EXPLANATORY MEMORANDUM TO

THE POLICE (COMPLAINTS AND MISCONDUCT) (AMENDMENT) REGULATIONS 2014

2014 No. 2406

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 amend the Police (Complaints and Misconduct) Regulations 2012 ("the 2012 Regulations") to give effect to amendments to the Police Reform Act 2002 ("the 2002 Act"), made by the Anti-social Behaviour, Crime and Policing Act 2014 ("the 2014 Act"), which enable the Independent Police Complaints Commission ("the Commission") to make recommendations to persons following the completion of an investigation with such persons being required to respond to the recommendation within the prescribed period.

2.2 These Regulations also makes a consequential amendment to regulation 36 of the 2012 Regulations to give effect to amendments to the 2002 Act made by the 2014 Act which enable the Commission to recommend and direct unsatisfactory performance procedures against persons serving with the police in relation to a death or serious injury matter.

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

3.1 None.

4. Legislative Context

4.1 The framework in accordance with which the Commission investigates, or oversees investigations into, matters relating to the conduct of a person serving with the police is set out in Part 2 of, and Schedule 3 to, the 2002 Act. These matters (defined in section 12 of the 2002 Act) comprise complaints about conduct (for example, complaints by members of the public), conduct matters (which indicate either misconduct or the commission of a criminal offence) or death or serious injury (or "DSI") matters (in which death or serious injury has arisen as a result of contact with a person serving with the police).

4.2 Section 138 of the 2014 Act amends paragraphs 24C and 27 of Schedule 3 to the 2002 Act, to enable the Commission to recommend and direct unsatisfactory performance procedures in relation to DSI matters. This

reflects the Commission's existing power to recommend and direct unsatisfactory performance procedures in complaints and conduct matters.

4.3 Section 139 of the 2014 Act inserts new paragraphs 28A and 28B into Schedule 3 to the 2002 Act. These provisions introduce a framework in accordance with which the Commission may make recommendations to persons following the completion of an investigation, and such persons are required to respond to the recommendation within the period of 56 days beginning on the day on which it was made.

4.4 Paragraph 28A(4) and (5) sets out the categories of person to which the Commission may make a recommendation. Paragraph 28A(4) provides that a recommendation may be made to any person in DSI matters and the other categories of matter specified in regulations. Regulation 2(2) of these Regulations inserts new regulation 29A into the 2012 Regulations which specifies these categories. Regulation 29A(1) sets out the specified conduct matters (for example, matters relating to an incident in which a person has died or suffered serious injury, a serious assault or sexual assault, serious corruption). Regulation 29A(2) sets out the specified complaints (for example, complaints alleging that the conduct complained of has resulted in death or serious injury, complaints alleging conduct that constitutes a serious assault or sexual assault, serious corruption). Regulation 29A(3) provides that the determination of an appeal relating to a complaint set out in new regulation 29A(2) is a specified category.

4.5 These Regulations also make a consequential amendment to regulation 36 of the 2012 Regulations to ensure that the Commission may recommend and direct unsatisfactory performance procedures in relation to a DSI matter as it already can under existing powers in the 2002 Act to recommend and direct unsatisfactory performance procedures in complaint and conduct matters.

5. Territorial Extent and Application

5.1. These Regulations extend to England and Wales only

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 Since 2004 the Commission has held the remit to provide independent oversight of the police complaints system. It was established by Part 2 of the 2002 Act to provide an effective and independent means for overseeing the investigation of complaints and alleged misconduct relating to the police in England and Wales. These Regulations give effect to changes introduced by sections 138 and 139 of the 2014 Act.

7.2 DSI matters following police contact account for some of the most high profile investigations that the Commission undertake. Where an investigation concludes and is found that there has been misconduct, there are clear procedures for dealing with it. However, some of these investigations conclude that there has been a failing by a person serving with the police that does not amount to misconduct but does amount to unsatisfactory performance. These changes introduced in the 2014 Act remedy the position introduced under changes made by the Police Reform and Social Responsibility Act 2011, in which the Commission was provided with the power to recommend and direct unsatisfactory performance proceedings following an investigation into a complaint or conduct matter, but not DSI matters.

7.3 At the conclusion of an investigation, the Commission notifies bodies of any 'institutional failings' it has identified. This is done by issuing recommendations, mainly to police forces and Police and Crime Commissioners, but sometimes other public bodies and private sector organisations. Previously there was no clear framework or mechanism to ensure these recommendations are properly followed up, enforced or monitored for progress. The result of this could be a criticism of the police and those bodies that take no action and then a similar incident occurs subsequently. This new power therefore establishes a statutory framework requiring recipients of such recommendations to respond within a specified time period (56 days). The response must state what action is proposed or has been taken, or alternatively why no action is being taken. To ensure further transparency within the police complaints system, the responses to the Commissions recommendations will be published and accessible by the public.

7.4 As a safeguard to this provision, those in receipt of recommendations are able to make applications as to why all or part of their response ought not to be published. This will be important in those situations where, for example, the response might include sensitive information that would expose a person to risk or harm. The final decision, however, will be determined by the Commission as the independent guardian of the police complaints system.

- ***Consolidation***

7.5 The Department considers that there is no scope for consolidation.

8. Consultation outcome

8.1 Two Technical Working Groups were held in 2013 with representatives from the policing landscape. All those involved in the Group were also sent copies of the draft of these Regulations to provide comments. No concerns regarding these Regulations were raised.

8.2 The Police Advisory Board for England and Wales has also been consulted in accordance with the statutory duty in section 63(3)(b) of the Police Act 1996 and offered no additional comments.

9. Guidance

9.1 The Commission will update its statutory guidance and their internal operations manual. The Commission will also write to all forces and local policing bodies to inform them of the availability of the power and what will be required of them.

10. Impact

10.1 There is no impact on businesses, charities, voluntary bodies or the public section.

11. Regulating small business

11.1 These Regulations do not apply to small businesses.

12. Monitoring & review

12.1 The Department and the Commission will monitor and review the use of the new powers by the Commission.

13. Contact

13.1 Elizabeth Rowlands, Police Integrity and Powers Unit, the Home Office on 020 7035 3939 or Elizabeth.Rowlands1@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.