



## SCOTTISH PUBLIC PENSIONS AGENCY

The Chief Executives, Fife Council and Dumfries & Galloway Council  
Chief Constables  
Clerks to the Joint Boards

7 Tweedside Park  
Tweedbank  
Galashiels TD1 3TE

Telephone: 01896 893223  
Fax: 01896 893230  
James.preston@scotland.gsi.gov.uk

Our ref: BYO/1-BYJ/4  
30 May 2003

Dear Sir or Madam

### **POLICE PENSIONS CIRCULAR No 2003/3**

1 This circular provides information on changes which are proposed to the Police Pensions Regulations, mostly in relation to the management of ill-health retirement. The draft Statutory Instrument that includes these amendments is now being prepared following a period of consultation. Taking into account the Scottish Parliament's summer recess it is anticipated that the changes will come into force from the 1 October 2003. Similar changes to the Police Pensions Regulations came into force in England and Wales from 1 April 2003 with a view that forces and police authorities there should bring the new procedures into effect from 1 July 2003.

This circular also explains the wider set of new procedures for ill-health retirement, which forces and police authorities should bring into effect on 1 October 2003. The new regulations and procedures reflect the agreement reached by the Police Negotiating Board in May 2002 on the better management of ill-health retirement and the set of guidelines agreed with the working groups charged with finalising the finer details of the May 2002 agreement.

**It should be brought to the immediate attention of force personnel officers, force medical practitioners and the administrators of the Police Pension Scheme.**

### **BACKGROUND**

2 The PNB Agreement of 9 May 2002 states that:

8.1 The key objectives in the management of ill health are:

- to ensure that personnel practices in forces and the pensions regulations combine to ensure that fair and effective decisions are taken on poor attendance and ill-health retirements;
- to ensure that, where possible, police officers are rehabilitated for duty rather than retired on ill-health grounds;
- to ensure that there is greater consistency in decision making practice between forces.

3 Following the May Agreement the PNB set up the Medical Retirement Working Group to draw up joint guidance on the management of ill-health retirement. Joint guidance was agreed on 30 January. A copy of this guidance is attached at Annex A. There will be consequential amendments to the Police Pensions Regulations as a result of the Agreement and the guidance which are currently being prepared for introduction from 1 October 2003.

**4 This circular highlights:**

- A. the changes being made to the current regulations;**
- B. what you need to do to apply the new regulations from 1 October 2003;**
- C. what you need to do to implement the wider set of new procedures (at Annex A) by 1 October 2003;**
- D. how the new regulations and new procedures impact on injury awards and decisions under regulations K1, K2 and K3;**
- E. the latest position on regional appeal boards;**

**A. Amendments to the Police Pension Regulations**

5 The following amendments are being made to the Police Pension Regulations with a planned introduction date of 1 October 2003. Please note: the points of explanation set out below are dealt with in more detail in Annex A.

• **Definition of permanent**

6 Permanent is qualified to make it clear that the disablement is likely to be permanent despite appropriate normal medical treatment for the officer's condition being applied. This is to prevent a case where a temporary condition is made permanent by refusal of treatment. As a safeguard to the officer, normal medical treatment is qualified to exclude medical treatment that it is reasonable for that officer to refuse.

• **Male and female duties**

7 Removal of the distinction between the duties of male and female officer duties in A12(2).

• **Definition of infirmity**

8 In order to make it clear that disablement, for the purpose of medical retirement, must have a recognised medical cause or be a disability as a result of injury, such as the loss of a leg, infirmity of mind or body is defined as a disease, injury or medical

condition. The definition “disease, injury or medical condition” expressly includes a mental disorder, injury or condition. We are using the word mental, not psychiatric, in order to keep in step with the Mental Health Act. There will also be an insertion in Schedule A and the glossary of expressions that “infirmity” has the meaning assigned it under this amendment.

- **Police Authority’s A20 decision**

9 As previously stated in SPPA Police Circular 2002/3, the police authority have discretion under regulation A20 not to retire an officer who has been assessed by the Selected Medical Practitioner (SMP) as permanently disabled. As well as the medical assessment the police authority should also take other factors into account in coming to a final decision. Hence Regulation A20 will be amended to require police authorities in making their determination to give due consideration to all the circumstances, advice and information available to them before reaching a decision.

- **Selected Medical Practitioner / Board of doctors**

10 The police authority may decide that in exceptional circumstances the function of the SMP should be carried out by a board of doctors. The regulations therefore will have a qualification to the term “duly qualified medical practitioner” and “selected medical practitioner” to take that into account. A board may be comprised of two or more doctors.

11 Referral in exceptional circumstances to a board of duly medical qualified practitioners may be made in the case of any questions under H1(2), whether on permanent disablement alone, or on permanent disablement combined with injury, or on injury alone and in the case of questions under K1, K2 or K3.

- **H1 report**

12. In any case where the SMP is considering permanent disablement (whether when answering H1(2)(a) and (b) only or when also answering H1(2)(c) and (d) ) he or she will complete a report and not a certificate in order to make clear that the final decision to medically retire an officer rests with the police authority and that it is not the sole determining factor in the authority’s decision.

13. Cases involving injury awards only, or questions under K1, K2 or K3 are to be referred to an SMP who shall express his or her findings in a certificate.

- **Fresh report under H2 and H3**

14. In H2(3) and H3 a fresh report rather than certificate will be issued where the medical authority has revised a decision where a report rather than a certificate has been prepared (see 12 above). In the case of a decision under appeal or review where a report did not apply a fresh certificate will be issued.

- **Distribution of report**

15. A copy of the SMP’s report in the case of any decision under H1(2)(a) or (b) is to be supplied by the police authority to the officer, without his or her needing to request it.

16. Where one or both of questions H1(2)(c) and (d) have been referred to the SMP in isolation from H1(2)(a) and (b), or where a decision is taken under K1, K2 or K3, regulation H2(1) and (2) still applies. The person must still apply to the police authority for a copy of the certificate within 14 days after being informed of a decision under regulation H1 and after being supplied with the certificate he may within 14 days give notice to the police authority of an appeal against the decision. These time limits may be extended at the discretion of the police authority.

- **Appeal against the H1 report**

17. Where an SMP has answered questions under H1(2) including one or both of questions H1(2) (a) and (b), the officer will have a period of 28, not 14 days, following his personally receiving the SMP's H1 report during which he or she may lodge an appeal against the SMP's medical opinion on the H1 questions. As with the present regulations, this (new) time limit may be extended at the discretion of the police authority.

18. A new provision is included requiring a written statement of the grounds of appeal by the officer within 28 days following the date of lodging the appeal. Where the officer gives no statement within 28 days the Police Authority need not refer the appeal to the Scottish Ministers (in which case the right of appeal lapses) unless the authority exercises discretion to allow a longer period for the statement.

19. This provision applies **only** to those cases involving the permanent disablement question, or permanent disablement **and** injury questions.

- **Internal review of H1**

20. H3(2) will be amended to enable a decision under H1 to be referred back to the SMP, if the claimant and the police authority agree to this, even though the claimant has given notice of an appeal against the SMP's decision. This new provision for an internal review applies until the moment the Scottish Ministers are notified of the appeal. This allows an opportunity for a dispute to be resolved without the expense of an appeal, but without prejudice to the claimant's right of appeal. This applies to **all** questions under H1, whether on permanent disablement alone, or on permanent disablement combined with injury, or on injury alone, and including K1, K2 or K3.

21. The SMP should complete a fresh report only where it resolves the issue under dispute. It must be understood that there is no right of appeal against a fresh report issued after an internal review. If a fresh report will not resolve the issue, the SMP should **not** issue one, and the appeal under H2 against the original decision under H1 should be allowed to proceed instead.

22. A further change is that a review under H3(2) by agreement between the claimant and the police authority can be carried out without the need for fresh evidence. This provision applies not only to reviews of decisions under H1 but also to review of appeal decisions under H2. Again, this should enable an appeal decision, which both parties agree is flawed, to be put right without recourse to Judicial Review.

23. H3(3) will be amended to enable a court or tribunal, or the claimant and the police authority by agreement, to refer a case to a board of practitioners selected by it, or agreed by them, instead of to a single duly qualified medical practitioner.

- **Appeal to the Crown Court**

24. Clarification confirming that the Crown Court is to hear any appeal against the police authority not accepting the refusal of medical treatment by a home police force officer as reasonable.

- **Appeal by overseas police officer**

25. Clarification confirming that a Tribunal is to hear any appeal against the police authority not accepting the refusal of medical treatment by an overseas policeman, an inspector of constabulary and a central police office as reasonable.

