EXPLANATORY MEMORANDUM TO

THE POLICE (COMPLAINTS AND MISCONDUCT) (AMENDMENT) REGULATIONS 2017

2017 No. 575

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 The purpose of this instrument is to amend the Police (Complaints and Misconduct) Regulations 2012 (S.I. 2012/1204) ("the 2012 Regulations") in order to clarify that complaints or allegations made against a person serving with the police which appear to involve, the abuse of position for a sexual purpose or for the purpose of pursuing an improper emotional relationship constitute serious corruption and must be referred to the Independent Police Complaints Commission (the IPCC) in accordance with the Police Reform Act 2002.

2.2 These matters are already defined as serious corruption in the relevant IPCC guidance, however this change is being made in order to make it explicit in the relevant regulations that such matters must be referred to the IPCC to consider whether an investigation is required and, if so, the form of such an investigation. This change is being introduced to aid understanding and achieve greater consistency in the handling of these matters as serious corruption.

3. Matters of special interest to Parliament

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 The IPCC was established under Part 2 of the Police Reform Act 2002 ("the 2002 Act). Part 2 and Schedule 3 of the 2002 Act set out the requirements of the handling of public complaints and conduct matters concerning individuals serving with the police, as well as the handling of deaths or serious injuries during or following contact with the police.

4.2 The 2012 Regulations made by virtue of powers conferred by the 2002 Act set out additional requirements in relation to the handling, and reference, of complaints and conduct matters to the IPCC. In particular, regulations 4 and 7 specifies types of complaints and conduct matters that must be referred to the IPCC.

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 These Regulations amend the 2012 Regulations and relate to investigations into complaints and conduct matters made against individual serving with the police (police officers, special constables and civilian police staff, which includes PCSOs) which are handled in accordance with Part 2 and Schedule 3 of the Police Reform Act 2002. Part 2 and Schedule 3 of the 2002 Act set out the requirements for the handling of public complaints and conduct matters concerning individuals serving with the police, as well as the handling of deaths or serious injuries during or following contact with the police, including the role of the IPCC and what matter must be recorded and automatically referred to the IPCC in accordance with the "Mandatory Referral Criteria" (regulations 4 and 7 of the 2012 Regulations).

7.2 The introduction of these changes follows the findings of Her Majesty's Inspectorate of Constabulary (HMIC) in the 2016 PEEL Legitimacy Inspection Report (published at https://www.justiceinspectorates.gov.uk/hmic/publications/peel-police-legitimacy-2016/) in relation to allegations the abuse of authority for sexual gain made against police personnel. HMIC's inspection identified 436 allegations of this nature over two years known to police forces but also discovered inconsistencies in the way some of these allegations were being identified and handled, including that not all matters that should be referred to the IPCC, were being so referred.

7.3 Following the publication of that report, the Minister of State for Policing and the Fire Service made a Written Ministerial Statement on 8 December 2016 (available at http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-12-08/HCWS336/) detailing the response to the findings and steps to be taken by the Government, the College of Policing and National Police Chiefs' Council, including the intention to make this change to the regulations concerning mandatory referral of matters to the IPCC.

7.4 The purpose of this change is to clarify that complaints or allegations made against a person serving with the police which appear to involve, the abuse of position for a sexual purpose or for the purpose of pursuing an improper emotional relationship constitute serious corruption and must be referred to the IPCC and handled in accordance with allegations of serious corruption. This specifically relates to contact and relationships between a person serving with the police and a member of public where abuse can arise to take advantage of the member of the public due to the imbalance in power and authority held by the police.

7.5 At present, these matters are already defined as serious corruption in the relevant IPCC guidance (and are therefore already required to be referred to the IPCC by virtue of the 2012 Regulations and guidance). However this change is being made in order to make it explicit in the 2012 Regulations that such matters constitute serious corruption and must be referred to the Commission to consider whether an investigation is required and, if so, the form of such an investigation. This change is

introduced to aid understanding and achieve greater consistency in the handling of these matters and address the shortcomings HMIC identified.

7.6 This amendment is made to each of the references to serious corruption in the 2012 Regulations for consistency. In addition to clarifying that the relevant matters must be referred to the IPCC, the effect of the changes made by the instrument to the 2012 Regulations is also to make clear that the IPCC may make recommendations to any person in cases where it has received a report following an investigation (other than an investigation by the appropriate authority on its own behalf) into such a complaint or conduct matter (or made a determination on an appeal relating to such a complaint).

Consolidation

7.7 These changes introduce amendments to the Police (Complaints and Misconduct) Regulations 2012. The Policing and Crime Act 2017 will introduce further changes to overhaul the police complaints and discipline systems, including to the 2012 Regulations and, as such, present a more appropriate opportunity to consider consolidation.

8. Consultation outcome

8.1 The Secretary of State consulted with the Independent Police Complaints Commission, the National Police Chiefs' Council, the Association of Police Authorities and the Police Advisory Board of England and Wales on this instrument and reflected comments made by these bodies.

9. Guidance

9.1 The IPCC issues statutory guidance in relation to the handling of complaints, conduct and death and serious injury matters by police forces and local policing bodies which will be updated to reflect these changes.

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 and the IPCC.

10.3 An Impact Assessment has not been prepared for this instrument.

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 HMIC.

13. Contact

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