EXPLANATORY MEMORANDUM TO

THE POLICE (CONDUCT) REGULATIONS 2008
2008 No. 2864

THE POLICE (PERFORMANCE) REGULATIONS 2008
2008 No. 2862

THE POLICE APPEALS TRIBUNALS RULES 2008
2008 No. 2863

1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These 3 instruments establish a new set of procedures governing police disciplinary matters, in response to the recommendations of the Taylor Review. The Police (Conduct) Regulations 2008 (the **Conduct Regulations**) establish procedures for taking action in respect of misconduct by police officers and special constables. The Police (Performance) Regulations 2008 (the **Performance Regulations**) establish procedures for dealing with issues of unsatisfactory performance and attendance on the part of police officers (apart from senior officers) and special constables. The Police Appeals Tribunals Rules 2008 (the **PAT Rules**) provide for appeals to a Police Appeals Tribunals against the findings and specific outcomes from both the Conduct and Performance regulations.

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

3.1 None.

4. Legislative Background

4.1 The Conduct Regulations and the Performance Regulations are made under sections 50, 51 and 84 of the Police Act 1996. A new section 84 was inserted into the Police Act by paragraph 7 of Schedule 22 to the Criminal Justice and Immigration Act 2008, and these Regulations are the first exercise of the powers in the new section 84.

4.2 The Conduct Regulations will provide the new misconduct procedures for police officers of all ranks and special constables. The Performance Regulations will provide the procedures for dealing with matters of unsatisfactory performance and attendance for officers up to and including the rank of Chief Superintendent and special constables.

4.3 The PAT Rules are made under section 85 of the Police Act 1996. Section 85 was amended by paragraph 8 of Schedule 22 to the Criminal

Justice and Immigration Act 2008 and this is the first exercise of the new powers in that section. The PAT Rules set out the procedures for an appeal to a Police Appeals Tribunal and the grounds on which a police officer and special constables can appeal against a finding and/or a particular outcome from the Conduct and Performance regulations.

4.4 Under the Police Reform Act 2002 the Independent Police Complaints Commission may become responsible for investigating a complaint about the conduct of a person serving with the police, a death or serious injury matter (defined in section 12 of the Police Reform Act 2002) or behaviour that would justify the bringing of disciplinary proceedings or a criminal prosecution, even if there is no complaint. Where such cases are referred to the Commission and they decide that it is necessary to investigate the complaint or matter, the procedures to be followed during the investigation are governed by the Police (Complaints and Misconduct) Regulations 2004 (the "2004 Regulations"). The 2004 Regulations are to be amended by the attached Police (Complaints and Misconduct) (Amendment) Regulations 2008 (the "Complaint Regulations") to ensure that the procedures governing the investigation of a complaint or matter which may end up being dealt with as a disciplinary matter mirror those set out in Part 3 of the Conduct Regulations. This explains the need for the cross-references in the Conduct Regulations to the 2004 Regulations. The Complaint Regulations are subject to negative resolution procedure and they will therefore be laid separately with their own explanatory memorandum with the expectation that they will come into force at the same time as the Conduct Regulations.

5. Extent

5.1 These instruments apply to England and Wales

6. European Convention on Human Rights

6.1 The Right Honourable Tony McNulty MP has made the following statement regarding Human Rights:

In my view the provisions of the Police (Conduct) Regulations 2008, the Police (Performance) Regulations 2008 and the Police Appeals Tribunals Rules 2008 are compatible with the Convention rights.

7. Policy background

7.1 In 2004 the then Home Secretary commissioned a review of the current arrangements for dealing with police misconduct and unsatisfactory performance.

7.2 The 'Taylor Review of Police Disciplinary Arrangements'[1] was the review conducted by William Taylor (a former Commissioner of the City of

[1] http://press.homeoffice.gov.uk/documents/police-disciplinary-arrangements/report.pdf?view=Binary-

London Police and former HM Inspector of Constabulary for Scotland) into the effectiveness of disciplinary arrangements for police officers.

7.3 The recommendations contained in his report, which was published in 2005, were accepted by Ministers and led to the Police Advisory Board for England and Wales (PABEW) being asked to take forward the process for implementing the recommendations.

7.4 The Taylor Review found that the current system of dealing with police misconduct is overly bureaucratic and legalistic with little or no encouragement for managers to swiftly and proportionately deal with low level misconduct matters. Disciplinary hearings were seen as being more akin to a criminal court hearing, and even low level misconduct matters were decided by a three person panel of senior police officers.

