

DETERMINATIONS OF THE SECRETARY OF STATE UNDER THE POLICE REGULATIONS 2003

The Secretary of State, in exercise of the powers conferred by regulation 22 and 28A of the Police Regulations 2003 (SI 2003/537) makes the following determination which is effective from 1 May 2015

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

The Secretary of State has not considered advice from the Senior Salaries Review Body, or referred the matter to the Police Remuneration Review Board because she considers it unnecessary to do so by reason of the nature of this determination.

The Secretary of State has supplied a draft of this determination to, and considered any representations from, those persons referred to in regulation 46(1C).

1) After Annex E, insert the following:

“ANNEX EE LIMITED DUTIES

Regulation 22 and 28A

1. This determination sets out the circumstances in which a member of a police force may be placed on limited duties, and the circumstances in which an element of pay may be deducted during periods when that member is carrying out adjusted duties.
2. The three categories of **Limited Duties** are defined as follows:
 - a. **“Recuperative Duties”** is defined as duties falling short of full deployment, undertaken by a police officer following an injury, accident, illness or medical incident, during which the officer adapts to and prepares for a return to full duties and the full hours for which they are paid, and is assessed to determine whether he or she is capable of making such a return.

NOTE: For clarity, recuperative duties should be viewed as a structured, time-limited, supportive and rehabilitative process.

- b. **“Adjusted Duties”** is defined as duties falling short of full deployment, in respect of which workplace adjustments (including reasonable adjustments under the Equality Act 2010) have been made to overcome barriers to working. For an officer to be placed on adjusted duties, he/she must:
 - i. be attending work on a regular basis;
and
 - ii. be working for the full number of hours for which he/she is paid (in either a full time or part time substantive role).

- c. **“Management Restricted Duties”** is defined as duties to which an officer is allocated in circumstances in which:
- i. verifiable confidential or source sensitive information or intelligence has come to the notice of the Force that questions the suitability of an officer to continue in his or her current post; and/or
 - ii. serious concerns are raised which require management actions, both for the protection of individuals and the organisation;

In either case also that:

- iii. criminal or misconduct proceedings are not warranted; and
- iv. the chief constable has lost confidence in the officer continuing in their current role.

3. An officer who is ‘fully deployable’ for the purposes of this determination will generally demonstrate all the following core capabilities:
- a. the ability to sit for reasonable periods, to write, read, use the telephone and to use (or learn to use) IT;
 - b. the ability to run, walk reasonable distances, and stand for reasonable periods;
 - c. the ability to make decisions and report situations to others;
 - d. the ability to evaluate information and to record details;
 - e. the ability to exercise reasonable physical force in restraint and retention in custody;
 - f. the ability to understand, retain and explain facts and procedures;
 - g. the ability to work the full range of shifts.
4. For the purposes of this determination, ‘substantive role’ means:
- a. a role that exists in the organisational design of that Force and is funded;
and
 - b. a role into which an officer is posted.

Deployment component of the police officer X-factor (‘X-factor’)

5. The deployment component of X-factor is established as equivalent in value to:
- a. For constables:
 - 8% of the pay to which the member is entitled as a constable.
 - b. For all other ranks:
 - 8% of the pay to which the member is entitled in his/her current rank , capped at 8% of the maximum of constables’ pay.
6. For the purposes of this determination, “pay” refers to rates as set out in Parts 2, 3, 4, 5, 6, 7 and 8 of Annex F of the determinations. For clarity, it does not include any additional allowances or other payments (for example: London weighting, CRTP, overtime or acting up allowance).

7. X-factor shall be calculated daily, for each day which the member has spent on adjusted duties. A day's pay for the purposes of this determination shall be calculated according to the determination at Annex M made under Regulation 30 (dividing by 7 the weekly rate).
8. For part time members, X-factor should be calculated on a pro-rata basis, taking into account the number of hours worked.

Allocation to adjusted duties

9. Triggers for officers to be placed on adjusted duties are as follows:
 - a. Officer fails to recover to full duties following a period of recuperation;
 - b. Failure to pass fitness test or Personal Safety Training brings to light an underlying medical condition that makes adjusted duties appropriate;
 - c. Medical review that comes about for some other reason.
10. It is for Chief Officers to define a process for allocating adjusted duties officers to suitable roles within the Force, according to the principles set out in current national guidance, and in compliance with their statutory duties under the Equality Act 2010, particularly in relation to officers with a disability within the meaning of that Act. In making the decision to allocate an officer to adjusted duties, account should be taken of any medical advice received by the force.
11. If a difference of opinion arises between the member and the Force in relation to such medical advice to place a member on adjusted duties where the difference of opinion relates to whether or not the member is "fully deployable", the chief officer or delegated authority shall, within 28 days of the difference of opinion coming to light, arrange for the member to be examined by a different registered medical practitioner, appointed or approved by the chief officer. The second doctor's opinion will be final.

