

## Title: COVID-19 FAQs on officer Terms and Conditions of service

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

### Updates since version 001:

New sections on: Changes to duty rosters; volunteering to work on a rest day or public holiday; lawful orders; payment to student officers required to undertake directed patrol; working from home tax relief; bonus payments.

Updated information on pregnant officers; rejoiners; deaths due to COVID-19.

### Updates since version 002:

New section on: payment to students asked to undertake duties they would not normally (short of accompanied patrol).

Updated information on Officers planning to retire; pregnant officers; postponement of Sergeants' legal exam; probationer assessment and selection; new recruits - conduct and performance matters; initial training; Job Related Fitness Testing; payment to students required to undertake accompanied patrol; self-isolation and pay; deaths due to COVID-19; carry over of annual leave; officers asked to rejoin; abatement of pensions; HMRC.

### Updates since version 003:

New sections on: Quarantine rules for international travel

Updated information on: officers planning to retire, and relaxation of tax penalties; deaths due to COVID-19; cancellation of leave; carry over of annual leave; postponement of Sergeants' legal examination and National Investigators' Examination (NIE); probationers' assessment and selection; new recruits' – training changes; rejoiners (all issues, including abatement, life cover, and tax charges)

### Updates since version 004

New section on NPPF Step Two legal examination validity

Updated information on: Quarantine rules for international travel

## COVID-19 Terms and Conditions FAQs

The following FAQs are aimed at keeping you updated regarding measures forces may take to increase the workforce and manage existing officers.

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

We have worked with the NPCC to develop a shared view of how forces should be enacting Regulations. There has been significant progress, and agreement on a number of issues. The NPCC National Reward Team have provided advice notes to Chief Constables on 20<sup>th</sup> April 1<sup>st</sup> May, 5<sup>th</sup> June and 12<sup>th</sup> June, and where relevant that advice is incorporated here. But the NPCC has been unable to mandate a position for Chief Constables to adopt, and has reminded Chief Constables of their ability to use discretion. The NPCC state the advice captures “recommendations to forces rather than agreed NPCC policy”. We note this, and state what we believe is the appropriate position for us to adopt as a staff association, in the best interests of members.

**From the week commencing 11 May a short list of questions has been sent to Branch Board Secretaries each fortnight, to enable us to track whether each force is adopting best practice.**

If you have queries please send them to [terms&conditions@polfed.org](mailto:terms&conditions@polfed.org) and please mark the email subject as COVID-19. We will answer all that we can, and where necessary will raise 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/>

## 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?



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## 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.

Following an announcement from the Economic Secretary on 22 April and as detailed in HMRC Pension schemes newsletter 119, the requirement for a gap in service to conserve Protected Pension Ages (PPA) has been relaxed. An officer with a Protected Pension Age who rejoins to undertake work in relation to Covid-19 can do so immediately without incurring tax penalties (otherwise incurred due to losing their Protected Pension Age). Therefore in most circumstances it would make more sense for such members to retire and rejoin immediately. The relaxation initially applied to those who rejoined from 1 March to 1 June, however upon review HMRC updated their newsletter on 2 June to confirm an extension of this approach until 1 November.

The government have committed to ensure there are no unintended tax liabilities for rejoiners during the period of COVID. The most recent [HMRC Pension schemes newsletter \(119\)](#) published on 30 April includes a section on tax charges for rejoiners with protected pension ages:

*“On 22 April 2020 John Glen MP (Economic Secretary to the Treasury) made a written ministerial statement to confirm that the government intends to temporarily suspend tax rules that would otherwise apply significant tax charges to pension income received by recently retired individuals aged between 50 and 55. In line with this statement, if the nature of the employment is to undertake work in relation to the COVID 19 outbreak, then HMRC accepts that the re-employment conditions have been satisfied.”*

The NPCC guidance to forces on abatement has to date reiterated the current position that Chief Constables have the discretion to abate, however PFEW maintain that officers' pensions should not be abated during the current crisis and we have written to forces where they have done so to reiterate our position.

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 this position changes the FAQs will be updated accordingly

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. In the meantime officers should keep any email trails / communications from HR departments offering 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 the Guidance supplied on 20 April was not as clear as we had hoped and suggested Chief Constables would retain some discretion. Any deviation from the position we have outlined should be reported to us either via the fortnightly data gathering questionnaire we will send out to Secretaries, or at [terms&conditions@polfed.org](mailto:terms&conditions@polfed.org)

The PFEW position with regard to officers identified as needing to self-isolate because they have been identified through the track and trace system is that they should also be treated as being on a period of leave that is separate from sick leave, and should receive full pay.

