

**EXPLANATORY MEMORANDUM TO  
THE POLICE (AMENDMENT) REGULATIONS 2015**

**2015 No. 455**

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 instrument makes various amendments to the Police Regulations 2003 (“the 2003 Regulations”), as follows:
    - 2.1.1 This instrument amends the 2003 Regulations to permit forces to take DNA samples from serving officers 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 police officer to which it relates has ceased to serve as an officer.
    - 2.1.2 It also amends the 2003 Regulations to:
      - 2.1.2.1 allow the Secretary of State to determine the circumstances in which a member of a police force may be placed on limited duties;
      - 2.1.2.2 define limited duties as recuperative duties, adjusted duties and management restricted duties; and
      - 2.1.2.3 allow the Secretary of State to determine the entitlement to pay of a member placed on adjusted duties.
    - 2.1.3 Finally, it amends the 2003 Regulations to update the requirements for consultation concerning proposed determinations in the light of the changes made by the Anti- social Behaviour, Crime and Policing Act 2014, including the abolition of the Police Negotiating Board.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 None.
4. **Legislative Context**
  - 4.1 The 2003 Regulations make provision about the terms and conditions of service of police officers in England and Wales.
  - 4.2 Regulation 19 of the 2003 Regulations makes provision about what samples chief officers can take from police officers. Regulation 3 of the instrument amends regulation 19 of the 2003 Regulations in order to require DNA samples to be taken from serving police officers, 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 police officer dealing with the crime. This includes checking DNA profiles recovered from crime scene samples against the profiles of individual police officers, and also wholesale checking of the database of police officers' profiles against the National DNA Database. Individual samples will be destroyed 12 months after the relevant officer leaves a police force, except where they transfer to another force.

4.3 Regulation 22 provides that the Secretary of State may determine periods of duty for police officers and confers on chief officers of police discretion to fix times and determine conditions around such periods of duty. Regulation 4 of the instrument amends regulation 22 of the 2003 Regulations by inserting a new provision to allow the Secretary of State to determine the circumstances in which a member of a police force may be placed on limited duties, and defines limited duties as recuperative duties, adjusted duties and management restricted duties. Regulation 5 of the instrument inserts a new regulation 28A into the 2003 Regulations to require the Secretary of State to determine the entitlement to pay of a member placed on adjusted duties.

4.4 Regulation 46 of the 2003 regulations makes provision for making and consulting on determinations under the 2003 Regulations. Regulation 6 of the instrument amends regulation 46 in order to update it in the light of the changes made by the Anti-social Behaviour, Crime and Policing Act 2014, including the abolition of the Police Negotiating Board. The requirements for consultation concerning proposed determinations will now broadly mirror the new consultation requirements relating to the making of regulations under section 50 of the Police Act 1996.

## 5. **Territorial Extent and Application**

5.1 The instrument applies in 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**

### 7.1 *DNA elimination database*

7.1.1 This instrument amends the 2003 Regulations to help forces identify DNA contamination at crime scenes.

7.1.2 Currently police officer's 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 officers will improve their ability to identify DNA contamination. A DNA profile will be derived from the DNA sample which will then be destroyed.

The DNA profile will be stored on the elimination database and checked against unidentified profiles on the national DNA database. When identified, profiles recovered as a result of contamination 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 an individual's service as a police officer has ceased. After this period profiles will be destroyed.

## 7.2 *Limited Duties*

- 7.2.1 In the past, officers who are not fully deployable for medical reasons were categorised as being on 'restricted duty'. This definition encompassed a wide variety of officers, and it was often the case that no real distinction was drawn between those awaiting the outcome of misconduct investigations, officers who were not fully deployable on a short term basis or who were recuperating and those who needed to have long term restrictions on their deployment.

- 7.2.2 The new definitions in regulation 22, which will be supported by detailed determinations and joint national guidance, have been introduced with a view to:

- modernising workforce management practices;
- making the process fairer for officers and staff;
- enabling forces to better determine what resources they have available at any one time to meet operational demand; and
- enabling forces to improve resilience by deploying officers in a more efficient way.

- 7.2.3 If an officer is not fully deployable after a period of recuperation on full pay they may be placed on adjusted duties. After a year on adjusted duties, officers will be reassessed and if they are not fully deployable, they may be retained at a reduced rate of pay to reflect that. This is at the discretion of the chief constable, and is provided for by the new regulation 28A. The detail of the criteria and process for determining whether a pay deduction is appropriate in a particular case, and the amount of the deduction, will be set out in supporting determinations.

## 7.3 *Consultation on proposed determinations*

- 7.3.1 See paragraph 4.4 above for an explanation of the policy background to this provision in the instrument.

## 7.4 *Consolidation*

- 7.4.1 These regulations make limited amendments to the 2003 Regulations. This is not regarded as a suitable opportunity to consolidate these and other amendments that have been made to the 2003 Regulations.

## **8. Consultation outcome**

- 8.1 The provisions of the instrument which amend Regulation 19 have been approved by the College of Policing as required by section 50(2ZC) of the Police Act 1996.
- 8.2 The provisions of the instrument which amend regulation 22 and insert regulation 28A have been the subject of consultation, in accordance with section 52A(6) of that Act, with the following bodies: the Police Federation of England and Wales; the Police Superintendents Association of England and Wales; the Association of Police and Crime Commissioners; representatives of chief constables; and the Disabled Police Association. The Secretary of State has taken into consideration representations made by those bodies during policy development. No further representations were made by those bodies at formal consultation stage.
- 8.3 The provisions of the instrument which amend regulation 22 and insert regulation 28A, and which amend regulation 46, have been the subject of consultation, in accordance with section 63(3) of that Act, with the Police Advisory Board for England and Wales . The Secretary of State has taken into consideration representations made by the Board

## **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 The Home Office will not issue guidance on the provisions of the instrument which relate to Limited Duties but supporting determinations will be published to provide detail of the principles and processes which forces must adopt in making any associated pay adjustments. In addition, detailed national guidance for forces has been developed with members of the Police Advisory Board and will be issued by chief constables in support of determinations.

## **10. Impact**

- 10.1 The instrument does not have any impact on business, charities or voluntary bodies.
- 10.2 There is a minimal impact on the public sector. Amendments to Regulation 19 enable the more efficient screening for DNA contamination of crime scenes which will help to identify down false lines of inquiry and improve the prosecution's case in court. Limited duties provisions will help police forces improve their ability to maintain operational resilience and to meet demand through more efficient resource planning and management.
- 10.3 An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

- 11.1 The legislation does not create new regulatory burdens for small business.

## 12. **Monitoring & review**

12.1 The 2003 Regulations make extensive provision about the terms and conditions of service of police officers in England and Wales, and the effective operation of the Regulations is the subject of ongoing monitoring and review by the Home Office.

12.2 In addition, the Police Advisory Board will monitor the impact of Limited Duties measures on police officers on an ongoing basis, excluding pay matters which will be included as part of the evidence requirement for the Police Remuneration Review Body.

## 13. **Contact**

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

In relation to Limited Duties and Consultation on Proposed Determinations:

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