

COVID-19 FAQs on officer Terms and Conditions of service

Date: 3rd April 2020

[Correct at time of writing: updates to be issued as necessary throughout the COVID crisis.](#)

COVID-19 Terms and Conditions FAQs

The following FAQs are aimed at keeping you updated regarding measures Avon and Somerset Police may take to increase the workforce and manage existing officers. We know that in the current crisis forces are having to find ways to ensure they have as many officers deployed as possible.

We have used a National Guidance Document in order to ensure that what it is written here is consistent with the advice and information that we have received from your General Secretary Alex Duncan.

We have had a number of queries regarding whether measures that the force has undertaken with regard to terms and conditions are admissible under regulations. We have also had queries about the impact of new measures that simply are not explicitly provided for in regulations, but where guidance is rapidly being worked up.

The following is intended to help to flag up whether actions that Avon and Somerset are taking – even when these are unusual – are still within regulations. Where changes have been enacted that are subject to guidance, we have noted these too. In several cases we are seeking for the NPCC to clarify further give clarity: but as this hasn't happened yet, we have stated what we believe we should be stating as our position as a staff association, in the best interests of members.

If you have queries please send them to info.avonsom@polfed.org and please mark the email subject as COVID-19. We will answer all that we can, and where necessary will raise centrally with the Police Federation of England & Wales, to the NPCC and Home Office.

As ever, further detail on existing regulations can be found at <https://www.polfed.org/about-us/police-regulations/>

We are aware that the NPCC are aiming to publish guidance on a number of topics, as soon as possible. Some of these are matters on which we have been engaging for some time.

These will include pensions – re-joiners; Reg 28; Specials Allowance; Rest days in lieu; Injury awards to officers – 'execution of duty'; emergency deployment of student officers and special constables; On call allowance; Overtime when acting up; Away from home allowance

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Structure and contents

These FAQs cover 3 categories of officer: serving officers (existing members, beyond probation); probationers and trainees; rejoiners.

For each topic, we have sought to address, as appropriate:

- What forces are doing and why
- Can they do this under current regulations (or where appropriate broader UK legislation)? Are there any consequences members need to know?
- What is happening by way of agreements and guidance? (most recent versions are attached) What is PFEW position?

Serving officers (beyond probation)

1. Officers planning to retire in 3-6 months asked to consider extending service

Officers who have not yet completed their maximum pensionable service can continue membership of their current scheme under normal terms. If an officer has already completed their retirement paperwork (for a retirement date in the future) they should consider contacting their pension administrator as soon as possible if they no longer intend to retire. However, it may be that, considering the further information below that they decide to retire anyway and apply to immediately rejoin.

The situation for officers who have completed their maximum pensionable service and continue in employment is less clear. However, if as expected, the requirement for a gap in service to conserve Protected Pension Ages (PPA) is temporarily suspended, then it would make more sense for such members to retire and rejoin immediately, especially as it also seems likely that Chief Constables will be exercising their discretion to not apply abatement during the current crisis. Adopting this approach and retiring would also allow officers to access their commuted lump sums. However, the relaxation of the service gap requirement and changes to the use of the abatement provisions described above are yet to be officially confirmed. We will let you know as soon as we receive confirmation and update these FAQs accordingly.

Discussions within Government about the situation in respect of auto-enrolment requirements are ongoing. It appears that at least as a temporary measure rejoiners will be offered membership of NPPS 2006 but without the ability to accrue further benefits.

However, we are led to understand that the intention is that rejoining officers will be offered retrospective membership of the 2015 CARE Scheme. This would provide members with death benefits, ill-health benefits and the opportunity to accrue further pension rights. We understand that discussions on this matter within Government are still ongoing, so this is not yet confirmed.

As soon as we know what the official position is, we will update you. In the meantime, members should consider very carefully any decision to opt out of membership.

2. Buy-back of Annual Leave

Although some forces are saying they will do this, it cannot currently be done under current Reg 33 (unless an officer is retiring or resigning).

We are seeking for the Home Office to issue a Determination allowing this.

3. Self-isolation and pay

Officers must be encouraged to do the right thing by self-isolating where necessary, without fear that their pay will be adversely affected, now or in the future.