#### 4. Quarantine rules for international travel

New regulations came into force across the UK on 8 June setting out a requirement for 14 days of self-isolation following international travel (ie, travel from outside of the UK, the Republic of Ireland, the Channel Islands and the Isle of Man). The only possible exception to this requirement was where officers and/or staff are required to undertake essential policing (as defined by the chief officer) within the 14 day self-isolation period. However, on 3 July the Foreign and Commonwealth Office updated its advice against “all but essential travel”, exempting destinations that no longer pose an unacceptably high risk for British travellers. For a current list of exempted countries see the Gov.uk website.

All travellers are still expected to fill out a form online 48 hours before arriving (back) in the UK via the gov.uk website, even if you are travelling from an exempted country.

Following the introduction of the Regulations in June, the NPCC issued guidance to forces on 5 June setting out the following recommendations:

**Recommendation 1:** Forces to make local decisions around managing any period of self-isolation after travel in respect of officers and staff who had booked holidays prior to travel restrictions being announced.

**Recommendation 2:** NPCC guidance should be that officers and staff, who have booked holidays following the announcement of travel restrictions, should make their own leave arrangements to accommodate the 14 day self-isolation period.

**Recommendation 3:** Forces are invited to use existing special/ compassionate leave policies for officers and staff who are required to travel abroad for relevant personal reasons.

**Recommendation 4:** If forces identify that an officer or staff member is exceptionally required to return to designated essential policing during the self-isolation period, they are

advised to ensure that this is supported by a risk-assessment and safe working arrangements.

The NPCC guidance also states that the 14 day self-isolation period set out in the legislation is not sick leave, unless the individual is symptomatic, in which case normal sickness arrangements would apply.

PFEW has sought further protections for officers, in particular for those who booked leave prior to these new restrictions coming into force as well as for those required to travel for exceptional circumstances (such as a funeral) and will continue to engage with NPCC on these matters.

### **Revised NPCC guidance 29 July 2020**

On 25 July the Government amended the list of exempted countries (removing Spain). Since then, further changes have been made, and it has become clear that exemptions can be removed at little or no notice. The NPCC have drafted guidance that reflects the fact that – in light of this – those booking to travel should now expect the situation to change rapidly.

Revised guidance was sent out by NPCC on 29 July. It sets out that 1, 3 and 4, above, remain unchanged. However, with regards to the changing nature of exemptions and the subsequent impact on the workforce, they set out the following:

#### **Holidays booked prior to the introduction of ‘travel corridors’ (i.e. Before 3 July 2020)**

Officers and staff who had booked holidays following the announcement of travel restrictions should make their own leave arrangements to accommodate the 14 day self-isolation period.

#### **Holidays booked whilst specific ‘travel corridors’ were in place, and these were expected to remain (i.e. between 03-25 July 2020 for Spain)**

For officers and staff who booked a holiday to a country at a time when that country was exempt from self-isolation procedures but for which the exemption was subsequently removed, then the period of self-isolation may be accommodated by a mix of:

- working from home (where appropriate) or special leave (where not appropriate)
- use of existing leave, rest days, time off in lieu, or unpaid leave

This position reflects a reasonable expectation on the part of the officer or staff member that the exemption would stay in place. Forces would have discretion about how this was applied, and in particular the opportunity to work at home if this is an option. An indicative mix of 50/50% is suggested, although forces may be able to increase the percentage of organisational support that is available to officers, based on individual local circumstances.

Officers and staff who booked a holiday to a country which was **not** exempted would still need to be prepared to accommodate the entire self-isolation period from use of their use of existing leave, rest days, time off in lieu, or unpaid leave.



**Post suspension of specific travel corridors (i.e. after the 25 July removal of the Spanish “corridor”)**

The government announcement on 25 July to withdraw the exemption of Spain from self-isolation procedures significantly raised awareness that such arrangements were subject to regular review and could be withdrawn at short notice. From this point, the status of all countries should now be considered uncertain and officers or staff members should be prepared to cover the entirety of any self-isolation period through use of existing leave, rest days, time off in lieu, or unpaid leave.

If travelling to a country currently on the countries and territories exempt lists there is no requirement to self-isolate on return. However, the countries and territories on these lists are kept under constant review and may change at short notice, as will the consequent exemption from the requirement to self-isolate.

If the requirement to self-isolate is re-introduced whilst on holiday then officers and staff should on their return be prepared to use existing leave, rest days, time off in lieu, or unpaid leave to cover all the self-isolation period. Forces would have discretion about how this was applied (including, for instance, whether working at home was a possibility).

If travelling to a country or territory that is not on the ‘exempt lists’ officers and staff should be prepared to use existing leave, rest days, time off in lieu, or unpaid leave to cover all the self-isolation period upon return (unless the country or territory has before such return been placed on the ‘exempt lists’).

The indication from Government is that the International Travel Regulations will be reviewed every 3 weeks and therefore the national guidance will also be subject to review on the same timescales.

