EXPLANATORY MEMORANDUM TO

THE INDEPENDENT OFFICE FOR POLICE CONDUCT (TRANSITIONAL AND CONSEQUENTIAL) REGULATIONS 2017

2017 No. 1250

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 This instrument supports the implementation of reforms to the corporate structure of the Independent Police Complaints Commission (IPCC), and its re-naming as the Independent Office for Police Conduct (IOPC), as provided for by Part 2, Chapter 5 of the Policing and Crime Act 2017 ("the 2017 Act"). This instrument makes transitional provisions and consequential and other amendments or modifications to secondary legislation to reflect, and ensure consistency with, the IPCC's reformed corporate structure and re-naming. This instrument also corrects an error in the wording of Regulation 23(3) of the Gangmasters and Labour Abuse Authority (Complaints and Misconduct) Regulations 2017 (S.I. 2017 No. 521) which occurred during the validation process for those regulations.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

Other matters of interest to the House of Commons

3.2 As this instrument is subject to negative resolution procedure, and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 The IPCC was established by Section 9 of the Police Reform Act 2002 ("the 2002 Act"). Part 2, Chapter 5 of the 2017 Act provides for the reform of the IPCC's corporate structure and for it to be re-named.

4.2 Section 33 of the 2017 Act amends the 2002 Act providing for the IPCC to continue to exist and for it to be known instead as the Independent Office for Police Conduct (IOPC). Section 33 also provides for the Commission to be replaced by the "Office" which is to consist of a Director General (a Crown appointment) and at least six other members (employee members and non-executive members). The non-executive members are to be appointed by the Secretary of State.

4.3 Section 34 of the 2017 Act amends Section 10 of the 2002 Act (General functions of the Commission). All of the existing investigatory functions of the Commission will become functions of the Director General as the single executive head of the organisation. Section 34 also inserts new provisions into Section 10 of the 2002 Act

setting out the functions of the Office which include securing appropriate arrangements are in place for good governance and financial management, and to provide support and advice to the Director General in the carrying out of the Director General's functions.

4.4 Schedule 9 to the 2017 Act makes further minor changes to the 2002 Act in relation to the re-structuring and re-naming of the IPCC including amendments to Schedule 2 and Schedule 3 of the 2002 Act.

4.5 This instrument comes into force on the same day as the associated primary provisions in the 2017 Act will come into force. The transitional provisions in this instrument, along with the transitional provisions in the commencement Regulations, provide for continuity between the work of the IPCC under its existing corporate structure and the new corporate structure. Any work done, or in the process of being done, under the existing organisational structure will continue to have effect, or may be taken forward by, the Director General.

5. Extent and Territorial Application

5.1 The extent of this instrument is England and Wales.

5.2 The application of this instrument is England and Wales

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

7.1 The IPCC has a central role in the system of police scrutiny and complaints and has three main functions:

- It investigates serious and sensitive cases where police misconduct is alleged or where someone has died or sustained serious injury.
- It acts as an appellate body for members of the public whose complaints, if proved, could result in charges of misconduct or criminality.
- It has a statutory duty to ensure public confidence in the police complaints system as a whole.

7.2 In 2013 the then Home Secretary announced a major change programme to provide the IPCC with increased powers and resources to deliver its functions.

7.3 The IPCC's work has expanded considerably and in 2016/17 it opened 590 independent investigations, more than five times as many as in 2013/14.

7.4 The 2017 Act provides for the IPCC to be given further powers and, in light of the IPCC's expanded role, the 2017 Act also provides for the reform of its corporate structure and governance arrangements. The purpose of the changes in the 2017 Act is to help deliver a more capable and resilient organisation, better placed to deliver its expanded role efficiently and effectively and ensure that complaints made against the police are responded to in a way that builds trust and public confidence.

7.5 The purpose of these regulations is mainly to make amendments or modifications to secondary legislation consequential to provisions in the 2017 Act. Many of the changes involve simply substituting "Director General" for "Commission" to reflect the transfer of functions from the Commission to the Director General under the 2017 Act. Other changes involve substituting "Independent Office for Police Conduct" or "IOPC" for "Independent Police Complaints Commission" or "IPCC" as a consequence of the re-naming of the organisation.

7.6 Regulations 23, 24, 27 and 33 include provisions that are not transitional or consequential to the 2017 Act but which have the purpose of ensuring that the regulations being amended are brought in line with the policy intent of the reforms in the 2017 Act, namely too provide for a single line of accountability and decision-making in the IOPC up to the Director General.

7.7 In addition to making consequential changes to the Gangmasters and Labour Abuse Authority (Complaints and Misconduct) Regulations 2017 (S.I. 2017 No. 521), Regulation 36 in this instrument also corrects an error in the wording of Regulation 23(3) of the said Gangmasters regulations which occurred during the validation process for those regulations.

7.8 The purpose of Regulation 37 of this instrument is to provide for appropriate transitional arrangements associated with the transfer of functions from the Commission, and other persons, to the Director General of the IOPC. The purpose of Regulation 38 is to provide for any person who was designated by the Commission in respect of an investigation to continue to be designated for such purpose once these regulations come into force. The overall purpose of Regulations 37 and 38 is to ensure there can be a smooth transfer of work undertaken under the existing governance arrangements of the IPCC to the new organisational structure.

Consolidation

7.9 The Department does not intend to consolidate any Statutory Instruments.

8. Consultation outcome

8.1 The Government launched a consultation on proposals to reform the IPCC's structure and governance in December 2015 and the response to the consultation was published in March 2016[1]. There was overwhelming support amongst respondents for the broad package of measures to reform the IPCC's governance structure, with 80% of respondents agreeing that the IPCC should be led by a single head, to be a Crown appointment (the Director General). The reforms were taken forward through the 2017 Act.

8.2 In accordance with requirements under the Police Act 1996, the Secretary of State consulted with the Police Advisory Board for England and Wales (PABEW) on this instrument. The consultation period on the draft Regulations was from 7th to 21st November 2017. PABEW had no comments on the drafting of the regulations in this instrument.

[1] **"**Reforming the Independent Police Complaints Commission: structure and governance. Summary of consultation responses and next steps" ISBN 9781786550675. https://www.gov.uk/government/consultations/reforming-the-independent-police-complaints-commission-structure-and-governance

9. Guidance

9.1 This instrument supports implementation of reforms in the 2017 Act. The corporate body known as the IPCC will continue to exist but it will have a different corporate structure and name. The IOPC will issue communications to its users and stakeholders to explain the internal changes and re-naming.

10. Impact

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

10.2 There is no impact on the public sector.

10.3 An Impact Assessment was prepared for the reform of the IPCC's corporate structure and re-naming as part of the impact assessment for the Policing and Crime Bill – Reform of the Complaints System.[2] A separate assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 The objective of the reforms to the corporate structure of the IPCC (provided for in the 2017 Act and in this instrument) are to support clearer, more efficient and effective, organisational decision-making through a single line of accountability up to the Director General.

12.2 The provisions of the 2017 Act and, by extension, the provisions of this instrument will be subject to the normal post-legislative review three to five years after Royal Assent. Success of the provisions in this instrument will also be monitored and reviewed on an on-going basis as part of the normal sponsorship arrangements between the Home Office and the IPCC/IOPC as a non-departmental public body (NDPB).

13. Contact

13.1 Gary Watson, Police Integrity Unit, at the Home Office, 0207 035 0519 or gary.watson1@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.

[2] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/528309/Impact_Assessment_-_Reform_of_the_Complaints_System.pdf