Our position is that all periods of self-isolation should be treated as being separate from ordinary periods of sick leave and should not be included for the purposes of calculating entitlement to sick pay. The mechanism to achieve this lies in Police Regulation 28 and Annex K – sick pay, and Regulation 33 (11) – leave and Annex P – sick leave, with additional guidance set out in PNB circular 05/1 on the use of chief officer discretion. Time spent in isolation should be on full sick pay and it should not be included for the purposes of calculating future entitlement to sick pay.

Annex P provides for officers to self-certificate for up to seven days. If officers are self-isolating and cannot work for more than seven days, forces will need to make an exception to the normal requirement for medical evidence and officers themselves can obtain an isolation note through the [NHS website](#) or [NHS 111 online](#).

The NPCC have also stated the same position as ours at national level but have not yet provided communication of this. We will send out any confirmation as soon as published.

4. Deaths due to COVID-19

Some forces are saying these should be treated as death as a result of injury on duty, for pension purposes. We believe this is possible in regulations, and we are seeking that applied consistently. We are seeking for the Home Secretary to ensure this is applied consistently. In the meantime, where officers die of COVID-19, local Federations should seek for the Chief Constable to treat this as death as a result of injury on duty. Please also let us know of any COVID deaths at info.avonsom.polfed.org, we want to know what the Chief

Constable's decision is so that we can keep a record, and lobby on behalf of dependents.

5. Treatment of officers in unexpected change of circumstances: Officers with weddings / civil partnerships cancelled

Some officers had weddings / civil partnerships booked which have now been cancelled. Under the PPS 1987 the spouse or civil partner would have benefitted automatically for pension purposes, from that date. However, unmarried partners are not entitled to a pension on the death of a PPS 1987 member. Please also let us know of any such cases at info@avonsom.polfed.org.

We are raising this with the Home Office. In the meantime, officers should be reminded of the importance of ensuring that their nomination of beneficiary(ies) is up to date.

6. Appeal to staff on career breaks, to return

Police Regulation 33, Annex OO does not generally allow chief officers to require officers to return from their career break earlier than the agreed date without the officer's consent.

Some forces wish to ask officers currently on a career break to return to duty. Under these circumstances it would seem sensible to suspend the career break temporarily.

7. Cancellation of leave

Avon and Somerset have adopted a pragmatic and welfare centric approach in this regard. The current position is that an officer who wishes to cancel their leave will be allowed to do so, but line managers have a responsibility to talk with the officer first. We cannot emphasise enough the value of taking breaks from the workplace. This approach has been published on pocketbook. As you will see below, the regulations governing the management of leave have not changed, only the amount that can be carried over has.

See carry Over of Annual Leave, below.

8. Carry over of annual leave

The Government has amended the Working Time Regulations (WTR) 1998 to allow workers to carry over up to four weeks' annual leave into the next two holiday years, where it has not been reasonably practicable for them to take it as a result of the effects of coronavirus (this includes the effects on the worker, the employer, the wider economy or society).

It is likely that this would allow carry over if, for example, an employer did not allow leave to be taken during the crisis due to an increased workload. It is less likely that it would allow carry over of leave just because a worker was unable to go on holiday as planned due to travel restrictions. In that situation, it would arguably still be reasonably practicable for workers to take the annual leave within the leave year, even if they cannot use it to go away on holiday.

Police Regulation 33, Annex O – annual leave already gives chief officers discretion to allow more than five days' leave to be carried over in exceptional circumstances and when it is in the interests of efficiency to do so. Our position is that chief officers should use their discretion provided by Regulation 33, Annex O to enable officers who are prevented from taking their annual leave to carryover up to four weeks annual leave into the next two leave years.

9. Dependents' leave

As summarised in the Quick Reference Guide, Regulation 33, Annex T states that officers are entitled to reasonable paid time off in order to take action which is necessary:

- a) when a dependent falls ill, gives birth or is injured or assaulted;
- b) to arrange for care for an ill or injured dependent;

- c) where a dependent dies to arrange and attend funeral
- d) where care arrangements for a dependent are disrupted or terminated; or
- e) to deal with an unexpected incident involving an officer's child at school or nursery.

