

## **DETERMINATIONS OF THE SECRETARY OF STATE UNDER THE POLICE REGULATIONS 2003**

The Secretary of State, in exercise of the powers conferred by regulation 14A of the Police Regulations 2003 (SI 2003/537), as amended, makes the following determination.

In accordance with the requirements of regulation 46 of the Police Regulations 2003, the Secretary of State has taken into consideration the recommendations of the Police Negotiating Board for the United Kingdom and supplied that Board with a draft of this determination, and has supplied the Police Advisory Board for England and Wales with a draft of this determination and taken into consideration the representations of that Board.

The Secretary of State has determined that, with effect from 16 January 2013—

1) In the determination under regulation 14 of the Police Regulations 2003 (Annex D – Retirement)—

a) in paragraph (1), for “subject to paragraph (2)” there shall be substituted “subject to paragraphs (2) and (3)”;

b) after paragraph (2) there shall be inserted the following:

“3) A member of a police force who accepts an offer of a Compensation Lump Sum under the determination made under regulation 14A of the Police Regulations 2003 (Annex DA) may retire only if the member has given to the Chief Officer of Police three month’s notice of the member’s intention to retire, and notice is deemed to be given for these purposes when the member gives notice of his acceptance of the offer.”.

2) After that determination there shall be inserted the following:

**“ANNEX DA**

**Regulation 14A**

### **COMPENSATION LUMP SUM ON VOLUNTARY RETIREMENT**

1) ELIGIBILITY FOR COMPENSATION LUMP SUM

a) Subject to the remainder of this paragraph, this determination applies to a

- member of a police force who—
- i. has at least 2 years' Service at the relevant date;
  - ii. does not have Full Pensionable Service; and
  - iii. leaves Service in circumstances where the police pension authority has determined that voluntary retirement terms apply.
- b) The police pension authority may, at its discretion, waive or reduce the requirement in sub-paragraph (a)(i).
- c) A member of a police force has Full Pensionable Service if—
- i. the Police Pensions Regulations 1987 apply to the member and, if required to retire on the relevant date, the member would be entitled to receive a pension of an amount not less than two thirds of the member's average pensionable pay under those Regulations (or would have been so entitled if the pension did not fall to be reduced in accordance with Part VIII of Schedule B, or if the member had not made an election under regulation G4(1), of those Regulations); or
  - ii. the Police Pensions Regulations 2006 apply to the member, and the member is entitled to reckon 35 years' pensionable service under those Regulations (or would have been so entitled if the member had not made an election under regulation 9 of those Regulations).
- d) This determination does not apply to a member of a police force if—
- i. subject to sub-paragraph (e), the member is the subject of an allegation of misconduct or gross misconduct which has not yet been determined under the Conduct Regulations by the relevant date;
  - ii. subject to sub-paragraph (g), the member has been required to attend a third stage meeting under regulations relating to performance from time to time in force under section 50 of the Police Act 1996, and the meeting has not yet been held by the relevant date;
  - iii. subject to sub-paragraph (h), the member's conduct has, in the 12 months preceding the relevant date, been found to amount to misconduct or gross misconduct (and the finding has not been overturned on appeal by the relevant date); or
  - iv. at a meeting of the kind mentioned in sub-paragraph (d)(ii) held in the 12 months preceding the relevant date, the member's performance or attendance has been found to be unsatisfactory or to constitute gross incompetence (and the finding has not been overturned on appeal by the relevant date).
- e) Where—
- i. sub-paragraph (d)(i) applies in relation to a member of a police force, and

