EXPLANATORY MEMORANDUM TO

THE NATIONAL CRIME AGENCY (COMPLAINTS AND MISCONDUCT) REGULATIONS 2013

2013 No. 2325

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 These Regulations make provision for the Independent Police Complaints Commission ("the Commission") to exercise independent oversight of complaints and other matters (including an incident in which a death or serious injury has occurred) relating to the conduct of a National Crime Agency ("NCA") officer (including the Director General of the NCA), in a similar way to the oversight exercised by the Commission in respect of the police.

3. Matters of Special Interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The statutory framework in accordance with which the Commission has oversight of the conduct of NCA officers (including the Director General) by virtue of these Regulations is broadly set out in Part 2 of, and Schedule 3 to, the Police Reform Act 2002 ("the 2002 Act"). This framework sets out the basis on which the Commission has oversight of the police. The Commission was established by the 2002 Act to provide an effective and independent means of overseeing the investigation of complaints and alleged misconduct relating to the actions of the police, but its remit has since been extended to other organisations which now include the NCA.

4.2 Section 10 of the 2002 Act provides that a function of the Commission is to exercise oversight of the handling of complaints about the conduct of persons serving with the police (such persons are defined in section 12(7)), conduct matters relating to those persons (see sections 10(2)(b) and 12(2)) and death or serious injury ("DSI") matters (see sections 10(2)(ba) and 12(2A)). Investigations may be handled by the appropriate authority (defined in section 29) or the Commission. In relation to the police, the appropriate authority is either the chief officer of the relevant force or the local policing body in relation to that force.

4.3 The detailed framework for the handling of complaints etc. is set out in Schedule 3 to the 2002 Act and in regulations made under it. The level at which a complaint etc. is handled will depend on a number of matters (e.g. its gravity) and, in broad terms, the more serious matters are referred to the Commission. Paragraph 15 of Schedule 3 sets out the basis on which the Commission may determine how a matter referred to it is to be handled. The Commission may determine that it will handle the investigation

itself, manage or supervise an investigation which is carried out by the appropriate authority or that the appropriate authority will carry out an investigation itself.

4.4 Section 26 of the 2002 Act enables the Commission to enter into an agreement with authorities which maintain bodies of constables for corresponding or similar oversight by it of complaints etc. in relation to the conduct of those constables as that which it exercises in relation to the police. The former section 26A[1] required the Commission to enter into an agreement with the Serious Organised Crime Agency ("SOCA") to similarly provide for its oversight of the conduct of SOCA's members of staff.

4.5 The NCA is established by Part 1 of and Schedules 1 to 8 to the Crime and Courts Act 2013 ("the 2013 Act"). The Act also abolishes SOCA and the National Policing Improvement Agency (NPIA). Sections 9 and 10 of the 2013 Act make provision for the Director General of the NCA and other NCA officers to be designated with, amongst other things, the powers and privileges of a constable to enable them to perform operational functions of the NCA. Section 11 of the 2013 Act inserts section 26C into the 2002 Act, and includes a duty on the Secretary of State to make regulations which provide for the Commission to have oversight of the NCA; this may make such provision by applying (with or without modifications) the provision in Part 2 of the 2002 Act. These Regulations, in making provision for the Commission's oversight of the NCA, do substantially apply the provision in Part 2 of the 2002 Act and differ from it only where this is necessary to reflect differences between the police and the NCA.

5. Territorial Extent and Application

5.1 These Regulations apply to England and Wales.

6. European Convention on Human Rights

6.1 As the instrument is subject to 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 NCA Plan, published in June 2011, sets out the vision for NCA officers:

"The NCA will comprise officers from a range of backgrounds and specialisms, reflecting the varied nature of its work. We will ensure that NCA officers, as operational crime-fighters, are able to make full use of a wide range of law enforcement and investigate powers. Subject to training, NCA officers can be given the powers of a police constable, customs and immigration powers. This creates a strong set of powers and will mean that NCA officers are able to deploy techniques which are not available to the police."

[1] This section was repealed by paragraph 15 of Schedule 6 to the 2013 Act.