**The self-isolation period**

There may be changes to the duration of the self-isolation period required under the Regulations (currently 14 days). NPCC policy will simply reflect the duration that is required by these, or amended, Regulations. With regards to the NPCC guidance, PFEW has sought further efforts by forces to pick up more of the 14 day quarantine period and we hope many forces will be able to do better for officers than the guidance sets out.

Should you have queries from members regarding the position PFEW has adopted then the national PFEW position is as follows:

Following the changes to the quarantine rules from 25 July we consider there to be 6 groups:

- i) Those who have gone overseas for work reasons.

- ii) Those who go overseas on holiday having already booked before the quarantine rules come into force in June .
- iii) Those who go overseas on holiday, but who book this from this point forward (June), ie knowing of the quarantine rules to a country requiring quarantine on return.
- iv) Those who go overseas on holiday, but who book on or after 3 July, but before 25 July, to a country on the list of exempted countries at the point of booking, but which is subsequently removed from the list.
- v) Those who go overseas on holiday, but who book on or after 25 July, knowing the volatile nature of the situation and that air bridges may well change again before or during travel.
- vi) Those who go overseas for a funeral, or other exceptional reasons.

PFEW adopted the view that the nature of travel and the known rules at the time of booking a holiday should be considered. Therefore, each of these 6 groups *could* be treated slightly differently: albeit our preferred position was that all would be given as much scope to work from home during quarantine as possible.

- i) Should be treated as having had no ability to choose, and therefore influence the risk they were subjected to, and forces should bear full responsibility for the period of isolation (quarantine). They should therefore receive full pay and this should not reckon against their sick leave.
- ii) As these officers booked leave before the new rules were introduced, we believe that they were unable – through no fault of their own - to make a full consideration of the circumstances they now find themselves in, and should be treated accordingly. They should be able to work from home if at all possible, and if that is not possible then ideally they should receive full pay. The force should try and schedule as many rest days as possible during the 2 week period and forces should consider special leave if necessary. Having to use their leave or unpaid leave should be a last resort.
- iii) Those officers who book overseas leave now that the new rules regarding quarantine are known could be expected to bear more of the responsibility for ensuring that the 14 day period is covered. However, it is really important that forces are proactive here, and we believe they should be checking when officers book leave whether that leave will include an overseas trip. We expect forces to retain audit trails here and make provision for cover in advance, if they know officers are planning to go overseas.

For these officers, again forces should be as sympathetic as possible, and should aim to allow WFH: but if that is not possible then officers will have to take further annual leave, or unpaid leave.

iv) Those who go overseas on holiday, but who book after the quarantine rules were introduced (and before 25 July) to a country that was exempted when they made the booking should be treated sympathetically if they are subsequently required to quarantine. They should be able to work from home if at all possible, and if that is not possible then ideally they should receive full pay. The force should try and schedule as many rest days as possible during the 2 week period and forces should consider special leave if necessary. Having to use their leave or unpaid leave should be a last resort.

v) Those who go overseas on holiday, but who book on or after 25 July will be more aware that air bridges may well change again before or during travel. However, they should not be required to bear the full brunt of the quarantine period and a practical alternative and sympathetic approach would be best; such as considering WFH wherever possible. As with iii above, it is really important that forces are proactive here, and we believe they should be checking when officers book leave whether that leave will include an overseas trip. We expect forces to retain audit trails here and make provision for cover in advance, if they know officers are planning to go overseas.

vi) Those officers who travel overseas for exceptional circumstances such as funerals. We believe these officers should be granted extra compassionate leave to cover the isolation period: or that they be able to work from home. These officers should not suffer penalties by way of any loss of their entitlements (ie they shouldn't have to give up any of their leave, nor take unpaid leave). Special leave of some kind would be the preferred solution.

Despite our disappointment with the general tone of the recommendations we are aware of some pockets of good practice arising locally. For example, an arrangement has been agreed in Devon and Cornwall and Dorset forces whereby an application process will take place requiring line manager endorsement, which will then be assessed by a panel including Federation representatives.

## 5. Deaths due to COVID-19

We believe such deaths should be treated as death as a result of injury on duty, for pension purposes.

The dependents of officers who die from coronavirus will receive benefits payable under the Police (Injury Benefits) Regulations 2006 if they are treated as having died from an injury received without default in the execution of their duty. We believe that all officers with contact with the public who die of COVID-19 should be treated as having died as a result of such an injury on duty, as it is common sense that contact with the public is the most likely way that officers will contract the virus. Officers do not have the option of working from home or social distancing that all members of the public are being legally required to undertake, for reasons of safety. It is clear that at this time performing public facing roles is putting them in harm's way.

We wrote to the Home Secretary on this matter.

Significant progress has been made on this point, with the NPCC outlining the circumstances which will cover all officers who have been in public facing roles, although stopping just short of providing a blanket assurance that all officers who die of COVID-19 will be treated as an injury on duty.