## **B. What you will need to do to apply the new regulations.**

26. Police authorities, chief officers, HR departments and medical advisers should note the proposed new regulations as soon as possible so that the new procedures and criteria which directly flow from them are prepared and put into place for the introduction from 1 October 2003. Wherever possible the relevant passages in the Guidance at Annex A will be referred to. (A reference to the police authority includes a reference to any person duly delegated by the authority to carry out the relevant function under the Police Pensions Regulations.) These changes will affect procedures in the following ways:

- New definition of permanent to be assessed on the assumption that the person will receive appropriate medical treatment – paragraph 6 above – ***action FMA/SMP and police authority***
  - ⇒ the **SMP** should take this into account when completing his or her report and decision on permanent disablement ( footnote 3 in the forms suggested for recording the decision refers); see paragraph 12 and 13 of Annex B to the Guidance (which is contained in Annex A to this circular);
  - ⇒ the **police authority** will need to decide whether or not refusal of treatment is reasonable in any case where the SMP decides that a person is not permanently disabled because there is treatment available to the officer; see paragraph 14 of Annex B to Guidance.
- Clarification that an appeal by an officer against a police authority not accepting his or her refusal of medical treatment (which the SMP considers would prevent permanent disablement) as reasonable is to be made under H5 (to a Crown Court) or under H6 (to a Tribunal) as applicable – ***action police authority to note.***
- Note that “permanent” in regulation A12 has not been given a definition in the regulations to be amended but is explained in the Guidance– ***action FMA/SMP and police authority***

- ⇒ the **SMP** and **police authority** should note that permanent is to be given its natural meaning and should in any case mean up to at least an officer's compulsory retirement age - see paragraph 9 of Annex B to Guidance.
- Removal of the distinction between the duties of male and female officer – paragraph 7 above – ***no action*** (*simply to note the discontinuance of a redundant provision.*)
  - New definition of infirmity – paragraph 8 above – ***action FMA/SMP.***
- ⇒ This confirms what is already good practice, by ensuring that disablement for the purpose of the Police Pensions Regulations must have a recognised medical cause or be a disability as a result of an injury – see paragraphs 6-7 of Annex B to Guidance.
- New requirement that the police authority's A20 decision should give due consideration to all the circumstances, advice and information available to them before reaching a decision on ill-health retirement– ***action police authority***
- ⇒ In advance of the full introduction of the new procedures in the guidance from 1 October 2003 it will be for the **police authority** to decide how best to apply this provision, but the authority should at least check first with management and the officer for their views before making an A20 decision – see paragraph 50 of the Guidance.
- New power for police authority, in exceptional cases, to select a board of two or more doctors to decide an issue under regulation H1 (including K1, K2 and K3), in place of a single SMP - ***action FMA and police authority.***
- ⇒ the decision to refer a case in this way is for the for the **police authority** to take under H1 - see paragraph 24 of the Guidance;
- ⇒ the **FMA** is best placed to alert the police authority to the fact that a case has particular difficulties – paragraph 24.
- New procedure under which the SMP shall express his or her findings in a report, not a certificate, in a case which involves the consideration of permanent disablement (see paragraph 12 above) – ***action FMA/SMP.***  
see Part 1 of **Annex B** to this circular for the suggested form of the conclusion to such a report under H1 – see paragraph 26 of the Guidance.
  - New procedure under which a fresh report rather than certificate will be issued under H2(3) or H3 where the medical authority has revised a decision involving the issue of permanent disablement .- ***action FMA/SMP.***
  - New procedure under which a person who is the subject of the SMP's medical report must be given a copy of it without having to request it - ***action police authority.***  
⇒ On receipt of the report from the SMP, the **police authority** should send a copy to the officer – see paragraphs 28 and 29 of Guidance.
  - New entitlement under which a person who is dissatisfied with a decision involving the issue of permanent disablement will have a period of 28, not 14 days following

him personally receiving the SMP's H1 report during which he or she may give notice of an appeal. As with the present regulations, this (new) time limit may be extended at the discretion of the police authority – ***action police authority***

⇒ Police authority to note new procedures – see paragraph 32 of Guidance.

⇒ Police authority to notify officers and appellants

- New requirement under which, following notice of an appeal against a decision involving the issue of disablement and/or permanency, the appellant must provide a written statement of the grounds of appeal within 28 days following the date of notice. Where the appellant gives no statement within 28 days the Police Authority need not refer the appeal unless it exercises discretion to allow a longer period – ***action police authority***

⇒ Police authority to note new procedures – see paragraphs 33-34 of Guidance.

⇒ Police authority to notify affected appellants.

- New procedure under which, following notice of appeal under regulation H2 but before the Scottish Ministers have been notified, the police authority and the claimant may agree to refer a decision back to the SMP for reconsideration. This internal review, without prejudice to an appeal, applies to any question decided under H1 or under K1, K2 or K3, and may be done without the need for fresh evidence – ***action FMA/SMP and police authority***

⇒ SMP and police authority to note new procedures – see paragraph 35 of Guidance.

⇒ SMP to note that if a fresh report will not resolve the issue, the SMP should not issue one, so that the appeal under H2 against the original decision under H1 may proceed instead – paragraph 35.

- New procedure under which an appeal decision under regulation H2 - on any question under H1 or under K1, K2 or K3 - may, by agreement between the police authority and the appellant, be referred back to the medical referee or board of medical referees for reconsideration. This may be done without the need for fresh evidence – ***action police authority to note facility to reduce need for Judicial Reviews.***

- New power under H3(3) for a court or tribunal, or the claimant and the police authority by agreement, to refer a case to a board of practitioners selected by it, or agreed by them, instead of to a single duly qualified medical practitioner – ***action police authority to note.***

### **C. What you need to do to implement the wider set of new procedures by 1 October 2003**

27. In order to achieve an orderly introduction of the better management of ill-health guidance, it was agreed that there should be an implementation period. Therefore this

circular is to alert you of the changes to be introduced and recognises preparation will be required to ensure that all forces are ready to implement the procedures in the guidance in time for 1 October 2003.

28. The new procedures are set out in the guidance but the following are suggested as *the key action points*:

- Separating the role of the SMP from that of the FMA, save in exceptional cases, with the FMA playing a separate but key role in the assessment of permanent disablement – Guidance paragraphs 17–27.  
A particular issue here is to ensure the independence of the SMP from the pressures that can arise from being the FMA for the same force that the police officer, whose case is being considered, is a member of. At the same time there is a need to ensure that the SMP is fully competent to deal with such cases.
- Applying the new guidance on [disablement for] the ordinary duties of a member of the force – paragraphs 1-5 of Annex B to Guidance.
- The FMA and SMP supplementing, save in exceptional cases, their assessment of permanent disablement with an assessment of the officer's capability – Annex C to Guidance.
- Involving the chief constable (or the person delegated for that purpose) in providing information to the police authority before it reaches its decision under A20 – Guidance paragraphs 38-45.
- The police authority also taking the views of the officer before it reaches its decision under A20- Guidance paragraph 46
- A check-list and procedure for the police authority when deciding how to exercise its discretion under A20 - Guidance paragraphs 47 – 51.
- Agreeing local protocols between police authorities and chief officers for:
  - the extent and level of delegation;
  - procedures for officers, force managers and the FMA to adopt to manage ill-health;
  - qualifications of the medical practitioners to serve as FMA and SMP in such cases;
  - whether to co-operate with other police authorities in securing the services of suitable SMPs;
  - arrangements for progress in each case to be monitored by a nominated member of the HR department to help the police authority ensure that it is dealt with expeditiously at all stages; and
  - arrangements for the force to report and the police authority monitor the force's exercise of powers under H1 and A20 that have been delegated to it.

29 The APA will be issuing guidance to police authorities in England and Wales on the key issues they should consider in drawing up local protocols - Guidance paragraphs 4-5. Similar guidance may also be available from COSLA.

30. The Guidance is intended to cover a variety of cases, ranging from those where the decision is finely balanced to cases which are urgent or where there is little reasonable doubt as to the correct course. The Guidance should be used flexibly, with



use made of the expedited or shortened procedures wherever appropriate. The Guidance should be applied to help in the effective management of ill-health retirement, not hinder it.

