

EXPLANATORY MEMORANDUM TO
THE POLICE (CONDUCT) REGULATIONS 2020

2020 No. 4

AND

THE POLICE (PERFORMANCE) REGULATIONS 2020

2020 No. 3

AND

THE POLICE APPEALS TRIBUNALS RULES 2020

(2020 No. 1)

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 These three instruments revoke and replace the Police (Conduct) Regulations 2012, the Police (Performance) Regulations 2012 and the Police Appeals Tribunals Rules 2012, together with various other instruments and provisions that amend or modify those 2012 instruments. They reflect reforms to the system to improve the procedures for dealing with allegations of police misconduct and underperformance.
- 2.2 These instruments form part of a group of four that establish a reformed system for handling complaints about, and related matters concerning, the police and for dealing with police disciplinary matters. The other instrument is the Police (Complaints and Misconduct) Regulations 2020.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instruments are subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of these instruments is England and Wales only.
- 4.2 The territorial application of these instruments is England and Wales only.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 These three instruments are all made mainly in reliance on powers conferred by the Police Act 1996 (“the 1996 Act”).
- 6.2 The Police (Conduct) Regulations 2020 revoke and replace the Police (Conduct) Regulations 2012, as amended and modified, in part to reflect changes made to the handling of police complaints and disciplinary matters made by the Policing and Crime Act 2017 (“the 2017 Act”). These Regulations deal with internal conduct matters brought to the attention of the police otherwise than under Schedule 3 to the Police Reform Act 2002 (“the 2002 Act”) and operate alongside the Police (Complaints and Misconduct) Regulations 2020, which deal with public complaints and discipline-related matters arising under Schedule 3 to the 2002 Act. Modifications to the provisions as they relate to former officers are included within Schedule 1 to the Police (Conduct) Regulations 2020.
- 6.3 The Police (Performance) Regulations 2020 revoke and replace the Police (Performance) Regulations 2012, as amended. These Regulations make new provisions to reflect changes to the handling of police complaints and discipline matters made by the 2017 Act.
- 6.4 The Police Appeals Tribunals Rules 2020, made under Schedule 6 to the 1996 Act, set out the circumstances in which a member of a police force or special constable may appeal to the Police Appeals Tribunal and the procedures governing such an appeal. They revoke and replace the Police Appeals Tribunals Rules 2012 (as amended) with substantially similar provisions as well as new provisions to reflect changes to the handling of police complaints and police discipline matters made by the 2017 Act and the other three 2020 instruments.
- 6.5 These instruments should be read alongside the Police (Complaints and Misconduct) Regulations 2020, which also reflect reforms to the system to improve the procedures for handling complaints about, and related matters concerning, the police and for dealing with police disciplinary matters. Those Regulations have been issued with their own Explanatory Memorandum as they are mainly made in reliance on powers conferred by the 2002 Act and not the 1996 Act.

7. Policy background

What is being done and why?

- 7.1 In March 2015, the Government published a report as a summary of consultation responses on reforms to the police complaints and discipline systems (*‘Improving police integrity: reforming the police complaints and disciplinary systems’*), many of the proposals of which followed the recommendations made by Major-General Chip Chapman in his review of the police discipline system (*‘the Chapman Review’*). A number of changes have already been made to the system as a result of the 2017 Act, including the extension of the discipline system to former officers and the introduction of the police barred list.

- 7.2 The Government's report focussed on making the system clearer and more robust and objective. Specifically, it identified a recommendation of the Chapman Review, to introduce a principle of rehabilitation for lower level cases, with a focus on development and improvement. The consultation feedback noted that care was needed not to lose the distinction between misconduct and underperformance.
- 7.3 Building on this, and the remaining recommendations set out in the Chapman Review, the reforms reflected in these instruments are wide-ranging and provide for greater efficiency and transparency in the way police discipline and performance issues are dealt with. There is a more proportionate approach, and an emphasis on learning and improvement in lower level conduct cases in preference to an obstructive blame culture. Misconduct has been redefined to allow only cases which may result in disciplinary action (at least a written warning) to be dealt with via the formal disciplinary process.
- 7.4 Changes have been made to the investigation processes to make them simpler and therefore quicker. They include a requirement to provide an explanation where investigations take longer than 12 months. There are also new provisions to ensure the transparency of investigations, including sharing terms of references and investigation reports. The Standards of Professional Behaviour have been amended to include a provision that police officers, where they are witnesses, have a duty of cooperation in all investigations.
- 7.5 The misconduct hearings process has also undergone reform, including the introduction of a wider case management role for the legally-qualified chair. Chairs will be responsible for the overall timescales of misconduct hearings and will chair pre-hearings to allow for a shorter and more focused full hearing. Regional hearings have been introduced to allow the police force to delegate their functions at the hearing to another police force, where appropriate.
- 7.6 The sanctions following a misconduct hearing have also been amended to reintroduce the sanction of reduction in rank, to allow for a more proportionate response to serious misconduct which does not justify dismissal, but which requires a harsher penalty than a final written warning.
- 7.7 The provisions covering the decision under the Police (Conduct) Regulations 2020 as to whether a police officer has a case to answer for gross misconduct or misconduct have been changed to provide for greater consistency between the processes followed by the Independent Office for Police Conduct (IOPC) and other investigations under Schedule 3 to the 2002 Act. New provisions have been introduced which will allow the Director General of the IOPC (or person acting on their behalf) to present misconduct hearings and appeal hearings, in certain circumstances, including situations where there is a disagreement between the police force and the IOPC, as recommended in the Chapman Review.
- 7.8 Within the performance system, simplifications have been made by introducing clearer entrance and referral points to the Police Performance Regulations 2020 at key stages in the investigatory and misconduct process.
- 7.9 In the appeals process, changes have been made to reflect the changes in the Police (Conduct) Regulations 2020, as well to provide for the replacement of a retired officer on the panel with an independent layperson and for the ability to delegate appeal functions.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

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 None.

10. Consultation outcome

10.1 These instruments have not been subject to public consultation.

10.2 The Secretary of State consulted with the Police Advisory Board for England and Wales (PABEW) on these instruments from 12 October to 7 December 2018. Members of PABEW have also been included in other Home Office policy forums and have had the opportunity to input their views throughout the development of these instruments.

10.3 Representations from PABEW were assessed and taken into consideration in finalising the regulations. A number of drafting changes were made as a result of PABEW's comments including strengthening the duties of the appropriate authority or, as the case may be, the Director General of the IOPC under Regulation 19 (timeliness of investigations) if an investigation is not completed promptly and removing the ability to extend written warnings.

11. Guidance

11.1 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 instruments. The Independent Office for Police Conduct, the National Police Chiefs Council, the Association of Police and Crime Commissioners and the Police Advisory Board for England and Wales have been consulted on changes to the guidance. This will be made available by 1 February 2020.

12. Impact

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

12.2 The impact on the public sector is minimal. We expect the cost to police forces and local policing bodies of operating the provisions in this instrument to be similar to the costs of operating under previous related legislation, and to be met from within existing budgets.

12.3 An Impact Assessment has not been prepared for this instrument because no impact on the private or voluntary sector is foreseen.

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 approach to monitoring of this legislation is that the Home Office will keep the operation of these instruments under review.

15. Contact

- 15.1 Ian Balbi, Head of Police Discipline Policy at the Police Integrity Unit, telephone: 07826 254 276 or email: ian.balbi@homeoffice.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Michael Cordy, Deputy Director for Police Integrity Unit, at the Home Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Kit Malthouse, Minister for Policing Crime and the Fire Service, at the Home Office can confirm that this Explanatory Memorandum meets the required standard.