EXPLANATORY MEMORANDUM TO

THE POLICE BARRED LIST AND POLICE ADVISORY LIST REGULATIONS 2017

2017 No. 1135

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 These Regulations provide for the processes, procedures and requirements for the maintenance and operation of the police barred list and police advisory list, which were established by Part IVA of the Police Act 1996 ("the 1996 Act")(inserted by Schedule 8 of the Policing and Crime Act 2017).

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 Part 2, Chapter 4 of the Policing and Crime Act 2017 introduced a number of reforms in police discipline. This includes Section 30 which creates Schedule 8, inserting Part 4A into the 1996 Act, which creates two statutory-approved lists; the barred list and the advisory list. These Regulations are made using the regulation-making powers in Part 4A of the 1996 Act which allow regulations to be made with regard to the barred and advisory lists.

4.2 Section 88A of the 1996 Act requires a report to the College of Policing, and ultimately inclusion on the barred list following any dismissal arising from regulations made under section 50(3) or 51(2A) of the 1996 Act, as well as the equivalent circumstances for police staff who are not subject to these regulations. Section 88I sets out the circumstances in which reports are to be made to the College for inclusion on the advisory list.

5. Extent and Territorial Application

5.1 The extent of this instrument is England and Wales.

5.2 The territorial application of this instrument is 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 Part 4A of the 1996 Act establishes the police barred and police advisory list. These Regulations set out the process for making a report to the College of Policing and the circumstances in which entries relating to individuals are to be removed from the lists. All individuals who are dismissed from positions within policing become a barred person and are included on the barred list as a result of their dismissal or a finding that they would have been dismissed following proceedings carried out in accordance with regulations made under section 50(3) or 51(2A) of the 1996 Act. This includes individuals dismissed under the Police (Conduct) Regulations 2012 and the Police (Performance) Regulations 2012, as well as the equivalent local procedures for civilian staff. Once included on the barred list, individuals will be unable to work for any police force or other specified law enforcement bodies.

7.2 Individuals who resign or retire during investigations, or who leave and an allegation against them which could have led to their dismissal later comes to light, will be placed on the advisory list until the investigation is brought to an end. If the individual receives a finding of dismissal they will be added to the barred list. If there is a lesser finding or no disciplinary proceedings are brought, the individual's details will be removed from the advisory list. Designated volunteers who have had their designated status withdrawn as a result of conduct or performance matters, or who decide to stop volunteering after a relevant allegation against them comes to light, will also be included on the advisory list. The advisory list will be used as a vetting tool by policing employers and an individual's inclusion on this list does not preclude their appointment or employment.

7.3 The barred and advisory lists have been created as part of a series of reforms within the police discipline system, to increase transparency and accountability. The lists seek to improve public confidence in the police and ensure that those who do not meet the high standards required of the police service and have been dismissed are not able to continue to work within policing.

7.4 The lists will supersede the existing Disapproved Register, currently available for vetting purposes only. The barred list represents a much more robust consequence for those who are dismissed from policing. Any person on the barred list will be prevented from being employed or appointed to a position in a police force, local policing bodies, the IPCC or HMICFRS. These changes acknowledge the severity of these actions and work to ensure that the integrity of policing is upheld.

Consolidation

7.5 These Regulations do not amend any other legislation and there is accordingly no scope for consolidation.

8. Consultation outcome

8.1 This instrument was not subject to public consultation.

8.2 The Secretary of State consulted with the Police Advisory Board of England and Wales (PABEW) on this instrument. The consultation period on the draft instrument was from 13 September to 13 October 2017. Members of PABEW have also been part of other Home Office policy forums and have had the opportunity to input their views throughout the development of these regulations.

8.3 PABEW made representations in several areas and these were taken into consideration as the regulations were finalised. All representations were assessed and responded to and with explanations as to policy intent and action taken in response to those representations where appropriate.

9. Guidance

9.1 Home Office guidance on police misconduct, unsatisfactory performance and attendance management procedures will be updated to reflect this change.

10. Impact

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

10.2 The impact on the public sector is minimal and is limited to the police, the IPCC and the HMICFRS.

10.3 An Impact Assessment was prepared for the creation of the barred list and advisory list as part of the impact assessment for the Policing and Crime Bill – Reform of the Discipline system.

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 Home Office will keep the operation of these regulations under review, including following subsequent inspections related to this issue undertaken by HMICFRS.

13. Contact

13.1 Rupert Bailey, Head of Police Discipline at the Home Office, 0207 035 0076, Rupert.bailey@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.