

**EXPLANATORY MEMORANDUM TO
THE POLICE (CONDUCT) (AMENDMENT) REGULATIONS 2015**

2015 No. 626

AND

THE POLICE APPEALS TRIBUNALS (AMENDMENT) RULES 2015

2015 No. 625

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 instruments**

2.1 The Police (Conduct) Amendment Regulations 2015 (“the 2015 Regulations”) amend the Police (Conduct) Regulations 2012 (“the 2012 Regulations”) to make provision in relation to protected disclosures by police officers, the persons who may conduct a misconduct hearing, the information which may be published in respect of misconduct and special case hearings and the holding of those hearings in public, and the removal or limitation of compensation payable to a senior officer in respect of the cessation of the officer’s fixed term appointment. The 2015 Regulations:

- make provision to make clear that the making of a protected disclosure by a police officer is not a breach of the standards of professional behaviour prescribed in the Regulations.
- in relation to the persons who may conduct a misconduct hearing, make provision for hearings concerning non-senior officers to be conducted by a legally-qualified chair, a member of a police force of at least the rank of superintendent and an independent member selected by the appropriate authority (the chief officer of the police force concerned or, if the misconduct hearing relates to the chief officer, the local policing body for that force).
- provide that a misconduct or special case hearing shall be held in public (subject to the discretion of the person chairing or conducting the hearing to exclude persons from all or part of the hearing) and make provision for the person chairing or conducting such hearings to require notice to be given to the public to facilitate attendance. Provision is also made for notice of the findings and outcome of misconduct or special case hearings to be given to the public and for the College of Policing to be informed where an officer is dismissed.

2.2 The Police Appeals Tribunals (Amendment) Rules 2015 (“the 2015 Rules”) amend the Police Appeals Tribunals Rules 2012 (“the 2012 Rules”) to make provision for appeals in relation to disciplinary matters to be held in public

(subject to the discretion of the chair to exclude persons from all or part of the hearing), for the chair to require notice of such an appeal to be given to the public to facilitate attendance and for the chair to require publication of information about the outcome of such an appeal.

- 2.3 The 2015 Regulations also amend the 2012 Regulations to make provision for an order to be made against a senior officer who receives a final written warning (or has such a warning extended) at a misconduct hearing to prohibit, cap or determine the method of calculation of any future compensation payment to the senior officer in the event that the officer's fixed term of appointment is not extended or they are required to resign or retire before the expiry of the fixed term. The 2015 Rules amend the 2012 Rules to provide that an officer can appeal against any such order made. They also provide that where a final written warning (or extension of such a warning) is cancelled on appeal, any order made is also cancelled.
- 2.4 Regulation 4 of the 2015 Regulations corrects an oversight in regulation 10A of the 2012 Regulations, which was inserted by the Police (Conduct) (Amendment) Regulations 2014 ("the 2014 Regulations") (S.I. 2014/3347). Regulation 10A enables the appropriate authority to prevent an officer who has become subject to the 2012 Regulations resigning or retiring until it is decided not to refer the officer to a misconduct hearing or such proceedings have concluded. Regulation 4 of the 2015 Regulations amends regulation 10A to the effect that regulation 10A does not apply to allegations that came to the attention of the appropriate authority before the 2014 Regulations came into force (12 January 2015). Regulation 3 of the 2015 Regulations amends the definition of "document" in regulation 3 of the 2012 Regulations to remove wording that is unnecessary as a result of the rule in section 6(c) of the Interpretation Act 1978 (that words in the singular include the plural and vice versa).

