

PARLIAMENTARY DEBATES

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OFFICIAL REPORT

Fourth Delegated Legislation Committee

DRAFT SERVICE POLICE (COMPLAINTS ETC.)
REGULATIONS 2023

Tuesday 21 March 2023

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The Committee consisted of the following Members:

Chair: DEREK TWIGG

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|---|---|
| † Bacon, Mr Richard (<i>South Norfolk</i>) (Con) | † Owatemi, Taiwo (<i>Coventry North West</i>) (Lab) |
| † Dixon, Samantha (<i>City of Chester</i>) (Lab) | † Pawsey, Mark (<i>Rugby</i>) (Con) |
| † Double, Steve (<i>Lord Commissioner of His Majesty's Treasury</i>) | † Pollard, Luke (<i>Plymouth, Sutton and Devonport</i>) (Lab/Co-op) |
| † Eastwood, Mark (<i>Dewsbury</i>) (Con) | † Ribeiro-Addy, Bell (<i>Streatham</i>) (Lab) |
| † Gullis, Jonathan (<i>Stoke-on-Trent North</i>) (Con) | Rimmer, Ms Marie (<i>St Helens South and Whiston</i>) (Lab) |
| Hamilton, Mrs Paulette (<i>Birmingham, Erdington</i>) (Lab) | † Tolhurst, Kelly (<i>Rochester and Strood</i>) (Con) |
| † Hudson, Dr Neil (<i>Penrith and The Border</i>) (Con) | Whittome, Nadia (<i>Nottingham East</i>) (Lab) |
| † Mak, Alan (<i>Havant</i>) (Con) | Luanne Middleton, Kevin Maddison,
<i>Committee Clerks</i> |
| † Moore, Damien (<i>Southport</i>) (Con) | |
| † Murrison, Dr Andrew (<i>Minister for Defence People, Veterans and Service Families</i>) | † attended the Committee |

Fourth Delegated Legislation Committee

Tuesday 21 March 2023

[DEREK TWIGG *in the Chair*]

Draft Service Police (Complaints etc.) Regulations 2023

2.30 pm

The Minister for Defence People, Veterans and Service Families (Dr Andrew Murrison): I beg to move,

That the Committee has considered the draft Service Police (Complaints etc.) Regulations 2023.

What a pleasure it is to serve under your chairmanship, Mr Twigg. We last met to discuss this sort of matter in November, in connection with the defence serious crime unit. I hope it will be evident to those who were involved in that Committee that there is a common theme running through this package of measures, which has to do with trying, as far as we can in the service context, to replicate in the military practice relating to justice in the civilian world. I hope also that hon. Members see in this measure the effects of the Police Reform Act 2002 and the Armed Forces Act 2006, and more pertinently, given time elapsed, the consequences of the various reviews of service policing and service justice, in particular those attributed to Lyons, Murphy and Henriques.

The draft regulations bring the process pretty much full circle. Hon. Members will be aware of the appointment of Margaret Obi, whom I met last week, as the Service Police Complaints Commissioner. Her appointment will allow servicemen, servicewomen and members of the public to have the same facility in relation to service justice as they do in that dispensed by Home Office police. The statutory instrument contains the regulations that are required to establish the service police complaints system, which will be overseen by the newly appointed Service Police Complaints Commissioner. It also contains the regulations required to establish the super-complaints regime for the service police.

The establishment of the independent commissioner with these regulations implements recommendation 44 of the service justice system review—the Lyons review—relating to complaints. Lyons found that a degree of independent oversight was missing in comparison with civilian police forces, which have statutory complaints systems, and recommended that a new niche defence body be created to deliver this. The review considered the options for establishing independent oversight, which helped to inform the approach taken by the Ministry of Defence.

The review suggested a small niche unit led by an appointed individual, possibly from a judicial background, operating to the same remit as the Independent Office for Police Conduct and its director general. As such, during 2022, the MoD ran a recruitment campaign for the Service Police Complaints Commissioner in accordance with the 2016 public appointments governance code. Ms Margaret Obi was appointed by His Majesty the King on the recommendation of the Secretary of State,

and her appointment was publicly announced in February. Ms Obi brings a wealth of experience and enthusiasm to this role, and her appointment ensures that there will be a more robust, independent process for service police complaints.

In line with the Lyons review recommendation, the commissioner will have functions similar to those conferred on the director general of the IOPC. The main responsibilities of the commissioner will be: to secure the confidence of persons subject to service law and service discipline, as well as the wider public, in the service police complaints system; to secure, maintain and review arrangements in respect of the procedures that deal with complaints, conduct, and death or serious injury matters; and to make recommendations and provide advice on those arrangements—for example, training or procedures where the commissioner believes that these may improve policing practice. The commissioner will independently investigate the most serious and sensitive cases and act as the review body for certain cases specified in regulations. She will report annually to Parliament via the Secretary of State for Defence on the delivery of the commissioner's functions.

