EXPLANATORY MEMORANDUM TO

THE SPECIAL CONSTABLES (AMENDMENT) REGULATIONS 2015

2015 No. 461

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 This instrument amends the Special Constables Regulations 1965 ("the 1965 Regulations") as follows:

2.1.1 This instrument amends the 1965 Regulations to permit forces to take DNA samples from serving special constables and to check information derived from the sample (DNA profile) against samples or DNA profiles taken in accordance with the Police and Criminal Evidence Act 1984(a) or recovered from scenes of crime. The instrument allows a DNA profile to be retained for 12 months after the special constable to which it relates has ceased to serve as a special constable.

2.1.2 This instrument also amends the 1965 Regulations to enable local policing bodies for an area to approve local allowances schemes for special constables and make payments. It also removes the requirement to seek approval from the Secretary of State before payments can be made by local policing bodies to special constables. The instrument makes provision for transitional arrangements whereby any existing approvals by the Secretary of State will be treated as having been given by the local policing body once these regulations come into force.

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

3.1 None.

4. Legislative Context

4.1 The 1965 Regulations make provision about the terms and conditions of service of special constables in England and Wales. Regulation 1B of the 1965 Regulations is amended to make provision about what samples chief officers can take from special constables. The instrument amends regulation 1B of the 1965 Regulations in order to enable DNA samples to be taken from serving special constables, and not just from candidates for appointment and new recruits as was the case before these Regulations came into force. The samples are to be used for elimination purposes – in other words, for the purposes of establishing

that a sample recovered from a crime scene does not originate from a special constable dealing with the crime. This includes checking DNA profiles recovered from crime scene samples against the profiles of individual special constables, and also wholesale checking of the database of police officers' and special constables' profiles against the National DNA Database. Individual samples will be destroyed 12 months after the relevant special constable leaves a police force, except where they transfer to another force or become a police officer.

4.2 Regulation 4 of the 1965 regulations is amended to enable local policing bodies to approve matters in respect of which special constables may be paid allowances and where appropriate, to set out any relevant conditions the payment may be subject to.

4.3 Regulation 5A of the 1965 regulations is amended to remove the requirement for the approval of the Secretary of State before payments can be made by local policing bodies to special constables.

4.4 Regulation 6 of the instrument makes transitional provision with the effect that any approvals by the Secretary of State under regulation 4 of the 1965 Regulations, in force immediately before these Regulations come into force are treated as having been given by the local policing body for every police area immediately after the instrument come into force. The local policing body may amend or withdraw that approval at any time after the instrument comes into force.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 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 ***DNA elimination database***

7.1.1 This instrument amends the 1965 Regulations to help forces identify DNA contamination at crime scenes.

7.1.2 Currently special constables' DNA samples can be taken at the recruitment stage and checked on a case by case basis against samples or information derived from samples taken in accordance with the Police and Criminal Evidence Act 1984(a) or recovered from scenes of crime. Case by case testing is time

consuming, expensive and ineffective and therefore has been happening infrequently.

7.1.3 Permitting forces to take DNA samples from all serving special constables will improve their ability to identify DNA contamination. A DNA profile will be derived from the DNA sample, and the sample will then be destroyed. The DNA profile will be stored on the elimination database. When identified, profiles recovered as a result of contaminations can then be removed from the national DNA database and training provided to those involved to reduce the risk of further incidents.

7.1.4 Cases of contamination may not come to light for some time therefore it is necessary to retain DNA profiles which contain the information derived from DNA samples for 12 months after service as a special constable has ceased. After this period profiles will be destroyed.

7.2 ***Allowance schemes***

7.2.1 The number of people volunteering as special constables rose significantly by nearly 25% between 2000-2013 to over 19,000. The Government sought to consolidate and build on this achievement by continuing to support new and existing volunteers through a range of measures designed to ensure that special constables are recognised and not left out of pocket.

7.2.2 The Government set out its commitment to update the expenses and allowances guidance and processes to enable Police and Crime Commissioners to set their own local expense levels and allowances. A key part of this was the proposal to remove the need for Secretary of State approval for local allowances schemes to reduce bureaucracy and central control and increase flexibility for PCCs to develop their schemes in response to local circumstances.

- ***Consolidation***

7.3 This instrument makes limited amendments to the 1965 Regulations. This is not regarded as a suitable opportunity to consolidate these and other amendments that have been made to the 1965 Regulations.

8. Consultation outcome

8.1 The provision of the instrument which amends Regulation 1 has been approved by the College of Policing as required by section 51(2ZB) of the Police Act 1996.

8.2 The provisions in Regulations 4 and 5 of the instrument were subject to a public consultation in July 2013 which proposed updating the existing guidance on expenses and allowances rates and criteria which was issued in 2005-6 and removing the need for Secretary of State approval for local allowances schemes and devolving responsibility for approving and initiating allowance schemes to PCCs by amending the 1965 Regulations.

8.3 The Government published the response to the consultation in April 2014. A total of 325 responses were received of which 211 were from special constables. Following overwhelming support for new guidance and updated expenses and allowance rates and criteria, the Government published guidance in April 2014. There was also overwhelming support for the proposal to devolve decision-making on local allowance schemes to PCCs, with just a small number of respondents raising concerns that enabling local accountability and decision-making. The Government announced its intention to remove the requirement for the Secretary of State to approve local allowances schemes for special constables.

9. Guidance

9.1 In relation to the provisions of the instrument which relate to DNA samples, the regulations are intended to be self explanatory to the lay reader, and no guidance will be issued.

9.2 In regard to regulations 4, 5 and 6 concerning special constables, a Home Office Circular will be published to inform the police, PCCs and other practitioners when the instrument is in force.

10. Impact

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

10.2 There is a minimal impact on the public sector. Amendments to Regulation 1 enable the more efficient screening for DNA contamination of crime scenes which will help to identify false lines of inquiry and improve the prosecution's case in court. Amendments to regulations 4 and 5 will mean that PCCs will no longer have to seek approval from the Secretary of State to agree local allowance schemes. Devolving responsibility for this to PCCs will reduce bureaucracy and increase local flexibility to develop schemes that respond to local circumstances.

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 The 1965 Regulations make extensive provision about the terms and conditions of service of special constables in England and Wales, and the effective operation of the Regulations is the subject of ongoing attention by the Home Office.

12.2 The impact of the provisions on special constables' allowances schemes will be subject to ongoing review through the College of Policing National Policing Lead for the Special Constabulary.

13. Contact

13.1 The following officials at the Home Office will be able to answer queries regarding the instrument:

In relation to DNA samples:	Claire Curneen tel: 020 7035 3424 or claire.curneen1@homeoffice.gsi.gov.uk
In relation to allowance schemes:	Varsha Ratna tel: 020 7035 6174 or varsha.ratna@homeoffice.gsi.gov.uk