

## **LIMITED DUTIES FREQUENTLY ASKED QUESTIONS (FAQS)**

**Prepared by the PFEW Research and Policy Support Team, 10 July 2015**

This document is designed to answer Frequently Asked Questions (FAQs) following the introduction of the limited duties provisions. It is principally aimed at branch board secretaries to help you deal with enquiries from members but please feel free to share it with members.

Police (Amendment) Regulations 2015 were laid in Parliament on 5 March 2015 and came into effect on 1 April 2015. These give the Home Secretary powers to determine the circumstances when a member may be placed on limited duties and the entitlement to pay when on adjusted duties (Regulation 22 and 28A).

Home Office circular 010/2015 published Annex EE – this came into effect on 1 May 2015 together with supporting guidance to forces and the Home Office Equality Impact Assessment.

At the same time I issued JBB circular 16/2015 to highlight key points from the guidance that representatives need to be aware of so that you can support and advise officers who potentially face being placed on adjusted duties and possibly having their pay reduced. Links to all the above documents can be found at section 8.

PFEW has severe reservations about the potential discriminatory impact upon officers with a protected characteristic. Given the complexity of this issue and the need for future monitoring of the equalities impact in forces, the Home Office has set a review date for the determination. This will be 18 months after the determination came into effect. Implementation and ongoing use of these measures will be monitored by the Police Advisory Board of England and Wales (PABEW) and the impact of any pay adjustments will be monitored by the Police Remuneration Review Body.

We made extensive comments on both the guidance and the regulations and determinations to try to make them as robust and clear as possible. We are concerned that almost every case will involve potential disability discrimination. Unfortunately, there are still many areas that lack clarity and may cause confusion and uncertainty for members. Much will now depend on how forces implement these arrangements. Whilst the determination and accompanying guidance sets out the key principles that forces should adhere to in implementing these measures; the Home Office and Chief Constables have consistently made clear that some elements will be left to forces to design a process.

These FAQs are not exhaustive. We anticipate that we will need to update these over the coming months as forces begin to implement these changes. Please look on the Hub for further updates.

**Andy Fittes**  
**General Secretary**  
**Police Federation of England and Wales**

# 1 Table of Contents

2	BACKGROUND.....	4
2.1	What does the term ‘limited duties’ mean?.....	4
2.2	What is the definition for each limited duties category? .....	4
2.3	Does the guidance issued to forces cover all limited duties categories? .....	4
2.4	Why have these changes been introduced?.....	5
2.5	What does restricted duty mean and are there any other officers who are currently classed as ‘restricted’ who are covered by the new limited duties arrangements? .....	5
2.6	Where were these proposals discussed?.....	5
2.7	What’s the difference between Winsor’s recommendations and the changes introduced on 1 May 2015?.....	6
3	THE SCHEME – HOW IT WORKS.....	7
3.1	What are the main features of the scheme? .....	7
3.2	When will the scheme be implemented?.....	7
3.3	I’ve heard the terms operational or force resilience – what does this mean?.....	8
3.4	What does ‘fully deployable’ mean? .....	8
3.5	How will the force decide what role I will be given? .....	8
3.6	I am a disabled officer will I be placed automatically on adjusted duties? .....	9
3.7	How do I know my force will agree to make the reasonable adjustments that I need?.....	9
3.8	I have failed the annual fitness test – my force wish to place me on adjusted duties is that correct? .....	10
3.9	My force has decided to place me on limited duties – is this just a way of getting rid of me? 10	
3.10	Can I appeal a decision to place me on adjusted duties? .....	10
3.11	If I am placed on adjusted duties, will I stay on adjusted duties for the rest of my career? 11	
3.12	What are the implications for my pay if I am placed on adjusted duties? .....	11
3.13	What is the x-factor?.....	11
3.14	How will the x-factor be calculated? .....	11
3.15	Who will decide whether I should lose the x-factor? .....	12
3.16	How much notice will I be given if it is decided to remove the x-factor? .....	12
3.17	Can I appeal a decision to remove my x-factor?.....	13
3.18	Is the decision to remove my x-factor permanent? .....	13
3.19	What happens if a role cannot be found for me or the force decides that it cannot accommodate the adjustments I need? .....	13
3.20	Is the scheme just a way to remove me from the service? .....	13

