

EXPLANATORY MEMORANDUM TO
THE POLICE (CONDUCT) (AMENDMENT) REGULATIONS 2020
2020 No. 78

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument makes a small, but substantive, amendment to the Police (Conduct) Regulations 2020 No.4, which were laid before Parliament in January 2020 and come into force on 1 February 2020. Those regulations reform the procedures for dealing with allegations of police misconduct and under performance. They include a provision to enable the Director General of the Independent Office for Police Conduct to present cases at police disciplinary proceedings in a number of circumstances. This instrument corrects an omission in those regulations to ensure that the Director General might exercise this power to present cases in a particular circumstance.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument will be of interest to the Joint Committee on Statutory Instruments because it breaches the rule which states that an instrument should not be laid before Parliament less than 21 days before it comes into force. This instrument will come into force on 1 February 2020, immediately after the coming into force of the Police (Conduct) Regulations 2020 No.4.

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 instrument is 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 this instrument is England and Wales only.
- 4.2 The territorial application of this instrument is England and Wales only.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 This instrument is being made under powers in the Police Act 1996 (“the 1996 Act”), the Police Reform Act 2002 (“the 2002 Act”) and the Policing and Crime Act 2017 (“the 2017 Act”).
- 6.2 It amends the Police (Conduct) Regulations 2020, which revoke and replace the Police (Conduct) Regulations 2012 to reflect major changes to police discipline, complaints and misconduct procedures made by the Policing and Crime Act 2017.
- 6.3 Specifically, this instrument amends regulation 24 of the Police (Conduct) Regulations 2020.
- 6.4 Regulation 24 sets out the circumstances in which the Director General of the Independent Office for Police Conduct may decide to present a case against a police officer or special constable in a misconduct hearing or an accelerated misconduct hearing. They include circumstances where the appropriate authority is under a particular duty to comply with a direction of the Director General to bring misconduct proceedings of a form specified and one of several conditions apply. The duty that is currently specified for the purposes regulation 24 is a duty under paragraph 23(5B) of Schedule 3 to the 2002 Act (this relates to cases investigated under paragraph 18 or 19 of that Schedule). The conditions which are specified in regulation 24 are essentially where the appropriate authority and the Director General have had different views as to whether there is a case to answer against the officer, where the Director General and the appropriate authority agree that the Director General should present the case or where the Director General is of the view that, in the particular circumstances of the case concerned, there is a compelling public interest for the Director General to present the case.
- 6.5 This amendment at regulation 2 of this instrument enables the Director General to present a case where a second duty to comply with a direction of the Director General to bring misconduct proceedings of a form specified arises and one of the conditions applies. That second duty is a duty under paragraph 27(4)(b) of Schedule 3 to the 2002 Act to comply with a direction to give effect to a recommendation of the Director General under paragraph 25(4C) of that Schedule. In essence this broadens the types of cases which the Director General can present to include certain cases which have been investigated under paragraph 16 of Schedule 3 to the 2002 Act.

7. Policy background

What is being done and why?

- 7.1 The wider context for this instrument is that Government has legislated to radically overhaul the police discipline, performance and complaints systems. This wide-ranging package of reforms is aimed at providing for greater efficiency, accountability and transparency in the way that these systems work. The key aims include: a more effective police complaints system to improve public confidence and a more proportionate approach to police discipline, with greater emphasis on development and improvement for “lower level” breaches of the standards of professional behaviour or performance. The package of reforms includes measures to increase the effectiveness of the police “watchdog” organisation, the Independent Office for Police Conduct.

- 7.2 The reforms have their roots in a review of the police discipline system by Major-General Chip Chapman (‘the Chapman Review’); and a public consultation to which the Government published its response in March 2015 (‘Improving police integrity: reforming the police complaints and disciplinary systems’). The Government legislated in the 2017 Act to introduce most of the reforms.
- 7.3 The Independent Office for Police Conduct – the police “watchdog” for England and Wales – was launched in January 2018, following reforms to the governance structure of the Independent Police Complaints Commission (the organisation’s previous name). These changes were introduced under the 2017 Act. The measures streamlined the organisation, creating a single head of decision-making, the Director General. The Director General may delegate their powers to investigative staff acting on their behalf.
- 7.4 The 2017 Act includes other measures to increase and clarify the powers of the Independent Office for Police Conduct and these further measures are due to come into force on 1 February 2020. They include, for example, a power for the Director General of the Independent Office for Police Conduct to initiate an investigation without having to wait for a referral from the appropriate authority (i.e. a police force etc). The new reforms also clarify and streamline the process under which the Director General may find that a police officer whose conduct they have investigated has a “case to answer” for misconduct or gross misconduct and may direct the appropriate authority to bring proceedings.
- 7.5 The provision at regulation 24 of the Police (Conduct) Regulations 2020 is a new reform, which, for the first time, enables Director General (or person acting on their behalf) to present a case at a police misconduct hearing in certain circumstances. These circumstances include cases where the Director General has investigated or directed an investigation (under paragraphs 17 and 18 of Schedule 3 of the 2002 Act), made a case to answer decision and directed that disciplinary proceedings take place, but, in circumstances where the appropriate authority which is responsible for holding those proceedings does not agree with the Director General’s findings that a police officer should face those proceedings. Chapman recommended that, in such circumstances, in the interests of public confidence and maximum effectiveness, it made more sense for the Director General to present the case at the hearing rather than the appropriate authority.
- 7.6 Regulation 24 also includes other circumstances where the Director General may decide to exercise new powers present at such hearings, that is to say: cases where the appropriate authority has disagreed with the Director General as to whether accelerated misconduct proceedings should be brought; cases where the Director General is of the view that in the particular circumstances of a case, there is a compelling public interest that the Independent Office for Police Conduct should present the case; and cases where there is agreement between both the appropriate authority that the Director General should present.
- 7.7 It had been the policy intention to include within the scope of Regulation 24 an additional category of cases in which the Director General could decide to present. That is to say: cases investigated by the appropriate authority itself – under paragraph 16 of Schedule 3 of the 2002 Act, but where the Director General had intervened following a review and directed the appropriate authority. This category of cases and wording was missed off the final regulations in error. This instrument remedies the omission.

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 This instrument has not been subject to public consultation.

10.2 The Secretary of State consulted with the Police Advisory Board for England and Wales (PABEW) on the Police (Conduct) Regulations 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 that instrument. The amendment to the Police (Conduct) Regulations which is contained in this instrument was included in an earlier draft of the Police (Conduct) Regulations 2020 and in the draft on which the PABEW was consulted in 2018 and did not attract objections from consultees. The Chair and members of PABEW have also been consulted on this SI.

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 Police (Conduct) Regulations 2020, as amended by this instrument, as well as other recent legislative changes. 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 and seen drafts of it which contained the policy delivered by the amendment in this instrument. The final version will be made available in early 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, local policing bodies and the Independent Office for Police Conduct 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 the Police (Conduct) Regulations 2020, which this instrument amends, under review.

15. Contact

- 15.1 Ann Oldroyd, Head of IOPC Policy at the Home Office, telephone: 0207035 1587 or email: ann.oldroyd@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 MP, Minister for Policing, Crime and the Fire Service, at the Home Office can confirm that this Explanatory Memorandum meets the required standard.