The NPCC's draft statement of intent for the approach to be taken states that:

*“Where an officer's death is caused by COVID-19 and, in the 14 days prior to showing symptoms of the disease, the officer was either deployed in public facing duties, or a work situation where it can be reasonably concluded that he or she contracted the virus from a member of the public or from a colleague in the course of their duties, then that shall be assumed to be the case.”*

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 [terms&conditions@polfed.org](mailto:terms&conditions@polfed.org), or via the fortnightly data collection, and what the Chief Constable's decision is so that we can keep a record, and lobby on behalf of dependents.

## **6. 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 [terms&conditions@polfed.org](mailto:terms&conditions@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.

## **7. 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.

## **8. Changes to duty rosters**

Police Regulation 22, Annex E provides that duty rosters must set out a members' rest days, free days, public holidays on which they are required to work and start and finish times for scheduled periods of duty for at least three months from when it comes into effect and must be published at least one month before it commences.

An officer's duty roster should only be changed due to exigencies of duty. PNB circular 86/9 states that the term "exigencies of duty" should be interpreted as relating to situations where:-

*"a pressing demand, need or requirement is perceived but is not reasonably avoidable and necessitates a change of roster"*

Changes to rosters should only be made after full consideration of welfare, operational and practical circumstances rather than purely on financial grounds. PFEW recognises that it may not always be possible to follow these guidelines but the aim should be to allow

officers adequate time for rest and recuperation between duties. In particular, when it is necessary to alter a duty roster forces must endeavour, so far as practicable, to provide:

- an interval of not less than 11 hours between the end of one shift and the beginning of the next; and
- an interval between each rostered rest day not exceeding 7 days,

unless a Branch Board agrees otherwise. Where it is not possible to satisfy the above conditions, officers will be entitled to an equivalent period of compensatory rest.

This is separate to the provisions in regulation 22, Annex E covering the introduction of a new shift pattern – for further advice on this see BB circular 015/2019 and BB circular 009/2018.

## 9. Volunteering to work on a rest day or public holiday

As detailed in the Quick Reference Guide, if a member requests to work on a rostered rest day or public holiday the day shall be treated as a normal duty day and the member will be granted another day off in lieu, which shall be treated as a rest day or public holiday.

However, Home Office circular 39/1985 states that responding to a management request for volunteers should not be treated as a request by the officer concerned to perform duty on the day in question. Therefore, in these circumstances the normal compensation arrangements for rest days or public holiday working will apply.

For the purposes of calculating any entitlement to compensation for rest day or public holiday working, it is PFEW's view that a management request for volunteers would not generally amount to a notification of a requirement to do duty on a rest day or a public holiday and that instead it is merely an indication that an officer may be required to do duty. Instead, compensation should be calculated from the date that officers are notified of the requirement to work and the duty roster changed.

## 10. Cancellation of leave

We are aware that some officers have attempted to cancel leave that they had already booked. Some forces are allowing them to do so, but others are refusing to let officers cancel leave right now. This is presumably to maintain existing rotas, and in order to make

officers take time out while they still can, in expectation of needing everyone at work over the coming period.

Legally, forces are able to refuse requests to cancel annual leave that has been booked.

We understand that some officers may be reluctant to take annual leave due to travel restrictions and/or quarantine requirements however we would encourage all officers to take their annual leave (and rest days) as far as reasonably practicable in this leave year to ensure that they have proper breaks from duty and to help them recuperate from the challenges of policing during the pandemic. In addition, as detailed below there are limitations on the carryover of annual leave.

See carry over of annual leave, below.

## 11. 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' (20 days) 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). The Home Office has confirmed that this measure also applies to officers.

However, it must be noted that the 20 days carry over does NOT apply to officers' entire leave entitlement. Although the changes to the WTRs are helpful, they are designed to be used in the worst of cases, where an officer has been unable to take leave and this is entirely because of COVID. Because the WTRs amendment allows carry over only of leave up to 20 days (rather than the officer's full leave allocation) there is a danger that even officers who have already suffered from being unable to take leave will lose still more of it. For example, an officer who could take no leave carries over 20 days – but still loses 10-12 days of their allocation, which cannot be carried forward. An officer who took even 10 days' leave carries over 10 – but still loses 10-12. Under the WTRs, an officer who was able to take 20 days' leave gets none to carry over. In other words, the new WTRs give only limited protection to those worst affected.