Also in line with the review, the commissioner will be responsible for deciding how the more serious complaints and other matters should be investigated—whether they should be referred back to the service police for a local investigation, or whether there should be a directed or independent investigation. Independent investigations are carried out by the commissioner into the most serious complaints and other matters. The commissioner will be able to call on a pool of experienced investigators to lead those investigations. The investigators will be able to exercise service police powers, similar to the way investigators appointed by the director general of the IOPC exercise police powers. These investigations will be independent of the service police and of the Ministry of Defence.

The review recognised that probably very few independent investigations would be required, and our analysis confirms this. Based on service police data for the 2018 to 2022 period, we estimate an average of 62 formal complaints annually, with 18 cases referred to the commissioner under the mandatory criteria for referral, although not all referrals would lead to an independent investigation. By way of comparison, over 36,000 formal complaints were recorded in the year 2020-21 by civilian police forces across England and Wales.

The draft regulations are quite technical and complex, and run to over 80 pages. As they largely mirror the legislation already in place for the IOPC and civilian police, I do not intend to go through each one in turn. Instead, I shall set out the main differences between this system and the civilian police complaints system, which I have interrogated. Secondly, I will touch on the responsibilities of the commissioner in relation to determining the appropriate type of investigation to be conducted.

As indicated in the explanatory memorandum to the regulations, there are some minor differences between the systems, to reflect the service context. In relation to complaints, the commissioner will only be able to make a recommendation on whether administrative action procedures should be initiated against someone in the service police, whereas the director general, who has a formal role in the equivalent police disciplinary procedure, can also direct that these procedures should be brought.

The College of Policing has no functions in relation to the service police, so has no role in relation to the super-complaints procedure. We have yet to designate any super-complaints bodies, as we need to set up the statutory criteria for designation before any decision can be made. The criteria broadly mirror those set out in the Police Super-complaints (Criteria for the Making and Revocation of Designations) Regulations 2018, with only minor modifications. Under both regimes, the decision whether a body meets the designation criteria is for the Secretary of State to make; we therefore decided that it was unnecessary for the Secretary of State to make further regulations formally to designate bodies, unlike in the civilian system. To ensure the public know which bodies have been designated, we have included a new duty on the MOD to publish this information.

The new complaints regime will apply only to matters relating to the service police that occur on or after the date on which these regulations come into force; that is, the service police complaints system will not, initially at least, deal with historical matters. The regulations recognise that, unlike civilian police, members of the service police are also members of the armed forces and can be deployed in another capacity. The complaints system is not designed to deal with non-police matters; as such, it will not be possible to make a complaint about service police personnel when they are performing duties in another capacity, although the regime will apply when they are off-duty, as the IOPC regime does to civilian police.

Samantha Dixon (City of Chester) (Lab): I note that paragraph 4.1 of the explanatory memorandum states that Gibraltar is excluded from the territorial extent of the instrument. Will the Minister explain why that is, given that a constituent of mine may go to Gibraltar and experience a problem with service police? The regulations would not cover such a case.

Dr Murrison: I think we covered this last time. I know that hon. Members are interested in the status of Gibraltar. The difficulty is that the draft SI is made under primary legislation, notably the Armed Forces Act 2006, which covers Gibraltar in a different way. Therefore, we cannot easily include Gibraltar in the scope of this statutory instrument. I am sorry if that is a slightly unsatisfactory response for the hon. Lady, but the 2006 Act passed under the last Government dealt with the matter in that way. Of course, service personnel still have the ability to go through the existing system. Such matters will be kept under review, not least in the quinquennial reviews. It could be that at some future date and with the benefit of a future Armed Forces Bill, we might be able to amend the matter. I hope that is satisfactory to her.

The different options for investigation by the Service Police Complaints Commissioner are pretty much identical to those in the civilian system. I will briefly run through those options. First, there is the possibility of a local investigation, where the service police force do the investigation themselves. Secondly, there can be a directed investigation, where a member of a service police force is appointed as the investigator, but the investigation is under the direction of the commissioner. Finally, there can be an independent investigation, where the commissioner carries out an investigation personally or designates an investigating officer to carry it out.

