

Office of the Police & Crime Commissioner

REQUEST FOR POLICE & CRIME COMMISSIONER DECISION - (N° 020/2019)

TITLE: Procedure for Forfeiture of Police Pensions

Executive Summary: (Précis not more than 100 words)

The Police Pension Regulations 1987 (regulation K5), as amended by the Police Pension (Amendment) Regulations 2011, provide for forfeiture of police pensions in cases where either a particular specified offence has been committed or an offence has been committed in connection with the person's service as a member of the Constabulary which is certified by the Home Secretary to be particularly serious.

This procedure deals with both situations.

Recommendation:

The Commissioner is asked to:

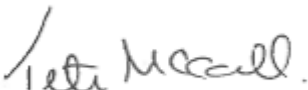
- Approve the procedure

Police & Crime Commissioner

I confirm that I have considered whether or not I have any personal or prejudicial in this matter and take the proposed decision in compliance with the Code of Conduct for Cumbria Police & Crime Commissioner. Any such interests are recorded below.

I hereby approve/~~do not approve~~ the recommendation(s) above

Police & Crime Commissioner / ~~Chief Executive~~ (delete as appropriate)



Signature:

Date: 10th June 2019

PART 1 – NON CONFIDENTIAL FACTS AND ADVICE TO THE PCC

1. Introduction & Background

The Police Pension Regulations 1987 (regulation K5), as amended by the Police Pension (Amendment) Regulations 2011, provide for forfeiture of police pensions in cases where either a particular specified offence has been committed or an offence has been committed in connection with the person's service as a member of the Constabulary which is certified by the Home Secretary to be particularly serious.

This procedure deals with both situations.

2. Issues for Consideration

The Police Federation and Superintendents Association have been consulted and are support of the procedure.

The Chief Constable has also been consulted and supportive of this approach giving clear definition of how the regulations should they be needed will be implemented.

3. Implications

(List and include views of all those consulted, whether they agree or disagree and why)

3.1. None at this time.

4. Legal Comments

4.1 The Director of Legal Services has been pivotal in the development of this procedure. The police pension regulations give a clear structured approach.

5. Risk Implications

5.1 None at this time. Probably more at risk by not having a procedure.

6. HR / Equality Comments

N/A

6.1

7. I.T. Comments

7.1 N/A

8. Procurement Comments

8.1 N/A

Public Access to Information

Information in this form is subject to the Freedom of Information Act 2000 (FOIA) and other legislation. Part 1 of this form will be made available on the PCC website within 3 working days of approval. Any facts/advice/recommendations that should not be made automatically available on request should not be included in Part 1 but instead on the separate Part 2 form. Deferment is only applicable where release before that date would not compromise the implementation of the decision being approved.

Is the publication of this form to be deferred? YES / NO

If yes, for what reason:

Until what date (if known):

Is there a **Part 2** form - NO

(If Yes, please ensure Part 2 form is completed prior to submission)

ORIGINATING OFFICER DECLARATION:

I confirm that this report has been considered by the Chief Officer Group and that relevant financial, legal and equalities advice has been taken into account in the preparation of this report.

Signed:

Date:

OFFICER APPROVAL

Chief Executive / ~~Deputy Chief Executive~~ (delete as appropriate)

I have been consulted about the proposal and confirm that financial, legal and equalities advice has been taken into account in the preparation of this report. I am satisfied that this is an appropriate request to be submitted to the Police and Crime Commissioner / Chief Executive (delete as appropriate).

Signature: G. Shearer

Date: 10th June 2019

Media Strategy

The decision taken by the Police & Crime Commissioner may require a press announcement or media strategy.

Will a press release be required following the decision being considered? NO

If yes, has a media strategy been formulated? NO

Is the media strategy attached? NO

What is the proposed date of the press release:

STATUTORY INSTRUMENTS

2011 No. 3063

**POLICE, ENGLAND AND WALES
PENSIONS, ENGLAND AND WALES**

The Police Pensions (Amendment) Regulations 2011

Made - - - - 20th December 2011
Laid before Parliament 23rd December 2011
Coming into force - - 16th January 2012

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 1 and 8A of the Police Pensions Act 1976⁽¹⁾.

