EXPLANATORY MEMORANDUM TO

THE POLICE (COMPLAINTS AND MISCONDUCT) REGULATIONS 2020

2020 No. 2

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 This instrument revokes and replaces the Police (Complaints and Misconduct) Regulations 2012, together with various other instruments and provisions that amend or modify those regulations.

2.2 This instrument forms part of a group of four instruments that establish a reformed system for handling complaints about, and related matters concerning, the police and for dealing with police disciplinary matters. The three other instruments are the Police (Conduct) Regulations 2020, the Police (Performance) Regulations 2020 and the Police Appeals Tribunals Rules 2020.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales with the exception of one minor provision that applies UK-wide. Paragraph 19F of Schedule 3 to the 2002 Act extends to the whole of the United Kingdom and makes provision in relation to the interview of serving police officers (other than those whose conduct is being investigated) during an investigation by, or under the direction of, the Director General of the Independent Office for Police Conduct ("the IOPC"). The Police (Complaints and Conduct) Regulations 2013 (S.I. 2013/281) were made in reliance of powers in paragraph 19F, and regulation 54 of this instrument makes minor amendments to those regulations consequential to changes made to paragraph 19F by the 2017 Act.

4.2 The territorial application of this instrument is England and Wales only with the exception of the provision referenced in paragraph 4.1.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 The Police Reform Act 2002 ("the 2002 Act") governs the handling of complaints against individuals serving with the police, indications of police misconduct ("conduct matters") and instances where a person has died or suffered serious injury after coming into contact with the police ("DSI matters"). The Policing and Crime Act 2017 ("the 2017 Act") amended the 2002 Act in a number of ways with respect to police complaints, conduct matters and DSI matters, including changing the definition of a complaint so that it encompasses wider expressions of dissatisfaction with a police force, as well as complaints against individuals serving with the police.

6.2 Further amendments made to the 2002 Act by the 2017 Act aim to improve the efficiency and effectiveness of the complaints system, replacing a number of complaint handling procedures and processes with a single overarching duty to handle complaints in a reasonable and proportionate manner.

6.3 These amendments to the 2002 Act have necessitated the revocation and replacement of the Police (Complaints and Misconduct) Regulations 2012 by this instrument. This instrument comes into force on the same day as the associated provisions in the 2017 Act come into force.

6.4 This instrument has been issued with its own Explanatory Memorandum as it is mainly made in reliance of powers in the 2002 Act, whereas the other three instruments within this group of instruments are mainly made in reliance of powers in the Police Act 1996.

7. Policy background

What is being done and why?

7.1 An efficient and effective system for handling complaints about the police is important to ensuring public confidence in policing.

7.2 In December 2014 the Government launched a public consultation on reforms to the police complaints and discipline systems. Previous research and surveys had shown that 35% of people lacked confidence in the ability of the police to deal with complaints fairly and 78% or people were not satisfied with how their complaint was handled.[1]

7.3 The Government's response to the consultation was published in March 2015 ("*Improving police integrity: reforming the police complaints and disciplinary systems"* Cm 9031) and proposed a number of structural reforms to the police complaints system to streamline complaints procedures and to introduce greater accountability, transparency and independence to the system.

7.4 The Government legislated for these changes in the 2017 Act. This instrument makes further detailed provision regarding the handling of complaints, conduct matters and

[1] Public Confidence in the Police Complaints system 2014 (Independent Police Complaints Commission – IPCC) and Crime Survey for England and Wales 2012/13 as referenced on page 7 of "*Improving police integrity: reforming the police complaints and disciplinary systems"* Cm 9031

DSI matters consequential to provisions in the 2017 Act – for example for the initial handling of complaints, investigation procedures, reports of investigations and for keeping complainants and others informed of the progress and outcome of a complaint.

7.5 This instrument removes references to certain methods of complaint handling which no longer exist in the primary legislation, such as "disapplication", "local resolution" and "discontinuance", reflecting a more streamlined process, with an overarching requirement to handle complaints in a reasonable and proportionate manner. Provisions governing when a police force need not record a complaint have also been removed, as the amended primary legislation provides that a complaint must be formally recorded if at any time a complainant indicates a wish for the complaint to be recorded.

7.6 Regulation 13 (timeliness of investigations) places a new duty on the appropriate authority (which will be the chief officer of, or local policing body for, the relevant police force) or, as the case may be, the Director General of the IOPC to provide the complainant and other interested persons with a written explanation if an investigation is not completed within 12 months. This reflects the policy intention to ensure greater accountability for investigations that are not finalised promptly.

