EXPLANATORY MEMORANDUM TO

THE POLICE POWERS OF DESIGNATED CIVILIAN STAFF AND VOLUNTEERS (EXCLUDED POWERS AND DUTIES OF CONSTABLES) REGULATIONS 2018

2018 No. [XXXX]

1. Introduction

1.1 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 add the power to conduct an intimate search under section 55(6) of the Police and Criminal Evidence Act 1984 to the list of "excluded powers and duties of constables" specified in Part 1 of Schedule 3B to the Police Reform Act 2002.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 This entire instrument applies only to England and Wales.

3.3 The instrument applies only to England and Wales because it applies only to police forces in England and Wales since that is the extent of the relevant provisions in the enabling provisions (see sections 38 and 108 of the Police Reform Act 2002). The instrument does not have minor or consequential effects outside England and Wales.

3.4 In the view of the Department, for the purposes of House of Commons Standing Order 83P the subject-matter of this entire instrument would be within the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter and the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament.

3.5 The Department has reached this view because it considers that the primary purpose of the instrument relates to policing, which is (with some exceptions) within the devolved legislative competence of the devolved legislatures in Scotland and Northern Ireland: the primary purpose of the subject matter of the instrument is not within Schedule 5 to the Scotland Act 1998 and is not otherwise outside the legislative competence of the Scottish Parliament (see section 29 of that Act); the primary purpose of the subject matter of the instrument is not within Schedules 2 or 3 to the Northern Ireland Act 1998 and is not otherwise outside the legislative competence of the Northern Ireland Assembly (see section 6 of that Act).

4. Legislative Context

4.1 The Policing and Crime Act 2017 (the 2017 Act) amends section 38 of the Police Reform Act 2002 to enable civilians employed by police forces, or police volunteers, to be designated with additional police powers. Part 1 of Schedule 3B of the Police

Reform Act 2002 (the 2002 Act) sets out a list of powers that are reserved solely for use by constables, and cannot be used by civilians employed by police forces, or police volunteers. Included within that list are some of the most intrusive powers available to constables; however, it does not include the power of a constable to conduct an intimate search under section 55(6) of the Police and Criminal Evidence Act 1984. These Regulations insert the power to conduct an intimate search into the list of reserved powers in Part 1 of Schedule 3B, prohibiting chief officers from designating this power on their staff or volunteers.

4.2 A commitment was given in the Government's response to the consultation on reforming the powers of police staff and volunteers[1], and when the Policing and Crime Bill was debated in the House of Lords[2], that the list of excluded powers would include the power to conduct an intimate search when a medical professional is not available. Due to an oversight in the drafting of the legislation, this was not included in the Bill during its passage through Parliament. In order to give effect to the commitment to Parliament, these Regulations are made using the regulation-making power in Section 38(6C) of the 2002 Act, as inserted by section 38(4) of the 2017 Act, which enables the Secretary of State to add to the list of powers and duties specified in Part 1 of Schedule 3B. This is the first time that power has been used.

5. Extent and Territorial Application

5.1 The extent of this instrument is England and Wales.

5.2 The territorial application of this instrument is set out in Section 3 under "Other matters of interest to the House of Commons".

6. European Convention on Human Rights

6.1 The Minister of State for Police and the Fire Service (Nick Hurd MP) has made the following statement regarding Human Rights:

In my view the provisions of the Police Powers of Designated Civilian Staff and Volunteers (Excluded Powers and Duties of Constables) Regulations 2018 are compatible with the Convention rights.

7. Policy background

What is being done and why

7.1 The policy objective behind the reforms introduced by the 2017 Act is to enable chief officers to designate a wider range of powers on police staff and volunteers. However, the reforms recognise that there are certain powers, which, by their nature, should remain the preserve of police officers. The addition of the power to conduct an intimate search will ensure that the most intrusive powers remain available only to police officers, thus preserving the office of constable as central to the delivery of policing in England and Wales.

[1] https://www.gov.uk/government/consultations/reforming-the-powers-of-police-staff-and-volunteers
[2] Hansard, 26 October 2016, Column 291: https://hansard.parliament.uk/Lords/2016-10-26/debates/F28E5CE2-4725-4472-8011-FB59144C96A4/PolicingAndCrimeBill#contribution-CF373BE7-1A72-4B59-95C0-A08AC2027DB8

7.2 Whilst the number of intimate searches conducted by police staff (rather than constables) is very low (three times nationally in 15 years), this is a very intrusive power and Ministers committed in Parliament to restrict its use.

7.3 Forces could be requested not to designate police staff and volunteers with this power, however, there is a risk of non-compliance. Furthermore, given Ministerial commitments in Parliament, if the Regulations are not laid there is a risk that the Government could be criticised for acting in bad faith.

Consolidation

7.4 Not applicable.

8. Consultation outcome

8.1 When the Government consulted on the package of reforms to the powers of police staff and volunteers in October 2015, the majority of the responses (57%) agreed the list of core powers was correct. In its response, the Police Federation of England and Wales proposed that the power to conduct an intimate search of a person at a police station should be a core power of a police officer. Given the level of intrusion inherent in such a search, the Government accepted the proposal.

9. Guidance

9.1 The very low number of intimate searches that have been conducted by police staff (three times nationally in 15 years), suggests that this is not a power which police forces have routinely designated on police staff. As such, the Government does not consider it necessary to issue guidance to relevant stakeholders regarding the Regulations. We will ensure through the relevant National Policing Lead that the small number of forces that do use this power are aware of the change.

10. Impact

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

10.2 The impact on the public sector is minimal, given the number of intimate searches conducted by police staff is very low.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 The Government will keep under review the list of "excluded powers and duties," and will give careful consideration to any request to add powers to the list. It should be noted that the regulation-making power within section 38(6C) of the 2002 Act can only be used to add powers to the list (i.e. to remove further powers from being designated on staff or volunteers); primary legislation would be required to remove any powers from the list.

13. Contact

13.1 Andrew Alexander at the Home Office can answer any queries regarding the instrument. Telephone: 020 7035 0877 or email: andrew.alexander@homeoffice.gsi.gov.uk