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Your ref:  
Our ref: POL/01/12/00

26 November 2010

Dear Colleague

## **The Police Pension (Amendment) (Scotland) Regulations 2011**

The Scottish Crime and Drug Enforcement Agency (SCDEA) currently recruits officers through the Scottish Police Services Authority (SPSA), on a secondment from force basis. The Police Criminal Justice and Public Order (Scotland) Act 2006 makes arrangements for SCDEA to directly recruit police members, through SPSA as the appointing body, but this provision has not been brought fully into force.

Staffing of police roles in SCDEA solely through this route is no longer sustainable; not least due to the risks arising in respect of SCDEA operational capability, business continuity and business outcomes. To address this, the Scottish Government, SCDEA and SPSA are taking forward the Direct Recruitment Project to:

- put the necessary legislative powers and framework in place to enable SCDEA, through SPSA, to directly recruit police members\*, and
- for SCDEA to develop procedures to underpin the implementation and delivery of direct recruitment.

Policy intentions are for SCDEA to have the ability to directly appoint, through SPSA, serving officers (who have successfully completed probation) in ranks from Constable to Chief Superintendent. The appointments are to be treated in the same way as a move between forces, in that service with a force and SCDEA is reckonable for the purposes of pay and pension. As with 'constables of a force' terms and conditions of service for directly recruited police members will be governed by regulation and related determination. These will closely mirror those of constables of a force in Scotland.

SPPA have been requested to extend PPS, NPPS (Scotland), Injury Benefit (Scotland) Regulations, The Police Pensions (Amendment) Regulations 2009 and the Police Pension Account (Scotland) Regulations 2010 to cover constables recruited to SCDEA.

In line with earlier changes introduced to recognise SOCA appointments the attached draft regulations similarly recognise relevant appointments to the National Policing Improvement



Agency (NPIA). Although such appointments are the responsibility of the NPIA the amendments being made attempt to recognise NPIA service in the Scottish regulations principally to provide for officers transferring to or from the Agency. As a starting point, as with the earlier SOCA amendments, the proposed changes are based on those introduced to the regulations in England and Wales. Employees of the NPIA who held the office of constable at the time of their appointment to a post in the agency are termed “employed constables of NPIA”. The NPIA was created by the Police and Justice Act 2006 and that Act amended the Police Pensions Act 1976 to broaden the relevant enabling powers to enable the amendments set out in this instrument to be made.

The attached also includes proposed changes to the 1987 Regulations and the Injury Benefit Scheme Regulations in Scotland to more clearly reflect that a constable of a home force on temporary service under 12A(2) of the Police (Scotland) Act 1967 retains membership of their police pension scheme while on such temporary service. This would include fixed term appointments with Europol. The same retention of membership for a constable on temporary service applies to the NPPS(S) (2007) but the existing regulations do not require amendment for this purpose.

A technical amendment to the PPS (1987) is also being proposed in order to be clear that the reference to “indexing” relates to increases provided by the Pensions Increase Act 1971 rather than the retail price index.

The amendment regulations also include a change to Part 2 of Schedule 2 of the Police Pensions (Scotland) Regulations 2007 to ensure that members who transfer out PPS service do not gain more “head room” for building up service in the New Police Pension Scheme (NPPS) than if they had not reduced their service in PPS.

There is also a slight amendment to the Police Pension (Scotland) Regulations 2010 in order to recognise SPSA and SCDEA in the definition.

\* For the purposes of these amendments, directly recruited police member means a police member of SCDEA, appointed through SPSA by virtue of Schedule 2 7 (2) (c) of the 2006 Act. SCDEA police members are not mentioned directly in many of the amendments due to the fact that they are by virtue of the regulations constables of a home force.

This letter commences the consultation on the proposed changes to the scheme. Any comments should be sent to me at the above address, or by email to [jenny.coltman@scotland.gsi.gov.uk](mailto:jenny.coltman@scotland.gsi.gov.uk) by **14 January 2011**.

Yours sincerely

Jenny Coltman  
SPPA



## SUMMARY OF PROPOSED CHANGES

### Schedule 1 – Amendments to the Police Pensions Regulations (1987)

Schedule 1 contains amendments to the Police Pensions Regulations 1987, governing members of the Police Pension Scheme 1987 (the old scheme).

