

## EXPLANATORY MEMORANDUM TO

### THE MINISTRY OF DEFENCE POLICE (CONDUCT, PERFORMANCE AND APPEALS TRIBUNALS) (AMENDMENT) REGULATIONS 2017

2017 No. 84

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Defence and is laid before Parliament by Command of Her Majesty.
- 1.2 This Memorandum contains information for the Joint Committee on Statutory Instruments.

#### 2. Purpose of the instrument

- 2.1 The Ministry of Defence Police (Conduct, Performance and Appeal Tribunals) Amendment Regulations 2017 (“the 2017 Regulations) amend—
  - the Ministry of Defence Police (Conduct etc) Regulations 2015 (“the Conduct Regulations”),
  - the Ministry of Defence Police Appeals Tribunals Regulations 2009 (“the Appeals Regulations”), and
  - the Ministry of Defence Police (Performance) Regulations 2012 (“the Performance Regulations”),

to make changes to the disciplinary procedures that apply to Ministry of Defence police officers.

- 2.2 The changes to the Conduct Regulations and the Appeals Regulations make provision for misconduct hearings, special case hearings and appeals from such hearings to be held in public, and associated public notices both before and after hearings to give information about the case to the public; allow SofS to give a national security direction in relation to hearings; ensure stronger protection for police whistle-blowers, and require legally qualified persons to chair the panel that conducts misconduct hearings for non-senior officers. The Instrument also makes minor amendments to all three sets of Regulations to correct errors. These three sets of regulations together comprise the statutory disciplinary procedures that apply to Ministry of Defence Police (“MDP”) officers across the UK. They mirror, with necessary modifications, the procedures applied to police officers with the territorial forces in England and Wales.

#### 3. Matters of special interest to Parliament

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

- 3.1 The Instrument corrects errors in the Conduct Regulations that were reported by the JCSI in their 25<sup>th</sup> Report of the 2014-2015 Session.
- 3.2 As indicated at paragraph 2.2, this instrument corrects errors in all three sets of Regulations. The free issue procedure has not been applied in this case however. This is because the correcting provisions form a small part of a wider instrument that makes substantive changes to the disciplinary procedures, such that the Department

considers that those other changes form the main purpose of the instrument. In addition, the substantive provisions and correcting provisions all relate to the disciplinary system for MDP officers so that the target audience for all of these changes is the same. The Department therefore considers that it would be disproportionate in these particular circumstances to apply the free issue procedure.

*Other matters of interest to the House of Commons*

- 3.3 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

**4. Legislative Context**

This Instrument makes changes to the disciplinary procedures that apply to MDP officers to mirror, with necessary modifications, those that apply to territorial police officers in England and Wales. There is no statutory requirement to do so in respect of the Conduct Regulations but section 4A of the Ministry of Defence Police Act 1987 requires the Secretary of State to make equivalent provision in relation to police appeals tribunals.

**5. Extent and Territorial Application**

- 5.1 The extent and territorial application of this instrument is the whole of 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 *Holding police misconduct hearings, special case hearings and associated appeals hearings in public***

- 7.1.1 All misconduct proceedings are currently held in private except in limited cases where the Independent Police Complaints Commission is able to direct that a misconduct hearing is held in public (these are cases that have been investigated under IPCC procedures). Misconduct and special case hearings are confined to cases where the allegation either amounts to gross misconduct or amounts to misconduct and the officer already has a final written warning in force. Other cases of misconduct are referred to misconduct meetings.
- 7.1.2 The IPCC and the Police Ombudsman for Northern Ireland (“PONI”) together with complainants and interested persons are able to attend misconduct proceedings where the case has been investigated under external procedures. These are cases that have been investigated under IPCC, PONI or PIRC (the Police Investigation and Review Commissioner for Scotland) procedures.
- 7.1.3 The chair or person conducting the misconduct proceedings has discretion to exclude someone or impose conditions on their attendance in order to facilitate the proper conduct of the proceedings.
- 7.1.4 The holding of police disciplinary hearings in public was a recommendation of the Chapman review of the Home Office Police disciplinary system, which found that the

police disciplinary system needed to be more transparent. Misconduct hearings and special case hearings and associated appeals will therefore now be held in public. Misconduct meetings will continue to be held in private.

