EXPLANATORY MEMORANDUM TO

THE POLICE (CONDUCT) REGULATIONS 2012

2012 No. 2632

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 These Regulations revoke and re-enact the Police (Conduct) Regulations 2008 (S.I. 2008/2864 – "the 2008 Regulations"), with modifications to reflect changes to policing governance made by the Police Reform and Social Responsibility Act 2011 ("the 2011 Act") and to improve the procedure for dealing with allegations of police misconduct.

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

3.1 None.

4. Legislative Context

4.1 The 2011 Act makes changes to policing governance in England and Wales, including the replacement of police authorities with directly elected Police and Crime Commissioners.

4.2 These changes include giving the Chief Officer of Police the power to appoint and dismiss the senior officers of the police force (those above the rank of Chief Superintendent). Previously this was the responsibility of the police authority. The Police and Crime Commissioner will have the power to appoint and dismiss the Chief Officer, as the police authority does now.

4.3 The 2008 Regulations set out a detailed procedure for the investigation of allegations of misconduct against police officers, for the taking of misconduct proceedings and for the imposition of sanctions. The 2008 Regulations include provision as to matters such as suspension, representation, the service of notices and evidence and the composition of panels to hear proceedings. They also provide for the involvement of the Independent Police Complaints Commission ("the IPCC") and the complainant or other interested persons, in cases where the allegation of misconduct arises from a complaint or other matter dealt with under Part 2 of the Police Reform Act 2002.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

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 Relevant provisions of the 2011 Act affecting the metropolitan police district came into force on 16th January 2012, and the Police (Performance and Conduct) (Amendment: Metropolitan Police) Regulations 2011 (S.I. 2011/3027 – "the 2011 Regulations") amended the 2008 Regulations to reflect this. They made the Chief Officer of Police the "appropriate authority" responsible for taking disciplinary action against the senior officers of the police force, consistent with the Chief Officer's new powers of appointment and dismissal.

7.2 These Regulations replicate the changes that were made to the 2008 Regulations by the 2011 Regulations, and make further changes to achieve the same results in relation to all police areas in England and Wales. The 2011 Regulations are revoked by the Police (Performance) Regulations 2012, which come into force on the same date as these Regulations.

7.3 Regulation 5(2) of these Regulations allows multiple allegations of misconduct to be considered together when deciding how the case should be handled and what disciplinary action should be imposed.

7.4 Regulations 26 and 47 of these Regulations have the effect that misconduct proceedings or special case hearings concerning senior officers of all police forces are conducted by a panel consisting of a legally-qualified chair, Her Majesty's Chief Inspector of Constabulary or one of his Inspectors, and a person selected from a list maintained for these purposes. A special case hearing is a disciplinary hearing held in a case where the appropriate authority determines that there is sufficient written evidence to establish on the balance of probabilities, without the need for further written or oral evidence, that the conduct of the officer concerned constitutes gross misconduct, and that it is in the public interest for the officer to cease to be a police officer without delay. A special case hearing may also be held on the recommendation or at the direction of the IPCC.

7.5 Regulations 33(16) and 53(16) of these Regulations provide for the panel conducting the misconduct proceedings or special case hearing, in a case where the officer concerned is a senior officer of any police force, to make the finding of fact as to whether or not the officer is guilty of misconduct or gross misconduct, but then to remit the matter to the appropriate authority for a decision as to the action to be taken against the officer.

7.6 Regulations 30 and 51 of these Regulations have the effect that a complainant or interested person may remain in attendance during the part of

the misconduct proceedings or special case hearing when consideration is being given as to what disciplinary action should be imposed, but they may be excluded when a plea in mitigation is being made on behalf of the officer concerned.

- Consolidation

7.7 These Regulations consolidate the 2008 Regulations and the 2011 Regulations.

8. Consultation outcome

8.1 The Secretary of State consulted with the Independent Police Complaints Commission, the Association of Chief Police Officers, 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 Home Office will be updating its statutory guidance to reflect the updated regulations. The Independent Police Complaints Commission, the Association of Chief Police Officers, the Association of Police Authorities and the Police Advisory Board of England and Wales will be consulted on changes to the guidance.

10. Impact

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

10.2 The impact on the public sector is minimal. We expect the cost of the Regulations for bodies including the police to be limited and to be met from within existing budgets.

10.3 An Impact Assessment has not been prepared for this instrument because no impact on the private or voluntary sector is foreseen.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Home Office will keep the operation of these regulations under review.

13. Contact

Steve Newby at the Home Office (tel: 020 7035 0715 or email: steve.newby@homeoffice.gsi.gov.uk) can answer any queries regarding the instrument.