Dependent means a spouse, child, parent, someone who lives in the same house as the officer (but not a lodger etc.) or, in relation to (a) (b) and (d) any person who reasonably relies on the officer for assistance for instance an elderly neighbour or relative.

There is no definition in Annex T of what is reasonable time off. Our position is that officers should be granted paid time off for as long as necessary to deal with any emergency arising out of this crisis.

10. Parental bereavement and pay

Parental bereavement leave is a new entitlement for bereaved parents to be absent from work, normally with pay at a statutory minimum rate, for up to two weeks. The new statutory right is available to the parents of a child who dies on or after 6 April 2020.

Our position is that officers should be granted up to two weeks leave and that such leave should be treated as a period of duty i.e. on full pay.

Agreement has been reached at the Police Consultative Forum that officers should benefit from parental bereavement leave and pay but this has not yet been translated into regulations and determinations. On 26 March 2020, the PCF asked the Home Office to issue a circular urgently.

11. Pregnant officers

The Management of Health and Safety at Work Regulations 1999 cover the health and safety of new and expectant mothers who work in the police service.

Government guidance during the coronavirus (COVID-19) crisis is that all employees should work from home unless this is not possible. Where an employee is pregnant, the guidance is that they should be "particularly stringent" in following social distancing guidelines; they should work from home where possible and employers (this includes Forces) should support them to do so.

Where it is not possible for a pregnant employee to work from home, employers should consider their duties under health and safety legislation. The employer should carry out a risk assessment, taking into account the extent to which it is possible for the employee to follow the social distancing guidelines, for example by avoiding non-essential use of public transport and staying two metres away from others. Where a risk is identified, the employer must take steps to control, reduce or remove it, by:

- temporarily altering the employee's working conditions or hours of work; or (if that is not reasonable)
- offering them suitable alternative work; or (if none is available)
- suspending them from work on full pay for as long as necessary to avoid the risk.

All of the above reflects the guidance already issued to Forces on the management of maternity and related issues set out in PNB circular 10/05. This includes what action is needed to protect the health, safety and welfare of the woman and her child. Whilst the guidance to Forces is aimed primarily at managing women in the Service, it is also important that Forces are aware of and sympathetic to the needs of new and expectant fathers or partners, particularly at this time.

In the final analysis, it is our position that a Force is responsible for the health safety and welfare of the woman and her child, and it must go through a formal risk assessment process and take all known relevant medical advice into account – this includes the Government advice above.

An officer's statutory maternity pay will be triggered if they are absent from work for a pregnancy-related reason, including a suspension on health and safety grounds, in the four-week period before their expected week of childbirth. To be clear, this does not mean that an officer's police maternity leave and pay will be triggered – this is explained in more detail in JBB circular 025-2017.

12. Postponement of Sergeants' legal examination and National investigators' examination (NIE)

The NIE, fixed for 2 June 2020 has been postponed, and candidates registered for this exam have automatically been transferred to the next available date, currently 8 September 2020.

The sergeants' legal examination, due in March 2020, was postponed last month. No date has yet been re-scheduled, but the College has confirmed that this will not take place before the end of June 2020. There is a meeting of the National Police Promotion Framework Board on 16 April at which consequential impacts on officers will be discussed, such as

extensions to examination validity periods, possible extension of the step 4 (Temporary Promotion and Work-Based Assessment) period and when the next examination will be re-scheduled.

(<https://www.college.police.uk/News/College-news/Pages/Sergeants-exam.aspx>)

Probationers

13. Assessment and selection

Currently, activity at Recruitment Assessment Centres has been postponed, and the College is working to provide an on-line alternative. They hope to do so within weeks. There is some uncertainty regarding the position of candidates who have completed the SEARCH process but not yet been offered a role; there are likely to be differences in approach between forces in terms of any accelerated approaches to this that they may introduce to deal with the current situation. Any concerns locally regarding fairness or safety should be raised with the Avon and Somerset Branch Office info.avonsom@polfed.org with the subject reference COVID-19 as above) to consider raising on a national level if appropriate.