- 7.1.4 In order to facilitate hearings being held in public, the person chairing or conducting the hearing has been given a power to require that public notice is given setting out the details of the hearing together with information about the case. There is then a further power to require a public notice of the outcome of those proceedings to be given.
- 7.1.5 Due to the MDPs particular role in protecting the nuclear deterrent, other critical national infrastructure and policing at other highly sensitive sites an additional power has been given to the Secretary of State to direct that all or part of a hearing is held in private and to require that steps are taken to protect witnesses. This power can only be exercised for national security purposes. It is based on rule 94 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 (national security proceedings).

## **7.2 *Introducing legally qualified persons to chair the panels that conduct hearing for non-senior officers***

- 7.2.1 Currently the persons who can chair the panel for misconduct hearings and special case hearings for senior officers must be legally qualified. This is being extended to misconduct hearings for non-senior officers. The Chapman review recommended the introduction of legally qualified chairs for such hearings. A legally qualified chair will therefore replace the current chair who is a senior MDP officer. No change is being made to the person who conducts a special case hearing for non-senior officers. Such hearings are heard by the Chief Constable of the MDP (or the chief officer of another police force). As it is only possible to have legally qualified chairs where a panel is required to conduct the case, these special case hearings will continue to be conducted by the Chief Constable.
- 7.2.2 The introduction of legally qualified chairs brings a greater independence to panels and is intended to ensure fairness for officers, police forces and any victims or complainants. It is also designed to ensure that the procedures that apply to such hearings are followed, that cases can be dealt with expeditiously and robustly, and to ensure that the reasons for decisions are properly set out in written judgements, in order to reduce the likelihood of successful appeals, in particular appeals relating to failures to follow procedure.

## **7.3 *Information given to the College of Policing***

- 7.3.1 In order to ensure that any MDP officer who is dismissed from the MDP for misconduct or gross misconduct is not re-employed by another police force or law enforcement body, provision has been made so that information is given to the College of Policing about the case. Police forces, including the MDP, will be able to check potential recruits against information held by the College as part of their vetting process.

## **7.4 *Protection for police whistle-blowers***

- 7.4.1 The Department considers that it is important that MDP officers have the same protection if they need to make a protected disclosure that has been given to officers of territorial police forces in England and Wales. This is intended to protect officers from disciplinary action being taken where they have made such a disclosure.

- 7.4.2 Whilst MDP officers are given protection from unfair treatment by their employer and colleagues under the Employment Rights Act 1996 (as amended by the Public Interest Disclosure Act 1998) this only provides remedies through the Courts where the whistle-blower feels they have little choice but to leave their jobs. In order to protect officers at an earlier stage it is now clear that the making of a protected disclosure is not a breach of the standards of professional behaviour for MDP officers.
- 7.4.3 This was introduced for territorial police officers following the review by Mark Ellison QC into possible corruption and the role of undercover policing in the Stephen Lawrence case.

### ***Consolidation***

- 7.5 These regulations amend the Conduct Regulations, the Appeals Regulations and the Performance Regulations. The Conduct Regulations were themselves a consolidation and this is the first amendment made to those regulations. The Appeals Regulations and the Performance Regulation have both been amended on previous occasions but the changes to both sets are not considered to be extensive. It was therefore not considered necessary to consolidate any of these regulations and a single amending instrument was considered more appropriate. Consideration will be given to consolidating each set of regulations on the next occasion they are amended.

## **8. Consultation outcome**

- 8.1 The Home Office carried out a public consultation in 2014 before introducing public hearings, introducing legally qualified persons to chair misconduct hearings for non-senior officers, giving police whistle-blowers additional protection and sending information to the College of Policing. As it is MOD policy to mirror Home Office policy for policing matters to ensure conformity with the framework that applies in England & Wales, the public have already had the opportunity to comment on these proposals. The Department has consulted the MDP Committee, the Defence Police Federation and MDP senior officers who were generally content with the changes. Contact was also made with the Devolved Administrations to advise them of the changes since the regulations apply throughout the United Kingdom but as these matters are reserved in all three Devolution settlements they were not formally consulted.

## **9. Guidance**

- 9.1 The MOD Police will update its non-statutory guidance on the disciplinary procedures to reflect the changes made to the Regulations.

## **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 cost of these regulations for the MDP will be limited and met from existing MDP budgets.
- 10.3 An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

**12. Monitoring & review**

12.1 The Ministry of Defence will keep the operation of these Regulations under review.

**13. Contact**

13.1 Karen Feather at the Ministry of Defence Telephone: 020 7807 8245 or email: [DBR-DefSy-PolicingPol1@mod.uk](mailto:DBR-DefSy-PolicingPol1@mod.uk) .