3.21	I am currently being considered for ill-health retirement – will I automatically be placed on adjusted duties?.....	14
3.22	I have been retained by my force under Regulation A20 – should I be classified as on adjusted duties?.....	14
4	TRANSITIONAL ARRANGEMENTS.....	14
4.1	If I am currently on restricted duty how will I be dealt with? .....	14
5	LEGAL CHALLENGES .....	15
5.1	Are there legal challenges to the changes, in principle? .....	15
5.2	What if I have been treated unfairly? .....	15
6	COMMON MISCONCEPTIONS .....	15
6.1	The force has decided that all roles should have a fully deployable requirement.....	15
6.2	If I am placed on adjusted duties will I automatically lose my x factor? .....	15
6.3	An officer who is not fully deployable because they cannot work the full range of shifts cannot be ill-health retired .....	16
6.4	The force has assumed that officers with certain disabilities or types of illness are incapable of carrying out certain functions .....	16
6.5	Doesn't it make it difficult for forces if the 24/7 requirement is only applied to patrol and response roles.....	16
7	NEXT STEPS.....	16
8	SOURCES OF INFORMATION .....	16
9	STAGES IN THE CONSULTATION (& NEGOTIATION) PROCESS .....	18

# LIMITED DUTIES

## 2 BACKGROUND

### 2.1 What does the term 'limited duties' mean?

'Limited duties' is the term used to describe some circumstances in which officers may be unable to undertake the full range of police duties. There are three categories of limited duties:

- Recuperative duties
- Adjusted duties
- Management restricted duties

### 2.2 What is the definition for each limited duties category?

The limited duties categories are defined in Annex EE under Regulation 22 of the 2003 Police Regulations as follows:

- Recuperative Duties is defined as duties falling short of full deployment, undertaken by a police officer following an injury, accident, illness or medical incident, during which the officer adapts to and prepares for a return to full duties and the full hours for which they are paid, and is assessed to determine whether he or she is capable of making such a return.
- Adjusted Duties is defined as duties falling short of full deployment, in respect of which workplace adjustments (including reasonable adjustments under the Equality Act 2010) have been made to overcome barriers to working. For an officer to be placed on adjusted duties, he/she must:
  - a) Be attending work on a regular basis;
  - b) Be working the full number of hours for which he/she is paid (in either a full time or part time role).
- Management Restricted Duties is defined as duties to which an officer is allocated in circumstances in which:
  - a) Verifiable confidential or source sensitive information or intelligence has come to the notice of the force that questions the suitability of an officer to continue in his or her current post; and/or
  - b) Serious concerns are raised which require management actions, both for the protection of individuals and the organisation;

In either case also that:

  - c) Criminal or misconduct proceedings are not warranted; and
  - d) The Chief Constable has lost confidence in the officer continuing in their current role.

### 2.3 Does the guidance issued to forces cover all limited duties categories?

No, the guidance only applies to officers who are ill, injured or have otherwise had appropriate restrictions to deployment applied for medical reasons. Therefore, only officers to whom the

recuperative and adjusted duties definitions apply will be covered by the guidance. Officers on management restricted duties are excluded from the scope of the guidance.

## 2.4 Why have these changes been introduced?

The Home Secretary directed the Police Advisory Board for England and Wales (PABEW) and the Police Negotiating Board (PNB) to consider a group of related recommendations from Tom Winsor's final report (volume 2) relating to restricted duty. These recommendations were intended to address the number of police officers who were placed on restricted duty, and therefore not fully deployable. In some forces, it was claimed, that the number was such as to have an adverse effect on force resilience. Winsor proposed bringing restricted duty within the scope of Police Regulations, so as to achieve a measure of consistency in the way in which it is dealt with, and to minimise or eliminate the problem of significant numbers of officers being placed on restricted duties on a permanent or semi-permanent basis.

## 2.5 What does restricted duty mean and are there any other officers who are currently classed as 'restricted' who are covered by the new limited duties arrangements?

Before these changes came into effect on 1 May 2015 the term 'restricted duty' was used to encompass a wide variety of officers. It was often the case that no real distinction was made between those awaiting the outcome of misconduct investigations, officers who were not fully deployable on a short term basis for reasons such as pregnancy or breastfeeding or who were recuperating and those who have long term restrictions on their deployment. Each force had its own definition and there was no consistency across England and Wales. It was therefore not possible to collect accurate and robust data on the numbers of officers on restricted duties.

Any temporary limitations to an officers' deployability arising from pregnancy or breastfeeding or because the outcome of a misconduct investigation is awaited are excluded from the scope of these arrangements. These are matters for the sensible management of human resources.

