EXPLANATORY MEMORANDUM TO

THE INDEPENDENT POLICE COMPLAINTS COMMISSION (INVESTIGATION OF OFFENCES) ORDER 2014

2014 No. 2402

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 instrument

2.1 This Order confers powers on the Independent Police Complaints Commission ("the Commission") in relation to its use of powers under the Police and Criminal Evidence Act 1984 ("the 1984 Act") in investigations which it carries out itself under paragraph 19 of Schedule 3 to the Police Reform Act 2002 ("the 2002 Act").

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

3.1 None.

4. Legislative Context

4.1 The framework in accordance with which the Commission investigates, or oversees investigations into, complaints and other matters relating to police conduct is set out in Part 2 of, and Schedule 3 to, the 2002 Act. The most serious matters are investigated by the Commission itself. Paragraph 19 of Schedule 3 to the 2002 Act applies in these cases, and confers the powers and privileges of a constable on members of the Commission's staff who are carrying out the investigation.

4.2 Section 136 of the Anti-social Behaviour, Crime and Policing Act 2014 ("the 2014 Act") amends paragraph 19(6) of Schedule 3 to the 2002 Act and inserts new sub-paragraph (6A) into that paragraph. These provisions confer power on the Secretary of State to make an order enabling a member of the Commission's staff to exercise a power under the 1984 Act (which includes a power contained in a code of practice issued under sections 60, 60A or 66 of that Act) in respect of which authorisation would otherwise be required by a police officer of or above a specified rank if authorisation is given by another member of the Commission's staff of or above a specified grade.

4.3 This Order is made under paragraph 19(6) and (6A) and specifies the powers in or under the 1984 Act in respect of which a member of the Commission's staff may give such authorisation. In particular, article 2 of this Order specifies the provisions of the 1984 Act, Code B and Code C which apply, subject to the modification of those provisions in article 3, to the investigation

of offences conducted by virtue of paragraph 19 of Schedule 3 to the 2002 Act by members of the Commission's staff designated under that paragraph.

4.4 This Order represents the first use of the power in paragraph 19(6) and (6A) of Schedule 3 to the 2002 Act.

5. Territorial Extent and Application

5.1 This Order extends to England and Wales only.

6. European Convention on Human Rights

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

7. Policy background

7.1 Since 2004 the Commission has held the remit to provide independent oversight of the police complaints system. Following the publication of the Hillsborough Independent Panel's report **http://hillsborough.independent.gov.uk/repository/report/HIP_report.pdf** on 12 September 2012 and the subsequent commitment by the Home Secretary on 12 February 2013 to provide the Commission with the powers and resources it requires to ensure effective investigations and increase public confidence in the police complaints system, the 2014 Act confers five new powers on the Commission to strengthen its ability to undertake or oversee investigations. Section 136 of that Act provides the power for the Commission to itself authorise certain interview and search powers under the 1984 Act where that authorisation would otherwise be required by a senior police officer.

7.2 The Commission's investigators, when conducting an independent investigation that includes suspicions that a criminal offence may have been committed, hold the power of arrest etc., just as it is available to a police constable. However, some powers under the 1984 Act require a Commission investigator to seek additional authorisation from a police officer of at least a particular rank. This includes, for example, the authorisation to interview a suspect who wants legal advice but has not yet received it, or to search premises. Although rare, when such authorisation under the 1984 Act is required, it does undermine the Commission's independence, due to it having to go to a police force.

7.3 This Order enables the authorisation of the use of certain powers under the 1984 Act by senior Commission staff. This Order is made in respect of those powers relating to entry and search of premises and the questioning of persons in the 1984 Act and the code of practice issued under sections 60, 60A and 66 of the 1984 Act. In ensuring safeguards around the extension of this power, only senior member of the Commission, who are considered to be of an

equivalent status to that of the police officer as set out in the 1984 Act, will be able to authorise their use, thus ensuring justified and proportionate application. This means that investigations can continue without being dependent on obtaining authorisation from the police, guaranteeing the Commission's continued independence and enhancing public confidence in the police complaints system.

- ***Consolidation***

7.4 The Department considers that there is no scope for consolidation.

8. Consultation outcome

8.1 Two Technical Working Groups were held in 2013 with representatives from the policing landscape. The Commission participated in the Groups and was able to provide background and reasoning behind why it had requested the powers, as well as provide feedback in relation to the drafting of this Order.

9. Guidance

9.1 The Commission will update its statutory guidance and internal operations manual. The Commission will also write to all forces and local policing bodies to inform them of the availability of the power and what will be required of them.

10. Impact

10.1 There is no impact on businesses, charities, voluntary bodies or the public section.

11. Regulating small business

11.1 This Order does not apply to small businesses.

12. Monitoring & review

12.1 The Department and the Commission will monitor and review the use of the new powers by the Commission.

13. Contact

13.1 Elizabeth Rowlands, Police Integrity and Powers Unit, the Home Office on 020 7035 3939 or Elizabeth.Rowlands1@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.