EXPLANATORY MEMORANDUM TO

THE SPECIAL CONSTABLES (MEMBERSHIP OF THE POLICE FEDERATION ETC.) (ENGLAND AND WALES) REGULATIONS 2022

2022 No. 505

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 This statutory instrument makes amendments to the Police Federation (England and Wales) Regulations 2017, the Police (Complaints and Misconduct) Regulations 2020, the Police (Performance) Regulations 2020 and the Police (Conduct) Regulations 2020 to enable special constables to join the Police Federation of England and Wales ("the Police Federation") and to enable the Police Federation to advise special constables in the same way that they do regular constables in proceedings that are covered under those Regulations.

2.2 This statutory instrument also amends the Police Regulations 2003 to enable special constables' attendance at certain meetings of the Federation to be treated as occasions of police duty.

2.3 This statutory instrument also amends the Special Constables Regulations 1965 to clarify that candidates can apply to the special constabulary at the age of 17. This will bring the age of application for special constables into line with the age of application for regular constables. The age of appointment will remain the same, at 18.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales only.

4.2 The territorial application of this instrument is England and Wales only.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 Special constables are not considered to be "members of police forces" in England and Wales, including for the purposes of the Police Federation (England and Wales) Regulations 2017, the Police (Complaints and Misconduct) Regulations 2020, the Police (Performance) Regulations 2020, the Police (Conduct) Regulations 2020 and the Police Regulations 2003. Policing legislation in England and Wales uses the wording "member of a police force" to mean members of the 43 territorial forces.

Having been subject to long standing separate regulation in England and Wales (since before 1965), the distinct nature of special constables is recognised in law with clearly defined benefits that result directly from this separate legal status.

6.2 Whilst they do not currently fall under the definition of "members of police forces," crucially, special constables are catered for in legislation in England and Wales as and where appropriate.

6.3 The Special Constable Regulations 1965 set out that an individual can only be considered as a candidate for appointment as a special constable once they have reached the age of 18. As a result, candidates are unable to apply to join the special constabulary unless they are 18 or older.

7. Policy background

What is being done and why?

7.1 Special constables make a vital contribution to keeping communities safe as voluntary police officers. They are increasingly fulfilling a range of specialised and frontline roles and, as a result, often face the same risks as regular officers whilst on duty. In addition, special constables hold the office of constable, which means they have the same powers as police officers.

7.2 Section 4 of the Police, Crime, Sentencing and Courts Act 2022 amended section 59 of the Police Act 1996 to enable special constables to become members of the Police Federation. The Police Federation is governed by regulations, listed in 7.4, which need to be amended following this change.

7.3 Many special constables have been clear that they would like to join the Police Federation to have greater access to support. The Police Federation has been clear that they would like to accept special constables as members, but, to date, this has not been possible due to the provisions of the Police Act 1996 which confine the membership of the Police Federation to members of a police force, that is regular constables.

7.4 This statutory instrument amends the Police Regulations 2003, the Police Federation (England and Wales) Regulations 2017, the Police (Complaints and Misconduct) Regulations 2020, the Police (Performance) Regulations and the Police (Conduct) Regulations 2020. Broadly, these amendments will allow special constables to join and be represented by the Police Federation and will enable their attendance at some Police Federation meetings to be treated as part of their police duties.

7.5 Although the Home Office currently provides free access to an insurance policy for special constables, which covers the cost of legal advice for disciplinary and misconduct proceedings, this does not cover all eventualities. Without these amendments in legislation, special constables will continue to be unable to access the same level of support and representation provided by the Police Federation, as regular officers. Given their voluntary sacrifice on a daily basis and that they are increasingly fulfilling front line and specialised roles where they are often exposed to similar risks as regular officers, it is important that they should be offered the opportunity to access the support currently offered to regular officers.

7.6 This statutory instrument also amends the Special Constables Regulations 1965 to allow people to apply to become a special constable when they are 17. This brings the age of application into line with the age at which a candidate can apply to become a regular constable, following the amendment of the Police Regulations 2003 in 2020.

The minimum age of appointment of a candidate to the special constabulary will remain the same, at 18.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

9.1 None.

10. Consultation outcome

10.1 This instrument has not been subject to public consultation.

10.2 The Home Office invited feedback from the Police Federation on this instrument on 12 January 2022. They responded on 17 February 2022, raising no issues. The representation of special constables by the Police Federation has also been discussed regularly in policy forums, which have included the National Police Chiefs' Council ("the NPCC") and other citizens in policing stakeholders, and attendees have had the opportunity to input their views throughout the development of the policy and instruments.

10.3 Representations from the Police Federation were taken into account when drafting this statutory instrument.

10.4 Policing stakeholders requested that the Home Office consider clarifying the age at which individuals could apply to join the special constabulary in light of changes to the age of application to become a regular constable. The Home Office consulted the NPCC to confirm that they were not aware of any contrary views.

11. Guidance

11.1 Home Office guidance is not required to support this change.

12. Impact

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

12.2 The impact on the public sector is minimal. Although there is a cost attached to membership of the Police Federation, this will be borne by police forces.

12.3 An Impact Assessment has not been prepared for this instrument because no impact on the private or voluntary sectors is foreseen.

13. Regulating small business

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

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that the Home Office will keep this instrument under review.

15. Contact

15.1 Zahra Torabi, Citizens in Policing Policy Lead at the Home Office, telephone: 07909890120 or email: zahra.torabi@homeoffice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Peter Spreadbury, Deputy Director for the Police Workforce and Professionalism Unit at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Rt Hon Kit Malthouse MP, Minister for Crime, Policing and Probation at the Home Office can confirm that this Explanatory Memorandum meets the required standard.