EXPLANATORY MEMORANDUM TO

THE POLICE (CONDUCT) (AMENDMENT) REGULATIONS 2026

2026 No. 597

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Home Office and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Sarah Jones, Minister of State for Policing and Crime, at the Home Office confirms that this Explanatory Memorandum meets the required standard.

2.2 Paul Regan, Deputy Director for the Police Integrity Unit, at the Home Office confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Numar Rowe and Mayowa Ochere at the Home Office can be contacted by email at the following addresses with any queries regarding the instrument: Numar.Rowe@homeoffice.gov.uk and Mayowa.Ochere@homeoffice.gov.uk. Alternatively, the department can be contacted by telephone: 07469 907 020 or 07787 000428.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument changes the standard of professional behaviour in relation to a police officer's 'use of force' at Schedule 2 to the Police (Conduct) Regulations 2020 (the "Conduct Regulations"). The standards of professional behaviour are the legal expectations that define how police officers must act at all times - on duty and off duty. This specific change will implement the independent Police Accountability Rapid Review's (the "Rapid Review's") recommendation, to revert from the civil law test to the criminal law test for the use of force in police misconduct proceedings. [1]

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.

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

5. Policy Context

What is being done and why?

5.1 In accordance with the Rapid Review's recommendation, this instrument will change the legal test for the use of force in police misconduct proceedings from the civil law

[1] The Rapid Review: https://www.gov.uk/government/publications/police-accountability-rapid-review/recommendations-by-tim-godwin-and-adrian-fulford-to-the-lord-chancellor-and-the-secretary-of-state-for-the-home-department--2

to the criminal law test. Currently, the applicable standard of professional behaviour states that: 'Police officers only use force to the extent that it is necessary, proportionate and reasonable in all the circumstances. The new standard will state that: 'Police officers only use force when they honestly believe this to be necessary. The force used should be necessary, proportionate and reasonable'.

5.2 On 5 July 2023, the Supreme Court in the case of R (on the application of Officer W80) v Director General of the Independent Office for Police Conduct and others [2023] UKSC 24 ("W80") confirmed that the civil law test had applied in relation to the use of force in police misconduct proceedings since a change to legislation in 2008. Following the W80 judgment, there have been concerns raised by policing stakeholders. In particular, regarding the adverse effects on police morale and recruitment (especially for firearms officers), resulting from the perceived unfairness of the civil law test.

5.3 The Rapid Review was commissioned in response to these concerns and was carried out by Rt Hon Sir Adrian Fulford and Tim Godwin OBE QPM who considered submissions from policing stakeholders, civil society, legal experts, and the Independent Office for Police Conduct.

5.4 The Rapid Review found no compelling evidence that the shift from the criminal law test to the civil law test was intended by government or supported by the Taylor Review of 2008 which helped establish the modern police misconduct framework.

5.5 It also found that the criminal law test would provide greater protection for officers making split-second decisions under pressure, supporting recruitment and retention in critical roles. The Government is determined to ensure both that officers are supported in making difficult decisions in the line of duty and that there are robust and transparent systems of accountability. The Rapid Review also makes the case that sufficient safeguards exist within the current system so that, even with a change to threshold, officers can be held to account.

5.6 The Rapid Review's recommendation to revert from the civil law test to the criminal law test was accepted by the Secretary of State for the Home Department (the "Home Secretary").[2]

5.7 The change made by this instrument will address the perceived unfairness and lack of proportionality of the civil law test. In addition, it will provide clarity for police officers and improve operational confidence as it will enable police officers to act decisively in challenging situations by ensuring that actions taken on the basis of an honestly held belief are assessed in a manner that reflects the split-second and uncertain circumstances in which force is often used.

What was the previous policy, how is this different?

5.8 Since the *W80* decision, police forces have applied the civil law test to the use of force in misconduct proceedings: an officer may rely on an honest but mistaken belief in the necessity of force only if that mistake was objectively reasonable. This contrasts with the criminal law test, which allows reliance on an honest belief regardless of whether that belief was mistaken or, if mistaken, regardless of whether that mistake was objectively reasonable.

[2] Government response to the Rapid Review, 23 October 2025:https://www.gov.uk/government/publications/police-accountability-rapid-review/government-response-to-the-police-accountability-rapid-review

5.9 This instrument ensures the criminal law test applies in misconduct proceedings in relation to the use of force by a police officer (including in self-defence or defence of others). However, it does not follow that police officers will be able to use disproportionate force. The force applied must always be reasonable, proportionate and necessary. In instances where this has been found not to be the case, police officers may be liable for misconduct. This is intended to support police officers who may otherwise be penalised for making genuine mistakes in high-pressure situations.

6. Legislative and Legal Context

How has the law changed?

6.1 An amendment has been made to Schedule 2 to the Conduct Regulations 2020, which sets out the standards of professional behaviour.

Why was this approach taken to change the law?

6.2 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 This instrument has not been subject to public consultation. The change is being made as a result of the Rapid Review's recommendation that the Home Secretary revert to the criminal law test for use of force in police misconduct proceedings. The Rapid Review heard wide-ranging evidence from across the policing sector, justice, legal and civil society groups between November 2024 and May 2025.

7.2 As required by law, the Police Advisory Board for England and Wales (PABEW) was provided with a draft of this instrument and between 10 November and 19 December 2025 was given the opportunity to provide their views. it.

7.3 The Government considered the PABEW's views and made a minor amendment to the draft instrument in response to the concerns raised by a small number of members. Upon the review of separate concerns, also raised by a small number of PABEW members, the Government concluded that substantive amendments to the draft instrument were not appropriate, as the drafting reflected the Rapid Review's recommendations and intended policy effect of the instrument.

8. Applicable Guidance

8.1 The Home Office will be updating its statutory guidance (Conduct, Efficiency and Effectiveness: Statutory Guidance on Professional Standards, Performance and Integrity in Policing) following engagement with the Police Advisory Board for England and Wales (PABEW) to reflect the changes to policing regulations in this area since 2020. This guidance is a lengthy document to which amendments are needed to reflect various changes being made, or which have recently been made in the police misconduct legislation which extends beyond the specific change to the standard of professional behaviour for use of force.

8.2 To ensure clarity for the sector with regards to these changes, and avoid duplicative publications, the Guidance is being published in the coming months, ensuring all updates are included. A draft copy of the updated guidance will be supplied to the PABEW, and comments on the proposed changes will be taken into account before the final updated guidance is issued. However, as has been laid out above, it is vital that this instrument is laid as soon as possible as the updated statutory guidance is not

required to operationalise the particular changes that the regulations are making as the instrument articulates how the new standard of behaviour should be assessed. This is also necessary in order to maintain confidence in the police, and to fulfil the commitment Government made to accept the recommendations of the independent Rapid Review which was commissioned in October 2024.

8.3 The statutory guidance documents will be published on gov.uk. In the interim, Home Office officials will continue to engage with key stakeholders to help policing acclimatise to the changes made by this instrument. The Government will also support police forces and other bodies, including the Independent Office for Police Conduct, National Police Chief's Council and College of Policing with their comprehensive accompanying guidance documents.

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 the Home Office consider there to be no, or no significant, impact on businesses as the instrument relates to the regulatory system governing police professional behaviour.

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 regulatory system governing police professional behaviour.

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 this instrument amends the regulatory system governing police professional behaviour in a limited way.

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 Home Office will keep the operation of this instrument under review.

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 None.

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").