- ii. after the relevant date, the member's conduct is found not to amount to gross misconduct (whether or not it is found to amount to misconduct), the police pension authority may, subject to sub-paragraph (f), decide within 30 days of the hearing or meeting at which that finding is made (or within 30 days of the appeal hearing or meeting at which a contrary finding is overturned) that this determination applies to the member.
- f) Where the conduct of a member of a police force to whom sub-paragraph (e) applies is found to amount to misconduct, the police pension authority shall only decide that this determination applies to the member if satisfied that it is appropriate to do so.
- g) Where—
  - i. sub-paragraph (d)(ii) applies in relation to a member of a police force, and
  - ii. after the relevant date, the member's performance or attendance is found not to be unsatisfactory or to constitute gross incompetence, the police pension authority may decide, within 30 days of the hearing or meeting at which that finding is made (or within 30 days of the appeal hearing or meeting at which a contrary finding is overturned), that this determination applies to the member.
- h) Where sub-paragraph (d)(iii) applies by reason of the conduct of a member of a police force having been found to amount to misconduct but not gross misconduct, the police pension authority may, if satisfied that it is appropriate to do so, decide that this determination applies to the member.
- i) Where this determination applies to a member of a police force, the police pension authority may impose such further qualifications for receipt of a Compensation Lump Sum as it thinks fit.
- j) A Compensation Lump Sum under this determination is paid at the discretion of the police pension authority and nothing in this determination extends or is to be construed to extend to give any person an absolute right to such a payment.
- k) In this determination—
  - i. "the relevant date" is the date determined by the police pension authority in relation to the application of voluntary retirement terms;
  - ii. "Pay" has the meaning set out in paragraph (3);
  - iii. "police pension authority" has the meaning set out in section 11(2) of the Police Pensions Act 1976, but where the member in question is the Chief Officer of Police, references to the police pension authority have effect as references to the pension supervising authority, within the meaning of that section;

iv. “Service” has the meaning set out in paragraph (4).

2) AMOUNT OF COMPENSATION LUMP SUM

- a) If this determination applies to a member of a police force, the police pension authority may offer the member a Compensation Lump Sum equal to the Compensation Tariff applicable to the member.
- b) The Compensation Tariff applicable to a member is the lesser of—
  - i. an amount calculated by multiplying one-twelfth of the member’s Pay by the length of the member’s Reckonable Service in years (up to and including the last day of such Reckonable Service); and
  - ii. the Voluntary Departure Maximum.
- c) If the amount that would be calculated under section 162 of the Employment Rights Act 1996, if the member was an employee with a right to a redundancy payment under section 135 of that Act, is greater than the Compensation Lump Sum determined in accordance with sub-paragraph (a), the Compensation Lump Sum must be increased to that amount.

3) PAY

- a) “Pay” in relation to a member of a police force means the member’s pay calculated in accordance with Annex F, as at the last day of Reckonable Service (this is subject to sub-paragraphs (b) to (d)).
- b) If, on the last day of Reckonable Service, the circumstances specified in sub-paragraph (c) below apply, and as a result the member is not receiving Pay of an amount equal to that which the member would have received if those circumstances did not apply, the member is to be treated as receiving or as having received Pay of such an amount, and this amount is referred to as “Assumed Pay”.
- c) The circumstances are that the member is—
  - i. on relevant service within the meaning of section 97(1) of the Police Act 1996;
  - ii. on sick leave under Annex P;
  - iii. on a career break under Annex OO;
  - iv. on maternity leave under Annex R;
  - v. on maternity support leave, parental leave, adoption leave or adoption support leave under Annex S;
  - vi. absent from duty because of being called out or recalled for permanent service in the reserve forces or the regular forces in pursuance of a call-out order made under the Reserve Forces Act 1980 or under an Order in

Council made on 18<sup>th</sup> May 1982; or

vii. receiving pay at a reduced rate where the member is entitled to pension benefits under an occupational pension scheme other than under the Police Pensions Regulations or to a payment under this determination in respect of an earlier period of service.

- d) If the member is in part-time service on the last day of Reckonable Service, the member's Pay will be calculated as if the member received the full-time rate at that time.
- e) Where the member's Pay is more than the Deemed Maximum for the time being, the member's Pay will, for the purpose of calculating the member's lump sum under paragraph (2), be taken to be the Deemed maximum.
- f) The Deemed Maximum is six times the figure for median gross annual full-time private sector pay, as provided by the Office for National Statistics in the most recent Annual Survey of Hours and Earnings.

#### 4) SERVICE AND RECKONABLE SERVICE

- a) "Service" in relation to a member of a police force means the current period of continuous service as a member of a police force, including any period of that service during which the member is treated as having received Assumed Pay and any other period of unpaid leave (this is subject to sub-paragraphs (d) and (e) below).
- b) Transfer from one police force to another does not result in a period of service coming to an end, and accordingly service before and after the transfer counts as a single period of continuous service.
- c) Any previous periods of service as a member of a police force which are not part of the current period of continuous service do not count towards the member's Service (this is subject to sub-paragraph (h)).
- d) The following periods do not count towards a member's Service but do not result in that period of service coming to an end—
  - i. any unauthorised absence; and
  - ii. any break in the member's Service which lasts no more than 28 days.
- e) The following periods do not count towards a member's Service—
  - i. any service which reckons under the Police Pensions Regulations which results from a credit of reckonable service pursuant to a transfer from another pension scheme (this is subject to sub-paragraph (h)); and
  - ii. any service which reckons under the Police Pensions Regulations attributable to a purchase of added years by the member.