This is because the changes to the WTRs were made to Regulation 13 (which sets a minimum of 20 days' leave) and not to Regulation 13A (which sets leave at 5.6 weeks). This is in line with the mechanism for carry over of leave due to sickness and has been subject to case law. The Working Time (Coronavirus) (Amendment) Regulations 2020 (SI no. 365 2020) do not provide a general entitlement to carry over leave: the entitlement to carry forward leave only relates to **the portion of the four weeks that it has not been reasonably**



**practicable to take as a direct result of the effects of coronavirus.** The NPCC has now issued guidance to forces, dated 12 June 2020 on the scope and application of the amendment. This confirms that the exceptional carryover under the WTR applies only to those days which could not reasonably practicably be taken principally i.e. those cancelled, refused or embargoed as a result of the effects of coronavirus. It does not apply to days where leave could have been taken but that an officer chose not to because, for example, restrictions on travel whether home or overseas.

Unfortunately, the NPCC guidance does not provide a clear direction to forces and instead much will come down to local interpretation both of the WTR and Regulation 33, Annex O of Police Regulations 2003. The NPCC guidance recommends that forces should:

- *Consider allowing the carryover of annual leave which was cancelled or refused in February or March 2020 owing to the effects of the coronavirus pandemic, noting that this would be in the spirit of, but before, the amendment to the WTR;*
- *Subject to local operational requirements, actively encourage and permit officers and staff to take their full annual leave entitlement within the leave year for which it is due;*
- *Ensure a clear distinction is made and recorded between leave that officers have chosen not to take (for example, because of constrained opportunities to travel) and leave which is not granted or has been cancelled;*
- *In respect of leave years 2020/21 and 2021/22, make additional provision for the carryover of the portion of 20 days that it has not been reasonably practicable for individuals to take, owing to the effects of the pandemic.*
- *Review requests for the cancellation of leave to consider if the effects of the pandemic preclude the individual taking the leave, having regard for their wider welfare considerations.*
- *Apply existing Police Regulations in respect of the compensation for officers who have to work their rest days, or have pre-arranged annual leave cancelled, cancellation of an annual leave day within a period of leave (Annex O, Regulation 33) and cancellation of rest days or public holidays (Annex H, Regulation 24, 26).*

Whilst the amendment to the WTR makes provision for the carryover of up to four weeks' leave as described above, it does not address what happens to any other annual leave that an officer has genuinely not been able to take due to the effects of the pandemic e.g. annual leave that has been cancelled, refused or embargoed rather than not taken due to travel restrictions. The NPCC guidance says that it is a matter for forces to determine locally how to apply the provisions of Police Regulations 2003 in these circumstances, which could result in some officers losing days of annual leave.



In the absence of clear NPCC guidance, our position is that Police Regulation 33, Annex O – annual leave already provides for the carryover of up to five days’ leave in any event and also 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. We maintain that these are exceptional circumstances and that where an officer has genuinely not been permitted to take leave due to the effects of the pandemic chief officers should use their discretion favourably to allow those officers, in those limited circumstances, to carryover any such days’ of leave in excess of the four weeks’ provided by the WTR and five days’ provided by Annex O. We will continue to engage with the NPCC to seek clearer guidance to forces to ensure a fair and consistent approach including any timescales for when such leave should be taken.

Some examples used by the NPCC are:

- An officer with an annual leave entitlement of 30 days is only able to take 15 days’ leave, due to coronavirus. The carry forward entitlement is 5 days (not 15). Any request for additional carry over above and beyond 5 days would be at force discretion, and would have to be made under Reg 33, Annex O.
- An officer with 30 days’ leave entitlement who is only able to take 15 days’ leave, and who chooses to cancel other leave that they had booked because they can no longer go on holiday overseas is not entitled to any carry over.
- An officer who had hoped to use leave to undertake preparation for an exam is not entitled to carry over that leave. However, they could apply to do so under Reg 33 Annex O.

Use of Reg 33 Annex O is, however, at Chief Constable discretion rather than being an entitlement.

As detailed above, all officers should be encouraged to take their annual leave entitlement in the current leave year to ensure that they have proper breaks and to help them recuperate. We understand that some officers may be reluctant to take annual leave due to travel restrictions but as explained above not being able to go abroad on holiday for instance is not a sufficient reason not to take leave and is unlikely to meet the test to permit carryover of leave meaning that officers risk losing untaken leave.

## **12. 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.

### **13. 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.

### **14. Pregnant officers**

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.

We have worked closely with the NPCC to agree the following paragraph, with the NPCC advising all forces to adopt this:

All pregnant officers should be able to choose to work from home. A discussion should be had with line managers to assess risk, take into account an individual's wishes and agree a way forward. If home working is the position sought by the officer but suitable work cannot be found for the officer to undertake at home, the officer should be placed on Medical Special Leave (MSL) in order to safeguard their health and wellbeing. MSL should not reckon as sick leave, and officers on MSL should remain on full pay. Placing a pregnant officer on MSL should not trigger early commencement of maternity leave.

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.