In accordance with section 1(1) of that Act, the Treasury⁽²⁾ have consented to the making of these Regulations and the Secretary of State has consulted with the Police Negotiating Board for the United Kingdom⁽³⁾.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Police Pensions (Amendment) Regulations 2011 and come into force on 16th January 2012.

(2) These Regulations extend to England and Wales.

Amendments to Regulations

2. The Regulations listed in the Schedule are amended as follows.

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- (1) 1976 c. 35. Relevant extensions to the powers conferred by section 1 are in sections 1, 4, 6 and 7 of the Police Pensions Act 1976. Section 1 was amended by section 2(3) of the Police Negotiating Board Act 1980 (c. 10), paragraph 28 of Schedule 7 to the Police Act 1996 (c. 16), section 1(1) of the Police and Firemen's Pensions Act 1997 (c. 52) and prospectively by paragraph 129 of Schedule 16 to the Police Reform and Social Responsibility Act 2011 (c. 13); section 7 was amended by paragraph 19 of Part II of Schedule 5 to the Police and Magistrates' Courts Act 1994 (c. 29), paragraph 29 of Schedule 7 to the Police Act 1996, section 1(2) of the Police and Firemen's Pensions Act 1997, section 78(2)(f) of the Police (Northern Ireland) Act 2000 (c. 32), section 126(1) of and paragraph 6(1) and (2) of Schedule 4 to the Criminal Justice and Police Act 2001 (c. 16), paragraph 6(1) of Schedule 3 to the International Development Act 2002 (c. 1), paragraph 30 of Schedule 4 to the Serious Organised Crime and Police Act 2005 (c. 15), paragraph 58 of Part 7 of Schedule 1 and Part 1(A) of Schedule 15 to the Police and Justice Act 2006 (c. 48), paragraph 11(2) of Part 2 of Schedule 9 to the Safeguarding Vulnerable Groups Act 2006 (c. 47) and paragraph 2(2) of Part 1 of the Schedule to S.I. 2007/1098. Section 8A was inserted by section 2 the Police and Firemen's Pensions Act 1997 and amended by article 109 of S.I. 2001/3649 and prospectively by paragraph 131 of Schedule 16 to the Police Reform and Social Responsibility Act 2011.
- (2) Formerly the Minister for the Civil Service: see S.I. 1981/1670.
- (3) See section 61 of the Police Act 1996 c. 16.

3. Subject to the following provisions of these Regulations, for “police authority”, in each place in the Regulations listed in the Schedule where those words appear, substitute “police pension authority”.

4. Regulation 3 does not apply to any instance where the words “police authority” are followed by the words “for Northern Ireland”.

5.—(1) The Police Pensions Regulations 1987(4) are further amended as follows.

(2) In regulation A6 (meaning of certain expressions in relation to persons who are not members of a home police force)—

(a) in paragraph (5), for “police authority” substitute “police authority or pension supervising authority”;

(b) in paragraph (5B)(b), for “police authority” substitute “police authority or pension supervising authority”;

(3) In regulation A16 (transfers)—

(a) in sub-paragraph (a)(ii), for “police authority of” substitute “pension supervising authority for”;

(b) in sub-paragraph (b), for “police authority” (in the second place) substitute “pension supervising authority”.

(4) For regulation A18(2) (compulsory retirement on grounds of age) substitute—

“(2) The time at which, under paragraph (1), a person shall be required to retire may be postponed—

(a) if the person concerned holds the rank of chief constable or Commissioner of Police of the Metropolis, by the pension supervising authority;

(b) if the person concerned holds any other rank in a police force maintained under section 2 of the Police Act 1996 or the metropolitan police force, or a rank above that of superintendent in the City of London police force, by the police pension authority; and

(c) if the person holds the rank of superintendent or any lower rank in the City of London police force, by the Commissioner of Police for the City of London.”.