As well as complaints, the new system will cover conduct matters and death or serious injury matters. In layman's terms, those are cases where no complaint has been made, but misconduct is suspected or a death or serious injury has occurred after contact with the service police. Again, we expect only a small number of conduct matters to be referred to the commissioner that would require investigation, and DSI matters are even more rare. Between 2018 and 2022, no DSI-type matters were recorded.

We expect relatively few independent investigations, but an effective independent service police complaints system is vital. The way in which complaints, conduct matters and DSI matters are dealt with has a huge impact on confidence in the service police. Where matters are dealt with badly, confidence in the service police and the wider service justice system can be damaged. Where matters are dealt with in a way that is efficient and effective, and is seen to be independent, trust can be restored and bring about improvements in policing.

Most important, the new system will help to ensure that when something goes wrong, the circumstances are thoroughly investigated, appropriate action is taken and lessons are not just identified, but learned. I am conscious that today of all days is a time to reflect on how we can increase the effectiveness and transparency of all police services, and I certainly include service police. I commend the draft regulations.

2.43 pm

Luke Pollard (Plymouth, Sutton and Devonport) (Lab/Co-op): I thank the Minister for his thorough introduction of this draft SI. The Opposition do not intend to divide the Committee, but I have a number of questions to pose to him.

All in Committee agree that our service personnel embody the very best of British. They exemplify the highest standards in our society, and we rightly expect our service police to uphold those same values, but when complaints are made against the service police, considerable flaws in the service police complaints process become apparent. As highlighted by the Lyons review, the current process lacks independence from the Ministry of Defence and its scope is too narrow.

Our armed forces personnel need to feel confident that, in return for carrying out their duty to keep our nation safe, they will in turn be looked after by the service police force that is there to protect them and to uphold high standards. Our service personnel also need to know that when service police officers fall short of that mark, a strong system is in place to investigate properly officers who are the subject of a complaint, and that they will be held to account if they have failed in their duties.

Broadly, therefore, we welcome the implementation of a new independent service police complaints process, and Labour will support today's draft legislation, but clarification is needed and I have a number of questions. Will the new body be adequately resourced to carry out its functions? The Minister says that he is not expecting too many cases to cross its desk, but I would be grateful if he set out whether sufficient resourcing is allocated, or whether the resources will come from existing budgets. There are also wider concerns about whether the new complaints process is wide enough in scope, and whether it will inherit some of the issues afflicting the current civilian police complaints system.

[Luke Pollard]

Labour welcomes the appointment of Ms Margaret Obi as the Service Police Complaints Commissioner, but the Government must provide assurances that the new independent niche body she oversees will be sufficiently resourced. We know that it will be funded by the MOD, but since there is to be a £2 billion real-terms cut in day-to-day spending for 2024-25, and since the extra money secured in last week's Budget applies only to the nuclear programme and replenishing stockpiles, can the Minister say what the new body's annual budget will be?

Will the funding for the new complaints system come out of the MOD's existing budget, and existing service police costs, or will additional resources be applied? Will staff in the new complaints system be permanently working in the new unit, or will they be on secondment, as we discussed in a previous statutory instrument on policing in our armed forces? Will staff need additional resources to carry out the independent body's functions? I am particularly looking at the training requirement to learn the necessary lessons, especially if we are to move service police complaints to the same level as complaints relating to civilian police forces. When is the new service police complaints process due to come into force? The SI mentions a date in June; will the Minister confirm that?

The Lyons review suggested that, even with a new independent body,

“investigations of serious crime and wrongdoing may not even reach double figures.”

It also stated that the caseload will depend on the scope of the system, who can access it, and what time limits are placed on it. New independent oversight of the service police is welcome but there are serious questions about service police misconduct when dealing with complaints in the armed forces. I hope those can be addressed through this new system. Also, from discussing a similar issue in a statutory instrument Committee a few months ago, we know of concerns that if cases remain very low in number, there will not be a sufficient volume going through the system for officers dealing with those cases to be adequately trained and familiar with the procedures. As the Minister is expecting only a very small number of cases, especially death and serious injury matters, will he set out how those working in that space will deal with a sufficient volume of cases to be trained to and to perform at a high standard? There were questions about whether that was appropriate the last time we met to discuss a related measure.

We also know that, in recent years, an epidemic of bullying and sexual harassment in our armed forces has been allowed to fester, with service police investigations into sexual offences increasing by a third since 2019. Although there are wider questions about the effectiveness of the military court martial system—the Minister will be aware that Labour has repeatedly called for the most serious crimes to be tried in civilian courts to improve access to justice for service personnel—it is crucial that service police officers and the service police force as a whole take more responsibility for creating a culture that roots out bad behaviour, and that they are held to account if they do not do so.

