

EXPLANATORY MEMORANDUM TO
THE POLICE (PERFORMANCE) (AMENDMENT) REGULATIONS 2014

2014 No. 2403

1. This explanatory memorandum has been prepared by the Home Office (“the Department”) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations amend the Police (Performance) Regulations 2012 (“the 2012 Regulations”) to give effect to amendments to the Police Reform Act 2002 (“the 2002 Act”), made by the Anti-social Behaviour, Crime and Policing Act 2014 (“the 2014 Act”), which enable the Independent Police Complaints Commission (“the Commission”) to recommend and direct unsatisfactory performance procedures against persons serving with the police in relation to a death or serious injury (or “DSI”) matter.

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

3.1 None.

4. Legislative Context

4.1 The framework in accordance with which the Commission investigates, or oversees investigations into, matters relating to the conduct of a person serving with the police is set out in Part 2 of, and Schedule 3 to, the 2002 Act. These matters (defined in section 12 of the 2002 Act) comprise complaints about conduct (for example, complaints by members of the public), conduct matters (which indicate either misconduct or the commission of a criminal offence) or DSI matters (in which death or serious injury has arisen as a result of contact with a person serving with the police).

4.2 The Commission may, in relation to matters investigated by it and certain investigations into other matters overseen by it, may recommend and direct unsatisfactory performance procedures in complaint and conduct matters but not DSI matters. Section 138 of the 2014 Act amends paragraphs 24C and 27 of Schedule 3 to the 2002 Act to make provision enabling the Commission to recommend and direct unsatisfactory performance procedures in relation to a DSI matter. This reflects the Commission’s existing powers to recommend and direct unsatisfactory performance procedures in complaint and conduct matters.

4.3 The 2012 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. To give effect to the amendments to the 2002 Act, these Regulations amend the 2012 Regulations to the effect that the existing provision for the Commission's role in the unsatisfactory performance or attendance framework applies in relation to its new powers in paragraphs 24C and 27 of Schedule 3 to the 2002 Act to recommend and direct unsatisfactory performance procedures in relation to a DSI matter as it already applies in relation to its existing powers under that Act to recommend and direct unsatisfactory performance procedures in complaint and conduct matters.

5. Territorial Extent and Application

5.1. These Regulations extend to England and Wales only.

6. European Convention on Human Rights

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The changes to the 2012 Regulations ensure that existing provision for the Commission's role in the unsatisfactory performance or attendance framework applies in relation to the new powers in paragraph 24C and 27 of Schedule 3 to the 2002 Act to recommend and direct unsatisfactory performance procedures in relation to a DSI matter. The 2002 Act already provides the Commission with the power to recommend and direct unsatisfactory performance procedures in complaint and conduct matters, and this amendment rectifies the provision to also include DSI matters, therefore, ensuring all matters are covered and the Commission have the required powers for dealing with unsatisfactory performance. This removes an obvious anomaly in the existing framework under the 2002 Act.

- *Consolidation*

7.2 The Department considers that there is no scope for consolidation.

8. Consultation outcome

8.1 Two Technical Working Groups were held in 2013 with representatives from the policing landscape. All those involved in the Group were also sent copies of the draft of these Regulations to provide comments. No concerns regarding the power were raised.

8.2 The Police Advisory Board for England and Wales has also been consulted in accordance with the statutory duty in section 63(3)(a) of the Police Act 1996 and offered no additional comments.

9. Guidance

9.1 The Commission will update its statutory guidance and operations manual. The Commission will also write to all forces and local policing bodies to inform them of the availability of the power and what will be required of them.

10. Impact

10.1 There is no impact on businesses, charities, voluntary bodies or the public section.

11. Regulating small business

11.1 These Regulations do not apply to small businesses.

12. Monitoring & review

12.1 The Department and the Commission will monitor and review the use of the new powers by the Commission.

13. Contact

13.1 Elizabeth Rowlands, Police Integrity and Powers Unit, the Home Office on 020 7035 3939 or Elizabeth.Rowlands1@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.