EXPLANATORY MEMORANDUM TO

THE REVENUE AND CUSTOMS (COMPLAINTS AND MISCONDUCT) (AMENDMENT) REGULATIONS 2025

2025 No. 703

1. Introduction

1.1 This explanatory memorandum has been prepared by His Majesty's Revenue and Customs (HMRC) on behalf of His Majesty's Treasury and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 James Murray MP, Exchequer Secretary to the Treasury confirms that this Explanatory Memorandum meets the required standard.

2.2 Neil Charnock, Deputy Director for the Investigation Policy area, at HMRC confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Stuart Martin at HMRC, Telephone: 03000 563217 or email: stuart.martin@hmrc.gov.uk can 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 This instrument amends the Revenue and Customs (Complaints and Misconduct) Regulations 2010 (S.I. 2010/1813) ("the 2010 Regulations") which govern HMRC's relationship with the Independent Office for Police Conduct (IOPC) and how complaints, conduct matters and death and serious injury matters (DSIs) are handled in England and Wales.

4.2 The 2010 Regulations are amended to align (where appropriate to HMRC) with legislative reforms made by the Home Office to police complaints and misconduct procedures. The amendments also focus IOPC's oversight of complaints and conduct matters to actions related to the exercise of HMRC duties (see paragraph 5.3). In cases where the complaint or conduct matter *does not* involve an allegation of death or serious injury, the focus is being refined to actions related to the performance of a "specified enforcement activity" (see paragraph 5.4).

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.4 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 It is important that HMRC updates relevant procedures for dealing with complaints and conduct matters involving its staff to reflect those followed by the police and other law enforcement agencies overseen by the IOPC. This ensures an appropriate consistency of approach across law enforcement agencies, maintains public confidence and ensures that complaints and conduct matters are dealt with efficiently and effectively.

5.2 In summary, this instrument adopts those procedures used by police forces that are properly appropriate for HMRC as a government department with a law enforcement function (see paragraphs 5.8 to 5.9). As agreed with the IOPC, it also focuses the IOPC's oversight of HMRC by revising mandatory referral criteria, which apply to certain complaints and conduct matters within their area of expertise (see paragraphs 5.3 to 5.5).

5.3 Focussed oversight by IOPC is achieved in two ways. First, mandatory referral to the IOPC is limited to matters which follow contact with HMRC during the execution of duties. This means that complaints and conduct matters arising whilst not on duty will no longer be subject to referral to the IOPC because such behaviours are not actions requiring the IOPC to be engaged. Off-duty matters remain subject to HMRC's disciplinary processes and, where necessary, police investigation.

5.4 Secondly, save for matters involving death and serious injury following contact with HMRC, mandatory referral of complaints or conduct matters will be limited to the performance of a "specified enforcement activity". This means an activity carried out for the purpose of, or in connection with, a "criminal investigation", and in all other cases, is connected with the exercise of listed powers available to HMRC during civil investigations, including powers of entry, search and seizure of property and provision of information (see para 6.2). This change more closely aligns with the IOPC's role as an oversight body for law enforcement agencies and means that matters involving officers discharging HMRC's other tax related functions will no longer be subject to mandatory referral. Any such matters will continue to be considered under HMRC's complaints and disciplinary processes. Where appropriate, a complainant will have a right of appeal to the Adjudicator's Office (see also para 9.2). An allegation involving criminal conduct would be open to referral to the police.

5.5 HMRC will now only be able to voluntarily refer to the IOPC any complaint or conduct matter where it (a) follows contact with HMRC during the execution of duties and (b) save for matters involving death and serious injury, relates to a specified enforcement activity.

5.6 Similarly, the IOPC's power requiring any matter to be referred and to treat any matter as if it had been referred (and commence an investigation without any referral having been made) under their new power of initiative (see paragraph 5.8(e)) will only apply to a complaint or conduct matter connected with the performance of duties or relating to a specified enforcement activity, or where the matter has resulted in death or serious injury.

5.7 These regulations will not change the way in which HMRC handles complaints or matters in connection with the death or serious injury to a customer following on-duty contact with HMRC. Mandatory referral of such matters will continue unaffected by the changes made by these regulations.

5.8 The amended regulations also introduce the following changes:

a. The introduction of a new overarching requirement that HMRC records all statutory complaints and handles all complaints in a reasonable and proportionate manner.

b. A new form of investigation directed by the IOPC which replaces previous supervised and managed investigations. Where the IOPC determine an investigation is required it will be carried out by HMRC unless the IOPC decide that an independent or directed investigation by the IOPC is more appropriate.

c. A new provision for the handling of intelligence or sensitive information received by the IOPC or HMRC and the limited circumstances in which such information may be disclosed to others.

d. Provision to increase the efficiency of complaint handling between the IOPC and HMRC in that, where a complaint is made direct to the IOPC it will be able to automatically notify HMRC of the complaint rather than having to ascertain if the complainant is content for HMRC to be notified.

e. New powers for the IOPC to treat a complaint, conduct matter or DSI matter as if HMRC had referred it ("power of initiative").

f. A new duty on HMRC or, if appropriate, the IOPC, to provide the complainant and other interested persons with a written explanation if an investigation is not completed within 12 months and, thereafter, every 6 months.

g. A new power for the IOPC to direct HMRC to bring disciplinary proceedings in appropriate circumstances.

h. A new power to enable the IOPC to require the re-investigation of a complaint, conduct or DSI matter where there are compelling reasons to do so.

i. New broader powers for the IOPC to make recommendations to HMRC to take action outside of the disciplinary process following an investigation carried out by them, for example, for an apology to be issued. There is also provision for the publication of both the recommendation and HMRC's response.

j. A new, more flexible system of reviews by the IOPC with respect to an investigation by HMRC, replacing the current appeal system. This includes notifying the officer subject of the complaint of the review, a requirement to determine whether the investigation outcome was reasonable or proportionate and broader powers available to IOPC if it determines a review in favour of the applicant.

k. Provision of the investigation terms of reference to the persons being complained about to increase transparency of the investigation process.

