EXPLANATORY MEMORANDUM TO

THE POLICE (COMPLAINTS AND MISCONDUCT) (OLD CASES) REGULATIONS 2013

2013 No. 1778

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 ensure that the Independent Police Complaints Commission ("the Commission") can effectively investigate historic complaints and other matters relating to possible police misconduct.

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 Police Reform Act 2002 ("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 framework for the handling of complaints etc. is set out in Schedule 3 to the 2002 Act and in the Police (Complaints and Misconduct) Regulations 2012 (S.I. 2012/1204) ("the 2012 Regulations"). 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. The Commission may determine that it will handle the investigation itself, manage or supervise an investigation which is carried out by the appropriate authority or that the appropriate authority will carry out an investigation itself.

4.4 The Commission took over from its predecessor, the Police Complaints Authority ("the PCA"), on 1st April 2004. The Independent Police Complaints Commission (Transitional Provisions) Order 2004 (S.I. 2004/671) ("the transitional order") sets out a number of transitional arrangements. For example, article 4 of the transitional order contains provisions which prevented complaints or other matters from being recorded by police forces if they had previously been the subject of an investigation by the PCA. This has the effect of preventing the Commission from investigating those matters.

4.5 Section 2 of the 2012 Act inserted section 28A into the 2002 Act. The section, amongst other things, disapplies article 4 of the transitional order in relation to a complaint or conduct matter previously investigated by the PCA if the Commission makes a determination to that effect. Section 28A(10) contains power to provide that any provision in or made under Part 2 of the 2002 Act is modified in its application to a matter in relation to which the Commission has made a direction under section 28(1) or (4). These Regulations make such provision to ensure that an old matter which is the subject of a direction can effectively be investigated under the 2002 Act; they specifically modify the application of a number of provisions in the 2012 Regulations for this purpose.

5. Territorial Extent and Application

5.1 These Regulations apply to 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 In response to the publication of the Hillsborough Independent Panel's report on 12th September 2012, the Commission published a decision which confirmed that it was prevented from investigating certain issues further because they had previously been investigated by the PCA (see paragraphs 40 and 52 of the decision). The purpose of the power in section 28A of the 2002 Act, therefore, is to lift the legal bar in the transitional order to enable the Commission to direct in exceptional circumstances that certain old matters may be investigated under the 2002 Act.

7.2 The requirement that the Commission should only be able to exercise this power in 'exceptional circumstances' is intended to set a high threshold; what is meant by exceptional can include a number of considerations such as the unusual gravity of the circumstances or an overwhelming public interest in a matter being investigated. The decision will thus rest solely with the Commission as the independent body overseeing the police complaints system. It will also be for the Commission to determine its procedures for making a relevant direction and any such direction will be published in such manner as the Commission considers appropriate.

7.3 The power in section 28A(1) and (4) represents a significant extension to the Commission's ability to investigate key historic cases such as Hillsborough but has been drawn tightly enough so that it should not become a cold cases review body of all matters that have been determined (and closed) before its establishment. The power will also provide an important enabling tool to the Commission - to secure public confidence in its work and the police complaints system as a whole. In providing the Commission with this power in relation to Hillsborough, or any other future investigation it carried out or oversees, the intention of the legislation is to meet the public expectation of continuous public accountability in the police, irrespective of when an incident worthy of investigation, occurred.

- ***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 Mayor's Office for Policing and Crime and the Common Council of the City of London.

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. It is also expected that these Regulations will not have a significant impact on the Commission which cannot be met from its existing resource budget.

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

11. Regulating small businesses

11.1 These Regulations do not apply to small businesses.

12. Monitoring and review

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

13. Contact

13.1 Please direct any queries about these Regulations to Moore Flannery (moore.flannery4@homeoffice.gsi.gov.uk) or Sukina Smith (sukina.smith27@homeoffice.gsi.gov.uk).