

## EXPLANATORY MEMORANDUM TO

### THE SERVICE POLICE (COMPLAINTS ETC.) REGULATIONS 2023

2023 No. [XXXX]

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Defence and is laid before Parliament by Command of His Majesty.

#### 2. Purpose of the instrument

- 2.1 This instrument is required to establish a new statutory regime for complaints, conduct matters and death or serious injury (“DSI”) matters involving the Service Police.

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

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

- 3.1 None.

#### 4. Extent and Territorial Application

- 4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom, the Isle of Man and the British overseas territories (except Gibraltar).
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the same as its extent.
- 4.3 The regulations apply in relation to the conduct of members of the Service Police forces wherever in the world they might be, so that it does not matter where that conduct is alleged to have taken place for someone to be able to make a complaint.

#### 5. European Convention on Human Rights

- 5.1 Rt Hon Dr Andrew Murrison MP, the Minister for Defence Personnel, Veterans and Service Families, has made the following statement regarding Human Rights:

“In my view the provisions of the Service Police (Complaints etc.) Regulations 2023 are compatible with the Convention rights.”

#### 6. Legislative Context

- 6.1 This instrument relies on powers in section 340P (complaints, misconduct etc) and section 340R (super complaints) of the Armed Forces Act 2006 (“the 2006 Act”) which are being used for the first time to establish a statutory system for making complaints about the Service Police as well as establishing a system for dealing with super-complaints about the Service Police.
- 6.2 These new systems correspond (with modifications) to the system for civilian police complaints and police super-complaints set out in Parts 2 and 2A of the Police Reform Act 2002 (“the 2002 Act”) respectively. They cover the Service Police forces, the new tri-service serious crime unit as well as members of the Service Police.

- 6.3 Section 365BA of the 2006 Act established the Service Police Complaints Commissioner (“the Commissioner”) who will fulfil the same role in relation to the Service Police that the Director General of the Independent Office for Police Conduct (“DG IOPC”) has under the 2002 Act in relation to persons serving with the civilian police. This instrument confers corresponding functions on the Commissioner to those conferred on the DG IOPC under Part 2 and 2A of the 2002 Act.

## 7. Policy background

### *What is being done and why?*

- 7.1 In 2017, the Ministry of Defence commissioned an independent review of the Service Justice System with the aim of ensuring its effectiveness. The Review was carried out by HH Shaun Lyons, a retired senior Crown Court judge, and was supported by Sir Jon Murphy, a former Chief Constable for Merseyside.
- 7.2 The Review, which was published in February 2020, included a recommendation that a new niche independent body be established to deliver independent oversight of the Service Police. The Government agreed to the recommendation and after considering the various options, Ministers decided to model the oversight functions of the new regime on those provided for the civilian police in England and Wales – which is overseen by the DG IOPC.

### *Explanations*

#### What did any law do before the changes to be made by this instrument?

- 7.3 The four Service Police Provost Marshals (Royal Navy Police, Royal Military Police, Royal Air Force Police, and Serious Crime) have put in place non-statutory complaints procedures to deal with complaints about members of their forces. These procedures allow complaints to be passed to another force to investigate in appropriate cases. However, there is no independent body that can carry out investigations into the most serious matters. There is no current procedure to deal with super-complaints.

#### Why is it being changed?

- 7.4 This instrument will put in place an independent regime to deal with complaints and other serious matters relating to the Service Police, modelled on the one in place for civilian police in England and Wales. The newly appointed independent Service Police Complaints Commissioner will have oversight of the new complaints system and be able to investigate the most serious allegations made against the Service Police. It also makes provision for super-complaints to be made by designated bodies to HMIC, and the Commissioner also has functions in relation to such complaints.

