness of this approach into doubt.

5.10 These regulations provide a bespoke legal framework that introduces a duty to hold and maintain police vetting and a statutory procedure that enables the vetting authority to dismiss officers who are unable to maintain vetting clearance.

6. Legislative and Legal Context

How has the law changed?

6.1 While it has been a requirement of their employment contracts for MDP officers to maintain vetting clearance since 2013, officers employed before this date are not subject to this requirement. This instrument introduces a statutory requirement for all MDP officers to hold and maintain vetting clearance. It also introduces a bespoke procedure to consider the withdrawal of vetting clearance and if withdrawn, to dismiss an MDP officer.

Why was this approach taken to change the law?

6.2 The lack of a statutory procedure to withdraw police vetting and dismiss officers meant there was a risk that officers could challenge the internal procedures for the withdrawal of vetting clearance as well as any dismissal under the MDP Performance procedures for a failure to maintain vetting clearance.

6.3 The withdrawal of vetting clearance is not a disciplinary matter, and it would not have been appropriate to extend the existing disciplinary procedures to cover this.

6.4 The Secretary of State has the power to make provision in regulations with respect to the conduct, efficiency and effectiveness of members of the Ministry of Defence Police and the maintenance of discipline under section 3A(1) of the Ministry of Defence Police Act 1987. Vetting decision-making and the consequences it can lead to (including dismissal) are matters of efficiency and effectiveness. This instrument ensures there is a legal mechanism for an MDP officers' vetting clearance to be withdrawn and for them to be dismissed.

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 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. Summaries of some of the evidence provided is incorporated within the review's published report. On vetting, the report recommended that there should be a statutory duty for officers to hold and maintain vetting clearance as well as clarification of the route by which officers can be dismissed for being unable to maintain vetting clearance.

7.2 Full consultation has taken place with the Defence Police Federation.

8. Applicable Guidance

8.1 The Ministry of Defence will develop guidance for those involved in the operation of the regulations – force vetting managers, senior officers, independent panel members for example – after consultation with the Home Office who are developing statutory guidance for the operation of the Police (Vetting) Regulations 2025.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because we consider there to be no, or no significant, impact on businesses as the instrument relates to the vetting clearance for MDP officers.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because the instrument relates to the vetting clearance for MDP officers.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector because the new regulatory procedure is limited to the MDP. Whilst these changes may increase the number of dismissals in the short-term, it is anticipated that once officers who are currently unable to hold vetting are handled under the procedures introduced in this instrument, the volume of cases will remain at a consistent level.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is that the Ministry of Defence will keep the operation of this instrument under review, including through annual statistics which will be developed in conjunction with the force.

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 The vetting procedures set out in this instrument are made in reliance on the power in section 3A(1) of the Ministry of Defence Police Act 1987. The consequential amendments to the conduct and performance procedures are made in reliance on subsection (1A) of that section.

11.2 The Defence Police Federation was consulted on the procedures set out in 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”).