**D. How the new regulations and new procedures impact on injury awards and decisions under regulations K1, K2 and K3;**

31. The PNB Agreement noted the possibility of the need to review injury awards should the current government review of such awards in the public sector make recommendations for change. Before any such review is completed, the current changes to the management of permanent disablement require consequential changes to the handling of injury awards. The following guidance is necessary in relation to injury awards in view of the proposed changes to the Police Pensions Regulations detailed in this circular. Reference is also made here to the procedures under regulations K1, K2 and K3. **This is not comprehensive guidance about injury awards, K1, K2 or K3 but deals specifically with points arising from the proposed changes to the Police Pensions regulations and the new procedures set out in the Guidance.**

• **Effect of proposed new regulations on injury awards**

32. An injury award is payable under Regulation B4 to a person who has ceased to be a member of a force and is permanently disabled as a result of an injury received without his or her own default in the execution of his or her duty. **The changes set out in paragraphs 34 and 35 come into effect from 1 October 2003.**

**Injury awards considered on their own**

33. In any case involving the reference to the SMP only of the question at H1(2)(c) and (d) (whether the disablement is the result of an injury and, if so, the degree of the loss of earning capacity as a result) the 1987 Regulations remain unamended except in one respect.

34. The only exception is that the officer who appeals against a decision under H1(2) (c) or (d) will also be offered an opportunity for an internal review of the issue in dispute under H3 without prejudice to his or her outstanding appeal, as set out in paragraph 35 of the Guidance.

**Injury awards considered together with permanent disablement**

35. The proposed regulations will apply in any case where the questions at H1(2) (c) and (d) are asked together with the questions at paragraphs (a) and (b) (whether the officer is disabled and, if so, whether that disablement is likely to be permanent). This means that:

- the decision on all the questions asked must be made in the form of a report, not a certificate. A suggested example of the form in which the decision should be given is attached at part 1 of Annex C to this circular;
- the right of appeal is altered as explained in paragraphs 17-19 above.

- **Effect of new procedures on potential injury awards**

36 In addition to the changes to the regulations the procedures set out in the Guidance have implications for how cases involving injury are handled. The changes in procedures set out in paragraphs 40 to 44 below should be brought into effect on 1 October 2003

**Cases where consideration of an injury award is held over**

37 Where a police officer is to be assessed by the SMP for permanent disablement in circumstances which do not require urgent consideration of an injury award – see paragraph 39 below – it will be inappropriate for the police authority to consider the question of granting such an award unless and until the officer is subsequently found to be permanently disabled and retired.

38 Where an officer has been assessed as permanently disabled under H1 and is being retained in the force, any related injury award would not fall to be considered until the officer had retired. The police authority should ensure that all relevant contemporary medical and non-medical records are kept to enable full consideration of a potential future claim for an injury award. Any incident which may relate to a future claim should therefore be fully recorded and investigated by management and the FMA as necessary - where appropriate in accordance with Health and Safety requirements. The same approach should apply to any illness or other condition, which may be the result of a process or a series of events. The police authority should be aware that the officer may request a copy of these records in order to check, and if necessary comment on, their accuracy and completeness. The officer may also wish to keep personal copies of any relevant medical or non-medical records for future use.

**Cases where an injury award is considered in conjunction with permanent disablement**

39 For the reasons stated above, it will normally be appropriate to consider the question of medical retirement before considering the issue of an injury award. There may, however, be cases where the police authority decides in the particular circumstances to refer questions at H1(2) (c) and (d) to the SMP at the same time as the questions at H1(2) (a) and (b). There are two sets of circumstances in which this may apply:

- serving officers who are seriously disabled, where the procedures set out in paragraphs 30 in the Guidance apply; or in other cases where it is clear from the outset that there is little prospect of retaining the officer in the force - in such circumstances the expedited procedure at paragraph 31 of the Guidance can be expected to apply; and
- injury claims arising after retirement.

40 In such cases referral of all four questions to the SMP will be via the FMA except in the special circumstances set out in paragraph 30 of the Guidance. Save in cases where the FMA acts as the SMP, the FMA will include in the medical background he or she is providing the SMP all relevant medical records and reports to enable the SMP to

make a decision on the additional question of an injury. The FMA should supplement his or her opinion on the issue of permanent disablement with a section relating to the question of an injury award if the SMP assesses the officer as permanently disabled. The FMA should include in that section of the opinion an outline of what he or she considers to be the key issues relevant to the question whether disablement is the result of an injury, but there is no need for the FMA to come to a conclusion on the matter. Copies of the FMA's advice will be sent to the police authority and the officer as set out in paragraph 23 of the Guidance.

41. Where the SMP decides that the officer is permanently disabled as a result of an injury, he or she will, go on to decide the issue of degree of disablement, taking advice as necessary from the force HR Department about the person's salary and qualifications. The completed report will be sent to the police authority and from there to the officer in accordance with paragraphs 28 and 29 of the Guidance.

43. As in a case involving only the issue of permanent disablement, an officer will have 28 days from receipt of the report to give notice of appeal and a further 28 days within which to state the grounds of the appeal. As in the procedures for appeals set out at paragraphs 32 to 34 of the Guidance, in each case the 28-day period may be extended at the discretion of the police authority. The officer also has access to the possibility of an internal; review of the decision under H3 without prejudice to his or her appeal, explained in paragraph 35 of the guidance.

### **Questions for the SMP under K1, K2 and K3**

44. Questions under K1, K2 and K3 should still be put direct to the SMP for the issue of a certificate. They remain unaffected by the proposed amendment to the regulations and the Guidance except that in all cases it is now possible to refer the relevant question to a board of SMPs.

45 The procedures under K1 (relating to reviewing the ill-health pension of a retired officer) are being reviewed, together with the need for a provision for reviewing the permanent disablement of a serving officer.

### **E. The latest position on regional appeal boards**

46 Included with the draft changes to Police Pensions Regulations mentioned above are amendments to both Regulation and Schedule H to allow the introduction of a board of medical referees. This requirement was part of the May 2002 PNB agreement.

47 Following a tender exercise, BUPA Wellness were chosen as the preferred bidder to provide the necessary board of medical referees for police appeals in Scotland. The anticipated introduction dates for medical boards is 1 October 2003. BUPA Wellness have provided a similar service for UK wide appeals under the Firefighters Pension Scheme since 1997 and have recently been re-appointed to provide this service to the Office of the Deputy Prime Minister following a tender exercise.

48 In addition to the changes to the Regulations, guidance is also being prepared to outline what changes in procedure will be necessary and detail other relevant information. Although there are contract based performance targets for BUPA Wellness which if not met will result in a reduction of the charge made, the price for each appeal which fully meets the timescale targets will be £4,200. As is currently the case and is detailed in the Regulations, payment for the appeal will be the responsibility of the police authority. However, the exceptions to this will include appeals that are deemed to be vexatious or time wasting and costs incurred due to a late cancellation by the appellant. Full details will be included in the guidance when this has been finalised and agreed.

A handwritten signature in blue ink that reads "J. Preston". The signature is written in a cursive, slightly slanted style.

Jim Preston  
Policy Manager

## ***ANNEX A***

### ***IMPROVING THE MANAGEMENT OF ILL HEALTH***

#### Introduction

It was agreed by the PNB in May 2002 that it should produce joint guidance for police authorities and senior force managers on the key areas of managing ill-health retirement.

#### **Context**

2. The PNB Agreement noted that the police service should not lose the skills and experience of officers who are still able to make a valuable contribution and that officers should not therefore have to retire on medical grounds unless it is necessary. The PNB also noted the need for consistency and fairness in the process. The PNB agreed therefore that there should accordingly be clarity about the criteria for medical retirement and about where responsibility lies for final decisions on medical retirement.

#### **Management of the process**

3. A flow chart setting out the key steps in the medical retirement process is attached at **Annex A**. If a case were to pass through all the stages in the chart, the entire process could last over a year. It is therefore important for the process to be managed as expeditiously as practicable by the police authority so that delays are kept to a minimum. Managers should also recognise that many cases could be concluded in much quicker time, without all stages being involved – in particular cases where permanent disablement is serious, or where the SMP assesses disablement to be only temporary. The FMA should try, wherever possible, to point out to local management and the police authority those cases that have the potential for going through quickly and those cases that are likely to need particularly careful management, if it is not to become unduly protracted.

#### **Need for local protocol setting out procedures and levels of delegation**

4. The Police Pensions Regulations provide for decisions on the referral of cases to the SMP, and the final decision on whether to grant ill-health retirement in a case, to rest with the police authority. However, each police authority should review any existing delegation framework for the consideration of medical retirement issues and discuss with the chief constable detailed arrangements for the effective management of ill-health retirement with a view to drawing up an agreed protocol.