## 2.6 Where were these proposals discussed?

The Home Secretary directed the Police Advisory Board of England and Wales (PABEW) and the Police Negotiating Board (PNB) to consider the Winsor recommendations on the management of officers on restricted duty. Most of the recommendations were consultative matters and fell within the terms of reference of the PABEW. The PNB, as the negotiating body, dealt with those parts of Winsor's recommendations that related to the adjustment to pay of officers placed on restricted duties.

Initial consideration of the PABEW matters took place in a PABEW working group, followed by consideration of all matters in a joint PABEW/PNB working group. Final decisions were taken by each Board at their respective meetings on 24 July 2013.

Agreement was reached at PABEW in July 2013 on the definition of recuperative duties and management restricted duties. No agreement was reached at either the PABEW or the PNB in respect to the definition of adjusted duties and, as this had pay implications, a failure to agree was recorded at the PNB in July 2013 and the matter referred to the Police Arbitration Tribunal (PAT). The PFEW made a strong case for a scheme that provided a systematic approach; complied with the Equality Act 2010; and was fair and workable. In contrast, the Official Side proposed a system that would mean that most, if not all, of the officers disadvantaged would be disabled under the terms of

the Equality Act 2010. Despite this, in December 2013, the PAT ruled in favour of the Official Side and the Home Secretary accepted the PAT's recommendation in Home Office circular 02-2014. This is available at:

<https://www.gov.uk/government/publications/circular-0022014-home-secretarys-decision-on-the-findings-of-the-police-arbitration-tribunal>

In May 2014, the Home Office referred back to the PABEW for further consideration of Winsor's recommendations (recommendations 38 & 40) ONLY on:

- the use of UPP to exit 'restricted duty' officers from the service and
- the redeployment of 'restricted duty' officers to staff roles if available (part of recommendation 39)

A PAB working party was set up and PFEW was represented at those meetings. In addition to PAB meetings, extensive discussions took place with HO officials and chief officer representatives about the guidance that covers all the matters considered previously by PABEW and the PAT in 2013. PFEW made significant comments on the guidance to help safeguard the interests of members and ensure the final process is fairer and more robust.

A diagram outlining the consultation (and prior to the abolition of the PNB negotiation) process can be found at section 9.

## 2.7 What's the difference between Winsor's recommendations and the changes introduced on 1 May 2015?

Winsor's recommendations addressed restricted duty primarily through a mechanism for moving officers automatically from restricted duty to reducing their pay to them leaving the service after two years.

Whilst PAB shared Winsor's objective about operational resilience it was doubtful that Winsor's approach would be effective in achieving that objective. PAB agreed an approach that places a greater emphasis on preventing officers from entering a regime of limited duties in the first place through more effective and timely use of positive management intervention and existing powers for example, sickness management and a focus on what officers can do with appropriate training/workplace adjustments.

PABEW preferred the term 'limited duties' to describe the circumstances in which officers may be unable to undertake the full range of police duties and agreed that the categories of officer who, for legitimate reasons, can be allocated to a limited range of duties only should be more tightly defined. The tighter definitions are intended to avoid the problem of large numbers of officers being allocated inappropriately to what was previously known as 'restricted duty'. See section 2.5 for an explanation of the term 'restricted duty'.

The original Winsor proposals have been modified to remove the element of automaticity particularly in respect to pay deductions. In addition, the process now includes an opportunity to review the decision to place an officer on adjusted duties in the first place, introduces chief officer discretion to pay deduction and an appeal process against any decision to reduce pay.

## 3 THE SCHEME – HOW IT WORKS

### 3.1 What are the main features of the scheme?

The HO equality impact assessment states that the focus of the scheme is intended to ‘help forces to deploy the individual skills and capabilities of every officer to the fullest extent possible’ enabling forces to better determine what resources they have available at any one time to meet operational demand and to improve resilience by deploying officers in a more efficient way.

The new process and definitions set out in Annex EE should help ensure a consistent approach to allocating officers to limited duties. Forces do though have discretion as to how they implement this process but they will need to ensure that each officer is assessed individually on a case by case basis, balancing the needs of the individual and the needs of the force.

Forces must have due regard to the Equality Act 2010.

Forces must have a clear understanding of:

- The level of demand/operational requirement including contingency for periods of exceptional demand and to meet statutory requirements under the Strategic Policing Requirement;
- The resources needed to meet that demand including the number of fully deployable officers; and
- Which officers are deployable, for what range of duties, at what times.

