

**EXPLANATORY MEMORANDUM TO  
THE POLICE (COMPLAINTS AND MISCONDUCT) (AMENDMENT)  
REGULATIONS 2008**

**2008 No. 2866**

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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 Police (Complaints and Misconduct) (Amendment) Regulations 2008 (the “Complaint Regulations”) and the Police (Amendment) Regulations 2008 form part of a group of 5 instruments establishing a new system for dealing with police disciplinary matters (the other instruments being the Police (Conduct) Regulations 2008, the Police (Performance) Regulations 2008 and the Police Appeals Tribunals Rules 2008). The Complaints Regulations link the new police officer disciplinary arrangements set out in the Police (Conduct) Regulations 2008 with the police complaints system established by the Police Reform Act 2002. The Police (Amendment) Regulations 2008 update the disciplinary and unsatisfactory performance outcomes that are required to be recorded on a police officer’s personal record and the time that such outcomes will remain on that record.

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

3.1 None

**4. Legislative Background**

4.1 The Complaint Regulations are made under sections 13, 23(1), 23(2)(g), 23(2)(r) and 105(4) of, and paragraphs 19B(7), 19B(10), 19C(2)(b), 19D(1), 19D(2), 22(7) and 29 of Schedule 3 to, the Police Reform Act 2002. Schedule 23 of the Criminal Justice and Immigration Act 2008 inserted both sections 23(2)(r) of, and paragraphs 19A to E and 29 of Schedule 3 to, the Police Reform Act 2002. The 2008 Act also amended paragraph 22(7) of Schedule 3 to the Police Reform Act 2002.

4.2 The Police (Amendment) Regulations are made under section 50 of the Police Act 1996 and amend regulation 15 of the Police Regulations 2003 (S.I. 2003/527) which sets out the matters that are to be recorded on a police officer’s personal record.

4.2 The Complaint Regulations will provide the link between the new misconduct procedures for police officers of all ranks and special constables, and the police complaints system that is governed by the provisions in Schedule 3 to the Police

Reform Act 2002 and the Police (Complaints and Misconduct) Regulations 2004, which they amend.

## **5. Extent**

5.1 These instruments apply to England and Wales.

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

6.1 As the instruments are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

## **7. Policy background**

7.1 The explanatory memorandum prepared for the Police (Conduct) Regulations 2008, Police (Performance) Regulations 2008 and Police Appeals Tribunals Rules 2008 (“the three affirmative SIs”) explains the reasons for the changes to the police disciplinary system. This memorandum therefore focuses on the reasons for these two sets of regulations which have been laid separately as they are subject to the negative resolution procedure.

7.2 Under the Police Reform Act 2002 the Independent Police Complaints Commission may become responsible for investigating a complaint about the conduct of a person serving with the police, a death or serious injury matter (defined in section 12 of the Police Reform Act 2002) or behaviour that would justify the bringing of disciplinary proceedings or a criminal prosecution, even if there is no complaint. Where such cases are referred to the Commission and they decide that it is necessary to investigate the complaint or matter, the procedures to be followed during the investigation are governed by the Police (Complaints and Misconduct) Regulations 2004 rather than the Police (Conduct) Regulations 2008.

7.3 The Complaint Regulations amend the Police (Complaints and Misconduct) Regulations 2004 to ensure that the provisions governing the investigation found in Part 3 of the Police (Conduct) Regulations 2008 are mirrored in respect of investigations under the 2004 Regulations which may result in disciplinary proceedings against the person concerned. In particular, the amendments to Schedule 3 to the Police Reform Act 2002 and Complaint Regulations provide:

- that a person under investigation must receive a written notice setting out the conduct under investigation, the investigator’s assessment of the severity of the conduct, if proved, and various other pieces of information such as the person’s right to legal representation;
- that a person under investigation may have a police friend and their role;
- that the person under investigation and his police friend can make representations to the investigator within 10 working days of receiving the written notice discussed in the first bullet point above;
- the procedure for the investigator to arrange an interview with the person concerned;
- details of what must be contained in the investigator’s report;
- details of who can be appointed as the investigator.

7.4 If an investigation report reveals evidence of misconduct and the matter is referred to misconduct proceedings or a special case hearing, the procedures will be governed by Parts 4 to 6 of the Police (Conduct) Regulations 2008 irrespective of whether the investigation took place under Schedule 3 to the Police Reform Act 2002 or under Part 3 of the Police (Conduct) Regulations 2008.

7.5 The Police (Amendment) Regulations 2008 amend the disciplinary and unsatisfactory performance outcomes which must be recorded on an officer's personnel record. This is necessary because the possible outcomes will be different under the Police (Conduct) Regulations 2008 and the Police (Performance) Regulations 2008 compared to the previous Regulations. For example, under the Police (Conduct) Regulations 2008 it will no longer be possible to be given a caution but a person may be given a written warning or final written warning.

### *Consultation*

7.6 The explanatory memorandum for the three affirmative SIs explains the lengthy consultation which has taken place on the new misconduct and unsatisfactory performance procedures. The Complaint Regulations and Police (Amendment) Regulations 2008 have similarly been unanimously approved by the Police Advisory Board for England and Wales (PABEW) at their meeting on 24<sup>th</sup> April 2008 following detailed consideration of the regulations by the PABEW's working party.

### *Guidance*

7.7 The Secretary of State may issue guidance under section 87 of the Police Act 1996 in so far as it relates to the discharge of functions by the Independent Police Complaints Commission, police authorities, chief officers of police and other police officers, special constables and police staff under the Performance and Conduct Regulations. The Home Office will be issuing guidance on all aspects of the new disciplinary procedures. This guidance will explain the link between the Police (Complaints and Misconduct) Regulations 2004 (as amended by the Complaint Regulations) and the Police (Conduct) Regulations 2008. It will also explain the information that must be recorded on an officer's record of service. In addition, the National Policing Improvement Agency has prepared training on the new procedures.

## **8. Impact**

8.1 An Impact Assessment has not been prepared for these instruments as they have no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is that there are potentially significant non cashable savings to be made by police forces and police authorities once these new procedures are fully implemented. Additionally, independent research conducted by a company called CRG research indicates that the new procedures have considerable scope to bring about improvement in police performance and public and police confidence by being quicker, fairer, more transparent and better value.

## **9. Contact**

9.1 Vic Marshall at the Home Office Tel: 020 7035 0846 or e-mail: [vic.marshall@homeoffice.gsi.gov.uk](mailto:vic.marshall@homeoffice.gsi.gov.uk) can answer any queries regarding these instruments.