

Home Office circular 26 / 2006
Forfeiture of Police Pensions

Dear Chairman/Clerk

FORFEITURE PROVISIONS OF THE POLICE PENSIONS REGULATIONS 1987

The Home Secretary has made it clear that police authorities should look at all cases of police officers who have been convicted of criminal offences connected with their police service with a view to forfeiture of their police pensions*.

2. This purpose of this circular is to draw attention to the legislation and provide guidance.

Annex A describes the legislation,
Annex B explains the procedures,
Annex C provides guidance on what should be included in an application to the Home Secretary for a certificate, and

3. Applications for certificates should be addressed to the
Police Integrity Team,
Police Leadership & Powers Unit,
4th floor (NW),
Peel Building,
2 Marsham Street,
London
SW1P 4DF.

We welcome telephone inquiries about this from police forces and authorities.

Sarah Muir
Police Integrity Team

*The Home Secretary's statement of 23 March 1998 in response to the Home Affairs Committee Report on police disciplinary and complaints procedures

1The term "pensioner" should be taken to include a person who is still a member of his force at the time of conviction

LEGISLATION

The relevant legislation can be found in Regulation K5 of the Police Pensions Regulations 1987. Paragraphs 2 and 3 allow a police authority to determine forfeiture in cases where a pensioner has been convicted of treason or of offences under the Official Secrets Acts 1911 to 1939 and has been sentenced to a term (or terms) of imprisonment of at least ten years. Forfeiture in these rare cases is entirely a matter for the police authority concerned.

2. Paragraph 4 allows a police authority to determine forfeiture where a member of a police force has been convicted of an offence committed in connection with his/her service as a member of a police force which is certified by the Secretary of State either to have been gravely injurious to the interests of the State or to be liable to lead to serious loss of confidence in the public service.

3. Paragraph 5 allows a police authority to determine the extent to which the pension should be forfeited. This may be permanent or temporary and may affect the whole or part of the pension.

4. Regulation H5 of the Police Pensions Regulations provides a right of appeal to the Crown Court against the police authority's role in the decision to forfeit the pension. Regulation H6 provides a right of appeal to a tribunal appointed by the Secretary of State, as police authority, if the pensioner was a central police officer.

THE PROCEDURES

There are three stages to forfeiture.

2. **The first stage is for the police authority to identify a case where a pensioner¹ (whether he or she is eligible for an immediate or a deferred pension) has committed an offence in connection with his/her service as a member of a police force.** The Courts have ruled that the pensioner need not have been a serving officer at the time of the offence in order to meet the requirement that it must be connected with his/her service. For instance, the offence may have been committed after the pensioner retired but he or she may have used police knowledge or police systems or police contacts in the commission of the offence. However, pension rights, once earned, should not be forfeited except in serious circumstances. Forfeiture will therefore not be appropriate in every case where a pensioner has committed a criminal offence, but it should always be considered where the offence was serious and there is or might be public concern about the pensioner's abuse of his/her position of trust.

3. Where a case has been identified, (and without prejudice to the final decision by the police authority on whether to forfeit a pension), the police authority should apply to the Home Secretary for the issue of a certificate. The authority should provide the basis for the application, including the reasons for the police authority's view that the pensioner's offence was committed in connection with his/her police service and, in their opinion, was either gravely injurious to the interests of the State or, more likely, was liable to lead to a serious loss of confidence in the public service. Applications should include as much detail as possible (see Annex C) and should be addressed to the Policing Powers and Protection Unit, 4th floor, Peel Building, 2 Marsham Street, London SW1P 4DF. The Unit welcomes telephone inquiries from forces and police authorities for advice as to whether a particular case is one on which a certificate might be issued. The authority should also notify the pensioner of the application. Applications are liable to disclosure and care should be taken to provide only relevant information.

4. **The second stage is for the Home Secretary to consider whether the pensioner's offence was either gravely injurious to the interests of the State or liable to lead to serious loss of confidence in the public service.**

5. A person's rights to a police pension are part of the remuneration to which his/her service has entitled him/her and it is not axiomatic that a certificate will be issued. Forfeiture is an additional penalty which should not be added automatically to whatever sentence the Court has imposed. In deciding whether to issue a certificate therefore, the Home Secretary attaches a greater weight to the words "serious loss of confidence in the public service" than the harm inevitably caused by any police officer or former police officer who commits a crime. The Home Secretary will take into account:

- The seriousness with which the Court viewed the offence (as demonstrated by the punishment imposed and the sentencing remarks);
- the circumstances surrounding the offence and investigation;
- the seniority of the officer or former officer (the more senior, the greater the loss of credibility and confidence);
- the extent of publicity and media coverage; and
- whether the offence involved:
 - an organised conspiracy amongst a number of officers,

- active support for criminals,
- the perversion of the course of public justice,
- the betrayal of an important position of trust for personal gain, and/or
- the corruption or attempted corruption of junior officers.

