

EXPLANATORY MEMORANDUM TO
THE POLICE PENSIONS (AMENDMENT NO. 3) REGULATIONS 2012

2012 No. 3057

AND

THE POLICE (AMENDMENT NO. 5) REGULATIONS 2012

2012 No. 3058

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 A single explanatory memorandum has been prepared in relation to both instruments because they are linked. The instruments implement a recommendation of the Independent Review of Police Officer and Staff Remuneration and Conditions (“the Winsor Review”) that provision be made for a voluntary redundancy scheme for police officers. Separately, the Police Pensions (Amendment No. 3) Regulations 2012 also include provisions necessary to allow the implementation, in relation to police officers, of the automatic enrolment provisions of the Pensions Act 2008.

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

3.1 None.

4. Legislative Context

4.1 Under section 50 of the Police Act 1996 the Secretary of State has the power to make regulations as to the government, administration and conditions of service of police officers. The Police Regulations 2003, made under this power, give the Secretary of State the power to determine various matters in relation to terms and conditions of service – see for example regulation 14 which allows the Home Secretary to determine the circumstances in which police officers may retire. The Home Secretary’s determinations are subject to the same consultation requirements as the regulations themselves (see regulation 46 of the Police Regulations 2003) and are promulgated by Home Office Circulars published on the Home Office website. There is currently no provision for the making of discretionary payments to police officers on voluntary retirement.

4.2 Under section 1 of the Police Pensions Act 1976, the Home Secretary has the power to make regulations in relation to pensions for police officers in England and Wales. Two pension schemes have been created using

regulations made under section 1. The “old” police pension scheme is governed by the Police Pensions Regulations 1987 (“the 1987 Regulations”), and the “new” police pension scheme by the Police Pensions Regulations 2006 (“the 2006 Regulations”). On the coming into force of the 2006 Regulations, members of the old scheme were given the opportunity to transfer to the new one, and the old scheme was effectively closed to new members, with recruits to the police service being given the opportunity to join the new scheme only.

4.3 Sections 3 to 8 of the Pensions Act 2008 require every employer to automatically enrol their eligible workers into a qualifying pension scheme. Workers can choose to opt out of the pension scheme once they have been automatically enrolled. However, employers have a duty to automatically re-enrol workers who have opted out every three years, and to enrol a worker who was not previously eligible whenever they become eligible. The old and new police pension schemes are qualifying schemes for the purposes of automatic enrolment.

5. Territorial Extent and Application

5.1 These instruments apply to England and Wales.

6. European Convention on Human Rights

6.1 As the instruments are subject to the negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

- What is being done and why

7.1 The Part 1 Report of the Winsor Review was published in March 2011 (Cm. 8024). Recommendation 58 was that police forces should be provided with the ability to offer voluntary exit terms to police officers on substantially the same terms as the Civil Service Compensation Scheme 2010. Paragraphs 6.1.42 to 6.1.53 of the Part 1 Report explain why this would be desirable, in terms of giving police forces more flexibility in managing their workforces. The Home Secretary referred the recommendations in the Part 1 Report to the police representative bodies for consideration, and the Police Negotiating Board agreed in principle to recommend to the Home Secretary that recommendation 58 should be implemented, subject to further consideration of the detail of the voluntary exit scheme.

7.2 The Police (Amendment No. 5) Regulations 2012 amend the Police Regulations 2003 by inserting provision allowing the Secretary of State to determine the circumstances in which discretionary payments (referred to as “compensation lump sums”) may be made to police officers on voluntary retirement, and the amount of such payments. A determination made by the Home Secretary will set out the details of the voluntary exit scheme as recommended by the Winsor Review.

7.3 In paragraph 6.1.49 and 6.1.50 of the Part 1 Report the Winsor Review discusses the advantages of allowing police officers with long service in the old police pension scheme to elect to receive a deferred pension from the age of 55, rather than the current age of 60, subject to the pension being actuarially reduced to reflect the longer period over which it is paid. A police officer receiving a compensation lump sum on voluntary early retirement should be able to use the lump sum to buy out the actuarial reduction in the pension, and if the lump sum is insufficient to do so, the police pension authority or the police officer will be able to make up the shortfall. The Police Pensions (Amendment No. 3) Regulations 2012 amend the Police Pensions Regulations 1987 Regulations by inserting provision to this effect. No such amendment is necessary in respect of the 2006 Regulations.

7.4 The Police Pensions (Amendment No. 3) Regulations 2012 also amend both the Police Pensions Regulations to remove obstacles in those Regulations to automatic enrolment in the new police pension scheme in accordance with the Pensions Act 2008.

7.5 In particular, in the Police Pensions Regulations 2006:

- Regulation 6(2)(b), which prevents the Regulations applying to an officer who has rejoined a police force having retired with at least 30 years' service accrued in the old police pension scheme, is revoked.
- Provision is added to Schedule 2 with the effect that an officer in this position is unable to accrue further service in the new police pension scheme. There is a 35 year limit on the service that can be accrued in the new scheme, and, because of the differences in the design of the two schemes, 30 years' service in the old scheme equates to 35 years in the new scheme.
- Provision is added to regulation 9 to the effect that automatic enrolment or re-enrolment under the Pensions Act 2008, or exercise of the right to opt in under that Act, has the effect of cancelling an election by a police officer to cease paying pension contributions.
- The restrictions on re-joining the new police pension scheme in regulation 9(5), on the basis that the police officer has already opted out of the scheme and opted back in, or that the officer has not been medically examined to see whether they should be eligible for awards payable on permanent disablement, are removed.
- As a consequence of the last change, provision is added to regulation 8 to require a police officer who re-joins the scheme to submit to a medical examination after re-joining, and to allow the force to find the officer ineligible for awards payable on permanent disablement either on the basis of the results of the examination or on the basis of a refusal to be examined (in the latter case, if the officer subsequently agrees to be examined, the force must revisit its finding on the basis of the results of the examination).
- Regulation 9 is further amended to ensure that where a police officer opts out of the new police pension scheme within 3 months

of being automatically enrolled or re-enrolled or opting in, the officer is treated as if he or she had not joined the scheme and his or her pension contributions are refunded in full.

- Provision is also added to regulation 9 to allow the notice given by a police officer on opting out or in to the new police pensions scheme to be given in electronic form, in accordance with the provision for such notices in the regulations made under the Pensions Act 2008.

- Consolidation

7.6 A number of instruments have been made this year amending the Police Regulations 2003 and the Police Pensions Regulations 1987 and 2006 as a consequence of the Winsor Review and changes to policing governance made by the Police Reform and Social Responsibility Act 2011. The Department has decided not to consolidate the relevant Regulations at this stage, but is keeping the desirability of doing so under review.

8. Consultation outcome

8.1 A draft of these regulations were supplied to the Police Negotiating Board as part of the consultation process. The comments received from the Police Negotiating Board have been taken into consideration and some changes have been made to the draft as a result.

9. Guidance

9.1 A Home Office Circular has been issued to Home Office forces with guidance on the provisions of the instrument. This is also available on the Home Office website.

10. Impact

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

10.2 The impact on the public sector is limited to the areas of police pensions and police pay and conditions. It is not anticipated to result in any increased costs.

10.3 An Impact Assessment has not been prepared for these instruments. This is because no impact on business, charities or voluntary bodies is foreseen and the impact on the public sector is negligible.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

- 12.1 Police pay and conditions (including pensions) are kept under review by the Home Office together with the Police Negotiating Board. If necessary changes are identified, the legislation will be amended accordingly.

13. Contact

Stephen Finer at the Home Office Tel: 020 7035 8343 or email: stephen.finer@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.