- f) “Reckonable Service” in relation to a member of a police force has the same meaning as the member’s Service except as provided for in sub-paragraphs (g) and (i).
- g) A period of unpaid leave does not count towards a member’s Reckonable Service but does not result in that period of Reckonable Service coming to an end.
- h) If the Secretary of State consents, following a request from the police pension authority, all or any part of a period of service—
  - i. other than as a member of a police force; or
  - ii. as a member of a police force but prior to a period of service to which this determination applies,
 may count as a member’s Service or Reckonable Service.
- i) If a member of a police force has been in part-time service at any time during the period referred to in sub-paragraph (f) above, the period of Reckonable Service in years in respect of each period during which the member has been in part-time service is calculated by dividing by 2087 the number of hours of the member’s part-time service in the period in question, using the result to four decimal places.
- j) For the purposes of this determination, Service and Reckonable Service are, subject to sub-paragraph (m), to be expressed in complete years and days, with any part day to be rounded up to a full day.
- k) Where periods of part-time service calculated in accordance with sub-paragraph (i) are to be expressed in complete years and days, they are first added together and the resulting number is then expressed in complete years and days, with any part day rounded up to a full day.
- l) Where Service or Reckonable Service are referred to in years, the days referred to in sub-paragraphs (j) and (k) are converted into years by dividing the number of days in excess of the period of whole years by 365, and using the result to four decimal places.
- m) If a period of Service or Reckonable Service is less than one year, this paragraph applies as if the words “complete years and”, wherever they occur, were omitted from sub-paragraph (j) and (k) and the words “in excess of the period of whole years” were omitted from sub-paragraph (l).

## 5) VOLUNTARY DEPARTURE MAXIMUM

- a) The Voluntary Departure Maximum in respect of a member of a police force is (subject to sub-paragraph (b))—
  - i. where the member is below Pension Age on the member’s last day of Service, the lesser of—
    - 1. the amount calculated by multiplying one-twelfth of the

- member's Pay by 21; and
2. the Tapering Maximum;
    - ii. where the member is at or above Pension Age on the member's last day of Service, half of the member's Pay.
  - b) If the member has been in part-time Service at any time during the last 3 years of the member's Reckonable Service, the Voluntary Departure Maximum in respect of the member is—
    - i. where the member is below Pension Age on the member's last day of Service, the lesser of—
      1. the amount calculated by multiplying one-twelfth of the member's Pay by A/B by 21;
      2. the amount calculated by multiplying one-twelfth of the member's Pay by the length of the member's Reckonable Service in years; and
      3. the Tapering Maximum;
    - ii. where the member is at or above Pension Age on the member's last day of Service, half of the member's Pay multiplied by A/B
  - c) The Tapering Maximum in relation to a member of a police force is calculated by multiplying one-twelfth of the member's Pay by the Tapering Sum.
  - d) For the purposes of sub-paragraph (c), the Tapering Sum is (subject to sub-paragraph (e)) 6 plus the number of months (rounded up or down to the nearest whole month in accordance with guidance issued by the Secretary of State) starting on (and including) the day after the member's last day of Service and finishing on (and including) the day before the member reaches Pension Age.
  - e) If the member is in part-time Service on the member's last day of Reckonable Service, the Tapering Sum is the number of months (rounded up or down to the nearest whole month in accordance with guidance issued by the Secretary of State) starting on (and including) the day before the member reaches Pension Age plus the Part Time Tapering Sum rounded up or down to the nearest whole number in accordance with guidance issued by the Secretary of State (this is subject to sub-paragraph (f)).
  - f) Before being rounded up or down the number of months referred to in sub-paragraph (e) above shall first be multiplied by the appropriate factor then applicable to the member, within the meaning of paragraph (6)(b) of Annex E.
  - g) The Part Time Tapering Sum is  $6 \times (A/B)$ .
  - h) In this paragraph—
    - A is the length of the member's Reckonable Service in years; and
    - B is what would have been the length of the member's Reckonable

Service in years if the member had worked full time throughout the period of the member's Service which reckons.

- i) In this paragraph "Pension Age" means the age at which the member is first entitled to receive payments on account of an ordinary pension under such Police Pensions Regulations as are applicable to the member.