5. A protocol will provide both authority and force with an agreed statement of the policy framework within which to implement the changes generated by the PNB Agreement and within which local arrangements for delegation should operate. Pension management decisions for the police authority should be clearly distinguished from on-going management actions which are the responsibility of the chief constable. The protocol should set out:

- the extent and level of delegation by the authority to officers or force managers for action to be taken in its name under regulations H1 and A20 in cases which do not involve ACPO ranks;
- the extent and level of delegation by the chief constable to other officers or force managers for action to be taken in his or her name in support of police authority decisions under regulations H1 and A20 in cases which do not involve ACPO ranks;
- the procedure for officers, force managers and the FMA to adopt when reporting cases for consideration by the police authority;
- the qualifications of the FMA and the SMP and how they are to be selected and trained;
- arrangements for each case involving an H1 referral to be monitored by a nominated member of the HR department, to help the police authority ensure that it is dealt with expeditiously at all stages, and to provide a point of contact for the police officer whose case is under consideration;
- whether the police authority will conclude agreements with other police authorities for co-operating in the supply of suitable SMPs;
- how the force should report, and the police authority monitor, the force's exercise of powers under H1 or A20 which have been delegated to it.

### **Delegation of powers**

6. Police Authorities should under no circumstances delegate to the force any matters relating to the consideration of the possible medical retirement of an officer of ACPO rank.

7. All references that follow to “police authority” and to “chief constable” should be read to include references to the police officers or force managers duly delegated to carry out their respective functions on their behalf. Where delegating a power under the Police Pensions Regulations a police authority or chief constable must be satisfied that the person to whom the power is delegated will be able to exercise it with the same degree of independence as if the power had not been delegated. In the case of police authority decisions, delegation may be to the chief constable, to the deputy chief constable when acting as chief constable, or to a civilian HR manager who has the strategic view and authority to take such a decision on the authority's behalf. Where possible the HR manager should hold a post at the civilian equivalent of an ACPO rank and also have a CIPD qualification, although lack of a formal qualification may be more than compensated for by a wealth of relevant experience. The person whose duty it is to make a decision on behalf of the police authority should not have been closely involved in the day-to-day management of the case up to that point.

8. A report made to the police authority on behalf of the chief constable on the suitability of a permanently disabled officer for retention in the force should be signed or authorised only by an officer of ACPO level or an equivalent civilian HR manager. The person signing or authorising such a report should not be the same as the one delegated to take the police authority's decision under A20 and should not have been closely involved in the case up to that point.

## **Qualifications of FMA and SMP**

9. It is difficult to be prescriptive about the minimum qualification an FMA should have since there are many existing FMAs with considerable experience but relatively few occupational health qualifications. New FMAs should be recruited with the minimum requirement that he or she be an Associate of the Faculty of Occupational Medicine (AFOM) or EEA equivalent and be given the opportunity quickly to build up a good knowledge of the police service and the range of duties that need to be performed.

10. Ideally, the SMP should be a Member or Fellow of the Faculty of Occupational Medicine (MFOM or FFOM), or EEA equivalent. The minimum requirement should be that he or she is an Associate of the Faculty of Occupational Medicine (AFOM) or EEA equivalent. Before appointment as SMP the police authority must provide the medical practitioner concerned with an induction programme and other training so that he or she has an understanding of what police service entails.

## **Referring Cases to the Selected Medical Practitioner (SMP)**

11. The Police Pensions Regulations provide that where a police authority is considering whether an officer is permanently disabled it shall refer the issue to the SMP for decision. A note on the definition of permanent disablement is attached at **Annex B**. Requests for referral of a case to the SMP can come from one of two sources: management or the officer. An officer's request for referral may be refused only in limited circumstances – see paragraph 15.

## **Management recommendation that Police Authority refer H1 question to SMP**

12. Except in the case of an accident or the sudden onset of illness, the FMA will normally have seen the officer several times and have liaised with local management over the officer's condition. Although local management can normally look to the FMA to advise the force in the first instance whether there is a need to consider permanent disablement, the FMA may be asked for his or her view if there is concern about a case. Such referral to the FMA for advice is a matter of good day-to-day management and will lead to a referral by the police authority to the SMP under H1 only where the FMA so advises.

13. The FMA should recommend referral in any case where he or she considers the officer **may be** permanently disabled, not just where the FMA considers that the officer **is** permanently disabled. Where the FMA advises that the case should be referred under H1, he or she should draw attention to any special or compassionate features including the need for urgency and, wherever possible, provide advice on which medical practitioner to use as the SMP and/or any specialism required. Local management should pass on the FMA's advice as quickly as possible to the police authority.

## **Officer asks management for H1 questions to be referred to SMP**

14. It should not normally be necessary for the officer to have to raise the issue of referral under H1, since this will have been done on his or her behalf. However, there may be cases where an officer who considers that he or she is permanently disabled

feels obliged to ask management that the police authority put the H1 process into effect. The officer should back this up with evidence of permanent disablement from his or her GP, or other medical practitioner he or she has been referred to. The chief constable should bring any such request to the notice of the police authority with comments from the FMA on whether the FMA is satisfied that there is a medical issue to consider. Where necessary the FMA will first see the officer.

15. The police authority should refer the case to the SMP unless there is reason to believe the officer's request is vexatious, frivolous or seeks without evidence to re-open a case which has been decided under H1 or, on appeal, under H2. In the case of a request to re-open a case the police authority should refer the issue again to the SMP only where the FMA considers there is fresh evidence which could lead to a substantive revision of the previous decision under H1 or H2.

#### **Appeal to the Crown court**

16. A refusal by a police authority to refer a case to the SMP is subject to appeal to the Crown Court under Regulation H5. Where referral is refused, the police authority must give a written statement to the officer explaining the reason and pointing out his or her avenue of appeal against the decision.

#### **Referring Cases to the SMP: Practical Arrangements**

##### **FMA asked to prepare advice for the SMP**

17. Where the police authority decides to refer the case to the SMP it should normally be via the FMA. However, where the police authority is advised by the FMA that death is imminent or that the officer is totally incapacitated due to a physical condition, it should appoint the FMA as the SMP for expedited consideration – see paragraph 30 below. (An assessment by the FMA, acting as the SMP, that an officer is totally incapacitated is without prejudice to any final decision by that or another SMP on the issue of total disablement under the Police (Injury Benefit) Regulations 1987.)

##### **FMA prepares advice to SMP**

18. In normal cases the police authority should ask the FMA most familiar with the case to provide advice on the case to the SMP, whose name and address should be confirmed with the FMA, unless the FMA indicates that the choice of SMP needs to be held over until he or she has completed the advice. The purpose of the FMA's advice is to inform the assessment by the SMP. The SMP will be asked whether the officer is permanently disabled, and if his or her opinion is that the officer is permanently disabled, the SMP will also be asked to complete a supplement to the report dealing with the officer's capability. The assessment of capability must also address the extent to which, if at all, the SMP considers that the disablement will affect the officer's attendance. Where the SMP considers that attendance may be affected if the officer were to perform particular duties, this should also be addressed. (This applies also to references to assessments of the officer's capability in paragraphs 19, 27 and 53.)

19. To assist the SMP, the FMA's advice will consist of two sections: a medical background and opinion:



- The medical background will include all relevant medical details and history of the case. This section should take account of the assessments of the officer's GP and hospital specialist as appropriate and wherever possible should be supplemented with relevant records, reports, X-rays or scans. (The FMA should seek the written consent of the officer for this section to be referred to the SMP.)
- The opinion will be the FMA's advice to the SMP on the issue of permanent disablement in answer to the questions under regulation H1(2)(a) and (b). The authority should ensure that the FMA is aware of the officer's compulsory retirement age. Where the FMA is of the view that the officer is permanently disabled he or she should also give his or her opinion on the officer's capability. (This section will not include any confidential medical information and therefore no consent of the officer is required.)

20. Wherever possible the FMA should give a clear view on whether or not the officer is permanently disabled. However, the FMA should not feel obliged to strive for a conclusion on the balance of probabilities in finely balanced or complex cases. In difficult cases involving more than one medical condition the FMA may conclude his or her opinion by setting out the issues and advising that the police authority appoint a board of two or more SMPs.

21. It will normally be expected that the SMP will examine the officer concerned, but there may be cases where the police authority indicates that there are no management objections to there being no examination. Provided the officer concerned is also content with this, the FMA can suggest to the SMP that there is no specific need for the officer to be examined.

22. The police authority should request the FMA to complete the advice to the SMP within 28 days and to let it know as early as possible whether there are problems over this timescale. The FMA should send the advice direct to the SMP.

23. The FMA should send copies of the opinion section and any advice on capability at the same time to the police authority and the officer. The police authority should check that the opinion and any advice on capability are set out in clear terms. The FMA should also give the officer the opportunity to request a copy of the medical background section. If the officer asks for a copy, the FMA should agree to release the medical background section unless there are medical reasons for withholding it. The FMA should also send the police authority a copy of the medical background if the officer gives written consent for this to be done.