Given the statement that the Home Secretary has just made in the Commons regarding the Casey review, what steps is the Minister taking, as the Minister with

oversight of policing in our armed forces, to see what lessons can be applied? Although that report looks at the Metropolitan police, I do not believe the Metropolitan police are alone in having these issues. I would be grateful if the Minister set out his plan to review the Casey report and apply any learnings to the MOD.

In the guidance on today's statutory instrument, the Minister says that the draft regulations provide for a complaints system similar to the system applied to the civilian police in England and Wales. I draw his attention to concerns about failings in the civilian police complaints system, which we cannot afford to transfer to the service police system. For example, Labour is clear that officers of any kind who are accused of rape and domestic abuse should be suspended while their case is investigated. I realise that that deals with the appeal against the investigating officers, but it is important to put that on the record.

Regulation 19 deals with withdrawn complaints. With the aim of ensuring high levels of probity, if a complaint is made against a service police officer and subsequently withdrawn, can that be one of the items that is reported to Parliament? There is concern that an organisation with a high level of hierarchy and orders to be followed may place barriers in the way of people seeking justice who have been failed by the chain of command or the justice system. If there is a point where complaints are made and subsequently withdrawn, may we have an understanding of how many cases are involved? I do not expect to see signs of a conspiracy, but we need to make sure that there are no barriers in the system, and the culture that goes along with it, to someone coming forward with a complaint about their experiences.

Last year, the Home Affairs Committee looked into police complaints procedures and concluded that there are still serious concerns about delays to investigations due to the complexity of language and processes. The Minister said that he has mapped the civilian language over to this SI. How will the application of the same processes and language apply in an armed forces context compared with the civilian context? We do not want to arrive at a place where we are unable to effectively hold service police to account because of unwarranted bureaucratic language and processes, which have been cited as holding back justice in civilian police forces.

Will the Minister provide some much-needed detail about the differences between the civilian complaints regime and the new service police complaints system? He briefly touched on that point in his remarks. Paragraph 7.7 of the explanatory memorandum states that the key difference will be

“the lack of accelerated procedures for members of the Armed Forces”

in internal disciplinary procedures, to reflect the service context. We all understand that service life is different from civilian life, but will the Minister set out what is meant by a lack of accelerated procedures for members of the armed forces? Surely there is merit in having complaints dealt with swiftly. If the issue is personnel who are involved being deployed, I would be grateful if the Minister set that out.

I have had quite a lot of dealings with the Independent Office for Police Conduct in relation to the Keyham shooting in the patch I represent, and I have been impressed by the IOPC's working. If the Minister's

intends to carry over a similar type of work to service policing, that is a good move. It is a really important sign that we need to move military justice to the same thresholds and standards that we expect in civilian justice.

On that basis, Labour will not oppose the regulations, but I want to pick up on the Minister's comments about the super-complaints body. When that is assessed, will there be a consultation, or will the process just be applied and a decision made by Ministers? Does it need to be approved through a statutory instrument process? Could he set that out clearly?

The Minister said that historical matters will not initially be dealt with. I understand the importance of drawing a clear line between what cases are dealt with and what are not, but I am not certain about the "not initially" part of what he said. Will he clarify whether that will be a task for the new commissioner in due course, or whether that is a decision for Ministers?

My hon. Friend the Member for City of Chester raised a very fair point about the application of this legislation to Gibraltar. As the Minister knows, I often raise questions about territorial extent. Unlike many SIs that we have dealt with recently, it is good to see that overseas territories and some Crown dependencies are included in these draft regulations. However, if we continue to miss out Gibraltar, we are creating a situation where UK service personnel in Gibraltar—not just the Gibraltar regiment, but UK service personnel based in Gibraltar—have a sub-optimal level of justice and application of modern legislation. Is there a piece of work under way in the MOD to collate all the pieces of legislation where Gibraltar has been excluded so that we can make sure to use the opportunity of the next Armed Forces Bill, whenever that may come, to correct a growing level of disservice to armed forces personnel who are based in Gibraltar?

2.53 pm

Dr Murrison: I thank the hon. Gentleman for his typically incisive and comprehensive list of questions, which I will do my best to answer.

On resourcing, I absolutely understand where the hon. Gentleman is coming from. In giving him an indication of the scale of dedicated resources, I come back to my point about our anticipated level of demand; set against the context of Home Office policing, it is really very small indeed. Margaret Obi will be employed for 2.5 days a week. She is a deputy High Court judge, so this is a part-time job for her, although this is pretty much maximum part time, and clearly, that will be reviewed. I will be interested to see what her annual report to the Secretary of State and Parliament says about the amount of work she feels she has, and whether it increases over time as service personnel develop confidence in the system, and potentially increase the demands on her and her staff. She will have three members of staff—the costs will be borne internally by the Ministry of Defence—and £250,000 has been identified annually for independent investigators.

