

EXPLANATORY MEMORANDUM TO
THE POLICE INJURY BENEFIT (AMENDMENT) (ENGLAND AND WALES)
REGULATIONS 2018

2018 No. 262

1. Introduction

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

2. Purpose of the instrument

- 2.1 These Regulations amend the Police (Injury Benefit) Regulations 2006 (S.I.2006/932) to amend provision for the reduction of police injury pension to reflect entitlement to employment and support allowance paid under sections 1(2)(a) or 1B of the Welfare Reform Act 2007 to mirror the previous regime that applied with incapacity benefit before employment and support allowance was introduced alongside it.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The amendments made by these Regulations are retrospective and have effect from 10th February 2017 the date on which the Police (Injury Benefit) Regulations 2006 were amended to provide expressly for the deduction of employment and support allowance (see S.I. 2017/21). Retrospective effect is permitted by section 1(5) of the Police Pensions Act 1976.
- 3.2 As these Regulations correct errors in S.I 2017/21, the free issue procedure has been applied.

Other matters of interest to the House of Commons

- 3.3 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The Police (Injury Benefit) 2006 Regulations are made under section 1 of the Police Pensions Act 1976 and set out the compensation scheme for payments to police officers who are permanently disabled as a result of an injury received without their own default in the execution of duty, or where death results from such an injury, to surviving spouses or civil partners, children or other dependent relatives of the deceased officer. Regulation 11 of the 2006 Regulations makes provision for an individual who ceases or has ceased to be a member of a police force and is permanently disabled as a result of an injury received without his own default in the execution of his duty to receive both an injury benefit pension and a gratuity, in both cases calculated in accordance with Schedule 3 of the 2006 Regulations. Under paragraph 7 of that Schedule, the amount received in injury pension shall be reduced by an amount equal to any 'additional benefit'. The benefits which constitute

‘additional benefits’ are set out in Schedule 3, paragraph 7(3) of the Police (Injury Benefit) Regulations 2006.

- 4.2 These Regulations amend the Police (Injury Benefit) Regulations 2006 to ensure that injury pension is not reduced in respect of second (or subsequent) post retirement entitlements to employment and support allowance mirroring the rules in relation to incapacity benefit. Consistently with this the amendments also provide that there is no reduction of injury pension in respect of entitlement to employment and support allowance where there has been a previous reduction in respect of incapacity benefit and there is a new post retirement claim for employment and support allowance.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales.
5.2 The territorial application of this instrument is England and Wales.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 From 27 October 2008 employment and support allowance began to replace incapacity benefit for claimants making a new claim for financial support on the grounds of incapacity and for existing recipients of incapacity benefit. This was done under the Welfare Reform Act 2007.
- 7.2 It has been a long-standing principle in the Police (Injury Benefit) Regulations 2006 that a recipient of a police injury award may not gain by receiving other taxpayer funded benefits related to their incapacity.
- 7.3 The Police (Injury Benefit) Regulations 2006 are administered locally by police pensions administrators. As the changes started to apply to recipients of police injury awards, forces across England and Wales adopted different approaches with regard to the deduction of employment and support allowance from injury pensions. The regulations were amended by SI 2017/21 to put the matter beyond doubt by making express provision to employment and support allowance in the 2006 Regulations.
- 7.4 However, those regulations did not reflect the pre-existing situation for incapacity benefit. Where an individual’s incapacity benefit stopped but the person became entitled to incapacity benefit again, the second incapacity benefit was not deducted. So, the amendment ensures that employment and support allowance is not deducted where the initial incapacity benefit or employment and support allowance has ceased and the individual becomes entitled to employment and support allowance some time after.
- 7.5 These changes will have effect from 10 February 2017, which was the date the previous amendments came into force.

Consolidation

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

8. Consultation outcome

- 8.1 Under section 1(1) of the Police Pensions Act 1976 the Home Office is required to consult the Police Advisory Board before making these regulations and under section 1(1ZB) of the 1976 Act must invite the views of the Northern Ireland Policing Board and the Police Association for Northern Ireland.
- 8.2 The Home Office consulted the Police Advisory Board of England and Wales (PABEW). The consultation period ran from 4 December 2017 to 2 February 2018.
- 8.3 A Response was received from the Police Federation of England and Wales (“PFEW”) on 1 February 2018. The PFEW felt that the draft achieved the aim we set out and noted two minor drafting points.

9. Guidance

- 9.1 Police pension administrators will communicate these changes to police officers in England and Wales.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no impact on the public sector.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 There are no proposals to monitor or review the outcome of the changes to this Statutory Instrument.

13. Contact

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