(5) After regulation A21 (effective date of retirement) insert—

“Chief officers of home police forces in England and Wales (other than the City of London police force)

A22.—(1) This regulation applies to any provision of these Regulations which confers a power on a police pension authority which is to be exercised in the authority’s discretion, or which requires the authority to make a determination, form an opinion or otherwise make a decision.

(2) In its application to a regular policeman who is—

(a) chief constable of a police force maintained under section 2 of the Police Act 1996; or

(b) the Commissioner of Police of the Metropolis,

a provision to which this regulation applies shall have effect as if it conferred the power in question on the pension supervising authority rather than the police pension authority, and any reference to the police pension authority shall be construed accordingly.”.

(4) S.I. 1987/257, as amended by S.I. 1988/1339, S.I. 1990/805, S.I. 1996/867, S.I. 2000/1549, S.I. 2001/3888, S.I. 2002/3202, S.I. 1998/577, S.I. 2003/27, S.I. 2003/535, S.I. 2004/1491, S.I. 2004/2354, S.I. 2006/740, S.I. 2006/932, S.I. 2007/1932, S.I. 2008/1887, S.I. 2009/2060 and S.I. 2010/431.

- (6) In regulation K5 (forfeiture of pension)—
- (a) in paragraph (2), for “a police authority responsible for payment of” substitute “the pension supervising authority in respect of”;
 - (b) in paragraph (4), for “a police authority responsible for payment to a member of a police force of” substitute “the pension supervising authority in respect of”;
 - (c) in paragraph (5), for “police authority” substitute “pension supervising authority”.

(7) In regulation H5 (appeal by a member of a home police force), in paragraph (1), for “police authority” (in the third place) substitute “pension supervising authority”.

(8) In regulation H6 (appeal by overseas policeman, inspector of constabulary or central police officer), in paragraph (2), for “police authority” (in the third place) substitute “pension supervising authority”.

- (9) In Schedule A (glossary of expressions)—
- (a) after the definition of “pension sharing order or provision” insert—
 - ““pension supervising authority” has the meaning given by section 11(2) and (2A) of the Act;”;
 - (b) omit the definition of “police authority”;
 - (c) after the definition of “police force” insert—
 - ““police pension authority” has the meaning given by section 11(2) and (2A) of the Act;”.

6.—(1) The Police Pensions Regulations 2006⁽⁵⁾ are further amended as follows.

(2) In regulation 3 (meaning of certain expressions in relation to persons who are not members of a home police force)—

- (a) in paragraph (2), for “police authority” substitute “police pension authority or pension supervising authority”;
- (b) in paragraph (3)(a), for “police authority” substitute “police pension authority or pension supervising authority”;
- (c) in paragraph (4)(a), for “police authority” substitute “police pension authority or pension supervising authority”;

(3) In regulation 5 (transfers)—

- (a) in sub-paragraph (a)(ii), for “police authority of” substitute “pension supervising authority for”;
- (b) in sub-paragraph (d)(ii), for “police authority of” substitute “pension supervising authority for”.

(4) After regulation 5 insert—

“Chief officers of home police forces in England and Wales (other than the City of London police force)

5A.—(1) This regulation applies to any provision of these regulations which confers a power on a police pension authority which is to be exercised in the authority’s discretion, or which requires the authority to make a determination, form an opinion or otherwise make a decision.

(2) In its application to a regular policeman who is—

(5) [S.I. 2006/3415](#), as amended by [S.I. 2007/1932](#), [S.I. 2008/1887](#), [S.I. 2009/2060](#) and [S.I. 2010/431](#).

