# EXPLANATORY MEMORANDUM TO

# THE POLICE (PERFORMANCE) REGULATIONS 2012

## 2012 No. 2631

**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 (Performance) Regulations 2008 (S.I. 2008/2862 – "the 2008 Regulations"), with modifications to reflect changes made to policing governance made by the Police Reform and Social Responsibility Act 2011 ("the 2011 Act") and to improve the procedure for dealing with unsatisfactory performance in police forces.

**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 The 2008 Regulations set out a detailed procedure for dealing with unsatisfactory performance or attendance by police officers of the rank of Chief Superintendent or below. The procedure is in three stages, with a meeting held at each stage to consider the officer's performance or attendance. If the outcome of the first stage meeting is a finding that the officer's performance or attendance is unsatisfactory, a written improvement notice is issued. If the officer fails to improve his performance or attendance in accordance with the notice, he can be required to attend a second stage meeting. This may result in the issuing of a final written improvement notice. Again, failure to improve performance or attendance in accordance with the notice may result in the officer being required to attend a third stage meeting. An officer may also be required to attend a third stage meeting, without a prior first or second stage meeting, if it is considered that the officer's performance constitutes gross incompetence. The third stage meeting may result in dismissal, reduction in rank, the issuing or extension of a final written improvement notice or redeployment to other duties.

4.3 The 2008 Regulations include provision for appeals against the outcome of a first or second stage meeting. They also include provision as to

matters such as representation, the service of notices and evidence and the composition of panels to conduct meetings.

## 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. These Regulations revoke the 2011 Regulations, while replicating the changes that they made to the 2008 Regulations and making further changes to achieve the same results in relation to all police areas in England and Wales.

7.2 Regulation 12 of these Regulations reflects amendments made by the 2011 Act to Schedule 3 to the Police Reform Act 2002. These amendments allow the Independent Police Complaints Commission ("the IPCC") to recommend, and ultimately direct, the institution of procedures under these Regulations in a case where there has been an investigation of a complaint or conduct matter under that Schedule.

7.3 Regulation 13 of these Regulations ensures that the IPCC is notified of the outcome of procedures under those regulations in cases in which it has had a prior involvement.

7.4 Regulation 30 of these Regulations allows the IPCC, in a case where there has been an investigation under Schedule 3 to the Police Reform Act 2002 which suggests that there has been gross incompetence on the part of a police officer, to recommend or direct that procedures under the Performance Regulations commence at the third or final stage, without having to pass through the preceding two stages.

7.5 Regulation 38 to 40 of these Regulations allow the IPCC, complainants and other persons to attend a third stage meeting held under regulation 30 in which they have an interest, along the lines of the provisions applying to proceedings for misconduct.

7.6 Regulation 44(5) of these Regulations adds further provision about the process to be followed and matters to be taken into account in reaching a decision in a third stage meeting.

7.7 There are further minor differences between these Regulations and the 2008 Regulations to reflect the matters mentioned above.

- Consolidation

7.8 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.