It is likely that the investigators will mainly be ex-policemen, and their qualifications will be determined by the Service Police Complaints Commissioner. The hon. Gentleman is probably aware of an organisation that acts as an agency for those kinds of people—indeed,

I think we have discussed that in the past in Committee—so there is a way of recruiting people with sufficient experience to do this work. Again, I expect the commissioner to be able to feed back on that when she delivers her report, and I certainly expect us to review it at the quinquennial review, which we will conduct as a matter of course.

Moving on to the DSCU, which obviously has the expertise, it will continue to do its work under the direction of the Service Police Complaints Commissioner. However, it is possible, given that she will be hiring independent investigators, that some of the demands on the unit will be moderated. These are quite complicated matters and they suck up quite a lot of officer time, so I expect there to be a gain, as it were, for service justice as a result of what we are discussing today.

I can confirm that the date given in regulation 1(1) is correct. Although the vesting date is in June, I have already met Margaret Obi to discuss her appointment, and she pretty much has things up and running.

On training, the hon. Gentleman's point is well made. The independent investigators will be trained and experienced police officers, but I take the point about the importance of training. I expect the commissioner to undertake a training role herself in respect of police conduct, and I would expect that to become a significant part of her role over time.

Turning to the super-complaints mechanism, I wrote to my own chief constable this morning following Louise Casey's review because, as the hon. Gentleman points out, the issues are not confined to the Metropolitan police. This is a good point in time for all constabularies to examine themselves, their procedures and their attitudes, and to take restorative action where appropriate. That includes service police. The setting up of a super-complaints procedure is an important part of this SI. In other words, were an issue such as stop and search—the most obvious example—to arise in a service context, I would expect the Service Police Complaints Commissioner to pick that up and run with it, as has been the case in the civilian context.

The hon. Gentleman made a good point about the withdrawal of complaints. I hope that Margaret Obi will study our proceedings today, as that would be a reasonable thing for her to cover in her annual report. I should emphasise that it is her report, not mine, but if it were not included when the report is presented to Parliament, it would be legitimate to ask questions. On oversight, I hope that parliamentarians will take a close interest, including, of course, those on the House of Commons Defence Committee. It would be perfectly open to that Committee to interrogate the annual report, and I expect the MOD will do its own internal quinquennial review when it comes.

The hon. Gentleman is right about delays. Again, I prayed this in aid the last time we met in a similar forum to justify service justice, because in general the level of delays in the service justice system is enviable compared with that in civilian justice. Justice delayed is justice denied.

I take the point about bureaucratic language and the need to explain things to laypeople in simple terms. I think that point is very well made indeed.

On the accelerated procedures, I have interrogated my officials because I did not quite understand the explanatory notes. They are, in a rather techie way, part

[Dr Murrison]

of the police disciplinary procedures that are laid out in statute. That is not what we are dealing with here. We are ultimately dealing with stuff that is laid out in King's regulations, and in a rather techie way—apropos my previous remark—the two are quite separate. We cannot, therefore, translate directly one from the other in this particular case. I suppose it comes back to the point about Gibraltar, where we are of course tied by previous legislation. In the absence of changes to primary legislation, in this case through an Armed Force Bill, it would be extremely difficult to replicate the situation precisely. I think the intent is the same, however, and I have been insistent that what we do by means of this SI replicates, for practical purposes, what we have in civilian life. I am absolutely attached to that as an important principle.

On historical complaints, I am pleased that the hon. Gentleman pulled out the phrase “not initially” because I was also interested in this. The truth of the matter is that we must be realistic about the burden on Margaret Obi. We are going to let this run for a bit; we will review

it internally after 18 months, we will have the quinquennial review, and we will have her annual report. As and when it becomes possible to look at historical complaints, the door is open to that, but I am not prepared to commit to it right now, because I want to ensure that complaints are handled contemporaneously. That must be the priority. Others will of course be dealt with through the existing service complaints procedure, but we recognise that this is the gold standard, not that, since this replicates what happens in civilian life. I hope that that is satisfactory for the hon. Gentleman.

I think I have pretty much got through all the hon. Gentleman's questions. I will, as ever, sieve through what he put to me and write to him if I have missed something.

Question put and agreed to.

Resolved,

That the Cttee has considered the draft Service Police (Complaints etc.) Regulations 2023.

3.2 pm

Committee rose.