Forces must develop this understanding before they can begin to implement these provisions – it is not sufficient to simply define a narrow group of roles for adjusted duties officers or conversely designate all posts as ‘fully deployable’. Forces must undertake a force wide assessment of operational demand, roles and capabilities of all officers; only then will they be able to map roles and resources across the organisation.

Forces must regularly review their workforces against the operational requirements and changing local and national priorities.

### 3.2 When will the scheme be implemented?

The scheme took effect from 1 May 2015. Forces will need to develop their own processes and equality impact assessments to implement the scheme locally. There should be a fair and transparent process and we would expect Joint Branch Boards to be fully involved.

Guidance, to accompany regulations and determinations, has been issued to forces. This includes how they should manage those officers who they currently class as ‘restricted’ – further information on this is can be found at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/418378/Limited Duties Guidance v6 3 - 1 May 2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/418378/Limited_Duties_Guidance_v6_3_-_1_May_2015.pdf)

Local policies and practices concerning adjusted duties are likely to be a provision, criteria or practice (PCP) in accordance with the Equality Act 2010 and will require justification.

### 3.3 I've heard the terms operational or force resilience – what does this mean?

We believe that resilience is requirement driven in that it relates to whether or not a force can meet demands on it. So the first step, as outlined in 3.1 above, is for a force to determine what those requirements/demands are.

Resilience is not 'input driven'. It would be wrong for a force to look at this in terms of what number of officers and their varying capabilities the force has at its disposal and then use that to define what demand it can fulfil or even define what demand may be. Instead, a force must first identify the level of demand and then look at what resources are required to meet that demand before allocating officers to roles.

We recognise that this is a huge job for forces to undertake and to keep it under regular review but without undertaking this task it will be difficult to justify any decisions taken, particularly relating to pay.

### 3.4 What does 'fully deployable' mean?

As set out in Annex EE a fully deployable officer will **generally** demonstrate all the following core capabilities:

- a. the ability to sit for reasonable periods, to write, read, use the telephone and to use (or learn to use) IT;
- b. the ability to run, walk reasonable distances, and stand for reasonable periods;
- c. the ability to make decisions and report situations to others;
- d. the ability to evaluate information and to record details;
- e. the ability to exercise reasonable physical force in restraint and retention in custody;
- f. the ability to understand, retain and explain facts and procedures;
- g. the ability to work the full range of shifts (earlies, lates and nights).

The kinds of capabilities needed for a role will vary and not all duties will need to be carried out in exactly the same way on all occasions by all officers in the same roles. Officers who cannot demonstrate all the capabilities listed above may still be matched to a substantive police role, particularly given the variety of roles that exist in the police service. Unless a force can demonstrate that a particular officer is impacting on the force's ability to meet its operational requirements it is difficult to see how a pay reduction could be justified.

This definition of fully deployable applies only in relation to the placing of an officer on adjusted duties – it is not used for any other purpose for example when considering the possibility of permanent disablement or permanent medical unfitness under the Police Pension Regulations.

### 3.5 How will the force decide what role I will be given?

As mentioned above, we believe forces must first undertake a force wide assessment of roles and capabilities before they can map roles and resources across the organisation. It has been left to forces to develop their own process. The guidance issued to forces states that the best approach will involve a force level process that is open, transparent and fair. We expect forces to involve JBBs in this process.

We anticipate that forces may develop broad categories of posts using the Police Professional Framework and any local job descriptions/person specifications but postings should be considered

on an individual basis taking into account medical evidence on whether the officer is medically fit to perform a role and whether the officer has the skills and capabilities to perform the role with any necessary adjustments.

Whilst the detail of this has been left to forces to determine, the guidance says it must be:

- open, transparent and fair.
- based on the positive capabilities of individual officers rather than the things they are not able to do.
- considered on a case-by-case basis.

The key considerations in decisions around the posting of officers on adjusted duties into appropriate roles are:

- a. The workplace adjustments that could reasonably be accommodated (including adjustments to the range of duties) in order for the officer to be capable of performing the role in question. These could include, for example, adjustments to the officer's duties, hours of work, the provision of special IT equipment or IT, adjustments to the work environment etc.
- b. Whether it is reasonable for the force to make those adjustments to that role. This would include consideration of operational resilience issues alongside the capabilities of the individual such as: health and safety risk assessment, cost, impact of adjustments on colleagues and team/force performance, whether adjustments have been made for others etc.
- c. The context of the totality of the police officer workforce, the number of vacancies available and the needs of disabled officers and officers returning from maternity leave as well as any other statutory duties which may apply.
- d. A trial period (determined by the force) to assess whether the individual can fulfil the role with reasonable adjustments.

