

EXPLANATORY MEMORANDUM TO
THE POLICE (CONDUCT) (AMENDMENT) REGULATIONS 2024

2024 No. 521

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 Chris Philp, Minister of State for Crime, Policing and Fire at the Home Office confirms that this Explanatory Memorandum meets the required standard.
- 2.2 Michael Cordy, Deputy Director for the Police Integrity Unit, at the Home Office confirms that this Explanatory Memorandum meets the required standard.

3. Contact

- 3.1 Ian Balbi at the Home Office, telephone: 07826 254 276 or email: ian.balbi@homeoffice.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 The Police (Conduct) (Amendment) Regulations 2024 primarily implements a recommendation from the Home Office review into the process of police officer dismissals. Specifically, it removes the independent legally qualified chair of police misconduct proceedings and replaces them with the chief officer of the relevant force where the officer concerned is a non-senior officer (those of the rank of Chief Superintendent or below). The chief officer may delegate to another senior officer (officer above the rank of Chief Superintendent), individual who has been a senior officer in the five years preceding their appointment as chair or a police staff member of equivalent grade to a senior officer.
- 4.2 In addition, this instrument introduces a provision to deal with circumstances where conflicts of interest arise in respect of proceedings. It also places a requirement on the chair of proceedings to provide certain information on decisions made at proceedings to the relevant local policing body (such as a police and crime commissioner).

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 In September 2023, following the Home Office's comprehensive review, the Government published its report on the process of police officer dismissals.¹ This review had been established to ensure that systems in place were fair and effective at removing those officers not fit to serve in policing.
- 5.2 In-part, the review considered the composition of the misconduct panels. Since 2016, those panels had been chaired by independent legally qualified chairs (LQCs).
- 5.3 Chief officers are the heads of their respective workforces and are held to account on the standards in their forces. The Government believes that chief officers should therefore have greater responsibility in the disciplinary process and the ultimate determination of whether an officer should be dismissed or not. This was a recommendation of the Home Office review.
- 5.4 As a result, these provisions now ensure that, for non-senior officers (i.e. those of the rank of Chief Superintendent or below), misconduct panels are chaired by chief officers. Responsibility can be delegated to a senior officer, former senior officer or police staff member of equivalent grade, to ensure cases can be heard in a timely manner.
- 5.5 To ensure that the misconduct panels remain police-chaired, where the officer concerned is a senior officer (i.e. above the rank of Chief Superintendent), misconduct panels are now chaired by a more senior officer selected from a separate force. However, where the officer concerned is a senior officer of the rank of chief officer, Deputy Commissioner or Assistant Commissioner, the chair is now His Majesty's Chief Inspector of Constabulary (HMCIC) or a nominated His Majesty's Inspector (HMI).
- 5.6 To ensure that the system retains necessary levels of independence and fairness, misconduct panels also now comprise of two independent panel members, appointed both to their role and individual panels by the relevant local policing body. The misconduct panel will now be advised on legal and procedural issues by an independent legally qualified adviser, also appointed by the relevant local policing body.
- 5.7 To avoid circumstances which would give rise to a conflict of interest, new provisions place a duty on those chairing or conducting misconduct meetings, appeal meetings or disciplinary proceedings, or acting as a legal adviser, not to do so where this would either give rise, or could reasonably be considered to give rise, to a conflict of interest. An equivalent duty is placed on the relevant appointing body, so that they do not appoint – or if already appointed, replace the individual - if they become aware of circumstances which give rise, or could reasonably be considered to give rise, to a conflict of interest.
- 5.8 The Independent Office for Police Conduct (IOPC) now has a statutory ability to make representations to the chief officer on the chair of a misconduct hearing. This occurs in circumstances where it has investigated, sought the views of the appropriate authority on the referral of an officer to a misconduct hearing and the appropriate authority has disagreed with the IOPC. This ensures additional oversight in decisions where the IOPC is concerned that there could be a conflict of interest if a chair is selected from the same force.

¹ <https://www.gov.uk/government/publications/police-officer-dismissals-home-office-review>

- 5.9 Local policing bodies play an important role in holding the police to account. New provisions support this scrutiny function, by requiring the chair of misconduct proceedings to provide the local policing body with reasons for certain decisions, including where it decides to hold proceedings in private or where the panel determines that the officer has committed gross misconduct, but a decision is made not to dismiss the officer.

What was the previous policy, how is this different?