- Regulation 2 amends regulation A6 to provide that an employed constable of NPIA or a police member of SCDEA shall be deemed to be a member of a home police force. It also allows for references to a force to be construed as a reference to NPIA or SCDEA, as the case may be. The Regulation provides that for the purposes of the regulations SPSA is to be construed as a police authority for SCDEA. A similar amendment is made for NPIA.
- Regulation 2 also provides that employed constables of NPIA and police members of SCDEA hold the rank given to them by NPIA or SPSA as if they held the rank in a force other than the Metropolitan Police Service (MPS). This has two effects:
  - employed constables of NPIA or police members of SCDEA holding a home force rank are subject to the same pension age (for the purpose of receiving a short-service pension) and to the same age limit (for the purpose of calculating deferred pensions and ill-health enhancements) that apply to home force ranks in forces, and
  - employed constables of NPIA or police members of SCDEA holding a home force rank have the same voluntary retirement age as they would in holding the same rank in a force.
- Regulation 3 of Schedule 1 amends regulation A12 to provide that the test for disablement set out in regulation A12(2) to be applied to employed constables of NPIA should be that which would have been applied to them if they were still a member of the home force they most recently served in. This reflects the amendments made in England and Wales but further consideration will be given to whether it is necessary to reflect this particular provision in the Scottish regulations.
- Regulation 4 amends regulation A16 to provide for transfers of officers from home police forces to NPIA to join the agency as employed constables and transfers of employed constables of NPIA the other way to be treated as inter-force transfers.
- Regulation 5 amends regulation A17 to extend the definition of retirement to police members of SCDEA by adding reference to section 23 of the Police, Public Order and Criminal Justice (Scotland) Act 2006. It also provides that a transfer from a home police force to join the NPIA as an employed constable does not count as retirement. Transfers by an employed constable of NPIA to a home force are already excluded from the definition of retirement by regulation A17(d) in that references to a force include a reference to the NPIA.
- Regulations 6 & 7 of Schedule 1 amend regulations A18 and A19 to provide that compulsory retirement on grounds of age or on grounds of force efficiency do not apply to employed constables of NPIA. Again this reflects the amendments made in England and Wales but further consideration will be given to whether it is necessary to reflect this particular provision in the Scottish regulations.
- Regulations 8 & 9 of Schedule 1 amend regulations B1 and B2A to provide that the notice period required of employed constables of NPIA for the purpose of retiring with



an ordinary pension or short-service award is as set out in their contract of employment and not in the regulations. It also confirms that NPIA has the discretion to accept a shorter period of notice.

- Regulations 10 & 11 of Schedule 1 amend regulations E8 and G1 to make specific references to employed constables of NPIA since they are not subject to police regulations and therefore have their allowances and pay governed instead by their contract of employment.
- Regulation 12 of Schedule 1 amends regulation K1 to exclude employed constables of NPIA from the provisions of that regulation under which the need for an ill-health pension may be reviewed and the person receiving the pension recalled to duty. It is expected that the scope for redeploying a disabled employed constable of NPIA will mean that there will be few cases of ill-health retirement from NPIA.
- Regulation 13 of Schedule 1 amends Schedule A to the regulations to reflect the fact that the leave entitlements of employed constables of NPIA and their part-time status is governed instead by their status as employees or contract of employment. In the case of police members of SCDEA, entitlements will be covered under the relevant regulations in the Scottish Crime and Drug Enforcement Agency (Scotland) Regulations 2011.
- Regulation 13 also amends Schedule A to provide definitions for employed constables of NPIA and police members of SCDEA and the respective Agencies; to extend the definition of a member of a police force to include an employed constable of NPIA and a police member of SCDEA and for the definition of a regular policeman to include an employed constable of NPIA and police member of SCDEA, and includes an amendment to allow officers on a fixed-term appointment with Europol to remain in the police pension scheme; this is to regularise the legislative position.
- Regulation 13 of Schedule 1 also amends Schedule A to substitute the definition of indexing from 'Government Index of Retail Prices' to 'Pensions Increase Act 1971'.

## **Schedule 2 – Amendments to the Police Pensions (Scotland) Regulations 2007**

Schedule 2 contains amendments to the Police Pensions (Scotland) Regulations 2007, governing members of the new Police Pension (Scotland) Scheme 2006, which applies to new entrants since 6 April 2006.