### 3.6 I am a disabled officer will I be placed automatically on adjusted duties?

No – a disabled officer who is fully deployable must not be placed on adjusted duties. If you fulfil the definition for adjusted duties, the process outlined in the guidance must be followed.

### 3.7 How do I know my force will agree to make the reasonable adjustments that I need?

Police officers are covered by the Equality Act 2010. They are also covered by European legislation. Disability is one of the protected characteristics under the Equality Act 2010 which places a duty on employers to consider and make adjustments where reasonable. Larger employers such as police forces will need to demonstrate that they have considered all reasonable adjustments in the context of operational resilience. Where forces can reasonably make adjustments, they must do so.

Forces should approach deployment in a creative way to enable all officers to be deployed in ways that are commensurate to their capabilities by removing barriers and disadvantages wherever it is reasonable to do so. Deployment models in forces will need to go much further than defining a narrow group of roles for adjusted duties officers. Deployment opportunities for adjusted duties officers can be widened through upskilling and retraining and the use of dynamic risk assessments.

For instance in the context of operational resilience it may be appropriate to move a fully deployable officer who occupies a role for instance in investigation, that does not make use of all their individual capabilities, to a frontline role and to post a disabled officer to the other post.

### 3.8 I have failed the annual fitness test – my force wish to place me on adjusted duties is that correct?

The College of Policing guidance on Job-Related Fitness Tests (JRFTs) ‘the bleep test’ states that only those police officers who are required to undertake personal safety training (PST) should be subject to testing. A provision, criterion or practice (such as a fitness test) which is applied universally, but which puts a person from a protected group at a particular disadvantage, and which is unable to be justified as being a proportionate means of achieving a legitimate aim may result in indirect discrimination. The College’s guidance confirms that the standard required in the ‘bleep test’ is likely to be a proportionate means of achieving a legitimate aim but that this justification covers only roles that require PST.

Forces may offer an alternative test based on medical grounds or as a reasonable adjustment, following a decision from occupational health. The College of Policing is also looking at developing an alternative test.

If as a result of your failure to pass the fitness test an underlying medical condition has been revealed it may be the case that you will be placed on adjusted duties. If, however, you have failed the test due to a lack of fitness then this should be dealt with separately.

### 3.9 My force has decided to place me on limited duties – is this just a way of getting rid of me?

As explained above, the approach agreed by the PAB differs from Winsor’s original proposals. The placing of an officer onto adjusted duties for instance represents an intention to retain an officer in a policing role that matches their individual capabilities. This may require long term or permanent workplace adjustments. If necessary you should be given the opportunity to retrain. It may also involve role swapping.

In some circumstances, it may be appropriate for the force to refer you to the SMP for consideration of permanent disablement. If the eligibility criteria are met, the guidance is quite clear, forces should be making use of IHR.

If a force were to decide that an officer has not made sufficient progress against a recuperation plan or a performance issues comes to light that is not due to a medical condition a force may invoke action under the Police Performance Regulations currently in force. If this is the case, these should be treated separately from the limited duties regime. A force will need to ensure that it acts in accordance with its obligations under the Equality Act 2010.

### 3.10 Can I appeal a decision to place me on adjusted duties?

The decision to place you onto adjusted duties should take into account medical evidence and professional advice on matters such as the appropriateness of adjustments and the impact of the Equality Act 2010. If you disagree with the medical advice on whether or not you are ‘fully deployable’ you can ask for a second medical opinion. Within 28 days the force should arrange for you to be examined by a different registered medical practitioner. The second medical opinion will be final.

It is for each force to decide a process for placing an officer on adjusted duties. The decision as to whether or not you are placed on adjusted duties is a matter for the chief officer or delegated authority.

### 3.11 If I am placed on adjusted duties, will I stay on adjusted duties for the rest of my career?

If you are placed on adjusted duties, any adjustments should be monitored or altered as necessary to ensure that they meet your needs as well as those of the force. There will be a formal management review carried out by your line manager one year after being placed on adjusted duties, and on an annual basis thereafter should you remain on adjusted duties. This may include referral to the Force medical advisor.

The purpose of the 12 month management review is to assess whether there has been a change in your medical circumstances, whether there needs to be any changes made to the adjustments already put in place and whether such adjustments can reasonably be accommodated. One outcome of the 12 month review may be that you are deemed 'fully deployable' and therefore taken off adjusted duties.

