

**EXPLANATORY MEMORANDUM TO
THE ELECTED LOCAL POLICING BODIES (COMPLAINTS AND MISCONDUCT)
REGULATIONS 2011**

2011 No. [XXXX]

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 Regulations make provision for the handling of allegations of misconduct against office-holders in the new bodies that will take over, from the existing police authorities, responsibility for maintaining and scrutinising police forces in England and Wales (with the exception of the City of London Police).

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

3.1 None.

4. Legislative Context

4.1 The Police Reform and Social Responsibility Act 2011 (“the Act”) abolishes police authorities in England and Wales, with the exception of the Common Council of the City of London which retains its role as police authority for the City. The Act creates a new directly elected office of Police and Crime Commissioner (“PCC”) for each police area in England and Wales outside London. The office-holder will have the same functions as a police authority in terms of securing the maintenance of an efficient and effective police force and holding the Chief Constable to Account. The Act also creates the Mayor’s Office for Policing and Crime (“MOPC”), which replaces the Metropolitan Police Authority in London. The holder of the MOPC is the Mayor of London for the time being. PCCs and the MOPC are known collectively in the Act as elected local policing bodies. The first PCCs will be elected in November 2012. The MOPC will replace the Metropolitan Police Authority in January 2012.

4.2 The Act allows each PCC and the MOPC to appoint a deputy, known in the case of the MOPC as the Deputy Mayor for Policing and Crime (“DMPC”). Further, the Act provides for the creation of a Police and Crime Panel (“PCP”) for each police area, with the function of scrutinising the actions and decisions of the PCC or MOPC. Outside London the PCP is made up of at least one member from each local authority in the police area, and may co-opt additional members, at least two of whom must not be local authority members. In the Metropolitan Police District the PCP is a committee of the London Assembly; it too may co-opt members who are not members of the Assembly.

4.3 PCCs and their deputies will not be subject to the local government standards regime which applies to members of police authorities. The Act gives the PCP the

power to suspend a PCC who is charged with a criminal offence punishable with more than two years' imprisonment. A PCC who is convicted of any imprisonable offence is automatically disqualified from continuing to hold office. There is no other provision in the Act for any sanction to be imposed on a PCC or for a PCC to be removed from office under any other circumstances. A deputy PCC is a member of the staff of the PCC, and can be subject to disciplinary action by the PCC like any other employee – the Act does not make any specific provision in this regard.

4.4 The Mayor of London will continue to be subject to the local government standards regime, notwithstanding his new role as holder of the MOPC. The DMPC may or may not be a member of the Assembly. If he is a member, he will continue to be subject to the local government standards regime, and will not be regarded as a member of the staff of the MOPC. If he is not a member, he will not be subject to the regime, and will be a member of the MOPC's staff. The Act does not make any provision for the imposition of any sanction on the holder of the MOPC or the DMPC, or for them to be removed from office.

4.4 The Act provides for the making of regulations about the handling of complaints against "relevant office holders", namely PCCs, their deputies, the holder of the MOPC and the DMPC. The regulations may also make provision about the recording of "conduct matters", namely matters in the case of which there is an indication that a relevant office holder may have committed a criminal offence. Further, the regulations may make provision about the manner in which these complaints and conduct matters are to be investigated or otherwise dealt with.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

The Secretary of State has made the following statement regarding Human Rights:

In my view the provisions of the Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2011 are compatible with the Convention rights.

7. Policy background

- *What is being done and why*

7.1 The Act closely circumscribes the provision that the Regulations may make in relation to the handling of complaints and conduct matters. The Regulations must provide for serious complaints (those which constitute or involve, or appear to constitute or involve, the commission of a criminal offence) and all conduct matters (which, by definition, involve the suspicion of a criminal offence) to be investigated by the Independent Police Complaints Commission ("IPCC") or by a police force under the management of the IPCC. This is to ensure that where a criminal allegation is made against a relevant office holder there is no bias or appearance of bias in the way the matter is dealt with by the local police, with whom the office holder will have a close relationship. The Regulations may provide for circumstances in which the

IPCC can decide that a complaint or conduct matter should not be investigated, or an investigation should be discontinued.

