

EXPLANATORY MEMORANDUM TO
THE POLICE (AMENDMENT) (No. 2) REGULATIONS 2016
2016 No. 1200

1. Introduction

1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament.

2. Purpose of the instrument

2.1 The purpose of this instrument is to amend the Police Regulations 2003 (“the 2003 Regulations”) in order to:

- amend the Secretary of State’s powers to make determinations to set requirements about: (1) the service in certain ranks that applicants must satisfy to be eligible for appointment to the rank of chief constable, Commissioner of Police for the Metropolis or Commissioner of the Police for the City of London; and (2) the completion of certain courses and assessment centres that applicants must satisfy to be eligible for appointment to ranks above chief superintendent;
- permit alcohol testing of members of police forces where the chief officer has reasonable cause to suspect such a member is under the influence of alcohol;
- make Employment and Support Allowance deductible from police officers’ pay when the officer is in receipt of full pay.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 This entire instrument applies only to England and Wales.

3.3 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 The 2003 Regulations make provision about the terms and conditions of service of police officers in England and Wales. Regulation 11 makes provision about the appointment of senior officers. Regulation 19A makes provision for police officers to be tested for alcohol as part of random routine testing. Regulation 31 makes provision for deductions from pay of social security benefits and statutory sick pay.

5. Extent and Territorial Application

5.1 This extent of this instrument is England and Wales.

5.2 The territorial application of this instrument is England and Wales.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

Appointment of senior officers

- 7.1 This instrument amends the powers of the Secretary of State to make determinations about the ranks to be held by individuals (and periods of time serving in those ranks) prior to becoming eligible for appointment in certain chief officer of police posts. It also clarifies that if the Secretary of State makes determinations about courses and assessment centres to be completed prior to appointment to a rank above that of chief superintendent, no appointment shall be made to the rank of chief constable, or a rank above that of chief superintendent, unless the requirements of the determinations are satisfied.

Alcohol Testing

- 7.2 This instrument amends the 2003 Regulations to permit testing of police officers suspected of being under the influence of alcohol. This amendment was accepted by the Police Advisory Board of England and Wales in 2012 and reflects the provisions currently in place to allow with cause testing for use of controlled drugs. This change will promote consistency across police forces in England and Wales regarding testing for substance misuse.

Employment and Support Allowance

- 7.3 From 27 October 2008 Employment and Support Allowance began to replace incapacity benefit for claimants making a new claim for financial support on the grounds of incapacity, and for existing recipients of incapacity benefit. This was done under the Welfare Reform Act 2007.
- 7.4 This amendment will clarify that a member of a police force on full pay who is also receiving Employment and Support Allowance will have their pay reduced by the amount of that Employment and Support Allowance. This replicates the position for members of police forces in receipt of incapacity benefit, and therefore is simply a change consequential upon the introduction of ESA.

Consolidation

- 7.5 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 these Regulations which amend regulation 11 have been approved by the College of Policing as required by section 50(2ZC) of the Police Act 1996.
- 8.2 The provisions of these Regulations which amend regulation 19A have been provided to the Police Advisory Board for England and Wales as required under section 63(3)

of the Police Act 1996. The Board did not make any representations to the Secretary of State arising from those provisions.

8.3 The provisions of these Regulations which amend Regulation 31 have been provided, in accordance with Section 52A(6) of the Police Act 1996, to the following bodies: the Police Advisory Board of England and Wales, the Police Federation of England and Wales, the Association of Police and Crime Commissioners, Chief Police Officers Staff Association and the Police Superintendents Association of England & Wales. There were no representations made by those bodies during consultation.

8.4 The only representation made in the course of the above consultation was from the College of Policing which suggested that the regulations should be amended to include the use of blood and urine sampling as alternative alcohol testing methods. The Home Office has not accepted this proposal, on the basis that this change would be inconsistent with the existing random alcohol testing provisions. At present there is no evidence available to the Home Office to suggest that breath testing methods would not be sufficient for the purposes of testing for alcohol misuse.

9. Guidance

9.1 Given the nature of the amendments made by these instruments, it is not considered necessary to issue any guidance.

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.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

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

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.

13. Contact

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

In relation to appointment of senior officers:

Claire Curneen telephone: 020 7035 3424 / claire.curneen1@homeoffice.gsi.gov.uk

In relation to alcohol testing:

Hannah Scarr telephone: 0207 035 3773 / hannah.scarr@homeoffice.gsi.gov.uk

In relation to the Employment Support Allowance:

Mayuri Pandya telephone: 0207 035 1831 / mayuri.pandya1@homeoffice.gsi.gov.uk