### 3.12 What are the implications for my pay if I am placed on adjusted duties?

After nine months on adjusted duties, you must be notified in writing that should you remain on adjusted duties, following your 12 month management review, you may be subject to the loss of the deployability element of the x factor payment (or more simply, the x-factor).

### 3.13 What is the x-factor?

Winsor set out in his review (Final report, volume 2) that the term 'x-factor' is used to encapsulate those elements of police officers' responsibilities and obligations, and terms and conditions, that are peculiar to service as a police officer, and are shared by very few workers in the public sector and even fewer in the private sector. Winsor noted that earlier police pay reviews had concluded that there should be an element of a police officer's basic pay that reflects the special responsibilities and constraints of his work and of the office of constable; whilst there had been no attempt to value it, it had been taken into account in setting police pay.

Winsor concluded that the x-factor takes account of a range of elements of police work including the use of discretion, disruption to family life, danger, prohibition on joining a trade union, restrictions on political activity and deployability. He quantified the deployability element as 8% of basic pay for constables. For other ranks, he said, it should be expressed in cash terms, benchmarked at 8% of the maximum of constables' basic pay (in terms of officers on adjusted duties it is this element of pay that is referred to as the 'x-factor' and is what is referred to in the remainder of this document).

### 3.14 How will the x-factor be calculated?

The value of the x-factor is:

- 8% of basic pay for constables; and
- 8% of basic pay for all other ranks, capped at 8% of the maximum of constables' pay.

The calculation of x-factor does not include any additional allowances or payments such as London weighting, overtime, acting up allowance etc. The x-factor should be calculated daily, for each day an officer has spent on adjusted duties. A day's pay should be calculated in accordance with Regulation 30, Annex M (dividing the weekly rate by 7).

### 3.15 Who will decide whether I should lose the x-factor?

If it is concluded at the 12 month management review that you should remain on adjusted duties the person(s) who conducted the review should make a recommendation to the delegated authority nominated by the chief officer as to whether you should:

- Remain on adjusted duties; and
- Sustain a deduction in pay.

Annex EE states that the delegated authority is defined as a person holding the rank of Assistant Chief Constable or equivalent or above.

On receipt of an individual recommendation, the delegated authority will use his/her discretion to decide on a case-by-case basis, whether or not an officer should sustain such a reduction in pay. Any decision must take account of the Equalities Act as well as the operational requirements of the force at that time (ie, whether or not the range of roles that can be undertaken by the force is significantly reduced).

The guidance issued to forces states that the application of chief officer discretion in relation to pay adjustment decisions is in no way intended as a substitute for consideration of whether a disabled officer would suffer a substantial disadvantage in comparison to a non-disabled officer as a result of a provision, criteria or practice put in place by the force.

A chief officer may decide that the x-factor should be retained in the following circumstances:

- a. The range of roles to which the force is able to deploy the officer is not significantly reduced.
- b. The avoidance of manifest unfairness e.g. where fully fit officers are performing the same range of duties within a role as an officer on adjusted duties.
- c. An officer is on adjusted duties solely as the result of an injury sustained or contracted in the course of having put themselves in harm's way in the execution of their duties (see Annex A of the guidance for examples).
- d. Some other exceptional reason (some examples of what would not generally be considered exceptional are provided in Annex A of the guidance but the decision about what is classed as an exceptional reason should be made locally. NB. The Federation has asked for Annex A to be reviewed as some of the examples given have caused confusion).

### 3.16 How much notice will I be given if it is decided to remove the x-factor?

If the relevant officer decides that you should sustain a pay reduction, you must be notified in writing of the decision. You must be given one month's notice of any deduction of the deployment element of x-factor from pay.

### 3.17 Can I appeal a decision to remove my x-factor?

An officer has the right to appeal the decision to reduce their pay, to the chief officer of police. The appeal should be heard by a different person from the person who made the decision that a pay deduction was appropriate. Forces should have developed their own policy on how this will work.

Grounds for appeal are:

- Abuse of process
- Perverse decision

Should an appeal be upheld, pay will be reinstated, including any back pay as applicable.

### 3.18 Is the decision to remove my x-factor permanent?

No. Each year your force must follow the process outlined in Regulations and Determinations and the accompanying national guidance. There must be an annual management review and should it be concluded that you should remain on adjusted duties as detailed in 3.15 above the person who conducted the review must make a recommendation to the delegated authority nominated by the chief officer of police on whether you should remain on adjusted duties and whether you should sustain a reduction in pay (NB your pay would continue to be reduced by the value of the x factor, there would not be a further reduction).