#### **A board of SMPs**

24. The PNB has agreed that in **exceptional** circumstances the function of the SMP should be carried out by a board of two or more doctors. It will be for the police authority to decide whether to do this, but it will look to the FMA in the first place to draw attention to whether the number or complexity of the medical issues in a case makes such a course worth considering.

### **The Role of the SMP**

25. The SMP will normally be required to examine the officer, but he or she may exercise discretion to consider the case on the papers if management, the officer and the FMA are all content with this. In all cases the SMP should complete a report to the police authority which is separate from the advice from the FMA and which confirms that he or she has not dealt with the case before. The police authority should ensure the SMP knows where to send his or her H1 report, plus any Part 2 report on capability.

### **The SMP determines H1 questions**

26. The first question for the SMP is to determine whether the officer is permanently disabled within the meaning of regulation H1. Details of how this is to be assessed are at Annex B. The police authority should require the SMP to describe wherever possible any disease or medical condition causing disablement by reference to internationally authoritative guides available to doctors such as ICD 10 (International Classification of Diseases) and DSM IV (Diagnostic and Statistical Manual).

### **SMP also considers officer's capability**

27. Where the SMP concludes that the person is permanently disabled, he or she should go on to complete a supplementary report (Part 2 of the report) to the police authority on the officer's capability. A note on what is required in the supplementary report is at Annex C.

## **Deciding Cases: Action by the Police Authority**

### **Inviting Representations**

28. The report of the SMP will be addressed to the police authority. Once the police authority has received the report from the SMP, it should provide the officer and the chief constable an opportunity to comment, make representations or appeal under regulation H2 as applicable before reaching a decision under regulation A20. The police authority should normally complete this action within 7 days.

29. The police authority should send the officer's copy of the SMP's H1 report under cover of a letter explaining his or her right of appeal against any of its conclusions and the availability of a dispute resolution procedure which, if both parties are content, may settle the matter under appeal without need of an appeal hearing (see paragraph 35 which deals with the procedure for doing so). Where the SMP has provided a Part 2 report, this should be sent out together with the Part 1 report and the Chief Constable and the officer should be invited to comment on the SMP's assessment of the officer's capability – see paragraphs 43 and 45.

## **Special procedures in cases of urgency or total incapacity**

### **FMA acting as SMP**

30. Where the police authority is advised by the FMA that death is imminent or that the officer is totally incapacitated due to a physical condition, the police authority should expedite the case by appointing the FMA as the SMP. In such cases, the FMA acting as SMP should be asked to complete an SMP's H1 report on permanent disablement as quickly as practicable. In such cases it will be inappropriate to supplement the report with advice on capability. The FMA should instead draw

attention to any points of action for the police authority, and also give an indication, where appropriate, of life expectancy in order that the police authority can if necessary arrange for medical retirement to be expedited if that is the preferred option of the officer, or his or her representatives. In some cases death in service will lead to the better provision for the officer's family. The authority is not responsible for determining and putting in place what is in the officer's best personal interests, it is the responsibility of the officer or his or her representatives to determine the preferred option.

### **Police authority action in cases requiring urgency**

31. Medical retirement may need to be expedited in other cases than just those where the FMA has acted as SMP. If, on receipt of the SMP's report, the police authority concludes, after consultation with the chief constable, that the severity of the officer's condition or compelling compassionate features in the case make it inappropriate to delay medical retirement, it may take an immediate decision under regulation A20. An expedited decision by the police authority will not prejudice the officer's appeal rights. The authority will notify the officer in writing of its decision and provide the officer, or his or her representatives, with a copy of the SMP's report.

### **Appeals and internal reviews**

#### **Appeal by the officer under regulation H2**

32. The officer will have a period of 28 days following his or her personally receiving a copy of the SMP's H1 report (preferably with the fact and time of delivery recorded) during which he or she may give notice to the police authority of an appeal against the SMP's medical opinion on the H1 questions as stated in the conclusion to his or her report. The officer has no right of appeal under H2 against the contents of the SMP's report provided he or she agrees with the SMP's conclusions on the H1 questions. This time limit may be extended at the discretion of the police authority. The circumstances in which such a course may be appropriate include the officer having been unable to act soon enough because of his or her condition. Normally, however, it is reasonable to expect the officer, or his or her representatives, to lodge an appeal within the period given that he or she is not obliged at that stage to make a formal statement of the grounds. (Except in the case of solicitors acting on behalf of an officer, the representative should be able to produce proof that he or she is acting with the officer's authorisation.)

33. Where an officer has lodged an appeal the police authority should acknowledge receipt of this and at the same time remind him or her of the requirement to provide a written statement of the basis of the appeal within 28 days following the date of lodging the appeal. The statement of the grounds of appeal need not be an explanation of the case the officer will be making in the appeal or be drawn up by a lawyer. The statement is simply to confirm which of the answers to the questions under regulation H1(2)(a) and (b) the officer is dissatisfied with and the immediate reasons why. This 28-day limit may be extended at the discretion of the police authority. Factors which may be taken into account in exercising such discretion are whether there are good reasons why a statement could not be made earlier and the authority's assessment of whether a reasonable extension of time will enable a statement to be produced.

34. If grounds of appeal are not provided within the period or extra period permitted, the police authority need not refer the appeal to the Scottish Ministers for the appointment of a referee.

#### **Possibility for internal review of decisions under dispute**

35. Regulation H3(2) allows a police authority and an appellant to agree to refer a decision back to the SMP for reconsideration. There may be cases where this process can resolve the issue without the time and effort of an appeal. Therefore, where an officer provides a statement of the grounds of appeal, the police authority should consider whether there is value in offering the appellant a reference of the matter back to the SMP for reconsideration. If the offer is made and the appellant agrees the matter should be referred to the SMP accordingly. If no offer is made or the appellant does not agree the appeal should be forwarded to the Scottish Ministers in accordance with H2. The SMP should issue a fresh report in the case of an internal review only where it will resolve the issue under dispute. It must be understood that there is no right of appeal under the regulations at present against a fresh report issued after an internal review. (The intention of using H3 before an SMP's decision goes to appeal is that it should be done without prejudice to that appeal.) If the report will not resolve the issue to the satisfaction of the appellant, the SMP must not issue a fresh report and instead the appeal under H2 against the original decision under H1 should be allowed to proceed.

#### **Action by police authority to take appeal process forward**

36. The possibility of a procedure under H3 should not be allowed to delay the appeal process unduly and the authority should either offer the officer internal resolution, without prejudice to a further right of appeal, or refer the appeal to the Scottish Minister of State within 14 days of receiving the officer's statement of grounds, or else explain to the officer why a longer period will be needed. Except in cases referred to at paragraphs 30 and 31 above, the presumption will be that the police authority will only reach a decision under A20 once the outcome of an appeal is known. However, exceptionally, there may be other cases where the police authority decide, in the particular circumstances of the case, that the most appropriate course is to retire an officer under regulation A20 while the appeal is still pending.

#### **SMP's consideration of officer's capability after a successful appeal**

37. Where the medical referee (and when introduced a board of medical referees) overturns an SMP's decision that an officer is not permanently disabled, the police authority should arrange, in consultation with the FMA, for another SMP to be given a copy of the medical referee's H2 decision and for the new SMP to provide a report to the police authority on the officer's capability in the light of the appeal outcome.

#### **Preparation and action for the A20 decision**

#### **Comments by chief constable if the medical authority has found the officer to be permanently disabled**

38. Where the officer has been assessed by the SMP or, on appeal, by the medical referee as permanently disabled, the chief constable should within 28 days of receiving the medical authority's assessment submit a report to the police authority containing the following:

- Confirmation that he or she has seen parts 1 (H1) and 2 (capability) of the SMP's report.

- An assessment of the officer's suitability and aptitude for retention.
- An assessment of the posts available, and the scope for retaining the officer in the force in order to continue with a police career – see paragraphs 42 to 43.
- Information on whether the officer is involved in any current or pending misconduct proceedings and the seriousness of any case involved.
- A recommendation as to whether the officer should be retained

39. If the chief constable is unable to provide a report in the recommended period, he or she should advise the authority and officer of this and indicate the amount of extra time needed. The police authority should reserve the right to require an earlier date than that suggested by the chief constable. Cases should be concluded as quickly as practicable.

40. Before a permanently disabled officer may be returned to duties in a force, it will be necessary to consider the need for a risk assessment in respect of any posts he or she will be expected to hold. The key considerations are that the officer's further deployment should not:

- aggravate the officer's existing disablement;
- expose the officer to a higher risk of injury than he or she would have had if not disabled;
- expose the public or other officers to an increased risk of injury;
- expose the officer to a risk of being criticised or disciplined for not acting in a way which would normally be expected of an officer, but which would be inappropriate in view of the officer's disablement.