6. The police authority and the pensioner will be notified of the Home Secretary's decision and the reasons for it. A copy of the certificate, if issued, will also be forwarded.

7. The third stage follows the issue of a certificate. This is the decision by the police authority whether or not the pension should be forfeited and the determination of the extent of forfeiture, both in terms of the proportion of the pension to be forfeited and the period over which that forfeiture is to take place. If the pension is a deferred one, the police authority may decide (once a certificate has been issued) to keep the question of forfeiture under review. However, delay in making a determination following the issue of a certificate could be challenged in the courts. Whether or not to delay the decision will depend on the individual circumstances of each case.

8. On the question of the amount which can be forfeited, paragraph 4 of the Regulations provides that forfeiture may be applied permanently or temporarily. The courts have ruled that the pension may be forfeited by no more than 65%, the remainder reflecting a pensioner's own contributions which cannot be forfeited. Certificates are likely to be issued only in serious cases.

9. For the purposes of these Regulations, pension does not include an allowance, a gratuity, a lump sum, or an award by way of repayment of aggregate pension contributions. It means a personal pension (including an ordinary, short service, ill health, injury or deferred pension), a widow's pension, or a dependent relative's special pension. A commuted lump sum may not be forfeited but if a pension is forfeited before it becomes payable (eg an ordinary pension before the age of 50 or a deferred pension before the age of 60), there will be little or no pension left to commute for a lump sum. The secured portion of a pension can only be forfeited temporarily, that is, until a pensioner reaches state pensionable age. After that, it may only be forfeited if the pensioner is in legal custody.

10. A pensioner who is dismissed after completing 25 years' service will not be entitled to an ordinary pension if he/she was dismissed for a cause for which the pension could be forfeited. In these circumstances, the pensioner will only become entitled to a deferred pension at the age of 60 and it will be for the police authority to determine whether the deferred pension should be forfeited and to what extent.

11. Other factors which might influence the extent of forfeiture are:

- those listed above (paragraph 5) which reflect the gravity of the officer's conduct;
- mitigating circumstances;
- disability in the family;
- illness at the time of the offence; and
- assistance or information given to the police during the investigation or following conviction.

12. If several officers were involved in the commission of the offence, the police authority might decide to reflect different levels of culpability in the extent of forfeiture for each. For example, officers of a senior rank may be more culpable than junior ones.

13. The police authority should inform the Home Office of the final outcome of the case, whether the pension has been forfeited and the extent of forfeiture.

Right of appeal

14. Regulation H5 gives a pensioner the right of appeal to the Crown Court (the Sheriff Court in Scotland) against the police authority's role in the decision to forfeit the pension. An officer may appeal against the police authority's decision that there was a connection between the offence and the pensioner's membership of a police force and against the extent of the forfeiture. The right of appeal lies after the forfeiture has occurred, even if the cause for aggrievement is that the offence was committed in connection with his/her service. A decision to delay the determination as to forfeiture following the issue of a certificate might, in some circumstances, be prejudicial to a successful appeal and liable to challenge. Under the rules of the Crown Court a notice of appeal should be submitted to the Court and any other party to the appeal within 21 days of the day the decision was notified. The Court has discretion, however, to accept an appeal out of time.

15. Regulation H6 provides a right of appeal to a tribunal appointed by the Secretary of State as police authority against the first and third stages of forfeiture where the pensioner was a central police officer.

Identification of cases

16. You should ensure, in cooperation with your police force, that systems are in place to identify cases to which the forfeiture provisions apply so that appropriate action may be taken to meet the provisions of this circular.

FORFEITURE OF POLICE PENSIONS: APPLICATIONS FOR A CERTIFICATE

Police authorities should include the following information in any application for a certificate:

- a statement that, in the view of the authority, the offence was committed in connection with service as a member of the police force and is liable to lead to serious loss of confidence in the public service;
- full details of the offence(s) and the perceived connection with police service;
- details of the circumstances surrounding the offence and investigation; In particular, whether the offence involved
 - organised conspiracy amongst a number of officers,
 - active support for criminals,
 - perversion of the administration of justice,
 - betrayal of an important position of trust for personal gain, and/or
 - corruption or attempted corruption of junior officers;
- details of the punishment imposed by the Court and the Judge's sentencing remarks if known;
- details of publicity and media coverage;
- brief details of the officer's service, in particular, length of service, and seniority; and
- financial implications, including pension details, widower's and/or children's allowances.