

EXPLANATORY MEMORANDUM TO
THE POLICE (COMPLAINTS AND MISCONDUCT) REGULATIONS 2012
2012 No. 1204

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 consolidate existing Regulations about police complaints, with limited changes designed to reflect amendments made to the primary legislation and to improve the efficiency and effectiveness of the complaints system. The changes will improve the system for those that operate it and members of the public.

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

3.1 None.

4. **Legislative Context**

4.1 The Police Reform Act 2011 makes changes to policing governance in England and Wales, including the replacement of police authorities with directly elected Police and Crime Commissioners. The Act makes a number of amendments to the Police Reform Act 2002 (“the 2002 Act”), which governs the handling of complaints against police officers and civilian staff, indications of police misconduct (“conduct matters”) and instances where a person has died or suffered serious injury after coming into contact with the police (“DSI matters”).

4.2 Amendments to the 2002 Act include making the Chief Officer of Police the “appropriate authority” responsible for handling complaints, conduct matters and DSI matters concerning senior officers of the police force (previously this was the police authority). The Police and Crime Commissioner will be the appropriate authority only in relation to complaints and matters concerning the Chief Officer.

4.3 A number of further amendments to the 2002 Act were made with the intention of reducing bureaucracy and giving police forces more freedom to deal with less serious complaints at the local level, allowing the Independent Complaints Commission (“the IPCC”) to concentrate on the more serious complaints and matters and on oversight of the system as a whole. In particular, police forces are given greater discretion, in certain circumstances, in relation to the initial recording of complaints and matters, the reference of complaints and matters to the IPCC, the disapplication of the requirements of the 2002 Act and the discontinuance of investigations. The Chief Officer,

rather than the IPCC, is also given the power to determine appeals against decisions taken in the handling of complaints and matters in certain circumstances. As an additional safeguard, however, the Police and Crime Commissioner is given the power to review the Chief Officer's handling of any complaint or matter and to direct the Chief Officer to take action in order to comply with duties under the 2002 Act.

4.4 These changes to the 2002 Act have necessitated changes to the Regulations made under that Act, which are implemented by this instrument.

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 The Independent Police Complaints Commission, as guardians of the entire police complaints system, conducted a review of the system following four years of operational experience. The review found that some of the statutory provisions for the handling of complaints contained processes which are either unnecessarily bureaucratic, or which are no longer necessary. The majority of the amendments made to the 2002 Act, and to Regulations by means of this instrument, are as a result of this review.

7.2 The changes make the police complaints system more effective and efficient and afford additional discretion to the police service to deal with low level complaints, with the focus being on dealing with the complainant's dissatisfaction rather than on bureaucratic processes. The changes are technical in nature and are identified in the Explanatory Note.

- Consolidation

7.3 These Regulations consolidate the Police (Complaints and Misconduct) Regulations 2004 ("the 2004 Regulations") and the various Regulations that have amended the 2004 Regulations.

8. Consultation outcome

8.1 During 2007 and 2008 the Independent Police Complaints Commission carried out a public facing review of the police complaints system after four years operational experience. The majority of the changes are a result of this review. The Regulations have been developed by some of

the main partners who will be affected by them. They have been considered and approved by the Police Advisory Board for England and Wales.

9. Guidance

9.1 The Independent Police Complaints Commission will be updating its statutory guidance to reflect the updated regulations. There will be a public consultation on 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.