On receipt of an individual recommendation, the delegated authority will use his/her discretion to decide on a case-by-case basis, whether or not an officer should sustain such a reduction in pay. Any decision must take account of the requirements of the Equality Act 2010 as well as the operational requirements of the force at that time.

### 3.19 What happens if a role cannot be found for me or the force decides that it cannot accommodate the adjustments I need?

Section 20 of the Equality Act 2010 imposes a duty to make reasonable adjustments where certain conditions are satisfied. If a force decides, in the context of operational resilience, that it cannot reasonably accommodate the adjustments an officer requires to overcome barriers to meeting the relevant provision, criteria or practice of the force then it may be appropriate to consider ill-health retirement. UPP can only be used to deal with performance issues in an officer's current role; a Chief Constable will need to ensure that any use of UPP will not result in less favourable treatment and detriment for the purposes of the Equality Act 2010.

### 3.20 Is the scheme just a way to remove me from the service?

The original Winsor proposals sought to remove officers from the service automatically after two years on 'restricted duties' using the UPP process. The focus of the PABEW approach is on the retention of officers. The Equality Act 2010 places a duty on employers to consider and make adjustments where reasonable. Forces should approach deployment in a creative way to enable officers to be deployed that makes best use of their capabilities by removing barriers and disadvantages wherever it is reasonable to do so.

As mentioned in 3.19 above, where there are no adjustments that would be effective in enabling an officer to overcome barriers to meeting the relevant provision, criteria or practice of the force, or where adjustments cannot be reasonably made, ill-health retirement may be appropriate. The PABEW agreed with Winsor when he said 'forces have the ability to retire officers on ill-health

grounds, and should make use of it in cases where an officer is not and is likely never to be capable of discharging' the ordinary duties of a police officer.

The PABEW, in July 2013, agreed that the use of UPP, as proposed by Winsor, would not address the position of officers who were not eligible for IHR and who were adequately performing in their current role. The PABEW examined an alternative regulatory provision to exit those officers with dignity from the Service – this has become known as 'capability dismissal'.

Some discussion took place on this, prior to the current scheme being introduced, and PFEW had a number of concerns with the proposals. The current guidance does not include any reference to capability dismissal. UPPs exist to deal with performance issues in the role that an officer is currently undertaking. The use of UPP against a disabled officer may result in less favourable treatment and detriment for the purposes of the Equality Act 2010.

No legislative provision has as yet been made for 'capability dismissal' – this is now a matter for the new Government to decide whether it wishes to make such provision. If a decision is made to provide for 'capability dismissal' the PABEW will need to be consulted on draft regulations and determinations. The national guidance will also need to be amended.

### 3.21 I am currently being considered for ill-health retirement – will I automatically be placed on adjusted duties?

No – any officer being considered for ill health retirement should not be placed on adjusted duties until the outcome of the IHR considerations is known and if necessary the process outlined in the limited duties guidance has been followed.

### 3.22 I have been retained by my force under Regulation A20 – should I be classified as on adjusted duties?

It may be the case that if you have been retained by your force under regulation A20 because an SMP has determined that you are permanently disabled but with capabilities that you will be classed as being on adjusted duties. This should not be automatic and your force will need to follow the processes set out in Annex EE and the national guidance.

If it is decided that you should be placed on adjusted duties, this would be subject to the annual management reviews and consideration of whether or not you should retain your x factor.

## 4 TRANSITIONAL ARRANGEMENTS

### 4.1 If I am currently on restricted duty how will I be dealt with?

Page 16 of the guidance issued to forces states that forces must not automatically transfer officers classed as on 'restricted duty' to the new category of adjusted duties. The process outlined in regulations and determinations and the guidance must be followed before any decision is taken. Forces should first develop an understanding of their operational requirements before assessing all officers on 'restricted duties' against the new definitions.

This should be carried out in the context of overall force resilience and the number of officers required to be flexibly deployable to meet demand and provide an effective service. Each decision should then be taken, in line with the above, on a case-by-case basis. You should be assessed against current medical/capability reports.

The guidance states that forces are expected to complete such a review within 9 months of the guidance coming into effect (which is February 2016). However, this deadline has not been translated into Regulations or determinations.

