

**EXPLANATORY MEMORANDUM TO**  
**THE MINISTRY OF DEFENCE POLICE (PERFORMANCE) REGULATIONS 2012**

**2012 No. 808**

1. This explanatory memorandum has been prepared by the Ministry of Defence and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 This instrument establishes new procedures governing police disciplinary matters in response to recommendations of the Taylor Review. The MDP (Performance) Regulations 2012 establish procedures for dealing with issues of unsatisfactory performance or attendance on the part of police officers (apart from senior officers).

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

- 3.1 None

4. **Legislative Context**

- 4.1 This instrument (the MDP (Performance) Regulations) provides for new internal procedures to deal with poor performance of MDP officers. The MDP (Performance) Regulations move MDP officers away from the informal restoring efficiency procedures that apply to MOD civil servants generally to provide a statutory bespoke set of procedures for MDP police officers.

- 4.2 These procedures mirror the position for Home Office police officers across England and Wales and set out in the Police (Performance) Regulations 2008 (S.I. 2008/2862).

- 4.3 This instrument does not cover senior officers and further regulations setting out poor performance procedures for such officers are still required.

5. **Territorial Extent and Application**

- 5.1 This instrument applies to the United Kingdom.

## **6. European Convention on Human Rights**

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

## **7. Policy background**

7.1 A report into the effectiveness of disciplinary arrangements for police officers was published in 2005 by William Taylor (a former Commissioner of the City of London Police and former HM Chief Inspector of Constabulary for Scotland). This resulted in Police (Conduct) Regulations and Police (Performance) Regulations being introduced for Home Office Police Forces in 2008. The MOD introduced the MDP (Conduct) Regulations in 2009 (S.I. 2009/3069), however, in order to introduce performance regulations it was necessary to amend Section 3A of the MDP Act 1987. This was done by Section 6 of the Armed Forces Act 2011 which was commenced on 8 March 2012.

7.2 The MDP (Performance) Regulations mirror the Police (Performance) Regulations 2008 as far as possible. However, as the MDP force is a national force, they apply to Scotland and Northern Ireland. They also do not cover special constables as there are no such constables appointed to the MDP force.

7.3 Appeals from these regulations will lie to the Ministry of Defence Police Appeals Tribunal established by the Ministry of Defence Police (Appeals Tribunals) Regulations 2009 (S.I. 2009/3070) to consider appeals from the Ministry of Defence Police (Conduct) Regulations 2009. These regulations therefore make consequential changes to allow the Tribunal to consider appeals from these new poor performance procedures.

7.4 These Regulations also make consequential changes to the Ministry of Defence Police (Conduct) Regulations to replace references to the old restoring efficiency procedures with references to this instrument.

- Consolidation

7.5 This instrument does not revoke or replace existing regulations.

## **8. Consultation outcome**

### *Home Office consultation*

8.1 Following the Home Office Ministers' acceptance of the key recommendations of the Taylor Review in 2006, the Police Advisory Board England and Wales were asked to take forward the detailed work. A working party was set up comprising the Association of Chief Officers (ACPO), the Association of Police Authorities (APA), police staff associations, and Independent Police Complaints Commission (IPCC), Her Majesty's Inspectors of Constabulary (HMIC) and the Home Office to draw up a proposed set of standard, improved misconduct and unsatisfactory performance procedures and associated

guidance. Policy proposals for both new misconduct and unsatisfactory performance, underpinned by a new set of Police Standards of Professional Behaviour, were subject to a two month consultation in 2006.

8.2 A wider six week consultation on the draft regulations for both conduct and performance took place from March to April in 2007 and received around 80 responses from a range of stakeholders. The responses were broadly supportive of both the policy behind the changes and the details of the Regulations. Stakeholders recognised the need to move to a system which deals with misconduct and poor performance in a more timely and proportionate way.

#### *Ministry of Defence consultation*

8.3 A 30 day public consultation on the Regulations was held from 17 January to 15 February 2012. Since the MDP regulations mirror the Police regulations that have been effective for over 3 years, a large number of responses was not anticipated and this shorter period was considered appropriate.

8.4 The Regulations that were consulted on included proposed changes that were to be made to the Police (Performance) Regulations 2008 through the Police (Performance) (Amendment) Regulation 2012 that were recently consulted on by the Home Office but not yet made. The Independent Police Complaints Commissioner commented that the MDP (Performance) Regulations appeared to include changes that the Home Office were proposing but which the IPPC took issue with. MOD consider that it would therefore be inappropriate for these changes to be incorporated in the MDP (Performance) Regulations until the Home Office has carried out a more detailed analysis of their consultation and agreed whether subsequent amendments should be introduced into the Police (Performance) Regulations. There may therefore be a need to amend the MDP (Performance) Regulations in due course.

8.5 MDP staff associations were supportive, but took issue with the panel composition of a third stage meeting. The regulations were therefore amended to address these concerns. The MOD Police Committee was supportive of MDP's move away from civilian procedures to statutory police performance regulations.

8.6 The MOD consultation included the devolved authorities, since these regulations will apply to MDP officers serving in Scotland and Northern Ireland. No comments were received.

## **9. Guidance**

9.1 "MDP Guidance on Unsatisfactory Performance and Attendance" has been produced which fully reflects Home Office guidance as applicable. The MDP has also arranged comprehensive training and awareness of the new procedures to all its officers and other staff.

## **10. Impact**

10.1 This legislation does not impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is that the new procedures have scope to bring about improvement in police performance by promoting a culture of learning and development for individuals and the organisation . Matters will be addressed more quickly, at a lower level and be fairer and more transparent.

10.3 An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

12.1 The Ministry of Defence Police's Professional Standards Department will monitor and review all formal outcomes to ensure that the new regulations are being understood, and applied fairly and consistently across the force. The Ministry of Defence Police Committee will provide a quarterly external review and offer advice and guidance where necessary.

## **13. Contact**

**Karen Feather** at the Ministry of Defence (Tel: 020 7807 8245) or email: [DBR-DefSy-PolicingPoll@mod.uk](mailto:DBR-DefSy-PolicingPoll@mod.uk) can answer any queries regarding the instrument.