NOTE: For the avoidance of doubt, it is likely that some officers with disabilities (as defined under the Equality Act 2010) will be fully deployable as defined in this determination and will not be suitable for Adjusted Duties.

Annual review of officers on adjusted duties and adjustments to pay

12. There will be an annual review of whether a member placed on adjusted duties should remain on adjusted duties. This review will take place 12 months after the member was placed on adjusted duties (the "12 month management review"), and on an annual basis thereafter.

Actions prior to the 12 month management review

13. After nine months on adjusted duties, the officer shall be notified in writing that should s/he remain on adjusted duty following assessment at the 12 month management review, s/he may be subject to the deduction from pay of the deployment component of X-factor.

The 12 month management review

14. The 12 month management review will constitute a “formal management review”, as described in current national guidance, undertaken with the individual concerned, and may involve a referral to the Force medical advisor(s).

15. The 12 month management review will include:
 - a. An assessment of whether the member is able, after workplace adjustments have been made, to discharge a substantive police role for the full duration of the hours for which he/she is paid;
 - b. An assessment of whether the member on adjusted duties can be accommodated without unreasonable detriment to overall Force resilience, as judged by the chief officer;
and
 - c. Where it is concluded that the officer shall remain on adjusted duties and the Selected Medical Practitioner (SMP) does not consider as appropriate the possibility of permanent disablement, or permanent medical unfitness (as defined under the Police Pensions Regulations), the person or persons who have conducted the review shall make a recommendation to a delegated authority nominated by the chief officer of police (“delegated authority” is defined for the purposes of this determination as a person holding the rank of Assistant Chief Constable or equivalent or above) as to whether the member should:
 - i. remain on adjusted duties;
and
 - ii. sustain a deduction from pay to the value of the X-factor.

NOTE: when deciding who will be responsible for decisions about deduction from pay, Forces should bear in mind that an appeal may subsequently be made to the chief officer of police. Therefore, to maintain an element of independence in the appeals process, there should be provision made by the Force for an appeal to be made to someone other than the person who made the initial decision to deduct ‘X-factor’.

Pay deductions

16. On receipt of the review panel’s recommendation, the chief officer of police, or delegated authority, shall use his/her discretion to decide whether or not an officer should sustain such a deduction from pay. In exercising his/her discretion, the chief officer of police or delegated authority must:
 - a. comply with equalities legislation;
 - b. Give consideration to the operational requirements of the Force at that time;
 - c. Consider each case individually and on its own merits, taking into account the relevant facts and circumstances of each;
 - d. Notify the officer in writing of their decision, giving one month’s notice of any deduction of the deployment component of the X-factor from pay for the subsequent period of time that the officer remains on Adjusted Duties.

17. Any deduction shall be calculated according to the officer's rate of pay on the day immediately after one months' notice has elapsed and shall be deducted in arrears on each pay day for each day of the previous pay period which the member has spent on adjusted duties.

Exercise of chief officer discretion in relation to pay deductions

18. The chief officer of police may in a particular case decide that the deployment component of the X-factor may be retained by the officer if one or more of the following circumstances are satisfied:
- a. The range of roles to which the Force is able to deploy the officer is not significantly reduced;
 - b. To avoid manifest unfairness e.g. where fully fit officers are performing the same range of duties within a role as an officer on adjusted duties;
 - c. An officer is on adjusted duties solely as the result of an injury sustained or contracted in the course of having put themselves in harm's way in the execution of their duty;
 - d. Some other exceptional reason (what is considered an exceptional reason is to be determined locally at Force level)
19. If an officer has been referred to the Selected Medical Practitioner in relation to consideration of ill-health retirement¹ prior to or during the first 12 month review process, decisions about pay deductions shall not be made until the outcome of that referral is known. In relation to any such referrals made after the implementation of any pay deduction, any further decision about changes to pay (including X-factor) shall be stayed until the day immediately after the date when a decision is made by the chief officer of police to retain or retire the officer.

Appeals

20. The officer has the right of appeal to the chief officer of police in relation to the deduction of X-factor.
21. Allowable grounds for appeal are:
- a. Abuse of process;
 - b. Perverse decision.
22. Should the officer submit an appeal that is upheld, pay shall be reinstated, including any back pay as applicable.

Review of officers on adjusted duty after the conclusion of the initial 12 month review process

23. After the initial 12 month review, "formal management reviews" as described in current national guidance should take place on at least an annual basis, following the same format as the initial 12 month management review, including consideration of X-factor deduction. If there is any significant change in the circumstances of either the officer or the Force, a further review may be initiated at the request of either the officer or local managers at any time.
24. If the conclusion of any subsequent review is that deduction of X-factor is no longer appropriate, X-factor will be reinstated with effect from the date of the conclusion of the review.

¹ The period from the date of written referral until the date the chief officer of police makes the decision to retain or retire the officer.