

EXPLANATORY MEMORANDUM TO
THE EMPLOYMENT AND SUPPORT ALLOWANCE (CONSEQUENTIAL
AMENDMENT) (POLICE INJURY BENEFIT) REGULATIONS 2017

2017 No. 21

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Home Office ('The Department') and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 These Regulations amend the Police (Injury Benefit) Regulations 2006 (S.I.2006/932) to expressly provide for the deduction of employment and support allowance paid under sections 1(2)(a) or 1B of the Welfare Reform Act 2007.

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 As this instrument is subject to the negative 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 Police (Injury Benefit) 2006 Regulations set out the compensation scheme for payments to police officers who are permanently disabled as a result of an injury received without their own default in the execution of duty, or where death results from such an injury, to surviving spouses or civil partners, children or other dependent relatives of the deceased officer. Regulation 11 of the 2006 Regulations makes provision for an individual who ceases or has ceased to be a member of a police force and is permanently disabled as a result of an injury received without his own default in the execution of his duty to receive both an injury benefit pension and a gratuity, in both cases calculated in accordance with Schedule 3 of the 2006 Regulations. Under paragraph 7 of that Schedule, the amount received in injury pension shall be reduced by an amount equal to any 'additional benefit'. The benefits which constitute 'additional benefits' are set out in Schedule 3, paragraph 7(3) of the Police (Injury Benefit) Regulations 2006.
- 4.2 These Regulations amend the Police (Injury Benefit) Regulations 2006 to expressly enable the amount of injury benefit pension payable to a person to be reduced by the amount of employment and support allowance received.

5. Extent and Territorial Application

- 5.1 The 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

- 7.1 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.
- 7.2 It has been a long-standing principle in the Police (Injury Benefit) Regulations 2006 that a recipient of a police injury award may not gain by receiving other taxpayer funded benefits related to their incapacity.
- 7.3 The Police (Injury Benefit) Regulations 2006 are administered locally by police pensions administrators. As the changes started to apply to recipients of police injury awards, forces across England and Wales adopted different approaches with regard to the deduction of employment and support allowance from injury pensions. These amendments therefore put the matter beyond doubt by making express provision to employment and support allowance in the 2006 Regulations and in doing so replicate the position for deduction of employment and support allowance from police officer pay under the Police Regulations 2003 S.I 2003/527.
- 7.4 As this amendment is being made under the Welfare Reform Act 2007, there are no powers to make these changes apply retrospectively. As a result, these changes will have effect from the date the instrument comes into force.

Consolidation

- 7.5 The Home Office does not intend to consolidate the relevant legislation.

8. Consultation outcome

- 8.1 The Regulations changes are being made under the powers conferred by section 28(2)(b) of the Welfare Reform Act 2007. Under section 172 of the Social Security Administration Act 1992, the Home Office is required to provide draft regulations to the Social Security Advisory Committee for consideration.
- 8.2 Draft regulations were provided to the Social Security Advisory Committee (SSAC). The SSAC wrote to the Home Office on 14 October 2016 to say that the Regulations could proceed. The SSAC indicated that they would be writing with some further points that they had discussed but there was nothing to stop the Regulations going ahead. The SSAC further wrote on 15 November 2016 to suggest that we consider whether we were obliged to conduct a “LEAP exercise”. A LEAP exercise is carried out where an issue of legal entitlement and administrative practices (‘LEAP’) arises. Having considered the issues raised and the circumstances dealt with in the 1979 LEAP report, we have concluded that the Home Office does not need to undertake a LEAP exercise.
- 8.3 The Home Office also consulted the Police Advisory Board of England and Wales (PABEW). The consultation period ran from 6 June 2016 to 27 June 2016. As this is a relatively small amendment, which reflects the changes made by the Department for

Work and Pensions, it was deemed unnecessary to provide a longer consultation period.

- 8.4 A Response was received from the Police Federation of England and Wales (“PFEW”) on 27 June 2016. The PFEW felt that the insertion of employment and support allowance should have been qualified and that the use of the Welfare Reform Act 2007, as opposed to the Police Pensions Act 1976, to make the amendment would be inappropriate as it avoids the no worsening provision in the Police Pensions Act 1976.
- 8.5 We clarified to them that employment and support allowance does not need to be qualified in the same way as incapacity benefit due to the different way employment and support allowance works. This is because in certain circumstances incapacity benefit is payable after state pension age. In those cases there is an exception to the principle of deduction. Employment and support allowance is not payable after state pension age so an equivalent deduction is not required. We also confirmed to them that given that these are changes consequential on the introduction of employment and support allowance exercising the powers in the Welfare Reform Act 2007 to make the amendments is entirely appropriate.

9. Guidance

- 9.1 The Home Office has communicated with police pensions administrators on 6 April 2016 and the Police Advisory Board of England and Wales on 6 June 2016 by email. Police pension administrators will communicate these changes to police officers in England and Wales.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no 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 There are no proposals to monitor or review the outcome of the changes to this Statutory Instrument.

13. Contact

- 13.1 Sara Alderman at the Home Office Telephone: 020 7035 1920 or email: sara.alderman@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.