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

- 3.1 As indicated at paragraph 2.4 above, regulation 4 of the 2015 Regulations corrects an error made in the 2014 Regulations. The free issue procedure has not been applied in this case. This is because the correcting provision forms a small part of a wider instrument making substantial other changes to the 2012 Regulations such that the Department considers that the other changes form the main purpose of the instrument. The Department therefore considers that it would be disproportionate in these particular circumstances to apply the free issue procedure. In addition, as both the correcting provision and other provisions relate to the police disciplinary system, the Department considers that the target audience for both the correcting provision and other provisions in the instrument are the same.
- 3.2 Regulation 4 of the 2015 Regulations comes into force on 13 March 2015 and therefore breaches the 21-day rule. Given that, as explained at paragraph 2.4 above, regulation 4 corrects an error in respect of provisions in the 2012 Regulations (inserted by the 2014 Regulations) that are already in force, the Department considers it important for the correction to take effect as soon as possible.

4. Legislative Context

- 4.1 The Police Act 1996 (“the 1996 Act”) makes provision for the organisation and supervision of police forces in England and Wales. Section 50 of the 1996 Act confers power on the Secretary of State to make regulations in relation to the government, administration and conditions of service of police forces. Section 51 contains equivalent power in relation to special constables. Section 84 of the 1996 Act confers power on the Secretary of State to make provision for the officer concerned or a relevant authority to be represented at proceedings conducted under those regulations, and for enabling the panel conducting such proceedings to receive advice from a relevant lawyer.
- 4.2 The 2012 Regulations are made under the powers in sections 50 and 51 to set out a detailed framework governing the investigation of allegations of misconduct against police officers and special constables, for the taking of misconduct proceedings against them and for the imposition of sanctions. The 2012 Regulations include provision for matters such as suspension, representation, the service of notices and evidence and the composition of panels to hear and determine misconduct allegations. They also provide for the involvement of the Independent Police Complaints Commission (“the IPCC”) in certain cases and make provision in relation to attendance and procedure at misconduct proceedings.

5. Territorial Extent and Application

- 5.1. These instruments extend to England and Wales only.

6. European Convention on Human Rights

- 6.1 As these instruments are subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *Protection for police whistleblowers*

- 7.1 The Department considers that, following the review by Mark Ellison QC into possible corruption and the role of undercover policing in the Stephen Lawrence case, it is particularly important that police whistleblowers are able to come forward with confidence. The Department therefore wants to ensure protection from disciplinary action and reprisals for police whistleblowers. It is essential that police officers have confidence that reporting wrongdoing will be a positive experience and not result in detrimental treatment being meted out by the police force or colleagues of the whistleblower.
- 7.2 Police officers are protected from unfair treatment by their employer and colleagues under the Employment Rights Act 1996 (as amended by the Public Interest Disclosure Act 1998) but this only provides a remedy through the courts when the whistleblower may feel they have little choice other than to leave their job. The Department has acted to protect officers at an earlier stage

by making clear in regulations that the making of a protected disclosure is not a breach of the standards of professional behaviour prescribed in the 2012 Regulations.

- ***Holding police disciplinary hearings in public***

- 7.3 Disciplinary hearings, including special case hearings, for police officers are currently held in private except in limited circumstances where the IPCC is able to direct that a hearing be held in public following an independent IPCC investigation.
- 7.4 The IPCC may attend a hearing to make representations in a case where an investigation has been undertaken or managed by the IPCC or in the case of an investigation supervised by the IPCC, or a local investigation by a police force, where the IPCC has made a recommendation or direction that an officer has a case to answer or that disciplinary proceedings should be brought.
- 7.5 A person nominated by the IPCC, may attend a disciplinary hearing as an observer where an investigation is supervised, managed or investigated independently by the IPCC, or in circumstances where the IPCC has made a recommendation or direction that an officer has a case to answer or that disciplinary proceedings should be brought in relation to a local investigation by a police force.
- 7.6 Complainants and interested persons are also able to attend a misconduct hearing as an observer. A complainant or interested person can be accompanied by one other person, and if they have a special need, one further person to accommodate that need.
- 7.7 There is currently a discretion granted to the person chairing or person conducting a hearing to impose any conditions on attendance of any person present at the misconduct proceedings, including excluding such a person, as they see fit.
- 7.8 There have recently been a number of revelations of both current and historic police misconduct that, if left unaddressed, have the potential to cause significant damage to public confidence in both the police disciplinary system and the police more widely. The Department considers it to be in the public interest for police disciplinary hearings and appeals to be generally held in public to increase justice and transparency. Disciplinary hearings deal with acts of misconduct by police officers so serious that, if proven, dismissal may be justified. Misconduct meetings, which deal with lower level misconduct, will remain private.
- 7.9 The holding of police disciplinary hearings in public was a recommendation of the Chapman review of the police disciplinary system, which found that the police disciplinary system needed to be more transparent. The opening of police disciplinary hearings to the public is designed to:
 - ensure that the robust response to misconduct that police forces take is visible;
 - promote greater consistency in decision making by panels;

