EXPLANATORY MEMORANDUM TO

THE POLICE AND CRIME PANELS (PRECEPTS AND CHIEF CONSTABLE APPOINTMENTS) REGULATIONS 2012

2012 No. 2271

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 The Police and Crime Panels (Precepts and Chief Constable Appointments) Regulations 2012 govern the procedure for scrutiny by a Police and Crime Panel of the exercise of the powers of a Police and Crime Commissioner to set the precept for the police area and appoint a Chief Constable. In particular the Regulations make provision for the steps to be taken if the Panel vetoes a proposed precept or appointment.

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

3.1 None

4. Legislative Context

4.1 Section 1 of the Police Reform and Social Responsibility Act 2011 ("the 2011 Act") provides for the establishment of a directly elected Police and Crime Commissioner for every police area in England and Wales outside London. The Police and Crime Commissioner is responsible for securing the maintenance of an efficient and effective police force and holding the Chief Constable to account for the exercise of his (the Chief Constable's) functions. Section 28 of the 2011 Act provides for the establishment of a Police and Crime Panel for each police area with a Police and Crime Commissioner. The Police and Crime Panel is responsible for scrutinising the actions and decisions of the Police and Crime Commissioner.

4.2 By virtue of section 39 of the Local Government Finance Act 1992, as amended by section 26 of the 2011 Act, a Police and Crime Commissioner may issue a precept for the collection of council tax to fund policing. Under section 38(1) of the 2011 Act the Police and Crime Commissioner also appoints the Chief Constable of the police force.

4.3 Schedules 5 and 8 to the 2011 Act make provision about the scrutiny, by the Police and Crime Panel, of a proposal from the Police and Crime Commissioner as to the issuing of a precept and the appointment of a Chief Constable respectively. The Schedules confer powers on the Police and Crime Panel to veto a proposed precept or appointment. They set out the procedure to be followed, but do not descend to the detail for example as to time limits for

compliance with the various duties that are imposed. Neither do they deal with the steps to be taken if a Police and Crime Panel vetoes a proposed precept or appointment. These Regulations make provision about those matters.

5. Territorial Extent and Application

5.1 This instrument applies 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

7.1 The principal policy aim for these Regulations is to ensure that the Police and Crime Commissioner has ultimate responsibility for the key decisions as to the level of precept and the appointment of the Chief Constable, as it is the Police and Crime Commissioner who is accountable to the public in relation to policing.

7.2 The Regulations therefore provide that, in the event of a veto by the Police and Crime Panel, the Police and Crime Commissioner must propose a revised precept or a different candidate for appointment as Chief Constable, and the Police and Crime Panel does not have a further power of veto in relation to this second proposal. However, in making the second proposal the Police and Crime Commissioner must take account of views expressed by the Police and Crime Panel.

7.3 A revised precept proposed by the Police and Crime Commissioner must be lower than the original proposal, if the original proposal was vetoed by the Police and Crime Panel because it was too high. Similarly the Police and Crime Commissioner must propose a higher revised precept, if the original precept was vetoed because it was too low. In the case of a Chief Constable appointment, the Police and Crime Panel must hold a confirmation hearing to consider the suitability of the reserve candidate proposed by the Police and Crime Commissioner. The Police and Crime Commissioner must take account of views expressed by the Police and Crime Panel in relation to the new proposal before taking a final decision as to the precept or appointment of the Chief Constable.

7.4 A further aim of the Regulations is to ensure that the process of issuing the precept or appointing the Chief Constable is not unduly delayed by any difference of opinion between the Police and Crime Commissioner and the Police and Crime Panel. The deadlines imposed by the Regulations ensure that the precept is settled in accordance with the timescale for the issuing of council tax bills by local authorities, and that an appointment of a Chief Constable takes place without a lengthy vacancy in the office.

- Consolidation

7.5 This order does not amend any existing instrument.

8. Consultation outcome

8.1 There has been detailed discussion and consultation with officials in the Department for Communities and Local Government and the Local Government Association in the drawing up of these regulations, given the interface with local government. Further consultation has taken place with a broader range of partners who are working with the Home Office on measures for scrutiny of Police and Crime Commissioners. Consultation with the Wales Office and Welsh Government has ensured that the differences in the local authority landscape in Wales are accounted for.

9. Guidance

9.1 We will be providing guidance to local authorities, although this will not go beyond explaining the Regulations in plain English.

10. Impact

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

10.2 The impact on the public sector is minimal. The only bodies affected are Police and Crime Commissioners and Police and Crime Panels. The core duties in relation to the scrutiny of proposed precepts and Chief Constable appointments are imposed by the 2011 Act, rather than by these Regulations – these Regulations merely set deadlines for compliance with some of those duties. The Regulations also prescribe additional steps that must be taken in the event of a veto of a proposed precept or appointment. Exercise of the powers of veto is expected to happen only in exceptional circumstances. If it does happen, the steps required under the Regulations are regarded as the minimum that must be prescribed in order to ensure that a precept is issued or an appointment made.

10.3 An Impact Assessment has not been prepared for this instrument because there is no impact on the private or voluntary sectors.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 Veto of a proposed precept or appointment of a Chief Constable is expected to be an exceptional event, so it is not thought necessary to have a formal process of monitoring and review. It is expected that Police and Crime Commissioners and Police and Crime Panels will draw to the attention of the Home Office any difficulties with the operation of the Regulations in practice.

13. Contact

Tracy Beswick at the Home Office Tel: 0207 035 0531 or email: tracy.beswick@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.