14. Attestation

Section 29 of the Police Act 1996 requires that every member of a police force or special constable shall be attested as a constable on appointment. Prior to attestation it is likely that a recruit is a member of the force but does not hold the office of constable. This raises questions regarding application of the statutory and regulatory provisions for individual recruits which come with that office, including injury benefits and awards, health and safety and equality legislation, and pension provisions. Lack of attestation carries potentially significant consequences for student officers in such forces who are also implementing the emergency deployment curriculum. This has been raised with NPCC. PFEW consider NPCC must issue a circular reiterating the statutory requirement.

15. New recruits – training changes

A revised, temporary initial learning curriculum designed to lead to ‘directed patrol’ status has been developed by the College to support safe and legal frontline policing during the period of emergency provision. This is anticipated to comprise a 7-8 week programme to bring student officers to the level of directed patrol status currently set for Special constables. The curriculum specifically provides that such officers will always patrol with another officer who is to be confirmed in rank and that such students will be ‘protected learners’ so, as such will not be judged on their performance during this time. It is very likely that further amendments will need to be made, or Home Office/Police Consultative Forum (PCF) circulars issued to deal with issues as they arise, including pay issues, protection regarding disciplinary proceedings and implications for probation status on reversion to the original entry route programme.

16. Operational policing training

Most of the College’s operational training courses have been postponed in light of the need to maintain social distancing. The College is looking to extend validity periods, for example in respect of firearms. PFEW has asked the College to engage with IOPC to ensure that they are content with any such arrangements.

17. Initial training

Forces are being encouraged to continue with the Uplift 20,000 programme. There are questions whether forces will have the infrastructure in place to fast-track the immediate induction of new recruits, such as sufficient equipment and tutors, and safety concerns. Many forces who have already introduced PEQF initial learning programmes are working with their partner Higher Education Institutions to provide learning other than in a face-to-face environment. However, any difficulties maintaining momentum on learning, including the new initial learning curriculum above, may have an impact on pay and probation arrangements and these issues are still to be considered and resolved. We are working to ensure that our members do not suffer any detrimental impact from the measures which are being taken.

18. Joint Related Fitness Testing

In-Service Fitness Testing: The NPCC and the College of Policing has advised forces to suspend all in-service fitness testing.

Fitness testing is not in Police Regulations: The College of Policing sets standards and provides guidance but decisions regarding the implementation of officer fitness testing sit with individual forces. Although the NPCC cannot require forces to comply with its advice, forces should be aware that there is a health and safety risk to officers of undertaking fitness testing during the COVID-19 pandemic given that social distancing rules cannot be followed due to the nature of the test.

Fitness Testing for New Recruits: The College of Policing has proposed that new recruit candidates should “self-declare” during the recruitment process that they can reach level 5:4 on the 15m Multi-Stage Fitness Test (MSFT). They advise that forces should re-test new recruits on entry (or as soon as practicable) and all new recruits must have undergone and been successful at the JRFT before they can undertake Personal Safety Training.

If a new recruit fails to reach the 5:4 standard upon taking the test they should have one further attempt three weeks from the first attempt. They will be subject to Regulation 13 should they not pass on their second attempt.

As for in service fitness testing, the College can only advise forces, and individual forces must decide whether or not to follow the College’s advice on fitness testing for new recruits. However, the following issues are important to note:

- As with all other serving officers, there is a health and safety risk to probationers of undertaking the JRFT whilst social distancing restrictions are in place. Forces would therefore need to consider whether or not the health and safety risks associated with embarking on PST without having first passed the JRFT outweigh the health and safety risks associated with taking the JRFT.
- Under Regulation 13 a probationer’s services may be dispensed with if the chief officer considers that s/he is not fit, physically or mentally, to perform the duties of the Office of Constable or is not likely to become an efficient or well conducted Constable. Failing the JRFT could be construed as evidence that the probationer is not physically fit to perform the duties of the office of Constable. However, there are significant concerns regarding the current validity of the JRFT, which have not yet been resolved by the College of Policing and NPCC. Because of the shortcomings of the current JRFT, the NPCC advised Chief Constables on 20th January 2020 that officers who fail the 15m MSFT should be given the opportunity

to undertake additional testing (in the form of the Chester Treadmill Police Walking Test and gas exchange analysis testing) prior to any formal sanction.