### **15. 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 other scheduled date of 24 November also remains.

The sergeants' legal examination, due in March 2020, was postponed in April, and the College has recently confirmed that it has been re-scheduled for a date between Monday 9 November and Wednesday 11 November 2020. It has now been confirmed that the inspectors' legal examination will be held on Tuesday 13 October 2020. The College will confirm the specific dates for individuals taking the sergeants' exam as soon as they can, but due to the volume of candidates the exams may be held over each of the three days.

The exams will be delivered through an on-line platform, which will allow officers to avoid taking their exams at a physical examination centre alongside fellow candidates. The College has a web page (<https://www.college.police.uk/News/College-news/Pages/Sergeants-exam.aspx>) setting out the current position, which may be updated as more detail becomes available. They have also provided answers to Frequently Asked Questions (<https://www.college.police.uk/What-we-do/Development/Promotion/Pages/Exam-Delivery-2020-FAQ.aspx>)

## 16. NPPF Step Two legal exam validity extension

Officers who passed the sergeants' exam in 2015 and had registered to sit the exam in March 2020 have had the validity of their 2015 exam extended until 31 December 2020. This extension only applies to those in this group who had registered for the exam in March.

All candidates who achieved a pass in the 2015 inspectors' exam have had the validity of their exam extended until 31 December (the extension applies to everyone in this group as they have not yet had the opportunity to register to take the exam in 2020).

All candidates in these groups, including those who had registered for the March sergeants' exam, will need to decide whether they wish to register for the exams in 2020. If they choose to sit the exam in 2020, their pass in the exam will expire on the date of the exam. They will not be eligible to enter any Step Three process that falls within the period of the exam and 31 December unless successful in the exam.

The College has updated their Frequently Asked Questions (<https://www.college.police.uk/What-we-do/Development/Promotion/Pages/Exam-Delivery-2020-FAQ.aspx>) to include more detail and the letter sent to forces is attached [here](#).

## 17. Lawful orders

Police Regulation 20 states that officers shall carry out all lawful orders. Failure to obey a lawful order exposes a member to a risk of misconduct proceedings (and in exceptional circumstances criminal proceedings).

Schedule 2 of the Conduct Regulations 2020 sets out the Standards of Professional Behaviour, which includes the following:

### “Orders and instructions

Police officers only give and carry out lawful orders and instructions.

Police officers abide by police regulations, force policies and lawful orders.”

The Code of Ethics sets out the principles and expectations that underpin the Standards of Professional Behaviour. The Code notes that there may be instances when failure to follow an order or instruction does not amount to misconduct. For example, where an officer

reasonably believes that an order is unlawful or has good and sufficient reason not to comply. The Code gives the following guidance on the use of an officer's discretion:

"Police discretion is necessary, but must be used wisely. When making decisions about using your discretion you must:

- use your training, skills and knowledge about policing
- consider what you are trying to achieve and the potential effects of your decisions
- take any relevant policing codes, guidance, policies and procedures into consideration
- ensure you are acting consistently with the principles and standards in this Code"

One of the principal considerations in determining what constitutes a good and sufficient reason are the health and safety implications of complying with an order. There may, for example, be circumstances in which it would be legitimate for an officer not to expose himself or herself to undue risk of injury. Under Health & Safety at Work legislation employers, including police forces, are required to ensure, so far as is reasonably practicable, the health, safety and welfare of all its employees. However, it is also the case that all employees (and this includes officers) are required to take reasonable care of their own health and safety and that of those who may be affected by their acts and omissions at work. It is also the responsibility of all employees to co-operate with their employer to ensure they can fulfil their legal obligations.

Therefore, the general approach should be that an order is lawful unless it is clearly unlawful. While there are other considerations that need to be balanced ultimately much will come down to the individual circumstances of a particular situation and the overriding duty to carry out lawful orders. Any decision to not obey orders or follow instructions, policing policies and other guidance, must be able to withstand scrutiny.

### **18. Bonus payments**

A bonus payment can be between £50 and £500 and it is paid for work of an outstandingly demanding, unpleasant or important nature. We believe that many of the tasks done by officers at this time could be considered to fall within this definition. In order to ensure the police service can continue to operate effectively (ie with as many officers as possible).

This provision is already in place, in Annex U and so could be paid straightaway.

## Probationers

### 19. Assessment and selection

Currently, activity at Recruitment Assessment Centres has been postponed, and the College has created an on-line alternative which will run until at least the end of 2020. The process includes a judgement test, interview and written assessment and briefing exercise.

[Guidance](#) has been issued giving more detail and the most up to date position is included on the College web site at <https://recruit.college.police.uk/Officer/Pages/College-of-Policing-Online-Assessment-Process-Overview.aspx>. 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 PFEW terms&conditions@polfed.org with the subject reference COVID-19 as above) to consider raising on a national level if appropriate.

### 20. Attestation

Some forces currently delay attestation for some weeks after appointment. 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. Branch Board Circular 2 of 2019 refers. This has been raised with NPCC. PFEW consider NPCC must issue a circular reiterating the statutory requirement.