7.5 The Taylor Review proposed that the new misconduct procedures should be based on ACAS principles which would modernise the system and make it easier for individual officers and the police service generally to learn lessons and improve the service to the public. One of the key points to emerge was the need to shift the emphasis and culture in police misconduct matters towards an environment focussed on development and improvement as opposed to one focused on blame and punishment. In addition, the report stressed the importance of carrying out a full assessment of the alleged conduct at an early stage with a view to then implementing a proportionate and non-bureaucratic response. The report also recommended a review of the existing unsatisfactory performance procedures that deal with individual poor performance and attendance of police officers.

7.6 The Performance Regulations and the Conduct Regulations will create a conduct and unsatisfactory performance environment for police officers that more closely reflect those which operate in normal employment practice.

7.7 The new procedures provide a fair, open and proportionate method of dealing with alleged misconduct and unsatisfactory performance. They are intended to encourage a culture of learning and development for individuals and/or the organisation. Sanction has a part, when circumstances require this, but improvement will always be an integral dimension of any outcome (even in the case where an individual has been dismissed there can be learning opportunities for the Police Service). The PAT Rules provide for appeals against the finding and/or a particular outcome from the Conduct or Performance Regulations to be dealt with in a timely manner with the PAT chair having the power to dismiss appeals at an early stage where there is no real prospect of success and no other compelling reason why the appeal should proceed.

Consultation

7.8 The key recommendations of the Taylor Review were accepted by Ministers, who asked PABEW to take forward the detailed work. PABEW set up a working party comprising representatives from the Association of Chief

Police Officers (ACPO), the Association of Police Authorities (APA), police staff associations, the Independent Police Complaints Commission, Her Majesty's Inspectors of Constabulary (HMIC) and the Home Office to draw up a proposed set of standards, improved misconduct and unsatisfactory performance procedures and associated guidance. This working party has met 29 times over a period of 33 months to take forward the implementation of the Taylor recommendations. The working party has overseen the various consultation exercises set out below. It has fully approved the policy underlying the new procedures.

7.9 A draft set of standards (known as the Standards of Professional Behaviour) underwent public and stakeholder consultation from 27th February 2006 to 19th May 2006. Key stakeholder groups within the police service, including ACPO, staff associations and the APA were consulted as part of this, as were other organisations such as the Commission for Racial Equality, the Independent Police Complaints Commission, the Equal Opportunities Commission and Liberty. The new standards are intended to make clear the standards of behaviour expected of all police officers (regardless of rank) and special constables.

7.10 Policy proposals for the new misconduct and unsatisfactory performance procedures were prepared by the Home Office with the full support and agreement of the PABEW and were subject to a two month consultation, from 28th July 2006 to 30th September 2006.

7.11 A wider six week consultation on the draft regulations ran from 9th March 2007 to 20th April 2007. There were around 80 responses to the Conduct and Performance Regulations, some in detail, from a range of stakeholders. The PAT Rules were subject of a six week consultation, from 28th January 2008 to 19th March 2008.

7.12 In addition, advice has been provided by the Advisory Conciliation and Arbitration Service (ACAS) and the procedures set out in these regulations are based on the ACAS Code of Practice on Disciplinary and Grievance procedures.

7.13 The responses to each consultation have been broadly supportive of both the policy behind the changes to the misconduct and performance procedures and the detail of the Regulations and Rules themselves. Stakeholders and other organisations are keen to move to a system which deals with misconduct and poor performance in a more timely and proportionate way. The Home Office and the PABEW has considered each of the responses received in the consultations and has made changes to the policy and the instruments as a result. These changes have been made with the approval of all those organisations represented at the PABEW working party. It was not possible to implement the proposals earlier as it was necessary to amend the Police Act 1996 and the Police Reform Act 2002. The necessary changes were made in the Criminal Justice and Immigration Act 2008 which received Royal Assent in May 2008.

Guidance

7.14 The Secretary of State may issue guidance under section 87 of the Police Act 1996 in so far as it relates to the discharge of functions by police authorities, chief officers of police and other police officers, special constables and police staff under the Performance and Conduct Regulations. Whilst the detail of the new procedures is fully set out in the Regulations and Rules, the Home Office will be issuing guidance on all aspects of the new disciplinary procedures. The National Policing Improvement Agency are also arranging training on the new procedures.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for these instruments as they have no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is that there is potentially significant non cashable savings to be made by police forces and police authorities once these new procedures are fully implemented. Additionally, independent research conducted by CRG research indicates that the new procedures have considerable scope to bring about improvement in police performance and public and police confidence by being quicker, fairer, more transparent and better value.

9. Contact

9.1 Vic Marshall at the Home Office Tel: 020 7035 0846 or e-mail: vic.marshall@homeoffice.gsi.gov.uk can answer any queries regarding these instruments.