### **Part 1**

- Regulation 2 of Part 1 of Schedule 2 amends regulation 3 provide that an employed constable of NPIA or a police member of SCDEA shall be deemed to be a member of a home police force. It also allows for references to a force to be construed as a reference to NPIA or SCDEA, as the case may be. The Regulation provides that for the purposes of the regulations SPSA is to be construed as a police authority for SCDEA. A similar amendment is made for NPIA.
- Regulation 3 of Part 1 of Schedule 2 amends Regulation 4 to provide that the test for disablement set out that regulation to be applied to employed constables of NPIA should be that which would have been applied to them if they were still a member of the home force they most recently served in. Again this reflects the amendments



made in England and Wales but further consideration will be given to whether it is necessary to reflect this particular provision in the Scottish regulations

- Regulation 4 of Part 1 of Schedule 2 amends regulation 5 to provide for transfers of officers from home police forces to NPIA to join the agency as an employed constable of NPIA and transfers of employed constables of NPIA the other way to be treated as inter-force transfers.
- Regulation 5 of Part 1 of Schedule 2 amends regulation 17 to provide that a transfer from a home police force to join NPIA as an employed constable does not count as retirement. The definition of retirement is already extended to employed constables of NPIA by the definition of retirement in the 2007 regulations. Transfers by an employed constable of NPIA to a home force are already excluded from the definition of retirement by regulation 17(1)(a) in that references to a force include a reference to NPIA.
- Regulation 6 of Part 1 of Schedule 2 amends regulation 18 to provide that the notice period required of employed constables of NPIA for the purpose of voluntary retirement is as set out in their contract of employment and not in the regulations. It also confirms that the NPIA have the discretion to accept a shorter period of notice.
- Regulation 7 & 8 of part 1 of Schedule 2 amends regulations 19 and 20 to provide that compulsory retirement on account of age or on grounds of efficiency of the force do not apply to employed constables of NPIA. These are not pensions provisions but management issues which are covered separately from the pensions regulations: by the default retirement age of 65 which applies to all employees in the UK and, in the case of decisions relating to efficiency, by the employee's contract of employment.
- Regulation 9 of Part 1 of Schedule 2 amends regulation 23 to make specific reference to employed constables of NPIA since they are not subject to the Police Regulations and therefore have their pay governed instead by their contract of employment.
- Regulation 10 of Part 1 of Schedule 2 amends regulation 51 to exclude employed constables of NPIA from the provisions of that regulation under which the continued need for a standard ill-health pension may be reviewed and the person receiving the pension recalled to duty. It is expected that the scope for redeploying a disabled employed constable of NPIA will mean that there will be few cases of ill-health retirement from the NPIA with a standard ill-health pension. The amendment does not affect the power of NPIA to review the continuous need for an enhanced ill-health top-up pension.
- Regulation 11 of Part 1 of Schedule 2 qualifies regulation 52 to provide that an employed constable of NPIA will not have his or her police pension abated during a period of employment with NPIA if that period started before the amendment regulations came into force on 1 April 2011. Apart from this safeguard the normal provisions of abatement apply to retired officers who become employed constables – that is police officers who are appointed to a post in NPIA while still a police officer and who then retire from their force before taking up the post.



- Again regulations 7 to 11 reflects the amendments made in England and Wales but further consideration will be given to whether it is necessary to reflect these particular provisions in the Scottish regulations.
- Regulation 12 of Part 1 of Schedule 2 amends Schedule 1 to the regulations to reflect that the leave entitlements of employed constables of NPIA and their part-time status is governed instead by their status as employees or contract of employment. In the case of police members of SCDEA, entitlements will be covered under the relevant regulations in the Scottish Crime and Drug Enforcement Agency (Scotland) Regulations 2011.
- Regulation 12 also amends Schedule 1 to provide definitions for employed constables of NPIA and police members of SCDEA and their respective agencies; to extend the definition of a member of a police force to include an employed constable of NPIA or police member of SCDEA; and for the definition of a regular police officer to include an employed constable of NPIA or police member of SCDEA.