7.2 The NCA will be an operational crime-fighting agency which will lead the United Kingdom's fight against serious and organised crime, providing a new focus on economic crime and strengthening policing at the border.

7.3 To fulfil the vision set out in the NCA Plan, the 2013 Act provides that NCA officers can be designated with the powers and privileges of one or more of a constable, customs officer (in relation to non-revenue matters) and immigration officer. These are powers that NCA officers need to ensure that they can deliver the functions of the NCA to make an immediate and enduring impact on the fight against serious and organised criminality. As the activities of criminal groups become increasingly more sophisticated and diverse, the powers held by law enforcement must be sufficient to tackle them.

7.4 Not all NCA officers will need operational powers, however, and NCA officers may not need all the operational powers which may be available to them. To provide the Director General with the flexibility that he or she needs to create the most effective operational work-force, the 2013 Act enables him or her to designate NCA officers with one or more of the available powers. The Director General of the NCA will also be an operational crime-fighter and can also hold one or more of the same operational powers as an NCA Officer. NCA Officers and the Director General will be subject to conditions of suitability, capability and training to hold operational powers.

7.5 It is expected that NCA officers will carry out their duties with the highest possible standards of professionalism, integrity and fairness. However, there may be occasions when a member of the public believes that the conduct of an NCA officer has fallen below the standard that could be expected, or may amount to misconduct or even an allegation of criminal behaviour. In these cases, the NCA will have a robust and transparent internal process through which it will investigate and seek to resolve that complaint or other matter relating to the conduct of the NCA officer.

7.6 In order to maintain public confidence that any complaints or other matters relating to the conduct of NCA officers will be given due consideration and dealt with appropriately, this process will also be overseen by the Commission. It is right that if such powers are to be exercised by NCA officers routinely, levels of oversight akin to those in place for the police, immigration officers and HMRC officers are in place. The arrangements which set out the oversight of the Commission over SOCA required strengthening. The 2013 Act also filled a gap in the former independent oversight of SOCA, by extending it to asset recovery activity carried out by NCA officers in England and Wales.

7.7 The Regulations make provision which broadly mirrors the existing arrangements on which the IPCC has oversight of the police (which are set out in Part 2 of the Police Reform Act 2002 and regulations made under it). However, the Regulations apply the provision in Part 2 of the 2002 Act with modifications in parts where it is necessary to reflect differences between the NCA and the police, in much the same way as the equivalent regulations setting out the Commission's oversight of HMRC (under the Revenue and Customs (Complaints and Misconduct) Regulations 2005) and its oversight of immigration officials (under the UK Border Agency (Complaints and Misconduct) Regulations 2010). This ensures that the independent oversight of NCA officers who are designated with operational powers (police, customs and

immigration powers) is consistent with the oversight of other law enforcement officers, ensuring fairness.

- **Consolidation**

7.8 Not applicable.

8. Consultation outcome

8.1 The consultation on the establishment of the NCA was completed as part of *Policing in the 21st Century* published in June 2010 (the Government response was published in December 2010). The proposals were also subject to Parliamentary scrutiny during the passage of the Crime and Courts Bill.

8.2 The Commission, the Police Advisory Board, the Association of Police and Crime Commissioners, the Mayor's Office for Policing and Crime, The Court of Common Council (City of London), the Association of Chief Police Officers and SOCA were consulted on these Regulations.

9. Guidance

9.1 Internal NCA guidance is being updated to reflect the IPCC's oversight over the NCA.

9.2 Guidance for the public will be available on the NCA's website.

10. Impact

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

10.2 The impact on the public sector is limited to the NCA and the Commission.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 These Regulations are intended to ensure that the necessary arrangements are in place for the Commission to oversee the most serious complaints and conduct matters relating to NCA officers. Their effect will be reviewed by the Department.

13. Contact

13.1 Stephanie Edwards at the United Kingdom Home Office (Tel: 020 7035 3457 or email: stephanie.edwards6@homeoffice.gsi.gov.uk) can answer any queries regarding the instrument.