41. Where an officer who is permanently disabled is retained, it is important that any restrictions upon the duties the officer can be required to or is expected to perform are clear to the officer, his or her colleagues and managers. Given the general duty to obey lawful orders and the duties of a common law constable, forces must ensure that appropriate arrangements are in place to deal with communication and any other issues which arise. This will, in part, be a matter of instruction and communication. Forces may wish to consider providing a mechanism whereby any officer on restricted duties who feels that he or she is being ordered to, or may be required to, do something beyond his or her capability can raise the issue without being seen to refuse the order.

### **Career in the police service**

42. In cases where the officer has only a few years still to serve before he or she can retire in the normal way, it will usually be sufficient for the chief constable to indicate what post the force has in mind for the officer and why. On the other hand an officer in the earlier stages of his or her career can reasonably expect to be given the prospect of continuing in the police service in a way which will enable him or her to develop capabilities and which will involve some variety of police work over the coming years. Medical retirement is likely to be appropriate where this is not the case.

43. The objective is to retain an officer in the force wherever practicable. In assessing whether an officer may be retained for a police career the chief constable will need to address the following issues in his or her report. Bearing in mind the

officer's rank and the fact that an officer retained for a police career may be eligible to be considered for promotion.

- whether there is a suitable post available at present or in the near future;
- whether, taking a strategic view of the likely future operational and fitness requirements of the force, there is a sufficient range of further posts likely to be available to the officer, in identified broad areas of duty, until compulsory retirement age to make it consistent with a police career, albeit on a limited scale;
- whether a satisfactory risk assessment has been drawn up for the officer in respect of any posts available at present or in the near future, and whether it is expected that similar risk assessments can be drawn up for possible future posts in the longer term;
- whether the officer and his or her line managers can be satisfactorily advised about handling situations where intervention as a constable to arrest someone or to prevent crime may be inappropriate in view of the officer's disablement;
- whether, setting aside unforeseen significant changes to the officer's condition for the worse, the officer can remain in the force without recourse to frequent reviews of his or her continued suitability for retention;
- whether there is a reasonable expectation that the officer will be capable of maintaining a satisfactory level of attendance.

44. In cases where there will not be a suitable post for a while, but such a post has been identified, the chief constable should consider arrangements to find a temporary post for the officer or to bring the officer back to a working environment as soon as possible in order to maintain the officer's confidence in being able to manage work.

45. When assessing the operational needs of the force at the second point in paragraph 43 above the chief constable should take into account the current number of officers on restricted duties and should also assess the expected pattern of potential medical retirement cases in the future. This will help the chief constable to judge the level of retention possible each year and the broad range of capabilities that those retained would need to have in order not to put the operational effectiveness of the force in jeopardy.

#### **Comments by officer**

46. If assessed as permanently disabled by the SMP or the medical referee, the police authority will also have given the officer an opportunity to make representations about his or her case. The officer may comment on Part 2 of the report by the SMP and the report from the chief constable and also say whether he or she wishes to remain in the force. If the officer disputes or queries any part of the medical authority's report on capability or the chief constable's report, he or she may adduce medical or other relevant evidence. The police authority should advise the officer where to send his or her comments and require receipt of them within 28 days. This period may be extended by the authority at its discretion.

#### **Decisions by police authority**

47. In deciding each case, the police authority should review the case in the light of

- The SMP's report – parts 1 and 2;
- The chief constable's report; and
- The officer's comments.

48. Where the officer disagrees with the comments made in Part 2 of the SMP's report the police authority should consider the reasons given. If the officer has adduced new evidence from a medical practitioner which is central to its decision under A20, and the SMP does not alter his or her view as a result, the police authority should, within 28 days of the new evidence being received by the authority, arrange for the officer to be examined by a third medical practitioner who is acceptable to both the SMP and the practitioner who provided the new evidence. If there is a failure to agree on a third medical practitioner the police authority should appoint its own third medical practitioner who should, where necessary, be a specialist. The third medical practitioner should report in writing to the police authority and to the other two practitioners. In exceptional cases the authority may refer the issue to a board of practitioners which includes a consultant.

49. Any comments made by the officer on the chief constable's report should be taken up with the chief constable by the authority with a request for comments within 14 days.

50. Where the officer has been assessed as permanently disabled, the police authority should consider all the evidence before it before reaching a decision under A20. The police authority will bear in mind the policy presumption in favour of retaining the officer until normal retirement age wherever that is practicable. Key factors include:

- length of service still to serve, rank etc;
- the SMP's advice on the officer's capabilities;
- the chief constable's advice – the chief constable should have taken due note of the SMP's findings, have dealt with each of the points listed at paragraph 43 above, and have provided an assessment on whether or not the officer can remain in the force; the chief constable's advice will inform but not determine the police authority's decision and the authority should consider whether the chief constable's assessment is robust;
- whether the officer wishes to remain in the force – the officer's opinion will inform but not determine the authority's decision, but where the officer does wish to remain, the presumption in favour of retention will arguably be greater still; .
- whether the officer faces outstanding or impending misconduct proceedings – in cases where the conduct in question is serious, or where the completion of disciplinary proceedings is necessary for the maintenance of public confidence, the public interest in completing the proceedings will outweigh the significance of the officer's condition, except in the most compelling compassionate cases.

51. If retention is not practicable, the officer should be medically retired. The police authority should aim to reach a decision, with the reasons stated, within 28 days of last receiving comments or advice on the case whether from the officer, chief constable or the SMP or other medical practitioner it has consulted. If there is a reason for delay, the police authority should explain this to the officer and give an indication of the extra time needed.

## **Review of decision under A20**

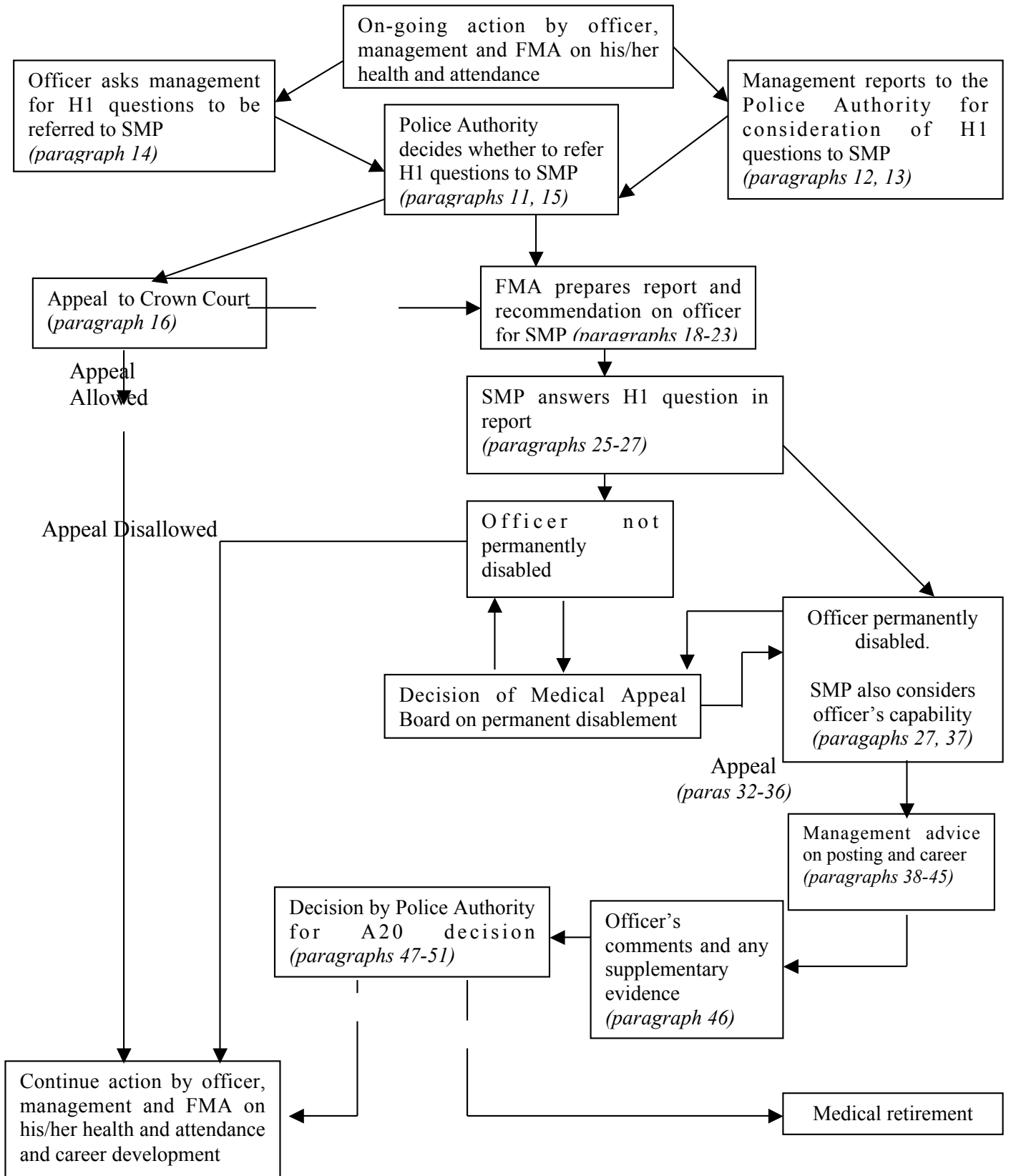
52. The expectation is that a decision under A20 should not have to be reviewed unless there is a significant change for the worse in the officer's condition or a significant change in the operational requirements of the force, which invalidates the assumptions on which the officer was retained in the first place. In such circumstances the chief constable should bring the matter to the attention of the police authority so that it can review its decision in the light of fresh reports from the FMA (unless the review arises where an officer is facing a possible hearing under the Efficiency Regulations, in which case a report should be from an SMP) and the chief constable and fresh comments from the officer. Where the officer disagrees with the comments made by the FMA, paragraph 48 applies as if references to the SMP were references to the FMA.

