

EXPLANATORY MEMORANDUM TO
THE POLICE (DESCRIPTIONS OF SERVICE) ORDER 2012

2012 No. 2954

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. **Purpose of the instrument**

2.1 The instrument amends the Police Pensions Act 1976 to bring specified posts in the senior leadership team in the shadow National Crime Agency, and the post of Chief Executive of the new College of Policing, within the scope of the police pension scheme. It also amends the Police Act 1996 to provide for police officers seconded to the College of Policing to be treated in the same way as officers seconded to various other central bodies, in relation to their terms and conditions of service and other matters.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

4. **Legislative Context**

4.1 Section 11 of the Police Pensions Act 1976 (interpretation) lists various descriptions of service which are taken to be service as a member of a police force for the purposes of the Act. The effect of the section is that a person serving in one of the capacities listed can be or remain a member of one of the police pension schemes created by regulations made under the Act.

4.2 Section 97 of the Police Act 1996 (police officers engaged on service outside their force) lists various descriptions of “relevant service” upon which a police officer may be engaged. The effect of being on relevant service is that the officer is treated as if he or she were not a member of his or her police force during the service, except as provided for in the section. The officer is no longer subject to the terms and conditions of service set out in regulations made under the Act, and terms and conditions are instead determined by the receiving body in accordance with Home Office guidance.

4.3 Under section 11A of the Police Pensions Act 1976 and section 97A of the Police Act 1996, the Home Secretary has the power to amend sections 11 and 97 by Order so as to add new descriptions of service to each section. This includes a power to make consequential or supplementary provision.

4.4 The Crime and Courts Bill, currently before Parliament, establishes the National Crime Agency as a non-Ministerial Government Department. The Bill amends the Police Pensions Act 1976 with the effect that the NCA

Director General is eligible for membership of a police pension scheme under that Act if, immediately before taking up that post, he was so eligible. The amendments to the Police Pensions Act 1976 also allow the Director General to designate other NCA posts as posts carrying such eligibility for a police pension.

4.5 The Government has indicated its intention to create a new police professional body, to be known as the College of Policing, with the objective of promoting professionalism in policing. Among other things, the College will assume responsibility for the standard setting, guidance and training delivery functions previously carried out by the National Policing Improvement Agency. Initially the College is being incorporated as a company limited by guarantee – in due course it is intended to bring forward legislation placing the College on a statutory footing.

4.6 Pending the establishment of the NCA in statute, the Government is taking steps to create the body in shadow form, including appointing various individuals to oversee the creation of the body and provide immediate senior leadership. The Government is also appointing a Chief Executive of the College of Policing, for the same purpose. In the case of the College, it is anticipated that the body will be staffed in part by police officers on secondment, as is currently the case for the NPIA.

4.7 This instrument amends section 11(1) of the Police Pensions Act 1976 by the addition of service in specified senior posts in the NCA, and service as Chief Executive of the College of Policing, to the kinds of service which constitute membership of a police force for the purposes of the Act. The instrument makes consequential changes to other provisions of the Act and to the Police Pensions Regulations 1987 to deal with ancillary matters arising from this, such as the application of other definitions used in the legislation.

4.8 This instrument also amends section 97(1) of the Police Act 1996 by the addition of service with the College of Policing to the kinds of relevant service to which the section applies. Again, consequential amendments are made to other provisions of section 97 to deal with matters such as the application of police disciplinary regulations on return to the police force and retention of the office of constable.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

Jeremy Browne MP, Minister of State, has made the following statement regarding Human Rights:

In my view the provisions of the Police (Descriptions of Service) Order 2012 are compatible with the Convention rights.

7. Policy background

- What is being done and why

7.1 Senior police officers represent a valuable and significant pool of candidates for all the key senior appointments being made for the purposes of the NCA and College of Policing. To make these roles sufficiently attractive to serving senior police officers, it is considered vital that existing members of the police pension schemes should be able to continue to accrue a police pension; these changes to the Police Pensions Act are needed to make that possible.

7.2 The categories of service that count as membership of a police force for pension purposes have been extended a number of times by primary legislation, and also by a previous Order. Equivalent provision to the one in this instrument has already been made in respect of Her Majesty's Inspectors of Constabulary, certain members of the Serious Organised Crime Agency and the National Policing Improvement Agency.

7.3 Police officers at all levels represent a valuable and significant pool of expertise and talent for those functions of the NPIA transferring to the College of Policing. Such expertise will continue to be essential to the College in its mission to further improve professionalism in policing. Providing for secondments to be made under the conditions applicable to other forms of central service will ensure the College continues to have access to this valuable resource, and places service with the College on the same footing as service with other central bodies such as the Independent Police Complaints Commission and Her Majesty's Inspectors of Constabulary.

- Consolidation

7.4 In view of the nature of the instrument and the powers being exercised, the question of consolidation of this instrument with others does not arise.

8. Consultation outcome

8.1 The instrument was the subject of statutory consultation with the Police Advisory Board for England and Wales (PABEW) under section 63(3) of the Police Act 1996 (as amended by section 10(3) of the Policing and Crime Act 2009). Responses were received from the Association of Police Authorities, the Association of Chief Police Officers and the Police Federation of England and Wales. All those who commented were content with the principle; the Order takes account of comments made on specific technical points. No member of the Board objected to the proposal.

9. Guidance

9.1 No specific guidance is proposed given, the limited scope of the provision being made.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is limited to the area of police terms and conditions of service, and particularly pension provision. Any increased cost will be minimal, bearing in mind that the instrument affects only a very small number of posts, and some public sector pension provision would have been made for the individuals in any event.

10.3 An Impact Assessment has not been prepared for this instrument. This is because no impact on business, charities or voluntary bodies is foreseen and the impact on the public sector is negligible.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The shadow NCA senior appointments will transfer to the NCA on the coming into force of the relevant provisions of the Crime and Courts Bill, after which the provisions in this Order in relation to those posts will be redundant.

12.2 It is intended that the legislation that puts the College of Policing on a statutory basis will provide for the pension arrangements for the Chief Executive post. At this point the provision which provides for secondment arrangements will be reviewed and any necessary changes made.

12.3 It is intended to repeal the amendments once they are no longer required, either by means of provision in the Bill placing the College of Policing on a statutory footing, or by means of a further Order.

13. Contact

Caroline Johnson (National Crime Agency) or Katie Ratcliffe (College of Policing) at the Home Office Tel: 020 7035 1562 or 020 7035 3171 or email: Caroline.Johnson@homeoffice.gsi.gov.uk or katie.ratcliffe@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.