## **21. New recruits – training changes**

A revised, temporary initial learning curriculum designed to lead to ‘accompanied patrol’ status has been developed by the College to support safe and legal frontline policing during the period of emergency provision. This comprises a 7-8 week programme to bring student officers to the level of accompanied 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. Some adjustments have been made to the original programme (mainly regarding domestic violence elements) and guidance on recognition of this learning on reversion to the student’s original learning programme has now been issued. 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, protection regarding disciplinary proceedings and implications for probation status on reversion to the original entry route programme.

## **22. New recruits – complaints, conduct and performance matters**

The IOPC has confirmed that in relation to how it investigates the conduct of new recruits, should any complaint, conduct matter or DSI be made, it will apply the same approach as it does now in relation to officers of every level of experience/expertise etc – in terms of new recruits account will be taken of their relative levels of inexperience and in expertise – and in this circumstance, the ‘curriculum-lite’ of their early training.”

Similarly, in the interests of fairness, PFEW expects that forces will also take account of the temporary – initial learning curriculum if it is necessary to investigate the conduct of a new recruit and when assessing the performance of officers on probation.

## **23. 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. So far, guidance has been issued for [JRFT](#) and [Taser training](#). PFEW has asked the College to engage with IOPC to ensure that they are content with any such arrangements.

## 24. 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 (HEIs) 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.

For PCDA students in particular, the apprenticeship funding rules do not allow for HEI providers to receive payments where there is a break in training for more than four weeks (although they are potentially eligible to apply for Government financial support provisions during COVID-19). This may introduce tensions between a force which wishes to initiate a break in learning for operational reasons and an HEI which wishes to continue training provisions in order to continue to receive payments.

Additionally, the College is planning changes to the presentation and delivery of training for both Direct Entrant inspectors and the Fast Track programme. Participants had expressed concerns about achieving assessment timelines, given other operational priorities. The College are intending to make completion of the programmes as flexible as possible in order to meet these concerns. They intend to issue guidance on this and have promised to involve PFEW on this.

Please inform PFEW at [terms&conditions@polfed.org](mailto:terms&conditions@polfed.org) if any students report any issues as a result of these changes.

## 25. Job 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 the College suggests that they should have one further attempt three weeks from the first attempt and that they will be subject to Regulation 13 should they not pass on their second attempt.

It is PFEW’s view that 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. Ultimately, this will be a matter for each Chief Constable to determine.

- 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.

Letter from Mike Cunningham's to Chief Constables dated 1 April 2020

[https://polfed.sharepoint.com/sites/pfewhqresearch/Shared%20Documents/Files/000%20COVID/JRFT/MC%20to%20CCs%20Re%20Uplift%20JRFT%20Final%20010420%20\(004\).docx](https://polfed.sharepoint.com/sites/pfewhqresearch/Shared%20Documents/Files/000%20COVID/JRFT/MC%20to%20CCs%20Re%20Uplift%20JRFT%20Final%20010420%20(004).docx)

## **26. Payment to students required to undertake accompanied patrol**

Students required to undertake accompanied patrol are also referred to as having undertaken the full emergency curriculum. As on 5<sup>th</sup> May 2020, we understand that no forces are requiring students to undertake accompanied patrol / the full emergency curriculum. Any force where students are required to do so should notify us either at [terms&conditions@polfed.org](mailto:terms&conditions@polfed.org), or via the fortnightly data collection exercise.

Should student officers be required to undertake accompanied patrol then we believe these officers should be moved up to pay point 1 on completion of the full emergency training, and subsequently undertaking accompanied patrol. The rationale and the mechanism is outlined in versions 001 and 002 of these FAQs. It is not repeated here as currently not relevant.

Should students be required to undertake accompanied patrol then all Branch Boards should seek for the overall PFEW position to be adopted.

## **27. Payment to students being asked to undertake duties they would not normally (short of accompanied patrol)**

We understand that some forces are requiring students to undertake duties they would not normally, such as backroom or control room duties. While these duties may not trigger an

uplift to the next spine point, there are mechanisms for enhancing pay, such as bonus awards (see earlier section). To try to arrive at some consistency across forces we are asking Secretaries to report such instances to us via [terms&conditions@polfed.org](mailto:terms&conditions@polfed.org), or through the fortnightly data gathering exercise. We will continue to work with the NPCC

## 28.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

### 29.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 usually 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. In response to the current urgent recruitment needs for police, an intention to relax the break in service requirement was first announced in a statement from the Economic Secretary to the Treasury on 22 April:

*“For public sector workers returning to support the government’s response to Covid-19 the government intends to temporarily suspend tax rules that would*

*otherwise apply significant tax charges to pension income received by recently retired individuals aged between 50 and 55.”*

On 30 April HMRC published Pension schemes newsletter (119) which confirmed that the relaxation would apply to rejoiners from 1 March to 1 June, subsequently HMRC updated the newsletter to extend the deadline to 1 November. The newsletter confirmed that “*if the nature of the employment is to undertake work in relation to the COVID 19 outbreak, then HMRC accepts that the re-employment conditions have been satisfied.*” Therefore where a rejoiner with a protected pension age would usually incur additional tax charges for returning to service without adhering to the break in service requirement, for the period 1 March to 1 November HMRC will consider this requirement to have been met (and therefore no charges will be levied) for rejoiners in the circumstances specified.