- 5.10 Previous legislation set out that the chair of a misconduct hearing was a legally-qualified chair. Misconduct panels for non-senior officers also comprised of a police officer of at least Superintendent rank and an independent panel member. For senior officers, the chair was supported by HMCIC or a nominated HMI instead of a police officer.
- 5.11 The Government believes that, as chief officers are the heads of their respective workforces and are held to account on the standards in their forces, they should have greater responsibility in the disciplinary process, including the determination of whether an officer should be dismissed or not. For this reason, chief officers will now chair misconduct hearings for non-senior officers.
- 5.12 Chief officers are however able to delegate this responsibility, either to another senior officer, an individual who has been a senior officer in the five years preceding their appointment as chair or a member of police staff of equivalent grade to a senior officer.
- 5.13 For non-senior officers, the chair of an accelerated hearing had to be the chief officer. Under the new legislation, the chief officer is also permitted to delegate this role in the same way as in the previous paragraph.
- 5.14 Under previous legislation, the chair of a misconduct hearing for senior officers was also a legally-qualified chair. The Government believes that misconduct proceedings should be police-chaired and so, changes introduced in respect of senior officers align with that principle for non-senior officers. The chair for a senior officer is now either a more senior officer from a separate force or, if the officer concerned is a chief officer, Assistant Commissioner or Deputy Commissioner, it is HMCIC or a nominated HMI.
- 5.15 The previous legislation did not include any specific provisions on conflicts of interest. To ensure fairness in proceedings, new legislation has introduced specific provisions on conflicts of interest.
- 5.16 Now that misconduct proceedings for non-senior officers are chaired by a senior individual in the same force, a new provision has been introduced to ensure that the IOPC can make representations on whether the chair should be delegated outside of the force, to ensure fairness and appropriate oversight.

6. Legislative and Legal Context

How has the law changed?

- 6.1 Amendments have been made to the Police (Conduct) Regulations 2020 to give effect to these changes.

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. Changes primarily stem from those recommended within the Home Office's review into the process of police officer dismissals, within which the Government heard wide-ranging evidence from across the policing sector. Summaries of some of the evidence provided is incorporated within the review's published report.
- 7.2 In accordance with section 63(3)(a) of the Police Act 1996, the Secretary of State has supplied a draft copy of this instrument to the Police Advisory Board for England and Wales (PABEW). Comments made by members of that Board have been taken into account and drafting changes have been made as a result of those comments. This included:
- Concerns about the function of the adviser appointed under regulation 8(6) of the Police (Conduct) Regulations 2020, including the impact of such an adviser being appointed to support the new legal adviser. This has been clarified so that only one legal adviser can be appointed, with an adviser under regulation 8(6) limited to a non-legally qualified lawyer at a misconduct meeting only.
 - The limitation of chief officers to only be able to delegate chairing responsibilities to a senior officer or member of police staff of equivalent grade. To ensure greater capacity and flexibility, this has been amended to incorporate individuals who have been a senior officer within the preceding five years.
 - The need for clarification on references to the Code of Ethics, in light of the College of Policing's publication of the new Code of Ethics and Code of Practice for Ethical Policing. This has been amended accordingly.
 - Concerns over the requirement of legal advice to be given in public, where advice is given either during a privately held pre-hearing or a misconduct hearing where the chair has determined that it should be held in private. This has been amended to clarify this position.
- 7.3 Members of the PABEW have also been included in other Home Office policy forums, which included a series of stakeholder workshops, to enable them to input views throughout the development of the respective policy.

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) to reflect the updated instrument.
- 8.2 A draft copy will be supplied to the PABEW and comments on the changes will be taken into account.
- 8.3 As the Home Office intends to lay further statutory instruments which make amendments to the police disciplinary system in the near future, the statutory guidance will be updated upon laying those instruments. Interim supporting guidance will be made available and published by 7 May when this instrument comes into force.

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 we consider there to be no, or no significant, impact on businesses as the instrument relates to the maintenance of the existing regulatory system governing police discipline. However an economic note has been prepared and published alongside this instrument.

Impact on businesses, charities and voluntary bodies

- 9.2 There is no, or no significant, impact on business, charities or voluntary bodies, as the instrument relates to the maintenance of the existing regulatory system governing police discipline.
- 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 statutory instrument amends existing regulatory procedures limited to policing.

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 these instruments under review, including through an annual statistics publication on police misconduct.
- 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 The Minister of State for Crime, Policing and Fire has made the following statement regarding Human Rights:

“In my view the provisions of the Police (Conduct) (Amendment) Regulations 2024 are compatible with the Convention rights.”

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”).