- The College's advice to forces about the recommended number of retakes, and the recommended time between retakes, for probationers who join during the Covid-19 pandemic is widely different to the College's published guidance for implementing the JRFT. The published guidance says that forces must provide supportive action if an officer fails the JRFT on the first attempt and should be allow a series of at least two retakes before any performance management procedures are started, with intervals of at least 6 weeks between each attempt.
- In terms of broader consequences for members, we are still unsure of the implications for membership of life insurance and pensions schemes for new recruits who join the service without having first completed a fitness test (they will still have had their medical examination). We are seeking clarification.

19.TOIL

The Quick Reference Guide summarises the provisions of Police Regulations 25, Annex G – overtime and Regulation 26, Annex H – rest days and public holidays.

Our position is that Forces should allow days in lieu to be taken wherever possible, as soon as possible.

If an officer has chosen to take time off in lieu of an allowance and the chief officer is unable, due to the exigencies of duty, grant the time off in lieu of payment within three months, then our position is that the time off in lieu of payment falls away and a right to payment arises and the allowance paid.

The Police Consultative Forum is looking to increase the timeframe for taking monthly leave days for inspecting and superintending ranks. Our position is that Forces should exercise some discretion pending an amendment to regulations and determinations so that officers do not lose out

Rejoiners

20. Officers being asked to rejoin, after retiring (or leaving early).

Regulations allow for this, but for officers who retired before age 55 (and therefore have a Protected Pension Age) there are tax penalties that may apply upon rejoining. In order to preserve the PPA and therefore avoid tax penalties, this requires a break in service of at least one month, and in some instances six months. We have been told by the Home Office that the requirement for a gap in service in order to protect PPAs is to be suspended for rejoiners during the current crisis and that an announcement to this effect is imminent.

Another requirement of the one-month break in service provision is that abatement of pension can apply, and this has usually been applied (to ensure that total remuneration does not exceed the officer's pay immediately prior to retirement). However, we are also expecting a relaxation of this position. Chief Constables already have the discretion not to apply abatement and we are expecting guidance from the Home Office to provide that this discretion not to abate is universally exercised on a temporary basis during the current crisis. This would allow members to continue to receive their pension and also receive their salary. This would obviously increase their income and therefore mean that more income tax was payable. We await official confirmation from the Home Office, and we will update you as soon as we know the definitive position.

A further complication in relation to rejoiners is that automatic enrolment legislation requires forces to enroll officers into a pension scheme. Normally pension scheme membership brings three major benefits; death in service benefits, ill-health benefits; and pension accrual. Under current regs retired officers who return will join NPPS 2006 and will have to pay contributions (11%+) but will not accrue further benefits. However, there are ongoing discussions (between the Home Office and HM Treasury) which indicate that rejoiners will be offered retrospective membership of the 2015 CARE Scheme. This would provide members with death benefits, ill-health benefits and the opportunity to accrue further pension rights. As soon as we are appraised of the definitive position, we will update you. In the meantime, members should consider very carefully any decision to opt out of membership.

Changes to scheme eligibility for rejoiners (whether retired or early leavers) will require regulatory change, and we also expect confirmation that the Injury Benefit regulations will apply to rejoiners.

Previous rejoiners schemes (30+ and 30++) are now closed, and whilst some forces have continued to operate a similar arrangement this is not currently formally backed up in regulations and guidance.

This has been raised with the NPCC and the Home Office and we understand that full and comprehensive guidance is due to be circulated as a matter of urgency.

21.HMRC tax charges – removal of requirement for 1-6 month break for rejoiners

Currently a retired rejoiner must adhere to the relevant break in service requirement to ensure that they do not attract additional taxation or penalties for breaching HMRC rules when they return to employment. This requirement is largely understood and implemented correctly by forces, though there have been instances where individuals have incurred additional tax liabilities and/or penalties by not adhering to the break in service requirement (whether by fault of the individual or force).

The Home Secretary announced on 26 March 2020 that the requirement for a break in service for those rejoining would be relaxed. However, we await details on how this relaxation will be implemented in order to ensure that retired rejoiners will not breach current HMRC rules and suffer tax penalties.

Guidance concerning the break in service requirement and the consideration of abatement is being compiled as part of the document that the Home Office will be issuing regarding rejoiners. We will let you know as soon as we receive official confirmation.