6) RE-APPOINTMENT IN THE POLICE SERVICE

- a) No payment shall be made in respect of a Compensation Lump Sum unless the member of the police force agrees in writing to make a repayment in accordance with this paragraph in the circumstances set out in sub-paragraph (b).

- b) The circumstances are that—

- i. a Compensation Lump Sum has been paid to the member under this determination, or the member has opted for it to be paid to buy out the member's pension reduction in accordance with the Police Pension Regulations;
- ii. after the Compensation Lump Sum was paid, the member commences work as a member of a police force, or as a member of the civilian staff of a police force (including the metropolitan police force) within the meaning of section 102(4) and (6) of the Police Reform and Social Responsibility Act 2011; and
- iii. the date on which the member commences work under sub-paragraph (ii) is—
  - 1. before the last day of the member's Notional Severance Payment Period; and
  - 2. less than 6 months after the date on which the member left Service.

- c) A member's Notional Severance Payment Period is (subject to sub-paragraph (c)) the length of time, expressed as a decimal number of years, found by applying the following formula—

$$C/D$$

where—

C is the amount of the Compensation Lump Sum paid to the member;  
and

D is the member's Pay by reference to which the sum was calculated.

- d) If the member was in part-time Service on the member's last day of Reckonable Service, the Notional Severance Payment Period calculated in accordance with sub-paragraph (c) is divided by the appropriate factor then applicable to the member, within the meaning of paragraph (6)(b) of Annex E.



e) The member must agree to repay, in the circumstances set out in sub-paragraph (b), an amount of the Compensation Lump Sum calculated in accordance with the formula set out in sub-paragraph (f) reduced, as necessary, in relation to sub-paragraph (f)(ii), in accordance with sub-paragraphs (g), (h) and (j).

f) The amount that the member must agree to repay is—

i. where the member commences work under sub-paragraph (b)(ii) less than 29 days after the date on which the member left Service on terms which qualified the member to receive the Compensation Lump Sum, the full amount of that Compensation Lump Sum;

ii. where the member commences work under sub-paragraph (b)(ii) 29 or more days after the date on which the member left Service on terms which qualified the member to receive the Compensation Lump Sum,

$$E/F \times C$$

where—

E is the member's Notional Severance Payment Period less the time (in years and days, expressed as a decimal number of years) between the date of the member's leaving Service on terms which qualified the member to receive a Compensation Lump Sum and the date of the member's re-appointment;

F is the member's Notional Severance Payment Period; and

C is the amount of the Compensation Lump Sum.

g) If the member agrees, the amount calculated under sub-paragraph (f)(ii) is reduced, in accordance with guidance issued by the Secretary of State, to take into account the income tax paid by the member in relation to the Compensation Lump Sum.

h) If the member's re-appointment pay as defined in sub-paragraph (i) is less than the member's Pay in relation to the Service which the member left on terms which qualified the member to receive the Compensation Lump Sum, the amount calculated under sub-paragraph (f)(ii) after applying sub-paragraph (g) where relevant, is reduced to an amount calculated in accordance with the following formula—

$$G/D \times H$$

where—

G is the member's re-appointment pay;

D is the member's Pay in relation to the Service which the member left on terms which qualified the member to receive the Compensation Lump Sum; and

H is the amount calculated under sub-paragraph (f)(ii) after applying sub-

paragraph (g) where relevant.

- i) For the purposes of sub-paragraph (h), the re-appointment pay—
  - i. of a member re-appointed as a member of a police force, is the member's Pay as defined in paragraph (3) except that it is as at the date of the member's re-appointment under sub-paragraph (b)(ii);
  - ii. of a member re-appointed as a member of civilian staff, is the member's annual rate of basic pay at that date.
- j) If the difference between the Compensation Lump Sum and the amount that the member agrees to repay after applying sub-paragraph (f)(ii) and, where relevant, sub-paragraphs (g) and (h), is less than the member's Statutory Redundancy Payment, then the amount that the member agrees to repay is reduced, or further reduced, so that the difference is equal to the member's Statutory Redundancy Payment.
- k) For the purpose of sub-paragraph (j), the member's Statutory Redundancy Payment is the amount that would be calculated under section 162 of the Employment Rights Act 1996 at the date when the member left Service on terms which qualified the member to receive the Compensation Lump Sum, if the member was an employee with a right to a redundancy payment under section 135 of that Act.