- ensure that the panels for such hearings discharge their duties with the greatest possible degree of professionalism and put this professionalism on show; and
 - ensure hearings proceed, and decisions get made, in an expeditious manner; in future where the panel is dilatory this would be exposed to the public and in the media.
- 7.10 In order to facilitate hearings being held in public, the person chairing or conducting the hearing has been given a power to give public notice of the details of the hearing and, following the hearing, its outcome. Wide discretion for the person chairing or conducting the hearing to exclude persons from all or part of a hearing or impose any conditions on attendance as they see fit have been retained. This is to ensure that where the particular circumstances of a case, or of certain aspects of it, outweigh the public interest in the hearing being held publicly, all or part of the hearing may still be held in private. Policing touches on many sensitive areas, including issues of national security, which may not be appropriate for public hearings. The Department has also ensured that representations by the officer concerned, police forces and others can be made to the person chairing or conducting a hearing so that they can make an informed decision on whether the public should be excluded from any part of a hearing.
- 7.11 The Department will issue guidance on the circumstances that should be considered when consideration is given to excluding any person from the hearing. As witnesses, complainants, interested persons and the IPCC play an important role in disciplinary hearings, the effect of the 2015 Regulations is to preserve the existing position in relation to attendance and participation of those persons.
- 7.12 In order to ensure that any officer dismissed from the police is not re-employed by another force, provision has been made so that a copy of any written notice of outcome where an officer is dismissed should be forwarded to the College of Policing. Police forces will be able to check potential recruits against information held by the College as part of their vetting processes.
- ***Introducing legally-qualified chairs to conduct hearing panels in cases concerning non-senior officers***
- 7.13 Police disciplinary hearings concerning non-senior officers are currently conducted by a three person panel, with a senior officer or senior human resource professional as the chair, an officer of the rank superintendent or above (or senior human resource professional if the chair is a senior officer) and a lay member. The Chapman review also recommended legally-qualified chairs in such hearings. Under the 2015 Regulations, the new three person panel will be a legally qualified chair, a member of a police force of at least the rank of superintendent (and who is of a more senior rank than the officer concerned) and an independent member selected by the appropriate authority. There will be no change to the composition of panels for senior officers, misconduct meetings or appeal hearings, or to the person conducting a special case hearing.

