

**EXPLANATORY MEMORANDUM TO
THE INDEPENDENT POLICE COMPLAINTS COMMISSION (COMPLAINTS AND
MISCONDUCT) (CONTRACTORS) REGULATIONS 2015**

2015 No. 431

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 make provision to extend the oversight of the Independent Police Complaints Commission (“the Commission”) to contractors which have contracted with a local policing body (e.g. a police and crime commissioner) or chief officer of police to provide services to a chief officer. This provision ensures that complaints and other matters relating to the conduct of contractors, which are exercising policing functions, are adequately handled and that the adequacy of these arrangements is overseen by the Commission.
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, complaints and others matters’ relating to the conduct of a person serving with the police is set out in Part 2 of, and Schedule 3 to, the Police Reform Act 2002 (“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 death or serious injury (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 Section 39 of the 2002 Act and regulations made under it provide for oversight by the Commission of complaints and others matters in relation to employees of contractors who are designated with detention and escort functions. This oversight is exercisable only in cases in which a local policing body has entered into a contract with the contractor for the provision of services relating to the detention or escort of persons who have been arrested or are otherwise in custody.
 - 4.3 Section 135 of the Anti-social Behaviour, Crime and Policing Act 2014 (“the 2014 Act”) inserts new section 12(8) to (10) into the 2002 Act. This includes a power to make regulations containing provision which enables the complaints and conduct framework to apply, with Commission oversight of those arrangements, in relation to any contractors which have contracted with a local policing body (e.g. a police and crime commissioner) or chief officer of

police to provide services to a chief officer. These Regulations make such provision, and will replace existing arrangements made under section 39 of the 2002 Act but only to the extent that it replicates those arrangements.

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 These Regulations give effect to section 135 of the 2014 Act, in providing the basis on which the Commission has oversight of complaints and other matters relating to the conduct of a contractor. The Commission was established by the 2002 Act to provide effective and independent means of overseeing the investigation of complaints and alleged misconduct of actions by the police. At present, the Commission's oversight of contractors is limited to employees of contractors who have been 'designated' by chief officers to perform detention or escort functions for (amongst others) police forces. These Regulations make provision which broadly reflects the existing arrangements overseen by the Commission in respect of the police, but with modifications in parts to reflect differences between contractors and the police.

7.2 Policing functions, including operating emergency call centres, providing front counter services and providing business support services such as finance and procurement or human resources, may be provided by contractors. The amendment of the 2002 Act by the 2014 Act therefore provides the Commission with the powers to cover contractors who are performing policing functions on behalf of the police in England and Wales and ensures that the Commission is able to investigate complaints and conduct matters arising from the exercise by contractors of those functions.

7.3 The extension of oversight mitigates the risk to the credibility of the complaints system due to the Commission not being able to, for example, investigate a complaint made by the member of the public against a contractor carrying out certain functions where such oversight is available in relation to the exercise of the same function by the police.

7.4 These Regulations do not limit what is meant by a contractor, following detailed feedback from the Commission. Therefore, a contractor is a person (e.g. a company or individual) which enters into a contract with a local policing body or chief officer to provide services to a chief officer. For the purpose of these Regulations, a contractor includes a sub-contractor of a contractor and an employee of the contractor or sub-contractor.

7.5 The appropriate authority is the chief officer. At the outset, a complaint or other matter relating to the conduct of a contractor must be referred to the

chief officer, who will be responsible for recording it and in more serious cases, referring it to the Commission. However, these Regulations make provision to enable the chief officer to arrange for the contractor (through the contractor manager) to carry out the functions of the appropriate authority; these functions include the investigation of the matter or taking disciplinary action against an employee in respect of whom there has been a finding of misconduct.

- ***Consolidation***

7.6 This does not apply. These Regulations represent the first use of the power in section 12(8) to (10) of the 2002 Act.

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 provided comments in relation to the drafting of these Regulations, which the Department took into account. An initial draft of these Regulations was sent to the members of the Working Group to enable them to provide further comments. The Department took into account comments made by the working Group.

8.2 The Police Advisory Board for England and Wales has also been consulted in accordance with the statutory duty in section 63(3) (b) of the Police Act 1996. The Department took into account the representations made by the Board.

8.3 The Reducing Regulation Committee (RRC) have been consulted on the extension of the Commission's remit in relation to private sector bodies which provide services to the police. As this is a public sector function, clearance from the RRC is not required.

9. Guidance

9.1 The Commission will update its statutory guidance and its internal 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 An Impact Assessment has not been prepared for the Regulations as there is no impact on businesses, charities, voluntary bodies or the public sector.

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.