7.2 The provision that the Regulations must make in relation to complaints that are not, or cease to be, investigated by or under the management of the IPCC depends on the identity of the relevant office holder concerned. Where the office holder is a PCC, a deputy PCC or a DMPC who is not a member of the London Assembly, the Regulations may not provide for such complaints to be investigated by anybody, and must provide for them to be resolved informally by the PCP. Where the office holder is the holder of the MOPC (in other words, the Mayor of London) or is a DMPC who is a member of the Assembly, the Regulations must provide for such complaints to be dealt with in accordance with the local government standards regime. The reason for the difference in approach is to avoid the creation of two regimes for dealing with non-criminal allegations against the Mayor and a DMPC who is a member of the Assembly, bearing in mind that they will continue to be subject to the local government standards regime in any event.

7.3 The Regulations may apply (with or without modifications) those provisions of the Police Reform Act 2002 concerned with the handling of complaints and conduct matters in relation to persons serving with the police, and also any other enactments appearing to the Secretary of State to be necessary or expedient in connection with or in consequence of the Regulations.

7.4 In fact, large parts of the Regulations are closely based on Part 2 of the Police Reform Act 2002 and the Police (Complaints and Misconduct) Regulations 2004 (SI 2004/643) made under it. This is because the police complaints regime provides an established model which is familiar to the IPCC and police forces.

7.5 The Regulations confer general functions on the IPCC in relation to relevant office holders that are equivalent to those discharged by the IPCC in relation to the police. They make similar provision for the IPCC to issue reports on the exercise of those functions. They apply secondary legislation made under the Police Reform Act 2002 giving the IPCC powers to conduct covert investigations and exercise other police powers. They place the same general duties on relevant office holders, PCPs and chief officers of police to assist the IPCC and give it access to premises and information as are applicable to police forces and police authorities in relation to police complaints.

7.6 In relation to the initial handling of complaints and conduct matters, the Regulations create a similar process to that under the police complaints regime, by which allegations are brought to the attention of the relevant PCP, are recorded by the PCP and are referred to the IPCC if they involve suspicion of the commission of a criminal offence. Where a complaint or conduct matter is referred, the Regulations require the IPCC to determine whether or not it should be investigated, and if it is to be investigated, whether this should be by the IPCC itself or by a police force under the management of the IPCC. The Regulations make similar provision to that under the police complaints regime in relation to the way investigations are to be conducted, including provision for investigations to be suspended, resumed and discontinued.

7.7 The Regulations provide for the investigator to submit a final report to the IPCC, and for the IPCC then to consider whether the report indicates that a criminal offence has been committed and that it is appropriate for the matter to be considered by the Director of Public Prosecutions (DPP). If the IPCC decides these questions in the affirmative, the report is to be sent to the DPP for consideration as to whether criminal proceedings should be brought. The Regulations provide for the report to be sent to the PCP and published, subject to the removal of sensitive material.

7.8 If the IPCC decides that a complaint or conduct matter should not to be investigated, the Regulations provide for it to be referred back to the PCP. Where a complaint is referred back, or the PCP decides at the outset that it does not satisfy the criteria for referral to the IPCC, the Regulations provide for the complaint to be subjected to informal resolution, and makes similar provision in this regard to that made in relation to the local resolution of police complaints. The Regulations allow the PCP to appoint a sub-committee, a single member or any other person (other than a relevant office holder) to achieve the resolution of the complaint. The Regulations are not prescriptive as to the method of resolution or the appropriate outcome, bearing in mind that the Act does not make any provision for any sanction to be imposed on a relevant office holder. It is envisaged that informal resolution will involve the PCP seeking an explanation from the office holder for his conduct and, where appropriate, an apology. The PCP retains its powers to require the office holder to attend before them and provide information, and to make a public report on the matter.

7.9 In the case of the Mayor of London and a DMPC who is an Assembly member, the Regulations simply provide for the London Assembly PCP to pass the matter to the monitoring officer of the Greater London Authority to be dealt with under the local government standards regime.