- 7.14 The Department considers the introduction of legally-qualified chairs to be necessary to ensure:
- A greater degree of independence in the decision making of panels, ensuring fairness for officers, police forces and any victims or complainants;
 - That the legal process at a disciplinary hearing is followed properly;
 - That process points raised by parties to the hearing are dealt with expeditiously and robustly; and
 - That the written judgments of the panel are legally sound and reduce the likelihood of a successful appeal on grounds of process.
- ***Giving the person conducting the further meeting or hearing of a senior officer the power to restrict compensation due to that officer in the event that their fixed term appointment is not extended or they are required to resign or retire***
- 7.15 The current arrangements for compensation for senior officers are set out in Police Negotiating Board Circular 10/3:
<http://www.local.gov.uk/web/workforcelibrary/police-negotiating-board-circulars>
- 7.16 The Circular provides for compensation to be payable where a Local Policing Body decides not to extend a chief officer's fixed term appointment or where they are required to resign in the interests of efficiency or effectiveness under sections 38(3), 39(5) and 40(4) of the Police Reform and Social Responsibility Act 2011. No compensation is payable where an officer is dismissed for misconduct.
- 7.17 In the Independent Review of Police Officer and Staff Remuneration and Condition Final Report – Volume 1, Tom Winsor recommended that the Government provide misconduct hearings for senior officers with the ability to remove such compensation payments if they are found to have breached the standards of professional behaviour.
- 7.18 It is of the utmost importance to public confidence in the police that the most senior police officers act with the highest standards of professional behaviour. Where these standards are breached it is important that such officers are not seen to be rewarded despite their behaviour. The Department considers the appropriate level at which such a power should be available to be where a final written warning is given or extended, at either a misconduct meeting or a hearing. A power has been introduced to give the person conducting a meeting or hearing the ability to prohibit, cap or determine the method of calculation of any future compensation payment to a senior officer in the event that their fixed term appointment is not extended or they are required to resign or retire in the interest of efficiency or effectiveness.
- 7.19 In order to ensure that such a power is used fairly and proportionately a right of appeal to a Police Appeals Tribunal against any order made has been provided.

- *Consolidation*

7.20 The Department considers that there is no scope for consolidation at this stage.

8. Consultation outcome

8.1 A public consultation was undertaken on the changes. The Department's analysis of the consultation and response, along with the original consultation document, is available at the following link:

<https://www.gov.uk/government/consultations/changes-to-the-police-disciplinary-system>

8.2 A majority of respondents agreed that police disciplinary hearings should be made public by default. The main benefits were cited as being transparency, greater public confidence and increased accountability. The ability for the chair to receive representations in advance of the hearings was suggested through the consultation and provision has been made for this in the 2015 Regulations.

8.3 A majority of respondents to the public consultation were in favour of the introduction of legally-qualified chairs and agreed that such a change would bring the benefits described at paragraph 7.14 above. There was a clear view that operational policing expertise was necessary on every panel; these Regulations therefore ensure that a serving police officer is a member of each hearing panel. There was agreement that the introduction of legally-qualified chairs would bring a greater degree of independence to the process and would therefore increase confidence in the process. Better legal judgments and ability to deal with legally complex cases were also cited as benefits.

8.4 There were few responses on the issue of giving a panel the power to make orders in relation to compensation payable to senior officers. Those that did respond thought that it should be available for gross misconduct where a final written warning is given. As the power is discretionary the Department considers it to be appropriate that it is available in all cases where a final written warning is given.

8.5 Respondents were asked to identify what safeguards would be required if stronger protections for whistleblowers were introduced. The main safeguards identified were to ensure that protection from disciplinary action would not be extended to false allegations or whistleblowers guilty of misconduct themselves. The guidance accompanying the Regulations makes clear neither scenario is protected. Overall, approximately one quarter of respondents, predominantly police forces, did not support the proposals to strengthen protections for police whistleblowers.

8.6 The Police Advisory Board for England and Wales has been consulted in accordance with the duty in section 63(3)(a) of the Police Act 1996. The Board's comments have been taken into account in preparing these instruments.

9. Guidance

- 9.1 The Department will issue guidance to forces in relation to the application of these instruments as part of its statutory guidance on Misconduct, Performance and Attendance Management Procedures. The draft guidance is available at: <https://www.gov.uk/government/publications/circular-0062015-changes-to-home-office-guidance-on-police-misconduct-unsatisfactory-performance-and-attendance-management-procedures>

10. Impact

- 10.1 There is no impact on businesses, charities or voluntary bodies. A regulatory impact assessment accompanies this explanatory memorandum.

11. Regulating small business

- 11.1 These instruments do not apply to small businesses.

12. Monitoring & review

- 12.1 The Department will monitor the effect of the application of these instruments through the Police Advisory Board of England and Wales Discipline sub-committee and will review the impact of the application of these instruments in 2019.

13. Contact

- 13.1 Matthew Burton, Police Integrity and Powers Unit, the Home Office on 020 7035 3723 or Matthew.Burton1@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.