#### What will it now do?

- 7.5 This instrument sets out the functions of the Service Police Complaints Commissioner and establishes the procedures for the handling of complaints, conduct matters and death and serious injury (“DSI”) matters. It also sets out a system within which Service Police super-complaints may be made by designated bodies.
- 7.6 These procedures are broadly the same as those set out in and made under Part 2 of, and Schedule 3 to, the Police Reform Act 2002. This includes the Police (Complaints and Misconduct) Regulations 2020 (S.I. 2020/2) and regulation 2 of the Police (Complaints and Conduct) Regulations 2013 (S.I. 2013/281) in relation to complaints,

conduct and DSI matters; and broadly the same as those set out in and made under Part 2A in relation to super-complaints.

- 7.7 There are a small number of minor differences between the civilian complaints regime set out in Part 2 of the 2002 Act and the one set out in this instrument, to reflect the fact that members of the Service Police are also members of His Majesty's Armed Forces. For example, there are differences between the internal disciplinary procedures for the civilian police and the administrative action procedure for members of the Armed Forces - the main one being the lack of accelerated procedures for members of the Armed Forces.
- 7.8 There are a few minor differences between the super-complaints regime set out in and under Part 2A and this instrument also due to differences between the civilian police and the Service Police. For example, the College of Policing has no functions in relation to the Service Police so has no role. Also, a statutory instrument is not required to designate a super-complaints body. However, the criteria that must be satisfied before the Secretary of State can designate a body are the same.

## **8. European Union Withdrawal and Future Relationship**

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

## **9. Consolidation**

- 9.1 Not relevant. This is the first exercise of these powers.

## **10. Consultation outcome**

- 10.1 There has been no formal consultation on this instrument. However, a range of stakeholders have been consulted on the development of the policy and processes which underpin these regulations, including the Provost Marshals of the Royal Navy Police, the Royal Military Police, the Royal Air Force Police, as well as the newly established tri-Service serious crime unit, headed by the Provost Marshal for Serious Crime.
- 10.2 As there was extensive public consultation in relation to the complaints system that was established under Part 2 of the 2002 Act and to the various changes that have been made over time to that system, it was not considered necessary to consult the public in relation to this instrument as the modifications are relatively limited. There was also public consultation in relation to the detail of the super-complaints system, most of which is set out in regulations made under Part 2A of the 2002 Act. Again, for this reason it was not considered necessary to consult the public on this aspect of this instrument.

## **11. Guidance**

- 11.1 Guidance regarding the procedures for making a complaint in relation to the Service Police, as well as for those involved in the handling of complaints and other serious matters, will be published in a Joint Service Publication (JSP). JSPs contain authoritative sets of rules or guidelines specific to, and applicable across, the Ministry of Defence. Internal Defence communications will also describe the main changes, ahead of and following implementation of the new regime.

11.2 In addition, this instrument requires the Service Police Complaints Commissioner to issue guidance relating to the handling of complaints; the means by which recordable conduct matters or DSI matters are dealt with; and the detection or deterrence of misconduct by members of the Service Police forces.

## **12. Impact**

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

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because there is no, or no significant, impact on business.

## **13. Regulating small business**

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

## **14. Monitoring & review**

14.1 The operation of the new complaints system will be reviewed annually by the Service Police Complaints Commissioner in their annual report, which this instrument requires the Commissioner to make to the Secretary of State. In addition, the Commissioner has the power to report at other times as necessary. Monitoring and reviewing the success of the systems this instrument establishes will be done as part of the Ministry of Defence's published response to those annual and other reports by the Commissioner. In addition, the Department carries out quinquennial reviews of the Service Justice System as part of its preparations for keeping the Armed Forces Act 2006 in force, which requires a further Act of Parliament every 5 years. A review of both the complaints system and super-complaints system will be carried out as part of this quinquennial review.

## **15. Contact**

15.1 Richard Hartell at the Ministry of Defence, email: richard.hartell101@mod.gov.uk, can be contacted with any queries regarding the instrument.

15.2 Caron Tassel, Deputy Director - Discipline, Conduct and Legislation - at the Ministry of Defence, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Rt Hon Dr Andrew Murrison MP, the Minister for Defence Personnel, Veterans and Service Families, can confirm that this Explanatory Memorandum meets the required standard.