53. An officer who wishes to ask the police authority for a review of the A20 decision should make such a request via the chief constable in order that the authority can be advised whether management considers that a review is necessary for one of the reasons in paragraph 52 above.



ANNEX A

1.1 Flow chart showing the management process of ill-health retirement in the most standard cases



Decision to retain

Decision not to retain

NOTE ON PERMANENT DISABLEMENT

**Ordinary duties**

Under the Police Pensions Regulations an officer may be required to retire on medical grounds if he or she is permanently disabled for the ordinary duties of a member of the force. In its judgement in 2000 in the case of *Stewart* the Court of Appeal held that the reference to “ordinary duties” is a reference to all the ordinary the duties of the office of constable:

“...the hypothetical member of the force whose ordinary duties the Regulation must have in mind is the holder of the office of constable who may properly be required to discharge any of the essential functions of that office, including operational duty.”

2. In taking this view the Court was concerned that without a relatively robust test of fitness, a Police Authority would be unable to safeguard the operational effectiveness of its Force, since it would be obliged to retain too many officers who were unfit for operational duties. The Court accepted that a constable cannot perform his or her ordinary duties unless he or she can at least run, walk reasonable distances, stand for reasonable periods, and exercise reasonable physical force in exercising powers of arrest, restraint and retention in custody. Although the core policing tasks go wider than these, it is important that the criteria for ordinary duties are as clear and robust as possible.

3. Using the National Competency Framework as a basis, the following are the ordinary duties of a member of the force for the purpose of assessing permanent disablement under regulation H1:

- Managing processes and resources and using IT;
- Patrol/supervising public order;
- Incident management, such as traffic and traffic accident management;
- Dealing with crime, such as scene of crime work, interviewing, searching and investigating offences;
- Arrest and restraint;
- Dealing with procedures, such as prosecution procedures, managing case papers and giving evidence in court.

4. Taking each of these duties in turn, inability, due to infirmity, as defined by the Police Pensions Regulations (see paragraph 6 below), in respect of **any** of the following key capabilities renders an officer disabled for the ordinary duties:

- the ability to sit for reasonable periods, to write, read, use the telephone and to use (or learn to use) IT;
- the ability to run, walk reasonable distances, and stand for reasonable periods;
- the ability to make decisions and report situations to others;
- the ability to evaluate information and to record details;
- the ability to exercise reasonable physical force in restraint and retention in custody;
- the ability to understand, retain and explain facts and procedures;

5. An officer, who because of infirmity is able to perform the relevant activity only to a very limited degree or with great difficulty, is to be regarded as disabled.

### **Disablement**

6. Under Regulation A12 disablement is defined as:  
“inability, occasioned by infirmity of mind or body, to perform the ordinary duties of a member of the force...”.

The Police Pensions Regulations under A12(5) define “infirmity of mind or body” as a disease, injury or medical condition, including a mental disorder, injury or condition, in order to make it clear that disablement, for the purpose of medical retirement, must have a recognised medical cause or be a disability as a result of injury, such as the loss of a leg.

7. This definition ensures as far as possible that the Selected Medical Practitioner (SMP) confines him or herself to a report which describes the cause of a permanent disablement by reference to internationally authoritative guides available to doctors such as ICD 10 (International Classification of Diseases) and DSM IV (Diagnostic and Statistical Manual).

### **Permanent disablement**

8. Regulation A12(1) provides:

A reference in these Regulations to a person being permanently disabled is to be taken as a reference to that person being disabled at the time when the question arises for decision and to that disablement being at that time likely to be permanent. The phrase “likely to be permanent” is also used in Regulation H1(2) where the questions to be put to the SMP are set out.

9. Permanent disablement is qualified in the Police Pensions Regulations A12(1A) by reference to its being permanent despite the officer receiving appropriate medical treatment. For this purpose, “appropriate medical treatment” does not include medical treatment that it is reasonable in the opinion of the police authority for that person to refuse. Permanent is not given any further explanation in the Regulations. Arguably the word speaks for itself, meaning for the rest of one’s life. If, in a case where the officer is still in the early stages of his or her career, such a long-term view is difficult the test should be that the officer is likely to remain disabled for the ordinary duties of a member of the force until at least the normal compulsory retirement age for his or her rank under regulation A18 – i.e. age 55 or more, depending on the rank and the force concerned.

### **The questions to be decided by the SMP**

10. Regulation H1(2) of the Police Pensions Regulations provides:

“Where the police authority are considering whether a person is permanently disabled, they shall refer for decision to a duly qualified medical practitioner selected by them the following questions:

- (a) whether the person concerned is disabled;
- (b) whether the disablement is likely to be permanent.

11. However, unless there really is nothing wrong with an officer, then it will be helpful for the SMP’s report to cover such issues as:

- whether he or she has an infirmity as defined by the Police Pensions Regulation A12(5) which impairs or prevents the performance of the ordinary duties;
- whether, in the case of each infirmity identified, the activities affected are affected to the extent that the person is **unable** to carry them out at present; and
- whether each infirmity identified is or is not likely to be permanent, assuming that appropriate medical treatment is given in the mean time.

### **Appropriate medical treatment**

12. Regulation A12(1A) qualifies “likely to be permanent” to assume that the person receives normal medical treatment for his disablement. When assessing whether appropriate medical treatment can be assumed to be given in a particular case, the SMP will have to consider the following:

- the extent to which the treatment is likely to be effective in preventing permanent disablement, taking account of the officer’s condition and of any other factors, such as allergies, which could lead to complications or harmful side-effects;
- the extent to which the treatment is tried and tested;
- the extent to which the treatment is available to the officer in time for it to be effective, taking account of general availability unless there are special reasons for that not being relevant.

13. The definition of appropriate medical treatment in the Police Pensions Regulation A12(1A) expressly excludes treatment to which the officer has a reasonable objection.

14. In a case where the SMP decides that the officer is not permanently disabled because specific appropriate treatment is available to the officer, it will be for the police authority to consider whether any objection by the officer to that treatment is reasonable or not. The authority should ask for whatever further medical advice or information about religious practices it thinks necessary. If the authority concludes that the objection is unreasonable the SMP’s decision will stand. However, if the authority decides that the objection is reasonable the SMP will be asked, with the consent of the officer under regulation H3, to amend his or her report accordingly so that the officer is assessed as permanently disabled. There is a right of appeal under H5 and H6 against a decision of the police authority as to whether a refusal to accept medical treatment is reasonable.

## Part 2 of SMP's Report

The power to determine whether an officer is to be required to retire on medical grounds is vested in the police authority by Regulation A20. In Stewart Simon Brown LJ came to the following conclusion:

*“Regulation A20 manifestly vests in the Police Authority a discretion whether or not to enforce retirement on the grounds of disablement. [...] the construction I favour would allow the Police Authority to retain any officer they wish to retain and at the same time enable them to ensure that they have as many fully fit officers as the force requires, for example in times of emergency.”*

2. Although the courts have given the police authority a wide enough measure of discretion under Regulation A20 to comply with the aim of retaining officers in the force wherever that is possible, it is important that an authority should exercise that discretion only after careful consideration of all relevant circumstances. A key factor is the extent to which the officer is still capable of some activities.