7.7 Regulation 29 (reviews) provides detail regarding the new process for complainants to seek a review of the outcome of their complaint. Under previous legislation, there were five points of appeal in the complaints process which the 2017 Act has reduced to a single point at the end of the complaints process. All reviews will be undertaken independently of the police by either the Director General of the IOPC or the relevant local policing body, depending on the nature of the complaint. Previously, the relevant chief officer was the appeal body for certain complaints.

7.8 Regulation 30 (recommendations by the Director General or a local policing body) provides for the Director General of the IOPC, or a local policing body, to make recommendations to the police force with a view to remedying the dissatisfaction of the complainant. This regulation also sets out the requirement to provide a written response to such recommendations stating whether the recommendation is accepted and, if not, the reasons why not. These changes reflect the policy intention for greater transparency in the handling of complaints and improved communication with the complainant and any other interested parties.

7.9 Regulations 48 and 49 set out the steps that a local policing body must take in order to give or withdraw a notice under section 13A of the 2002 Act (as inserted by the 2017 Act). This is a notice informing the chief officer that the local policing body intends to take on certain complaints function in place of the chief officer. The steps include a requirement to consult certain parties and to publish a response to the consultation. Regulation 50 allows local policing bodies to delegate their police complaint functions.

7.10 This instrument also includes new requirements on the appropriate authority to refer complaints and matters involving the conduct of chief officers to the Director General of the IOPC. The instrument also requires the Director General of the IOPC to investigate such complaints and matters where there is an indication that the chief officer may have a committed a criminal offence or behaved in a way which would justify the bringing of disciplinary proceedings.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 None.

10. Consultation outcome

10.1 This instrument was not subject to public consultation.

10.2 The Secretary of State consulted with the Police Advisory Board for England and Wales (PABEW) on this instrument. The consultation period on the draft instrument ran from 12 October to 7 December 2018 with a further period of consultation from 15-29 November 2019 in relation to Schedule 2 to this instrument, which sets out the modifications to the 2002 Act and the regulations themselves for cases where a complaint or conduct matter relates to the conduct of a person has ceased to be a person serving with the police since the time of the conduct.

10.3 Representations from PABEW were assessed and taken into consideration in finalising the regulations. A number of drafting changes were made as a result of PABEW's comments including strengthening the duties of the appropriate authority or, as the case may be, the Director General of the IOPC under regulation 13 (timeliness of investigations) if an investigation is not completed promptly.

11. Guidance

11.1 The Director General of the IOPC has a statutory responsibility to secure and maintain public confidence in the police complaints system in England and Wales (see section 9 of the 2002 Act). As part of this duty, the Director General of the IOPC will publish updated statutory guidance, under section 22 of the 2002 Act, to assist police forces and local policing bodies deliver their functions in relation to the handling of complaints and related matters. Home Office guidance on "Conduct, Efficiency and Effectiveness: Statutory Guidance on Professional Standards, Performance and Integrity in Policing" will be updated to reflect changes made by the other three instruments that form the overall package of legislative changes to the police complaints and disciplinary systems. This will be made available by 1 February 2020.

12. Impact

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

12.2 The impact on the public sector is minimal. We expect the cost to police forces and local policing bodies of operating the provisions in this instrument to be similar to the costs of operating under previous related legislation, and to be met from within existing budgets.

12.3 An Impact Assessment has not been prepared for this instrument because an Impact Assessment was prepared for the reforms to the police complaints and discipline systems as part of the Impact Assessment for the 2017 Act (https://www.gov.uk/government/publications/policing-and-crime-bill-police-complaints-discipline-and-inspection).

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that the provisions of the 2017 Act and, by extension, the provisions of this instrument will be subject to the normal post-legislative review three to five years after Royal Assent. The impact of the provisions in this instrument will also be reviewed on an on-going basis as part of arrangements for the Home Office to monitor the operation of legislation governing police integrity matters.

15. Contact

15.1 Gary Watson, Head of Police Complaints Policy, at the Police Integrity Unit, telephone: 0207 035 0519 or email: gary.watson1@homeoffice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Michael Cordy, Deputy Director for Police Integrity Unit, at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Kit Malthouse, Minister for Policing, Crime and the Fire Service at the Home Office can confirm that this Explanatory Memorandum meets the required standard.