- (a) chief constable of a police force maintained under section 2 of the Police Act 1996; or
 - (b) the Commissioner of Police of the Metropolis,
- a provision to which this regulation applies shall have effect as if it conferred the power in question on the pension supervising authority rather than the police pension authority, and any reference to the police pension authority shall be construed accordingly.”.
- (5) For regulation 19(3) (compulsory retirement on account of age) substitute—
- “(3) The time at which, under paragraph (2), a person shall be required to retire may be postponed—
- (a) if the person concerned holds the rank of chief constable or Commissioner of Police of the Metropolis, by the pension supervising authority;
 - (b) if the person concerned holds any other rank in a police force maintained under section 2 of the Police Act 1996 or the metropolitan police force, or a rank above that of superintendent in the City of London police force, by the police pension authority; and
 - (c) if the person holds the rank of superintendent or any lower rank in the City of London police force, by the Commissioner of Police for the City of London.”.
- (6) In regulation 55 (forfeiture of pension)—
- (a) in paragraph (2), for “A police authority responsible for payment of” substitute “The pension supervising authority in respect of”;
 - (b) in paragraph (4), for “A police authority responsible for payment to a regular police officer of” substitute “The pension supervising authority in respect of”; and
 - (c) in paragraph (5), for “police authority” substitute “pension supervising authority”.
- (7) In regulation 66 (appeal by a member of a home police force), in paragraph (d), for “police authority” substitute “pension supervising authority”.
- (8) In regulation 67 (appeal by inspector of constabulary or officer engaged on relevant service), in paragraph (2)(d), for “police authority” substitute “pension supervising authority”.
- (9) In Schedule 1 (glossary of expressions)—
- (a) after the definition of “pension sharing order” insert—
 - ““pension supervising authority” has the meaning given to it by section 11(2) and (2A) of the Police Pensions Act 1976;”;
 - (b) omit the definition of “police authority”;
 - (c) after the definition of “police fund” insert—
 - ““police pension authority” has the meaning given to it by section 11(2) and (2A) of the Police Pensions Act 1976;”.
- 7.—(1) The Police (Injury Benefits) Regulations 2006(6) are further amended as follows.
- (2) In regulation 3 (meaning of certain expressions in relation to persons who are not members of a home police force)—
- (a) in paragraph (2), for “police authority” substitute “police pension authority or pension supervising authority”;
 - (b) in paragraph (4)(b), for “police authority” substitute “police pension authority or pension supervising authority”;

(c) in paragraph (6)(b), for “police authority” substitute “police pension authority or pension supervising authority”.

(3) After regulation 8 (disablement, death or treatment in hospital the result of an injury) insert—

“Chief officers of home police forces in England and Wales (other than the City of London police force)

8A.—(1) This regulation applies to any provision of these Regulations which confers a power on a police pension authority which is to be exercised in the authority’s discretion, or which requires the authority to make a determination, form an opinion or otherwise make a decision.

(2) In its application to a regular policeman who is—

- (a) chief constable of a police force maintained under section 2 of the Police Act 1996; or
- (b) the Commissioner of Police of the Metropolis,

a provision to which this regulation applies shall have effect as if it conferred the power in question on the pension supervising authority rather than the police pension authority, and any reference to the police pension authority shall be construed accordingly.”;

(4) In regulation 34 (appeal by a member of a home police force), for “police authority” (in the third place) substitute “pension supervising authority”.

(5) In regulation 35 (appeal by inspector of constabulary or police officer engaged on relevant service and any other overseas policeman), in paragraph (2), for “police authority” (in the third place) substitute “pension supervising authority”.

(6) In regulation 40 (forfeiture)—

- (a) in paragraph (2), for “A police authority responsible for payment of” substitute “The pension supervising authority in respect of”;
- (b) in paragraph (4), for “A police authority responsible for payment to a member of a police force of” substitute “The pension supervising authority in respect of”; and
- (c) in paragraph (4A), for “police authority” substitute “pension supervising authority”.

(7) In regulation 42(1) at the end insert “and for the purposes of this paragraph “police fund” has the same meaning as in those Regulations”.

8.—(1) The Police Pension Fund Regulations 2007(7) are further amended as follows.