3. In a case where the SMP finds that an officer is more likely than not to be permanently disabled for the ordinary duties of a member of the force, he or she should be asked to examine in more detail the ordinary duties the officer is incapable of by reason of infirmity as defined by the Police Pensions Regulations A12(5) and to answer the following additional questions:

- Of the key capabilities related to those ordinary duties, which are not permanently affected by the infirmity identified?
- Which capabilities are permanently affected?
- In the case of the capabilities which are permanently affected which would the officer be capable of carrying out provided adjustments were made by management, and what adjustments would be involved?

4. Part 2 of the SMP's report must also address the extent to which, if at all, the SMP considers that the disablement will affect the officer's attendance. Where the SMP considers that attendance may be affected if the officer were to perform particular duties, this should also be addressed.

**REPORT OF THE SELECTED MEDICAL PRACTITIONER**

**PART 1 DECISION**

1.

2. Issued under regulation H1(2) of the Police Pensions Regulations 1987 where the duly qualified medical practitioner has the questions referred to him by the police authority in a case where only questions H1(2)(a) and (b) are being referred.

Name: .....

Police Authority: .....

Following my/our\* consideration I/we\* certify that:

1 The above-named is/is not\* disabled from performing the ordinary duties of a member of the police force.

2 If disabled - The above-named is disabled in respect of the following condition(s):

.....  
.....

3 The disablement is/is not\* likely to be permanent. ❖ If permanent

4 Of the conditions listed at 2 above, the following is/are\* likely to be permanent:

.....  
.....

\* delete as appropriate ❖ do not proceed further if not applicable

Name: .....Qualification(s): .....

Signature: .....Date: .....

Name: .....Qualification(s): .....

Signature: .....Date: .....

- **Boards of doctors must use the same report.**
- **Where it is concluded that the person is permanently disabled, please complete the supplementary part of the report unless the person is no longer a member of the force.**

## **NOTES:**

1. The following are the ordinary duties of a member of the force for the purpose of assessing permanent disablement under regulation H1:
  - Managing processes and resources and using IT;
  - Patrol/supervising public order;
  - Incident management, such as traffic and traffic accident management;
  - Dealing with crime, such as scene of crime work, interviewing, searching and investigating offences;
  - Arrest and restraint;
  - Dealing with procedures, such as prosecution procedures, managing case papers and giving evidence in court.
  
2. Disablement means inability, occasioned by infirmity of mind or body as the case may be, to perform all the ordinary duties of a member of the force. “Infirmity” means a disease, injury or medical condition, and includes a mental disorder, injury or condition – see Annex B to Guidance, paragraphs 6 and 7.
  
3. “Permanent” is not defined in the regulations since the word arguably speaks for itself, meaning for the rest of one’s life. If, in a case where the officer is still in the early stages of his or her career, such a long-term view is difficult the test should be that the officer is likely to remain disabled for the ordinary duties of a member of the force until at least the normal compulsory retirement age for his or her rank – see Annex B to Guidance, paragraphs 8 and 9. However, see also point immediately below.
  
4. For purposes of permanent, it shall be assumed that the person receives normal appropriate medical treatment for his or her disablement. (If the person is refusing such treatment, it will be for the police authority to decide whether or not such refusal is reasonable - see Annex B to Guidance, paragraphs 12-14.)

**Part 2: Supplementary report on capability**

**To be completed by the duly qualified medical practitioner where it is concluded that the officer is permanently disabled for the ordinary duties of a member of the force. Please complete 1 to 4 below unless it is considered that 5 applies; in which case go straight to 5.**

1. Of the key capabilities related to those ordinary duties, which are not permanently affected by the infirmity identified?
  
2. Which capabilities are permanently affected?
  
3. In the case of the capabilities that are permanently affected which would the officer be capable of carrying out provided adjustments were made by management, and what adjustments should be involved?
  
4. (a) To what extent, if at all, do you consider that the disablement will affect the officer's attendance, irrespective of the duties he or she is required to undertake? (For instance, will he or she need have regular absences for treatment or is there a likelihood of relapses?)  
  
(b) To what extent, if at all, do you consider that the disablement would affect attendance if the officer's duties were to entail specific activities?  
  
(c) If the disablement will affect the officer's attendance either at (a) or (b) above, in what way could this be remedied or reduced? (If necessary add as appropriate here to the comments you have already made at 3 above on suggested adjustments).
  
5. If recommending expedited consideration of medical retirement please state the reasons here.

Name: .....Qualification(s): .....

Signature: .....Date: .....

Name: .....Qualification(s): .....

Signature: .....Date: .....

- **Boards of doctors must use the same report.**



**NOTES:**

1. The key capabilities for ordinary duties are:
  - the ability to sit for reasonable periods, to write, read, use the telephone and to use (or learn to use) IT;
  - the ability to run, walk reasonable distances, and stand for reasonable periods;
  - the ability to make decisions and report situations to others;
  - the ability to evaluate information and to record details;
  - the ability to exercise reasonable physical force in restraint and retention in custody;
  - the ability to understand, retain and explain facts and procedures.
2. Please also see Annex C to the Guidance.
3. It is for management to decide whether or not any adjustment recommended by you at 3 or 4(c) is reasonable.
4. Cases where 5 applies should be limited to those where death is imminent or disablement is so severe that there is no real scope for considering retention in the force – see Guidance, paragraphs 30 and 31.

**REPORT OF THE SELECTED MEDICAL PRACTITIONER**

**PART 1 DECISION**

Issued under regulation H1(2) of the Police Pensions Regulations 1987 where the duly qualified medical practitioner has the questions referred to him by the police authority in a case where questions H1(2)(a) (b) (c) and (d) are being referred.

Name: .....

Police Authority: .....

Following my/our\* consideration I/we\* certify that:

1        *The above-named is/is not\* disabled from performing the ordinary duties of a member of the police force.*

2        If disabled - *The above-named is disabled in respect of the following condition(s):*

.....  
.....

3        *The disablement is/is not\* likely to be permanent. ❖ If permanent*

4        *Of the conditions listed at 2 above, the following is/are\* likely to be permanent:*

.....  
.....

5        *The condition(s) at 4 above is/is not\* the result of an injury received in the execution of duty. If some conditions are and some conditions are not the result of an injury, please specify:.....*

.....  
..... ❖ If injury on duty

6.        The degree of the person's disablement is .....%

\*        delete as appropriate applicable

❖        do not proceed further if not applicable

Name: .....Qualification(s): .....

Signature: .....Date: .....

Name: .....Qualification(s): .....

Signature: .....Date: .....

- **Boards of doctors must use the same report.**
- **Where it is concluded that the person is permanently disabled, please complete the supplementary part of the report unless the person is no longer a member of the force.**

*Part 2 not attached in this example see Annex B*

## **NOTES:**

1. The following are the ordinary duties of a member of the force for the purpose of assessing permanent disablement under regulation H1:
  - Managing processes and resources and using IT;
  - Patrol/supervising public order;
  - Incident management, such as traffic and traffic accident management;
  - Dealing with crime, such as scene of crime work, interviewing, searching and investigating offences;
  - Arrest and restraint;
  - Dealing with procedures, such as prosecution procedures, managing case papers and giving evidence in court.
  
2. Disablement means inability, occasioned by infirmity of mind or body as the case may be, to perform all the ordinary duties of a member of the force. “Infirmity” means a disease, injury or medical condition, and includes a mental disorder, injury or condition – see Annex B to Guidance, paragraphs 6 and 7.
  
3. “Permanent” is not defined in the regulations since the word arguably speaks for itself, meaning for the rest of one’s life. If, in a case where the officer is still in the early stages of his or her career, such a long-term view is difficult the test should be that the officer is likely to remain disabled for the ordinary duties of a member of the force until at least the normal compulsory retirement age for his or her rank – see Annex B to Guidance, paragraphs 8 and 9. However, see also point immediately below.
  
4. For purposes of permanent, it shall be assumed that the person receives normal appropriate medical treatment for his or her disablement. (If the person is refusing such treatment, it will be for the police authority to decide whether or not such refusal is reasonable - see Annex B to Guidance, paragraphs 12-14.)
  
5. Disablement is deemed to be the result of an injury if the injury has caused or substantially contributed to the disablement.
  
6. Question 6 is for the purposes of the table in Part V of Schedule B to the Police Pensions Regulations 1987.
  
7. Degree of disablement is calculated by reference to the degree to which earning capacity has been affected as a result of an injury received in the execution of duty.