

EXPLANATORY MEMORANDUM TO
THE INDEPENDENT POLICE COMPLAINTS COMMISSION (IMMIGRATION AND
ASYLUM ENFORCEMENT FUNCTIONS) REGULATIONS 2008

2008 No. 212

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

2. **Description**
 - 2.1 The purpose of these regulations is to confer functions on the Independent Police Complaints Commission (“IPCC”) in relation to immigration officers and officials of the Secretary of State exercising certain specified enforcement functions in relation to immigration and asylum.

 - 2.2 In consequence the IPCC will provide independent oversight of certain complaints and conduct matters (including incidents where a death or serious injury has taken place) as a result of immigration officers or officials of the Secretary of State exercising specified enforcement functions in relation to immigration and asylum:

 - 2.3 For the avoidance of doubt, these specified enforcement functions include their exercise in connection with any surveillance activity where authorisation has been granted for such activity under Part 2 of the Regulation of Investigatory Powers Act 2000.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None

4. **Legislative Background**
 - 4.1 The IPCC was established under Part 2 of the Police Reform Act 2002.

 - 4.2 Section 41 of the Police and Justice Act 2006 allows the Secretary of State to make regulations to give the IPCC oversight over immigration officers and officials of the Secretary of State exercising enforcement functions. These Regulations confer functions on the IPCC in relation to the exercise of specified enforcement functions by immigration officers and officials of the Secretary of State in relation to immigration or asylum. Those specified enforcement functions are:
 - (a) powers of entry;
 - (b) powers to search persons and property;

- (c) powers to seize or detain property;
- (d) powers to arrest persons;
- (e) powers to detain persons;
- (f) powers to examine persons or otherwise obtain information (including powers to take fingerprints or to acquire other personal data); and
- (g) powers in connection with the removal of persons from the United Kingdom.

The regulations make it clear that for the purposes of the IPCC's oversight the following are not considered enforcement functions:

- (i) an immigration decision within the meaning of section 82(2) of the Nationality, Immigration and Asylum Act 2002;
- (ii) any decision to grant or refuse asylum; or
- (iii) any direction to remove persons from the United Kingdom.

They provide for the provisions of Part 2 and Schedule 3 of the Police Reform Act 2002 (the "2002 Act"), and certain secondary legislation to apply with modifications.

- 4.3 Part 2 of the 2002 Act (as modified by Schedule 1 to these Regulations) confers on the IPCC functions of monitoring and securing the effectiveness of a scheme for recording, handling and investigating complaints about the conduct of immigration officers and officials of the Secretary of State exercising enforcement functions in relation to immigration or asylum. They also confer on the IPCC those functions in relation to conduct for which no complaint is made (conduct matters) and incidents of death or serious injury (DSI matters).
- 4.4 Schedule 3 to the 2002 Act (as modified by Schedule 2 to these Regulations) contains the scheme for handling complaints, conduct matters and DSI matters.
- 4.5 The Police (Complaints and Misconduct Regulations) 2004 and the Independent Police Complaints Commission (Staff Conduct) Regulations 2004 made under Part 2 of the 2002 Act are modified by Schedules 3 and 4 of the regulations. The Independent Police Complaints Commission (Investigatory Powers) Order 2004 is applied, and the Regulation of Investigatory Powers (Communications Data) Order 2003, in so far as it makes provision in respect of the IPCC, is also applied

5. Territorial Extent and Application

- 5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

The Minister of State for Borders and Immigration, Liam Byrne 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

- 7.1 Historically whilst immigration officers and some officials of the Secretary of State had police-like enforcement powers (for instance they were given the power of arrest in 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 from the police, levels of scrutiny similar to those in place for the police would be required.
- 7.2 The IPCC is a Non-Departmental Public Body, funded by the Home Office, but by law entirely independent of the police, interest groups and political parties and whose decisions on cases are free from government involvement. It currently oversees the whole of the police complaints system and fulfils a similar function for other non-police agencies such as the Single Organised Crime Agency (SOCA) and HM Revenue and Customs (HMRC).
- 7.3 The IPCC has agreed to take on responsibility for independent oversight of serious complaints and incidents arising where police-like enforcement powers have been (or in the case of them should have been used and were not) used by immigration officers and officials.
- 7.4 These regulations confer functions on the IPCC in relation to the exercise of specified enforcement functions by immigration officers and officials of the Secretary of State in relation to immigration and asylum in England and Wales.
- 7.5 Parallel but separate arrangements are being developed to ensure independent oversight is put in place for Scotland and Northern Ireland.

8. Impact

- 8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.
- 8.2 The impact on the public sector is limited to the Border and Immigration Agency, the IPCC and the Police. The regulations provide a power for the IPCC to require police forces to carry out investigations into Border and Immigration Agency complaints or incidents under its management or supervision. Based on historical data the number of complaints that will be referable to the IPCC is likely to be very low. In deciding how to administer an investigation the IPCC will have a number of options available to them, one of which is to require the police to undertake the investigation. In most cases the IPCC will undertake the investigation themselves or will manage or supervise an internal investigation.

9. Contact

Philip Turner at the Border and Immigration Agency Tel: 0161 261 1673 or e-mail: Philip.Turner27@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.

