

**EXPLANATORY MEMORANDUM TO**  
**THE UK BORDER AGENCY (COMPLAINTS AND MISCONDUCT)**  
**REGULATIONS 2010**

**2010 No. 782**

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 These regulations provide for the Independent Police Complaints Commission (IPCC) to provide independent oversight of serious complaints and conduct matters (including incidents where a death or serious injury has taken place) that arise as a result of the UK Border Agency (“UKBA”) officers and contractors working on behalf of the UKBA exercising the functions of the Secretary of State in relation to immigration, asylum and customs.
- 2.2 The aim of the regulations is to provide for a system under which the IPCC will have oversight of UKBA officers and contractors carrying out immigration, asylum and customs functions.

3. **Matters of Special Interest to the Joint Committee on Statutory Instruments**

- 3.1 The regulations are made under section 41 of the Police and Justice Act 2006, as amended by section 30 of the Borders Citizenship and Immigration Act 2009 (“the 2009 Act”). The section 30 amendments gave the Secretary of State power to make regulations to give the IPCC oversight of certain persons who transferred from Her Majesty’s Revenue and Customs (“HMRC”) to the UKBA on 5<sup>th</sup> August 2009.
- 3.2 These regulations further extend IPCC oversight to UKBA contractors and seek to address the concerns of the Joint Committee on Statutory Instruments in relation to S.I. 2009/2033, which originally extended IPCC oversight of certain persons transferring to the Agency, as agreed in the memorandum from the Home Office on 30 October 2009.

4. **Legislative Context**

- 4.1 In 2009, Parliament legislated to secure the transfer of certain customs functions from HMRC to the Secretary of State. The 2009 Act provided the required powers to facilitate the transfer of these functions. Section 30 of that Act amends section 41 of

the Police and Justice Act 2006 to give the Secretary of State power to make regulations to enable the IPCC to continue to have oversight over HMRC personnel transferring from HMRC to UKBA. The IPCC currently has oversight over those persons and over immigration officers and officials of the Secretary of State exercising enforcement functions under the UK Border Agency (Complaints and Misconduct) Regulations 2009 (S.I. 2009/2033).

- 4.4 Section 30 of the 2009 Act further amends section 41 of the Police and Justice Act 2006 to give the Secretary of State power to make regulations to enable the IPCC to have oversight of contractors working on behalf of the UKBA exercising immigration, asylum, customs functions on behalf of the Secretary of State and customs revenue functions on behalf of the Director of Border Revenue.

## **5. Territorial Extent and Application**

- 5.1 This instrument applies to England and Wales.

## **6. European Convention on Human Rights**

- 6.1 The Parliamentary Minister of State for Borders and Immigration, Phil Woolas MP has made the following statement regarding 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 Historically whilst immigration officers and some officials of the Secretary of State had enforcement powers similar to those exercised by the police (for instance they were given the power of arrest in the Immigration Act 1971), they worked alongside and in tandem with police officers who would ordinarily take the lead in using those powers. In recent years however, working practices have changed and in response to this the Government decided that if such powers are to be exercised by immigration officers and officials routinely and independently of the police, levels of oversight similar to those in place for the police would be required.
- 7.2 The Department made S.I. 2008/212 to secure the IPCC's remit over serious complaints, and conduct matters relating to the use of specified enforcement functions by immigration officers and officials of the Secretary of State exercising immigration or asylum functions. Prior to making regulations under these powers the Government undertook a full public consultation on the details of the proposed oversight. The Independent Police Complaints Commission Oversight of Border and Immigration Agency Incidents and Complaints – Consultation Paper was published in July 2007. An Analysis of Responses and Policy Statement were subsequently published in February 2008 and laid in the Parliamentary libraries. The documents were also published on the UKBA website (<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/closedconsultations/ipccconsultation/>).

