EXPLANATORY MEMORANDUM TO

THE POLICE (PERFORMANCE AND CONDUCT) (AMENDMENT: METROPOLITAN POLICE) REGULATIONS 2011

2011 No. 3027

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 amends various instruments concerned with police performance and conduct in consequence of changes made to policing governance in the Metropolitan Police District by the Police Reform and Social Responsibility Act 2011 ("the 2011 Act"). Further regulations will be made in 2012 to reflect the changes in relation to the rest of England and Wales.

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 the governance arrangements for policing in England and Wales, with the exception of the City of London police area. The Act abolishes the police authorities responsible for maintaining police forces outside London and replaces them with directly elected Police and Crime Commissioners ("PCCs"). The Act also abolishes the Metropolitan Police Authority and replaces it with the Mayor's Office for Policing and Crime ("MOPC") – an office held by the Mayor of London. PCCs and the MOPC are referred to collectively in the Act as elected local policing bodies.

4.2 The 2011 Act provides for Chief Officers of Police of forces outside London (Chief Constables) to be appointed by the PCC – previously they were appointed by the police authority. The Act provides for the Chief Officer of Police for the Metropolitan Police District (the Commissioner) and the Deputy Commissioner to continue to be appointed by the Queen on the advice of the Secretary of State. The MOPC has the power to suspend or remove the Commissioner or Deputy Commissioner, with the approval of the Secretary of State.

4.3 The 2011 Act further provides for senior police officers in forces other than the City of London force to be appointed by the Chief Officer of Police – previously these officers were appointed by the police authority. The ranks concerned are those of Assistant Chief Constable and Deputy Chief Constable

Assistant in police forces outside London, and Commander, Deputy Assistant Commissioner and Assistant Commissioner in the Metropolitan Police force.

4.4 The 2011 Act also establishes Chief Constables and the Commissioner of Police of the Metropolis as corporations sole, and makes provision for them to employ staff. Previously, all police staff were employed by the police authority.

4.5 The 2011 Act makes no changes to the arrangements for policing governance in the City of London police area.

4.6 The relevant provisions of the 2011 Act come into force on 16th January 2012 in relation to the Metropolitan Police District. They will come into force on 22nd November 2012 in the rest of England and Wales.

5. Territorial Extent and Application

5.1 This instrument applies 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 This instrument amends the Police (Efficiency) Regulations 1999 (referred to in these Regulations as "the Efficiency Regulations), the Police (Performance) Regulations 2008 (referred to as "the Performance Regulations"), the Police (Conduct) Regulations 2004 (referred to as "the 2004 Conduct Regulations") and the Police (Conduct) Regulations 2008 (referred to as "the 2008 Conduct Regulations") to reflect changes made by the 2011 Act in relation to policing arrangements in the Metropolitan Police district.

7.2 Regulations 3, 4 and 6(2)(b) of these Regulations amend the Efficiency Regulations, the Performance Regulations and the 2008 Conduct Regulations to reflect the provision made in the 2011 Act regarding the employment of police staff.

7.3 Regulation 5(2) of these Regulations amends the 2004 Conduct Regulations with the effect that the Mayor's Office for Policing and Crime is the appropriate authority responsible for dealing with allegations of misconduct against the Commissioner and certain senior officers of the Metropolitan Police exercising the functions of the Commissioner. The Commissioner is responsible for dealing with allegations against other officers, including senior officers (currently the Metropolitan Police Authority is responsible for dealing with allegations against all senior officers).

Regulation 6(2)(a) of these Regulations makes a similar amendment to the 2008 Regulations.

7.4 Regulation 6(5) and (12) of these Regulations amend the 2008 Conduct Regulations with the effect that misconduct proceedings or special case hearings concerning senior officers of the Metropolitan Police 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.

7.5 Regulation 6(7), (8), (9), (14), (15) and (16) of these Regulations amends the 2008 Conduct Regulations so as to provide for the panel conducting the misconduct proceedings or special case hearing, in a case where the officer concerned is a senior officer of the Metropolitan Police, 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. The 2008 Conduct Regulations currently provide for the person or persons conducting the misconduct proceedings or special case hearing to make the finding as to conduct and decide on the action to be taken.

7.6 The remainder of regulation 5 and 6 of these Regulations make consequential amendments to the 2004 and 2008 Conduct Regulations.

7.7 Regulations 7 and 8 make transitional provision to ensure the continuing validity of anything done in an ongoing appeal under the 2004 and 2008 Conduct Regulations prior to the changes made by these Regulations in relation to the identity of the appropriate authority, the composition of the panel conducting misconduct proceedings or special case hearings and the process for taking the final decision as to disciplinary action.

7.8 These Regulations come into force on 16th January 2012, to coincide with the creation of the Mayor's Office for Policing and Crime. Further regulations will be made later in 2012 to implement the same changes outside London when PCCs are established, and also to implement further reforms to the police performance and conduct system affecting the whole of England and Wales.

- ***Consolidation***

7.9 These Regulations make limited amendments consequent upon provisions in the 2011 Act, that have to be made at relatively short notice before the relevant provisions of the Act come into force in relation to the Metropolitan Police District. Accordingly this is not regarded as a suitable opportunity to consolidate these and other amendments that have been made to

the regulations dealing with police performance and conduct. However, the further regulations to be made in 2012 will consolidate the existing 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 for England and Wales on this instrument and reflected comments made by these bodies.

9. Guidance

9.1 An addendum to the Home Office Guidance on Police Officer Misconduct, Unsatisfactory Performance and Attendance Management Procedures is being issued to coincide with the coming into force of these Regulations. This addendum to the 2008 guidance will assist the Metropolitan Police and the MOPC in implementing the changes.

10. Impact

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

10.2 There is no impact on the public sector.

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

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Home Office will monitor the effect of these Regulations in the Metropolitan Police District as part of the process of developing the further amending regulations in 2012.

13. Contact

13.1 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.