7.10 The Regulations allow a PCP to delegate any of its functions, except its functions in relation to the final resolution of a complaint, to the chief executive of the PCC or MOPC or, in the case of the London Assembly PCP, the monitoring officer of the Greater London Authority. The purpose of this is to avoid the PCP being burdened with the initial handling of complaints and conduct matters. While the chief executive is an employee of the PCC or MOPC, and his independence may thus be open to question, the Act provides for him to be the PCC or MOPC's monitoring officer and therefore to have a statutory duty under local government legislation to report any unlawful act on the part of the PCC or MOPC to the PCP. The Government takes the view that the task of the initial handling of complaints and conduct matters sits well with the role of the monitoring officer. Further, allowing scope for these matters to be dealt with internally in the first instance will promote the early resolution of minor complaints without unnecessary bureaucracy. In the case of complaints against the Mayor in his capacity as MOPC, or against the DMPC, it will allow the Greater London Authority to follow a single, uniform approach to handling complaints, as far as is possible. It will be for the PCP to decide whether and to what extent it wishes to delegate its functions, in the light of the local circumstances, and the PCP will retain ultimate responsibility for the handling and final resolution of any matter.

- ***Consolidation***

7.2 The Regulations do not amend an existing instrument.

8. Consultation outcome

8.1 These Regulations have been developed by the Home Office with some of the main partners who will be affected by them. There was a 4 week public consultation on the draft regulations which took place between 23rd September and 21st October 2011. The reason that the consultation was relatively short was to allow the regulations to be in place by January 2012, in time for the replacement of the Metropolitan Police Authority with the MOPC. The Police Reform and Social Responsibility Act 2011 only received Royal Assent on 15th September 2011, so it was not possible to start the consultation earlier.

8.2 The consultation elicited 31 responses. The Government considered the responses to the consultation very carefully and made some important changes to the Regulations as a result.

8.3 First, the Government has provided for the PCP to delegate its functions in relation to the handling of complaints to the chief executive of the PCC or MOPC or to the Greater London Authority monitoring officer as discussed in paragraph 7.10 above.

8.4 Second, the Government has removed provision allowing the relevant office holder to delay notifying the PCP of a complaint for up to 28 days while he sought to resolve it himself. This was included in an effort to prevent low-level complaints that could be satisfactorily dealt with by the relevant office holder giving an explanation or apology being unnecessarily sent to the PCP. However, it was unpopular with those who responded to the consultation and, in view of the changes that will give the monitoring officer a role in handling complaints, it is no longer regarded as necessary. The PCP will be able to delegate to the monitoring officer its functions in relation to the initial handling of any complaint. The PCP will also be able to appoint the PCP to carry out the informal resolution of any complaint, if it wishes. Whether or not it does so, the complaint can be treated as resolved if it has already been satisfactorily dealt with by the monitoring officer at the initial handling stage.

8.5 Finally, the Government made a number of technical changes to the regulations to address drafting errors or inconsistencies in the draft regulations that were identified by the consultation responses.

8.6 The full analysis of consultation responses is available on the Home Office website at <http://www.homeoffice.gov.uk/about-us/consultations/>.

9. Guidance

9.1 The Regulations allow the IPCC to issue guidance in relation to the operation of Parts 1, 2, 3 and 5, and the Secretary of State to issue guidance in relation to the operation of Part 4. This guidance is not essential to understanding how the Regulations will operate – it will provide practical advice to those involved in the handling of complaints and conduct matters. It is not yet complete, but will be issued before the coming into force of the Regulations.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The net impact on the public sector is minimal. The Act assumes that initially the new policing bodies will require a similar level of resources as is currently used to support police authorities, although the Government would expect the new bodies to demonstrate increasing value for money in their support functions and to seek to reduce these costs over time. The same assumption applies in relation to the handling of complaints against relevant office holders – currently police authorities have mechanisms in place for dealing with allegations of misconduct against their members in accordance with the local government standards regime, and it is not expected that the overall burden of the new regime on the new policing bodies and PCPs will be any greater. While it is possible that each relevant office holders may attract more complaints than each member of a police authority at present, there will of course be far fewer of them.

10.3 The Government expects the impact of the Regulations on other bodies including the Independent Police Complaints Commission to be limited and to be met from within existing budgets, through a reprioritisation of existing activities.

10.4 An Impact Assessment has not been prepared for this instrument. The impact of introducing a complaint system for the new policing bodies is covered by the impact assessment that was prepared for the Act, which is available at <http://www.homeoffice.gov.uk/publications/about-us/legislation/police-reform-bill/>.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Government intends to keep the working of these Regulations in the Metropolitan Police District under review before they are introduced for the rest of England and Wales in November 2012. The Government will also review the operation of the arrangements for the whole of England and Wales after 2 years.

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.