EXPLANATORY MEMORANDUM TO

THE POLICE (COMPLAINTS AND MISCONDUCT) (AMENDMENT) REGULATIONS 2006

2006 No. 1406

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

This explanatory memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1 The purpose of these Regulations is threefold: firstly to make fully effective provisions within the Serious Organised Crime and Police Act 2005 to bring a new category of cases known as "death or serious injury (DSI) matter" within the police complaints system; secondly to change the timescale when there is a requirement for a complaint or conduct matter to be referred to the Independent Police Complaints Commission ("the IPCC") so that this must take place by the end of the next day and not the end of the next working day as currently; and thirdly to correct an error in the Police (Complaints and Misconduct) Regulations 2004 in respect of the powers of a chief officer.

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

3.1 Regulation 2(10) of the instrument corrects an error in the Police (Complaints and Misconduct) Regulations 2004 (S.I. 2004/643) which was reported in the Sixteenth Report of the Joint Committee on Statutory Instruments of 2003-04.

4. Legislative Background

4.1 The police complaints system is provided for in Part 2 of the Police Reform Act 2002, in which the categories of complaints or conduct matters that must be referred to the IPCC are specified. Section 160 of, and Schedule 12 to, the Serious Organised Crime and Police Act 2005 widened the scope of the complaints system to include a new category of cases known as "death or serious injury (DSI) matter". DSI matters involve a death or serious injury during or following police contact where there is neither a complaint nor an indication that a person serving with the police had committed a criminal or disciplinary offence. This provision came into force on 1 July 2005 and in order to make the provision fully effective, the Police (Complaints and Misconduct) Regulations 2004 (SI 2004/643) need to be amended so that those Regulations contain appropriate references to DSI matters.

4.2 Regulation 2 of the Police (Complaints and Misconduct) Regulations 2004 specifies in paragraphs (3)(a) and (4)(a) that complaints or conduct matters that are required to be referred to the IPCC must be reported to that body by the end of the working day following the matter coming to the attention of the appropriate authority. A working day is defined in regulations as any day other than a Saturday or a Sunday or a day which is a bank or public holiday in England and Wales. By changing this provision so that there is a requirement to report these matters by the end of the next day, the potential for delay will be minimised. This has been achieved by regulation 2(2) to (4) of this instrument.

4.3 Regulation 26 of the Police (Complaints and Misconduct) Regulations 2004 sets out chief constables' powers to delegate their functions in relation to complaints and misconduct. The Joint Committee on Statutory Instruments sought clarification of the purpose and effect of paragraph (5) of regulation 26 which purports to preserve chief constables' common law powers to delegate their functions. The Home Office accepted that, as regulation 26 was meant to be exhaustive as respects permissible delegations of functions, paragraph (5) should not have been included and should therefore be revoked at the earliest suitable opportunity. This is achieved by Regulation 2(10) of this instrument.

5. Extent

5.1 This instrument applies to England and Wales

6. European Convention on Human Rights

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 When the powers of the IPCC were established by Part 2 of the Police Reform Act 2002 they provided that deaths and serious injuries which occurred during or following police custody were required to be referred to the IPCC only if there was a complaint or an indication that a criminal or disciplinary offence had been committed by a person serving with the police. The Serious Organised Crime and Police Act (SOCAP) 2005 provided an opportunity to make it mandatory to refer such cases even where there was no such complaint or indication. Such matters, called "death or serious injury matters" might include, for example, suicides or other deaths in police custody, or a road traffic involving a police vehicle. These cases can provoke considerable public interest and concern.

7.2 The requirement to refer qualifying matters to the IPCC by the end of the working day following it coming to the attention of the chief officer meant that there was the potential for considerable delay before the IPCC was made aware of the complaint or other referable matter. For example, where such a case comes to the attention of the appropriate authority on a Friday, it must be referred to the IPCC by no later than the end of the following Monday, or

Tuesday if the Monday is a bank or public holiday, as the intervening days are not 'working days'. The use of 'working day', as defined, is an anachronism because both the police service and the IPCC operate 24 hours a day and 7 days a week. Also, in practice, the police service generally operate as though every day is a working day and cases are already referred to the IPCC on non-working days. This change will serve both to minimise avoidable potential delays in referring DSI matters and to reflect what happens in practice.

7.3 Regulation 26(5) of the Police (Complaints and Misconduct) Regulations 2004 was originally included so as not to unwittingly restrict a chief constable's common law powers of delegation. However, following the Committee's request for clarification of the purpose and effect of this paragraph, it was revisited and, as the policy intention was to stipulate more narrowly the persons to whom delegations of the powers and duties under Part 2 of the Police Reform Act could be made, the Department accepted the Committee's criticism and undertook to revoke that provision as soon as possible. The need for the preceding changes have provided that opportunity.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9. Contact

9.1 Irene Lacey at the Home Office Tel: 020 7035 0839 or e-mail: irene.lacey@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.