EXPLANATORY MEMORANDUM TO

THE POLICE SUPER-COMPLAINTS (DESIGNATION AND PROCEDURE) REGULATIONS 2018

2018 No. 748

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 The purpose of this instrument is to set out the bodies which have been designated and can therefore raise a super-complaint about a systemic issue in policing, under the Policing and Crime Act 2017, and the requirements for making a super-complaint. The instrument also sets out the procedures and process of how a super-complaint should be handled; the duties on the three policing bodies – Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services, the Independent Office for Police Conduct and the College of Policing – when responding to a super-complaint; and the powers they have to be able to investigate and respond to a super-complaint.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 Chapter 2 of Part 2 of the Policing and Crime Act 2017 introduces the police super-complaints system. It inserts Part 2A (sections 28A-28C) of the Police Reform Act 2002 ('the 2002 Act').

4.2 New section 28A of the 2002 Act allows designated bodies to make super-complaints, being complaints that a feature, or combination of features, of policing in England and Wales by one or more than one police force is, or appears to be, significantly harming the interests of the public.

4.3 New section 28B of the 2002 Act defines "designated body". It means a body designated in regulations made by the Secretary of State. In making (or revoking) a designation, the Secretary of State must apply criteria set out in regulations.

4.4 New section 29C of the 2002 Act allows the Secretary of State to make regulations making provision about super-complaints.

4.5 This instrument is preceded by an instrument laid in March 2018 (The Police Super-Complaints (Criteria for the Making and Revocation of Designations) Regulations

2018 S.I. 2018/412) which set out the criteria an organisation must fulfil in order to become a designated body, as well as revocation criteria, and allowed for the issuing and revision of guidance by Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services. ('the March 2018 instrument').

5. Extent and Territorial Application

5.1 The extent of this instrument is England and Wales.

5.2 The territorial application of this instrument is 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 The police super-complaints system is a new system which will provide an avenue to raise concerns about systemic issues in policing, which are not being currently captured by the existing complaints system. The existing complaints system can be used to complain about individual police officers and members of staff working for a police force or particular incidents. Systemic issues may include raising a concern about how police across a number of force areas consistently respond to or handle a particular type of crime.

7.2 Under the new system, organisations such as charities can apply to become designated bodies so that they can raise issues or concerns, on behalf of the public, about patterns or trends in policing which are, or appear to be, significantly harming the interests of the public. Organisations wishing to become designated bodies must demonstrate that they fulfil the nine criteria which were set out in the March 2018 instrument. These were:

1. That the body is competent in, and has considerable experience of, representing the interests of the public.

2. That the body would represent the interests of the public effectively in its role as a designated body and, in particular, would work to improve policing.

3. That the composition of the body and the arrangements for its governance and accountability are such that it can be relied upon to act independently and with integrity in its role as a designated body.

4. That the body has the capability necessary to carry out its role as a designated body effectively.

5. That the body has made arrangements for the appropriate storage and handling of data that it may obtain in its role as a designated body.

6. That the body can be relied upon to have regard to any guidance about the making of complaints under section 29A(1) of the 2002 Act which is given to designated bodies by Her Majesty's Chief Inspector of Constabulary.

7. That the body's activities include activities in, or in relation to, more than one police area.

8. That the body is not:

(a) a trade union, or

(b) an association (other than a trade union) which represents the interests of members of police forces.

9. That the body would:

(a) collaborate effectively with bodies which are not designated bodies but which are, or may be, aware of matters which could form the basis of a complaint under section 29A(1) of the 2002 Act, and

(b) where appropriate, make a complaint under that section on the basis of matters raised with it by such bodies.

7.3 Super-complaints will be submitted to Her Majesty's Chief Inspector of Constabulary who will work with the Independent Office for Police Conduct and the College of Policing to investigate and respond to the super-complaint. This collaborative approach is an important component of this system, promoting join-up across policing in order tackle systemic issues.

7.4 These Regulations set out the 16 successful designated bodies as well as the duties the three policing bodies have in relation to assessing and responding to super-complaints.

Consolidation

7.5 These Regulations do not amend any other legislation, and there is accordingly no scope for consolidation.

8. Consultation outcome

8.1 On 16 October 2017, the Government launched a public consultation on 'Criteria for Designating Bodies in the Police Super-Complaints System', inviting comments from the public and key stakeholders on the proposed criteria organisations need to meet in order to be eligible to become a designated body in the new police super-complaints system. The consultation closed on 8 December 2017 and 27 responses were received. There was overall broad support for the criteria proposed, and minor amendments were made following the analysis – the 16 bodies designated in these Regulations were subject to the amended criteria which were consulted upon.

9. Guidance

9.1 Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services will issue guidance to the designated bodies setting out how to make a super-complaint and it will be published when the system becomes operational. (Regulation 5 of the March 2018 instrument).

10. Impact

10.1 There is no impact on business, charities or voluntary bodies other than on those who choose to apply to become a designated body.

10.2 The impact on the public sector is limited to the police, Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services, the Independent Office for Police Conduct and the College of Policing.

10.3 No Impact Assessment has been prepared.

11. Regulating small business

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

12. Monitoring & review

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

13. Contact

13.1 Victoria Arnott at the Home Office, 0207 035 8422, victoria.arnott@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.