EXPLANATORY MEMORANDUM TO

THE POLICE (COMPLAINTS AND CONDUCT) REGULATIONS 2013

2013 No. 281

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 prescribe various matters under paragraph 19F of Schedule 3 to the Police Reform Act 2002 ("the 2002 Act") to enable the Independent Police Complaints Commission ("the Commission"), in relation to any investigation carried out or managed by it, to require certain persons to attend for interview in the capacity as a witness.

2.2 These Regulations are necessary to give effect to the powers inserted into the 2002 Act by the Police (Complaints and Conduct) Act 2012 ("the 2012 Act").

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 police conduct is set out in Part 2 of, and Schedule 3 to, the 2002 Act. 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.

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. 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 provision governing the handling of complaints etc. is set out in Schedule 3 to the 2002 Act. 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. In particular, the Commission may determine that it will handle the investigation itself or manage an investigation which is carried out by an appropriate authority.

4.4. Section 1 of the 2012 Act inserted paragraph 19F into Schedule 3 to the 2002 Act. This paragraph sets out the basis on which the Commission may interview a serving officer (defined in paragraph 19F(4)) in connection with an investigation carried out or managed by it, and includes a power to prescribe the procedure to be followed in connection with such an interview. These Regulations make such provision, which includes (but is not limited to) a requirement that a serving officer attend an interview and provision to determine how the time at which an interview is to be held is agreed or decided.

5. Territorial Extent and Application

5.1. These Regulations apply to England and Wales and Scotland.

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 These Regulations enable the Commission to require several categories of individuals, including members of police forces, special constables and police staff (who include Police Community Support Officers) to attend for interview. In addition, the Commission will be able to rely on this power in relation to officers and members of staff at "additional policing bodies" which are analogous to police forces. The additional policing bodies include those authorities prescribed by regulation 3 of these Regulations and the Serious Organised Crime Agency ("SOCA") and National Policing Improvement Agency ("NPIA"). It is significant that, through this power, the Commission may require witnesses to attend an interview without needing to seek the approval of a chief officer, relying instead on the statutory duty placed directly on the serving officer to comply with these Regulations.

7.2 These Regulations represent a significant extension to the Commission's evidence-gathering ability, as it will be able to exercise this power as part of any investigation managed or carried out independently by it. It is envisaged that this will form a key element of the IPCC's current investigations into the Hillsborough disaster.

7.3 Before the introduction of this power by the 2012 Act, those serving with the police who witnessed incidents which were referred to the Commission as a result of a complaint, conduct matter or DSI matter but were not themselves under investigation could not be compelled to attend an interview where they refused to do so. This was significant given the very serious nature of the matters which may be referred to and investigated by the Commission. As a result, it was sometimes the case that investigations were unnecessarily protracted while the Commission tried to secure relevant evidence, and that public confidence in both the Commission and the police complaints system was adversely affected. These Regulations will, therefore, provide an important enabling tool to the Commission which is under a duty to carry out investigations expeditiously, such that public confidence in its work and the police complaints system is maintained. In providing the Commission with this power in relation to Hillsborough, or any other future investigation by the Commission, the Government aims to meet the public expectation of professional accountability from the police.

- ***Consolidation***

7.4 Not applicable.

8. Consultation outcome

8.1 There has been extensive consultation with the Police Advisory Board of England and Wales and its members, the additional police bodies prescribed in regulation 3 of these Regulations, SOCA and NPIA, the Mayor's Office for Policing and Crime and the Common Council of the City of London. Given that these Regulations extend to Scotland, the Department also consulted the Scottish Government.

9. Guidance

9.1 The Commission has power to issue guidance under section 22 of the 2002 Act.

10. Impact

10.1 The impact on the public sector is minimal and falls considerably short of the £5 million threshold.

10.2 An Impact Assessment has not been prepared for these Regulations.

11. Regulating small business

11.1 These Regulations do not apply to small business.

12. Monitoring & review

12.1 The Department will review and update these Regulations as and when it consider it appropriate in consultation with the Commission and key policing partners.

13. Contact

13.1 Moore Flannery (moore.flannery4@homeoffice.gsi.gov.uk) or Sukina Smith (sukina.smith27@homeoffice.gsi.gov.uk) can answer any queries regarding these Regulations.