If you are currently on 'restricted duties' and you have been referred to the SMP you should not be automatically re-categorised as on adjusted duties until the outcome of the assessment is known and the process outlined in Regulations and determinations has been followed.

## 5 LEGAL CHALLENGES

### 5.1 Are there legal challenges to the changes, in principle?

Counsel's opinion has been sought and it sets out that there is not likely to be a successful generic challenge to the changes. It notes that there was no procedural breach when bringing in the amended Regulations and Determination and they are not inherently unlawfully discriminatory since the discretion given to individual forces means that justification can be addressed at that level.

### 5.2 What if I have been treated unfairly?

Counsel's opinion does note that decisions at local level will potentially give rise to claims, particularly in the employment tribunal based on disability discrimination.

Annex EE, paragraph 10, states that it is for chief officers to define a process for allocating adjusted duties officers to suitable roles within the force, according to the principles set out in current national guidance, and in compliance with their statutory duties under the Equality Act 2010, particularly in relation to officers with a disability within the meaning of that Act.

Forces should be implementing the new scheme in accordance with the new Regulations and determinations as well as the guidance and if this is not done in a fair and legal manner it is possible that claims may arise.

If you are concerned about the individual treatment you are receiving from your force you should contact your local Joint Branch Board for assistance.

## 6 COMMON MISCONCEPTIONS

### 6.1 The force has decided that all roles should have a fully deployable requirement

It would be very difficult for a force to make a blanket decision that all posts must be fully deployable because that would fetter their ability to make decisions on an individual case basis and it is difficult to imagine circumstances where such a stringent requirement would actually be necessary.

### 6.2 If I am placed on adjusted duties will I automatically lose my x factor?

No, it is not an automatic process. The chief officer can decide that the x factor should not be withdrawn depending on the individual circumstances of a particular case. He/she should follow the procedure set out in the guidance.

### 6.3 An officer who is not fully deployable because they cannot work the full range of shifts cannot be ill-health retired

This is not necessarily the case. The criteria for determining whether an officer is fully deployable are listed in Annex EE and at paragraph 43 of the published guidance. These criteria must only be used in the context of adjusted duties. It must not be used to determine whether an officer meets the permanence test in the pension regulations.

### 6.4 The force has assumed that officers with certain disabilities or types of illness are incapable of carrying out certain functions

It would be difficult for a force to justify making decisions based on blanket assumptions about certain types of disability or illness. Each case must be considered on its own merits.

### 6.5 Doesn't it make it difficult for forces if the 24/7 requirement is only applied to patrol and response roles

There should be a wide variety of roles available to adjusted duties officers. The guidance states that 'placing an officer on adjusted duties represents an intention to retain an officer in the force in a substantive role' and that 'where forces can make adjustments, they must do so'. The focus should be on what an officer can do, rather than those things they may be unable to do. This could involve a period of retraining, should an officer be moved to a new role and the guidance is clear that this should be done, wherever reasonable.

A reasonable adjustment could also involve "bumping" a fully fit officer from a role that can be performed by an officer on adjusted duties. Officers should not be left in silos, with no further training/career development.

## 7 NEXT STEPS

- If you require further information or support you should contact your local Joint Branch Board in the first place.
- JBBs can contact Elaine Parker or Karen Pinfold in the Research & Policy Support Department either by phone 01372 352003/4 or by email [pnbresearch@polfed.org](mailto:pnbresearch@polfed.org)

## 8 SOURCES OF INFORMATION

We hope that you found this FAQ useful.

Further information on limited duties is available in the following documents:

- Amendment Regulations 2015 - SI 2015/455:  
<http://www.legislation.gov.uk/uksi/2015/455/contents/made>
- Police Regulations and determination 2003, Annex EE Limited Duties –HOC 010/2015:  
<https://www.gov.uk/government/publications/circular-0102015-changes-to-the-management-of-limited-duties-police-amendment-regulations-2015-si-2015455-and-supporting-determinations>

- NPCC Guidance to support changes to the management of police officers on limited duties:  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/418378/Limited\\_Duties\\_Guidance\\_v6\\_3\\_-\\_1\\_May\\_2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/418378/Limited_Duties_Guidance_v6_3_-_1_May_2015.pdf)
- JBB circular 16/2015 – guidance to JBBs on limited duties:  
<http://thehub/departments/research/Shared%20Documents/JBB%20Circulars/JBB%20Circular%2016-2015.pdf>

## 9 STAGES IN THE CONSULTATION (& NEGOTIATION) PROCESS