(2) In regulation 2—

- (a) omit the definition of “police authority”;
- (b) for the definition of “police fund” substitute—

““police fund” means—

- (a) in relation to a police force maintained under section 2 of the Police Act 1996, the sums provided to the Chief Officer of Police by the elected local policing body to pay police pensions;
- (b) in relation to the City of London police force, the fund out of which the expenses of that force are paid;
- (c) in relation to the Secretary of State—
 - (i) in the case of transfers from, or awards or sums payable out of, the police fund, moneys provided by Parliament, and

- (ii) in the case of transfers into the police fund, the Consolidated Fund;
- (d) in relation to SOCA, the account established and maintained by SOCA and known as the income and expenditure account; and
- (e) in relation to NPIA, the account established and maintained by NPIA and known as the income and expenditure account;

“police pension authority” has the meaning given by section 11(2) and (2A) of the Police Pensions Act 1976;”.

(3) Omit regulations 12(2) and (3), 12A(2) and 12B(2).

Transitional and transitory provision

9.—(1) Anything done, or treated as done, by or in relation to a police authority in pursuance of a relevant function before these Regulations come into force has effect as if it was done by or in relation to the police pension authority or pension supervising authority which assumes that function by virtue of these Regulations.

(2) In paragraph (1) “relevant function” means any function of a police authority under the Regulations listed in the Schedule.

10. Until the coming into force of section 1 of the Police Reform and Social Responsibility Act 2011(8), regulation 8(2)(b) is modified so that sub-paragraph (a) of the substituted definition of “police fund” reads—

- “(a) in relation to the metropolitan police force, the funds provided to the Commissioner of Police of the Metropolis by the Mayor’s Office for Policing and Crime to pay police pensions, and in relation to any other police force maintained under section 2 of the 1996 Act, the fund kept by that force’s police authority under section 14 of the 1996 Act;”.

Home Office
20th December 2011

Nick Herbert
Minister of State

We consent

20th December 2011

Michael Fabricant
Brooks Newmark
Two of the Lords Commissioners of Her
Majesty’s Treasury

SCHEDULE

Regulation 2

The following Regulations are listed for the purposes of regulation 2—

- (a) the Police Pensions (War Service) Regulations 1979**(9)**;
- (b) the Police Pensions (War Service) (Transferees) Regulations 1985**(10)**;
- (c) the Police Pensions Regulations 1987;
- (d) the Police Pensions (Purchase of Increased Benefits) Regulations 1987**(11)**;
- (e) the Police Pensions (Additional Voluntary Contributions) Regulations 1991**(12)**;
- (f) the Police Pensions (Provision of Information) Regulations 1997**(13)**;
- (g) the Police Pensions (Part-time Service) Regulations 2005**(14)**;
- (h) the Police (Injury Benefits) Regulations 2006;
- (i) the Police Pensions Regulations 2006;
- (j) the Police Pension Fund Regulations 2007.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to the Regulations listed in the Schedule (“the listed Regulations”) in consequence of changes made by the Police Reform and Social Responsibility Act 2011 (“the 2011 Act”) to policing governance in England and Wales.

The listed Regulations make provision for the funding and administration of schemes for the payment of pensions and injury benefits to police officers. They confer powers and impose duties on police authorities in that regard. In practice, those powers and duties are exercised or carried out in large measure by police staff employed by the police authority but under the direction and control of the Chief Officer of Police.

Sections 1 and 3 of the 2011 Act abolish police authorities in England and Wales, with the exception of the Common Council of the City of London, replacing them with police and crime commissioners and, in the metropolitan police district, the Mayor’s Office for Policing and Crime. Police and crime commissioners and the Mayor’s Office for Policing and Crime are known collectively as “elected local policing bodies” (see sections 96(2) and 102(1) of the 2011 Act).

