

EXPLANATORY MEMORANDUM TO
THE INDEPENDENT POLICE COMPLAINTS COMMISSION (FORCES
MAINTAINED OTHERWISE THAN BY LOCAL POLICING BODIES)
ORDER 2013

2013 No. 1779

1. This explanatory memorandum has been prepared by the Home Office (“the Department”) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Order ensures that the oversight of the handling of complaints and other matters relating to the conduct of officers, special constables and civilian employees of the Ministry of Defence Police and the British Transport Police Force by the Independent Police Complaints Commission (“the Commission”) will be similar to that which applies to the police, but with certain differences which meet the specific requirements of those two bodies.

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

3.1 None.

4. Legislative Context

4.1 The statutory framework in accordance with which the Commission has oversight of police conduct is set out in Part 2 of, and Schedule 3 to, the Police Reform Act 2002 (“the 2002 Act”). The Commission was established by the 2002 Act to provide an effective and independent means of overseeing the investigation of complaints and alleged misconduct relating to the actions of the police.

4.2 Section 10 of the 2002 Act provides that a function of the Commission is to exercise oversight of the handling of complaints about the conduct of persons serving with the police (such persons are defined in section 12(7)), conduct matters relating to those persons (see sections 10(2)(b) and 12(2)) and death or serious injury (“DSI”) matters (see sections 10(2)(ba) and 12(2A)). Investigations may be handled by the appropriate authority (defined in section 29) or the Commission. The appropriate authority is either the chief officer of the relevant force or the local policing body in relation to that force.

4.3 The detailed framework for the handling of complaints etc. is set out in Schedule 3 to the 2002 Act and in the Police (Complaints and

Misconduct) Regulations 2012 (S.I. 2012/1204). The level at which a complaint etc. is handled will depend on a number of matters (e.g. its gravity) and, in broad terms, the more serious matters are referred to the Commission. Paragraph 15 of Schedule 3 sets out the basis on which the Commission may determine how a matter referred to it is to be handled. The Commission may determine that it will handle the investigation itself, manage or supervise an investigation which is carried out by the appropriate authority or that the appropriate authority will carry out an investigation itself.

4.4 Section 26 of the 2002 Act imposes a duty on the Secretary of State to secure the establishment and maintenance of procedures corresponding or similar to those made by or under Part 2 of that Act in relation to the Ministry of Defence Police and the British Transport Police Force. These bodies have established complaints procedures which are similar to but do not correspond fully with those established by police forces and the local policing bodies which maintain them.

4.5 This Order, therefore, provides that procedures which are similar to, but do not correspond with, Part 2 and any provision made under it are to be established and maintained in relation to the Ministry of Defence Police and the British Transport Police Force.

5. Territorial Extent and Application

5.1 This Order applies to England and Wales.

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

- What is being done and why

7.1 This Order will enable the Ministry of Defence Police and British Transport Police to have different arrangements for dealing with complaints and conduct matters in relation to senior officers from those which apply to senior officers in Home Office forces. This difference in arrangements reflects the fact that the governance and accountability arrangements for the Ministry of Defence Police and British Transport Police differ from those for Home Office forces.

7.2 This Order will have the effect that both bodies are required to establish and maintain procedures by each entering into an agreement with the Commission, and that officers, special constables and civilian employees of each of them are subject to a similar framework in

accordance with which the handling of complaints and other conduct matters is overseen by the Commission as that which applies to the police.

8. Consultation outcome

8.1 The Secretary of State consulted with the Commission, the Ministry of Defence Police and the British Transport Police on this Order and its content reflects the comments made by these bodies.

9. Guidance

9.1 This Order does not require changes to any guidance.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is minimal. The Department expects that the cost implications of this Order for bodies to be limited and to be met from within existing budgets.

10.3 An Impact Assessment has not been prepared for this Order because no impact on the private or voluntary sector is foreseen.

11. Regulating small business

11.1 This Order does not apply to small business.

12. Monitoring & review

12.1 The Department will keep the application of this Order under review.

13. Contact

Sunil Parekh at the Home Office (tel: 020 7035 4887) or sunil.parekh@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.