- 7.3 Similarly the Government acknowledged the need for oversight of HMRC's investigation into all cases of alleged serious misconduct in light of a recommendation from the Butterfield report of 2003. Lord Butterfield's review (published at [http://www.hm-treasury.gov.uk/butterfield03\\_report\\_index.htm](http://www.hm-treasury.gov.uk/butterfield03_report_index.htm)) followed the collapse of a number of high profile fraud and drug prosecution cases which led to HMRC staff being subject to allegations of serious professional misconduct.
- 7.4 As a result of this, HMRC made S.I. 2005/3311 to establish independent oversight of the exercise of powers by HMRC officers by the IPCC. In bringing forward this oversight, HMRC undertook consultation with the IPCC, Home Office, Association of Chief Police Officers, and Cabinet Office.
- 7.5 On 25 July 2007 the Prime Minister announced the Government's decision to integrate the vital work of the Border and Immigration Agency, Customs and UKvisas overseas and at the main points of entry to the UK and establish a unified border force. Subsequently the Government brought forward enabling legislation (the 2009 Act) to facilitate the transfer of staff and functions and to provide a power to maintain the IPCC's remit over all these functions in England and Wales.
- 7.6 Furthermore, the 2009 Act extended IPCC oversight to contractors working on behalf of UKBA exercising the functions of the Secretary of State in relation to immigration, asylum, customs and customs revenue functions.
- 7.7 The UK Border Agency (Complaints and Misconduct) Regulations 2009 (S.I. 2009/2033) provide a single, coherent scheme for IPCC oversight of UKBA personnel exercising immigration, asylum, customs and customs revenue functions.
- 7.8 However, the 2009 Regulations did not cover contractors as the Government wished to consult with associated contractors prior to bringing this measure forward.

- ***Consolidation***

- 7.9 These regulations revoke S.I. 2009/2033 and replace those regulations with a single, coherent scheme for IPCC oversight of UKBA immigration, asylum, customs and customs revenue functions carried out by UKBA officers and contractors.

## **8. Consultation outcome**

- 8.1 Section 7 above sets out details of previous consultation on the issue of introducing IPCC oversight over: (a) immigration and asylum matters; and (b) customs and revenue matters.
- 8.2 The Government's plans to create the UKBA were subjected to parliamentary scrutiny during the passage of the 2009 Act. In addition, Government officials have undertaken short focussed consultation on the minor changes these regulations bring with the IPCC and contract managers. A full public consultation is not deemed necessary as the consultation conducted in 2006 suggested support for these measures. However, the regulations ensure consistency in oversight regardless of whether UKBA activity is carried out by UKBA officers or contractors.

## **9. Guidance**

- 9.1 Internal UKBA guidance is being updated to reflect the IPCC's oversight over certain UKBA contractors in England and Wales.
- 9.2 Guidance for UKBA customers is not necessary as complaints from members of the public will be dealt with in the same way as before under the new arrangements. However, UKBA will update leaflets, its website and other information sources so that customers know that complaints regarding certain UKBA contractors exercising the functions of the Secretary of State in relation to immigration, asylum and customs and those exercising customs revenue functions can now be made to IPCC.

## **10. Impact**

- 10.1 There will be no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector is limited to the UKBA, the IPCC and the police. The regulations provide a power for the IPCC to require police forces to carry out investigations into UKBA complaints, conduct matters under its management or supervision, or at the request of UKBA. There has always been a role for the police under the 2008 Regulations.
- 10.3 An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

- 11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

- 12.1 These regulations should secure that the IPCC has the necessary powers to oversee the most serious complaints, and conduct matters relating to certain UKBA staff and contractors.
- 12.2 Officials from the UKBA and the IPCC regularly engage in dialogue and meet to discuss matters related to the IPCC's oversight. Periodically the Department will review discussions held regarding these regulations and will consider whether it would be advantageous to make any modifications.

## **13. Contact**

Claire Jones at the United Kingdom Border Agency (Tel: 0161 261 1106 or email: [Claire.jones13@homeoffice.gsi.gov.uk](mailto:Claire.jones13@homeoffice.gsi.gov.uk)) can answer any queries regarding the instrument.