

**EXPLANATORY MEMORANDUM TO
THE JUDICIAL DISCIPLINE (PRESCRIBED PROCEDURES)
(AMENDMENT) REGULATIONS 2008**

2008 No. 2098

1. This explanatory memorandum has been prepared by the Office for Judicial Complaints and is laid before Parliament by Command of Her Majesty.
2. **Description**
 - 2.1 These Regulations amend the Judicial Discipline (Prescribed Procedures) Regulations 2006 (S.I. 2006/676) (“the principal Regulations”) and come into force on 28th August 2008. The principal Regulations prescribe the procedures to be followed in the investigation and determination of allegations of misconduct by judicial office holders under chapter 3 of Part 4 of the Constitutional Reform Act 2005 (c.4) (“the Act”).
 - 2.2 These Regulations are subject to negative resolution procedure.
3. **Matters of Special interest to the Joint Committee on Statutory Instruments**
 - 3.1 These Regulations are made by the Lord Chief Justice of England and Wales (‘the Lord Chief Justice’). By virtue of section 144(3) of the Act, they are in the form of a statutory instrument to which the Statutory Instruments Act 1946 applies as if they were made by a Minister of the Crown.
 - 3.2 Regulation 14(b) amends regulation 25(6) of the principal Regulations. That regulation when originally enacted ought to have cross-referred to paragraph (2) of regulation 25 but did not do so. This matter was brought to the attention of both Houses in the Joint Committee on Statutory Instruments’ Twenty-Fifth Report. The amendment in regulation 14(b) aims to rectify this drafting error. Note, however, that the requirement to comply with a request to make representations now applies only to the subject of the disciplinary proceedings and the complainant. The Lord Chief Justice does not consider as a matter of policy that third parties should be bound by the requirements of the Regulations.
4. **Legislative Background**
 - 4.1 These Regulations are made by the Lord Chief Justice under section 115, section 120 and section 121 of the Act with the agreement of the Lord Chancellor, the Lord President of the Court of Session and the Lord Chief Justice of Northern Ireland.
5. **Territorial Extent and Application**

5.1 These Regulations apply to the United Kingdom.

6. European Convention on Human rights

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

7. Policy Background

7.1 The Act provides a statutory framework for the discipline of judicial office holders, and the principal Regulations establish procedures to be followed when investigating and determining complaints against judicial office holders. When the principal Regulations were first enacted the Lord Chancellor and the Lord Chief Justice agreed to review them after one year of operation. Accordingly, in May 2007, the Lord Chancellor and the Lord Chief Justice appointed a review group consisting of officials from the Ministry of Justice and representatives from all levels of the judiciary to review the principal Regulations by identifying any operational difficulties and suggesting solutions to improve the timeliness and efficiency of the complaints and disciplinary process.

7.2 The amendments contained in these Regulations reflect the findings of the review group and can be broken down into three broad categories: amendments which address drafting irregularities on the face of the principal Regulations; amendments which seek to reduce undue delay in the complaints and discipline process; and amendments which aim to rectify operational difficulties caused by the current drafting of the principal Regulations.

7.3 These amendments are unlikely to be controversial or of wide public interest. The regulations have been prepared after extensive consultation with the people directly affected, namely in the first instance a Review Group chaired by a Lord Justice of Appeal who had acted as a Nominated Judge, and three Expert Advisory Groups comprising a number of judicial representatives. Subsequently, the amendments have been considered by the Justices' Clerks' Society, the Judges' Council and the Judicial Appointments and Conduct Ombudsman.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument, as it has no additional impact on business, charities or voluntary bodies.

9. Contact

9.1 Any enquiries about the contents of this memorandum should be addressed to Dale Simon, Head of the Office for Judicial Complaints, Tel: 020 7189 2926 or e-mail: dale.simon@ojc.gsi.gov.uk.