Section 4(1) of, and paragraph 2 of Schedule 2 to, the 2011 Act establish the Commissioner of Police of the Metropolis (“the CPM”) and chief constables of police forces in England and Wales as corporations sole with the capacity to employ staff and hold funds in their own right. Sections 18 and 19 of the 2011 Act prohibit an elected local policing body from arranging for any constable (including a chief constable or the CPM) or a member of the staff of a constable from exercising the body’s functions. The Act envisages that police staff previously employed by police authorities

(9) S.I. 1979/1259, as amended by S.I. 1987/256.

(10) S.I. 1985/2029, as amended by S.I. 1987/256 and S.I. 1987/1907.

(11) S.I. 1987/2215, as amended by S.I. 2002/3202, S.I. 2005/1439 and S.I. 2008/1887.

(12) S.I. 1991/1304, as amended by S.I. 2002/3202, S.I. 2003/27, S.I. 2003/2717, S.I. 2006/740 and S.I. 2010/2235.

(13) S.I. 1997/1912.

(14) S.I. 2005/1439.

but under the direction and control of the chief constable or the CPM will now be employed by the chief constable or the CPM.

The 2011 Act amends the Police Pensions Act 1976 (“the 1976 Act”) to reflect these changes (see paragraphs 128 to 133 of Schedule 16 to the 2011 Act). References to a police authority in the 1976 Act are replaced with references to a “police pension authority”, which is defined for the purposes of England and Wales as the chief constable, the CPM or, in relation to the City of London, the Common Council (see paragraph 132(3) of Schedule 16 to the 2011 Act). The intention is that, in relation to police forces in England and Wales other than the City of London Police, the chief constable or the CPM and his staff will be responsible for the funding and administration of police pension schemes and will exercise functions previously exercised by the police authority. The amendments made to the listed Regulations by these Regulations reflect this intention.

Regulation 3 has the effect that, except as otherwise provided for in these Regulations, references to the police authority in the listed Regulations are replaced with references to the police pension authority. Regulation 4 makes an exception to this rule in the case of references to the police authority for Northern Ireland.

Regulations 5(5), 6(4) and 7(3) insert provision into those listed Regulations which establish the police pension and injury benefit schemes (namely the Police Pensions Regulations 1987, the Police Pensions Regulations 2006 and the Police (Injury Benefit) Regulations 2006) making particular provision for the pension of a chief constable or the CPM. The effect is that any power in those Regulations which involves the exercise of a discretion is exercised by the pension supervising authority (namely the elected local policing body: see paragraph 132(3) of Schedule 16 to the 2011 Act) rather than by the police pension authority. Thus the chief constable or the CPM will not take decisions (either personally or through his staff) in relation to his own pension.

Regulations 5(6), 6(6) and 7(6) have the effect that powers in relation to the forfeiture of any police pension are conferred on the pension supervising authority rather than the police pension authority, it being thought more appropriate that these powers should rest with the body responsible for maintaining the police force.

Regulations 7(7) and 8 amend provisions in the listed Regulations concerning the funding of police pensions, to reflect the fact that, in police forces maintained by an elected local policing body, the police pension fund will be controlled by the chief constable or the CPM, using monies provided by the elected local policing body.

The provisions of the 2011 Act making changes to policing governance arrangements in the metropolitan police district, including sections 3 and 4(1), will come into force on the same day as these Regulations, namely 16th January 2012. The provisions of the 2011 Act making changes in relation to police areas outside London will be brought into force on 22nd November 2012, on which date the first police and crime commissioners will take office. The provisions amending the 1976 Act will come into force on 16th January 2012, but the commencement order will contain transitory provision modifying the definition of “police pension authority” so that it includes a police authority, until section 1 of the 2011 Act comes into force. The effect will be that police authorities for police areas outside London will continue to exercise their police pensions functions until they are replaced by police and crime commissioners, at which point the functions will pass to the chief constable.

Regulation 9 secures the continuing validity of anything done by or in relation to a police authority under the listed Regulations.

Regulation 10 secures that, in the period before section 1 of the 2011 Act comes into force, references to the police fund in the listed Regulations continue to refer to the fund kept by the police authority in police areas outside London.