## Part 2

- Part 2 of Schedule 2 affects only those who were members of the Police Pension Scheme 1987 (PPS) and who subsequently opted out of that scheme and transferred out some or all of their PPS service after having opted out. The purpose of these amendments is to ensure that the act of transferring out PPS service does not enable such officers to gain more “head-room” for building up service in the New Police Pension Scheme (NPPS) than if they had not reduced their service in PPS.
- Regulation 13 of Schedule 2 provides that these amendments apply only to those to whom the Police Pension Regulations (Scotland) 2007 apply on or after 1<sup>st</sup> April 2011. This can happen in two ways:
  - in the case of a former officer who retired with less 30 years’ pensionable service in PPS who re-joins the service on or after 1<sup>st</sup> April 2011, the 2007 Regulations apply to that officer at the point of re-joining.
  - in the case of an officer who has opted out of the PPS and cancels his or her election with effect from on or after 1<sup>st</sup> April 2011, the 2007 Regulations apply to that officer at the point of cancelling his or her election.
- Regulation 14 of Schedule 2 amends regulation 6 of the Police Pensions (Scotland) Regulations 2007. Regulation 6 (2) (b) excludes from the NPPS(S) those who re-join the service on or after 6 April 2006 if they had previously retired with 30 years’ pensionable service and therefore an entitlement to a target two-thirds pension. This amendment widens that provision also to exclude from the NPPS re-joiners coming back into the service on or after 1<sup>st</sup> April 2011 who would have had 30 years’ PPS service but for having transferred out some or all of that service after having opted out of the PPS before retirement.
- Regulation 15 of Schedule 2 amends Schedule 2 to the Police Pensions (Scotland) regulations 2007 at paragraph 9. Paragraph 9 provides for the maximum of 35 years’ pensionable service in the NPPS(S), set out in regulation 16, to apply also to officers with a combination of PPS and NPPS service. The 35-year limit is applied in such cases by converting PPS service into NPPS service, using the table provided in



Schedule 2, in order to have a consistent standard of measurement. The changes made by the amendments in paragraph 3 apply to officers who:

- opted out of PPS and then retired before re-joining the service on or after 1<sup>st</sup> April 2011
  - opted out and then opted back in with effect from on or after 1<sup>st</sup> April 2011 without leaving the service.
- The amendments push back the relevant time (the ‘applicable time’) at which PPS pensionable service is measured, for the purpose of calculating the amount of NPPS service that can also be built up, from the point of retiring or opting back in (prior to which the officers could have transferred out PPS service after first having opted out) to the point when they opted out.
  - Paragraph 4 amends Schedule 3 principally to cover those who joined NPPS by opting back in (as opposed to doing so by re-joining the service) with effect from on or after 1<sup>st</sup> April 2011 and who in addition made an election to transfer their PPS service to NPPS. They are excluded from Schedule 2 by virtue of paragraph 9(d), which does not apply to officers who make a transfer election. The new paragraph 19 in Schedule 3 provides for the 35-year limit in regulation 16 to apply to such cases using the same provisions as in paragraph 9 of Schedule 2 and also making the relevant time at which PPS service is measured the point when officers opted out of the PPS.
  - Regulation 16 inserts new paragraph 19 which is set in terms which also cover the possibility of officers who have re-joined the service under regulation K1 of the 1987 regulations and resumed membership of the PPS before electing to join the NPPS with effect from on or after 1<sup>st</sup> April 2011. The amendment extends to cover the cases where such officers transferred out some or all of their PPS pension rights after having opted out of the PPS either before their ill-health retirement or after having opted out of that scheme after re-joining their force.

### **Schedule 3 – Amendments to the Police (Injury Benefit) (Scotland) Regulations 2007**

Schedule 3 contains amendments to the Police (Injury Benefit) (Scotland) Regulations 2007, governing all police officers, whether they be members of the Police Pensions Scheme 1987 (the old scheme), the New Police Pension Scheme (Scotland) 2006, or members of neither scheme (having opted out).

- Regulation 2 amends regulation 3 to provide that an employed constable of NPIA who is not a member of a home police force, shall be deemed to be such a member except where the context otherwise requires. The phrase “where the context requires” refers to specific regulations which need to apply with different wording from that used for members of a force.
- Regulation 3 amends regulation 6 to provide that references to duty and being on duty shall apply to employed constables of NPIA who are employed constables, as if they were references to their acting within the scope of their employment. This gives employed constables of NPIA the same cover injury as officers have while on duty. Employed constables of NPIA hold the office of constable and therefore do not require



special mention in the regulations where they refer to “constable” in the context of the duty of a constable.

- Regulation 4 amends Schedule 1 (glossary) of the Injury Benefit Regulations to provide definitions for employed constables of NPIA or police members of SCDEA and their respective agencies; to extend the definition of a member of a police force to include an employed constable of NPIA or police member of SCDEA; and for the definition of a regular policeman or police officer to include an employed constable of NPIA or police member of SCDEA.
- Regulation 4 also defines relevant service under its meaning in section 38A of the Police (Scotland) Act 1967. This is to clarify the meaning for the benefit of fixed-term appointments.

#### **Schedule 4 – Amendments to the Police Pension Account (Scotland) Regulations 2010**

- Regulation 2 amends Regulation 2 in order to amend the definition, recognising SPSA and SCDEA as “police authority” and “police force” and “regular police officer”.