5.9 These changes ensure HMRC deals with complaints and conduct matters efficiently and effectively, reinforce public confidence by strengthening the IOPC's independent role and streamlines processes to reduce bureaucracy.

What was the previous policy, how is this different?

5.10 Legislative change was required to ensure that IOPC's oversight of HMRC was consistent with that of the police and other law enforcement agencies. The previous Regulations reflected IOPC oversight arrangements at the time they were laid and, as a result of reforms made to police related legislation, HMRC is required to revise and refresh our Regulations.

5.11 Previously, the IOPC's oversight extended to complaints, conduct and DSI matters relating to all HMRC officers across all functions of HMRC. This included mandatory and voluntary referrals.

5.12 The IOPC's oversight is more appropriately focussed as set out in paragraphs 5.3 to 5.8.

6. Legislative and Legal Context

How has the law changed?

6.1 The instrument amends the Revenue and Customs (Complaints and Misconduct) Regulations 2010 ("the 2010 Regulations"). The 2010 Regulations provide the legislative framework governing the recording, handling, and investigation of complaints, conduct matters and death and serious injury matters in England and Wales in relation to the Commissioners for, and officers of, HMRC, and confer oversight functions on the IOPC.

6.2 This instrument introduces a limitation on mandatory referral of complaints or conduct matters to allegations arising from the execution of duties. Allegations not involving a death or serious injury are further limited to the performance of a "specified enforcement activity" defined as an activity:

a. carried out for the purpose of, or in connection with, a criminal investigation, or

b. in all other cases, which is, or is connected with, the exercise of:

i. a power of entry;

ii. a power to search premises, persons or property;

iii. a power of detention;

iv. a power of seizure;

v. a power to examine or inspect premises, persons or property;

vi. a power to compel the provision of information from any person exercised in the presence of that person;

and includes an activity carried out in connection with any authorisation granted under Part 2 (surveillance and covert human intelligence sources) of the Regulation of Investigatory Powers Act 2000.

6.3 This instrument amends the 2010 Regulations to align, where appropriate, with amendments made by the Policing and Crime Act 2017 to the Police Reform Act 2002, and the subsequent Police (Complaints and Misconduct) Regulations 2020 (S.I. 2020/2), with respect to the recording, handling, and investigation of police complaints, conduct matters and DSI matters.

6.4 This instrument amends the 2010 Regulations to reflect the new procedures and also amends the legislation to limit mandatory referral to the IOPC (see paragraphs 5.3 to 5.8).

Why was this approach taken to change the law?

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

7. Consultation

Summary of consultation outcome and methodology

7.1 No formal consultation has been undertaken in connection with this instrument. This is because the Home Office and the IOPC have been consulted extensively on the changes to the police complaints and misconduct procedures, which form a large part of this instrument. HMRC is committed to aligning, so far as is appropriate, to those reforms.

7.2 HMRC have liaised with the Home Office and worked closely with the IOPC in developing our proposed amendments and have their support to amend our legal framework.

8. Applicable Guidance

8.1 HMRC and the IOPC have not identified a need to issue separate statutory guidance to accompany the instrument.

8.2 The IOPC published revised statutory guidance in February 2020, incorporating their new procedures.[1] While this guidance is directly applicable to the police, not HMRC, HMRC gives this due regard when considering complaints from members of the public which could be relevant for referral to the IOPC.

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 there are no tax policy changes and no or minimal impact on businesses or the court system. This SI introduces changes that ensure the IOPC's oversight of HMRC better reflects its role as a police and law enforcement oversight body, reinforces public confidence in HMRC's complaints handling and minimises the extent to which the IOPC is required to maintain multiple sets of working practices.

9.2 The majority of complaints received in HMRC each year from members of the public are about customer service or the administration of HMRC's tax or benefit services. These are looked into by the Adjudicator's Office, not the IOPC. Individuals who wish to make a complaint will not need to do anything different as a result of the changes in this instrument.

9.3 The introduction of the instrument is likely to reduce the number of referrals to the IOPC and subsequently a reduction in costs as the IOPC charge per referral and investigation.

Impact on businesses, charities and voluntary bodies

9.4 There is no, or no significant, impact on business, charities or voluntary bodies because there is no change on processes or workloads.

9.5 There is no significant impact on the public sector because the legislation does not apply to public sector activities.

[1] Revised IOPC Statutory Guidance: https://www.policeconduct.gov.uk/sites/default/files/Documents/statutoryguidance/2020_statutory_guidance_english.pdf

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 IOPC has a responsibility to keep the arrangements within this instrument under review and, when necessary, make recommendations or give advice for changes. It will also continue to be reviewed as part of arrangements for the Home Office to monitor the operation of legislation governing police integrity matters.

10.2 This instrument does not include a statutory review clause. It does not make or amend provisions that relate to business activity (including voluntary and community bodies) and is not subject to the statutory review provisions which were introduced by the Small Business, Enterprise and Employment Act 2015.

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 resolution procedure and does not amend primary legislation, no statement is required.

13. The Relevant European Union Acts

13.1 This instrument is not relevant to European Union law.