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Our ref: POL/01/02/01 and  
POL/06/01/01


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Dear Colleague

## **POLICE PENSIONS CIRCULAR No 2005/3 POLICE PENSION SCHEME AND THE DISABILITY DISCRIMINATION ACT**

**This circular should be brought to the immediate attention of force personnel officers and the administrators of the Police Pension Scheme.**

1. This Circular is to notify you that changes to the Police Pension Scheme (PPS) have now been made, with effect from 1 October 2004, to provide for an ill-health standard which applicants to the scheme must meet if they are to qualify for the its ill-health benefits. Details of the changes were circulated for consultation on 5 October 2004 and similar changes have been introduced by the Home Office for police forces in England and Wales.

The amendments necessary to the PPS are made by the Police Pensions (Amendment) (Scotland) Regulations 2005 (SSI 2005/200)  or refer to [www.hmso.gov.uk](http://www.hmso.gov.uk) . The SSI makes amendments to both the Police Pensions Regulations 1987 and the Police Pensions (Purchase of Increased Benefits) Regulations 1987. It also supplements advice on decisions under Regulation A20 on whether or not to retire an officer on the grounds of ill health where that officer is excluded from ill-health benefits (see paragraph 16).

### **Background**

2. In October 2004 the police service was brought further within the scope of the Disability Discrimination Act 1995 (DDA), in implementation of Council Directive 2000/78/EC which established a general framework for equal treatment in employment and occupation. The DDA will apply to the medical standards on entry into the police service. While those who are unable to meet the fitness criteria at the time of application may still be refused entry to the service, there will be others, e.g. with progressive conditions, who are fit for immediate service but whose risk of later ill-health retirement makes their likely pensions costs significantly higher than those without an identified risk of such retirement. The regulations provide a means of allowing such applicants to join the PPS without incurring a disproportionate burden on it.

## **Guidance on the new Police Pension Scheme health standard**

3. Detailed guidance on how recruits to the police service are to be assessed for access to the ill-health benefits of the PPS is given in the Pensions annex to the Guidance issued with Police Division Police Circular No. 19/2004 issued on 17 September 2004. This annex also included a flow diagram to help administrators.

4. The Pensions annex also gives guidance on handling cases involving former officers re-joining the police force after a break in service and officers opting (back) into the PPS.

## **Provisions of the Amendment Regulations**

5. Regulation 2(2) to (4) specifies the ill-health pension benefits from which an officer is to be excluded where his or her pension costs are assessed as likely to be disproportionately high due to a risk of medical retirement.

6. Regulation 2(5) provides for the pension contributions of an officer excluded from ill-health benefits to be reduced from 11% to 7.5% of pensionable pay.

7. Regulation 2(6) provides that the officers who have opted out of the Police Pension Scheme cannot be debarred from re-joining the scheme on ill-health grounds but are liable to be excluded from its ill-health benefits in the same way as applicants to join the service (including those who apply to rejoin after a break in service).

8. Regulation 2(7) inserts new Regulations G7 and G8 into the Police Pensions Regulations. New G7 provides for applicants to join the police, those seeking to re-join after a break in service, and those applying to re-join the scheme after opting out to be examined by a medical practitioner selected by the police authority (selected medical practitioner – SMP) in order to assess whether there is a significantly increased risk of the applicant becoming permanently disabled for police duties.

9. Under new Regulation G7 the SMP will report his or her decision to the police authority who will then use this report in conjunction with reference tables produced by the Government Actuary's Department (GAD) (set out in the Pensions annex to the Guidance) to determine whether the applicant is eligible to be admitted to the full benefits of the PPS, or would have to be excluded from the ill-health benefits of the scheme on the ground that his or her pension costs, are likely to be disproportionately high, which is defined as being more than 50% greater than the costs of a person with no identified risk of medical retirement.

10. New Regulation G8 lays down an appeal procedure. The applicant must give notice of appeal within 28 days of receiving a copy of the SMP's report. The applicant must then submit the appeal within two months of receiving the SMP's report (or such longer time allowed by the police authority) in the form of evidence that a medical practitioner has examined the applicant and disagrees with the SMP's opinion. If the SMP's review of the medical evidence produced by the applicant results in the applicant gaining access to ill-health benefits, no further appeal action is necessary. In any other case the police authority will arrange for a third medical practitioner to examine the applicant. The police authority will then use the third medical practitioner's report in conjunction with the GAD reference tables to determine afresh whether the applicant is eligible for ill-health benefits.

11. Regulation 3 provides for amendments to the Police Pensions (Purchase of Increased Benefits) Regulations 1987 to ensure that the added 60ths of final salary bought by officers excluded from ill-

health benefits are paid at a suitably reduced level of contributions and to exclude automatic credit of the full amount of added benefits being purchased by periodical contributions in the event of medical retirement. The amount of added 60ths to be credited to the pension benefits of the officer are to be pro-rated in the same way as they would be if he or she had opted out of the PPS instead of being medically retired.

### **Key points**

**12.** The key points for senior management and police authorities to note are:

- The SMP is required only to give an opinion on the prospects and likely timing of permanent disablement – he or she is not required to comment on whether the applicant would be able to remain in the force despite that permanent disablement or on the cost of ill-health benefits.
- The medical decision of the SMP or, in the case of an appeal, the third medical practitioner is binding on the police authority. It must apply that medical opinion to the reference tables provided by the Government Actuary's Department.
- The tables provided by the Government Actuary's Department are binding on the police authority. It must include or exclude the applicant as set out in the tables.
- The police authority decision is final and not subject to review in the case of a person who joins the police, and can be considered again only after a period of three years in the case of an applicant who declines to join the service and wishes to reapply later.

### **Inter-force transfers**

**13.** The above changes to the Police Pensions Regulations do not affect officers transferring from one force to another without a break in service. Transferees entitled to ill-health benefits will continue to have such an entitlement even though the risk of ill-health retirement may have risen to a higher level at the time of transfer. By the same token, transferees excluded from ill-health benefits will remain so excluded.

### **Transfer values on leaving or joining the police**

**14.** No amendments have been considered necessary to the Regulations governing the calculation of transfer values out, or service credits for transfer values received, in respect of officers excluded from ill-health benefits under the PPS. GAD advises that Public Service Transfer Club transfers are to remain unaffected by an officer's exclusion from ill-health benefits – i.e. that the payment out will not be less, and the service credit will not be more, than otherwise. However, GAD is still considering whether specific guidance is necessary on the factors to be used in providing a service credit to such an officer for an incoming transfer value from a non-Club scheme. Further advice on the question of transfer values will be issued as soon as possible.

### **Ill-health retirement of officers excluded from ill-health benefits.**

**15.** A key pensions and retirement point for senior managers and police authorities is the need for fair treatment of officers excluded from ill-health benefits under Regulation A20. This point also applies to officers who have opted out of the PPS.

**16.** Regulation A20 gives the police authority discretion to decide whether to require an officer to retire on ill-health grounds or to retain him or her for further service as a police officer. The Police Negotiating Board Joint Guidance on Improving the Management of Ill Health (issued with SPPA

circulars 3 and 4 of 2003) explains that the key considerations for the police authority are: the SMP's assessment of the officer's physical and mental capability, the Chief Officer's advice on the scope for retention as an officer, and the officer's comments on whether he or she wishes to remain in the force. Police authorities must not let the fact that an officer excluded from ill-health benefits may cost less to retire than an officer entitled to such benefits distort their A20 decision.

Yours sincerely

A handwritten signature in blue ink that reads "J. Preston." The signature is written in a cursive style with a period at the end.

**Jim Preston**