### **30.Rejoiners - abatement of pension**

For those rejoining, pensions can be abated so that officers do not receive their pension in addition to a salary from the force. This is to ensure the rejoiner’s pay does not exceed that received immediately prior to retirement. This means officers forego their pension payments for the duration of employment.

Chief Constables already have the discretion not to apply abatement and we have been lobbying the Home Office to provide guidance that the 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 their potential liability to tax). PFEW maintain that Chief Constables are not obliged to abate pensions, and it is better that they do not do so. Regulation K4 of the Police Pensions Regulations 1987 allows this.

The NPCC have reminded all Chief Constables that they do not have to abate pensions. We have raised our concerns in writing to the Home Office and their response has made clear that there is no intention to provide forces with guidance for a universal approach to abatement during the Covid-19 crisis. We are aware that this has led to an inconsistent approach across forces, with some retired re-joiners having their pensions abated whilst others are not (or are choosing to return part time in order to receive their full pension). We continue to monitor this, and would be grateful if any force that abates a rejoiners’ pensions is notified to us either via [terms&conditions@polfed.org](mailto:terms&conditions@polfed.org), or via the fortnightly data collection from Branch Board Secretaries.

### **31. Other rejoiner pension matters eg HMRC tax changes, autoenrolment, life cover**

There are a number of issues pertaining to pensions that rejoiners will face. These may impact on the money they and their families receive should the worst happen. The NPCC and indeed the Home Office cannot amend these, and there is no immediate solution available. However, we believe it is crucial that all Chief Constables adequately inform officers rejoining of the financial risks they are personally having to absorb by rejoining before these matters are addressed.

In order to satisfy auto-enrolment legislation re-joiners will need to be offered membership of a pension scheme. At present this can only be the New Police Pension Scheme (NPPS) 2006 under which officers will be required to pay full rate contributions. This means they will benefit from life cover, but accrue no pension benefits. There is significant risk that officers will therefore opt out (and lose the life cover). We understand that subsequent and retrospective membership of the 2015 CARE Scheme will be offered instead, but, the details of this and the timing of it are unclear.

There is a very real danger that returning officers will be volunteering to put themselves in potential harm's way without the comfort of doing so in the certain knowledge that there is adequate provision for their dependants should they pay the ultimate price. This is clearly inappropriate, and whilst we appreciate that the NPCC does not have the power to change this situation, we feel that it is important that Chief Constables are made aware of it, and rejoiners are made aware of it.

Branch Boards should discourage any rejoiners from opting out of the pension scheme, because of the life cover it brings.

Changes to scheme eligibility for rejoiners (whether retired or early leavers) will require regulatory change, however the Injury Benefit regulations provide benefits for all officers in the event of death or injury in the execution of their duty (see Section 4 of these FAQs 'Deaths due to Covid-19').

Previous rejoiner 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 have subsequently seen sight of draft guidance on the new retention scheme. We continue to monitor this and once details are confirmed we will update the FAQs accordingly.

### **32. 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. This was followed by a statement from the Economic Secretary to the Treasury on 22 April confirming the government's intention and that it would apply to rejoiners from 1 March to 1 June. HMRC have also confirmed this position in their recent Pension schemes newsletter, and on 2 June updated the wording to confirm that the deadline had been extended to 1 November.

### **33. Working from home – Claiming Tax Relief**

The general rules of tax relief for WFH allow for a proportion of costs such as gas/electricity/additional necessary office furniture or equipment - wholly used for work and with no reimbursement received from employer - to be claimed as business expenses deducted from earnings. Individuals have to claim the relief themselves:

<https://www.gov.uk/tax-relief-for-employees/working-at-home>

There are a lot of restrictions on what can be claimed. Individuals take full responsibilities of understanding HMRC's requirements, keeping records and submitting the claims. Bear in mind this means submitting self-assessments which most officers will not normally do.

Alternatively, a force, if they wish, can pay up to £4/week until 5th April and £6/week from 6th April to cover some bills, which is tax-free. This is something that properly could be considered for officers and staff through expenses claims: however no employer has any obligation to pay this, it is discretionary.

A handwritten signature in black ink, appearing to read 'Alex Duncan'.

**Alex Duncan, National Secretary, PFEW**