EXPLANATORY MEMORANDUM TO

THE ROAD TRAFFIC ACT 1988 (POLICE DRIVING: PRESCRIBED TRAINING) REGULATIONS 2023

2023 No. 185

1. Introduction

1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 These regulations will prescribe the minimum standards for police driver training for the purposes of ensuring that the Police Driving Standards Measures in sections 5 – 7 of the Police Crime Sentencing and Courts Act 2022 (PCSCA), which amend the Road Traffic Act 1988 (the 1988 Act), will apply. They will assist in enabling those involved in post-incident investigations and court cases to objectively assess whether the officer (or other designated person) has undertaken the appropriate enhanced driver training or has otherwise acquired the specialist driver skills. They will also make clear to Chief Officers their responsibilities in relation to training provision for police drivers.

2.2 These regulations will revoke and relay an amended version of the Road Traffic Act 1988 (Police Driving: Prescribed Training) Regulations 2022, which commenced on 30 November 2022. These regulations are materially the same as the Road Traffic Act 1988 (Police Driving: Prescribed Training) Regulations 2022, except technical changes have been made.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Road Traffic Act 1988 (Police Driving: Prescribed Training) Regulations 2022 were laid in Parliament on 31 October 2022 and came into force on 30 November 2022. The JCSI drew the Road Traffic Act 1988 (Police Driving: Prescribed Training) Regulations 2022 to the special attention of both Houses in the Committee's Twentieth Report of Session 2022-23. This was on the ground that there is doubt as to whether they are intra vires in respect of not citing sections 2A and 3ZA of the Road Traffic Act 1988 in the preamble, where the regulations prescribe police driver training for the purposes of sections 2A and 3ZA of the Road Traffic Act 1988. Therefore we have corrected this defect by making this new instrument. This is purely a technical change and does not affect the policy effect of this instrument. All other amendments are minor technical changes and the instrument does not contain any other substantive differences to the Road Traffic Act 1988 (Police Driving: Prescribed Training) Regulations 2022. The Road Traffic Act 1988 (Police Driving: Prescribed Training) Regulations 2022 are revoked on the same day that this instrument comes into effect.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdictions which the instrument forms part of the law of) is England, Wales and Scotland.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England, Wales and Scotland. The legislation allows for different provisions to be made for different purposes or areas.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 Prior to the commencement of sections 5 – 7 of the PCSCA, the tests set out in the 1988 Act for the offences of careless and dangerous driving apply to police drivers in the same way as any other driver, taking no account of the various exemptions in road traffic legislation (for example, in relation to speed limits and road signs) that apply to the police or of their additional training. Those offences are committed when a person drives in a way that is below (careless) or far below (dangerous) what would be expected of a competent and careful driver.

6.2 Sections 5 and 6 of the PCSCA amended the 1988 Act tests for the offences of dangerous and careless driving respectively so that in determining whether an offence has been committed a designated person's standard of driving is compared to that of a competent and careful constable who has undertaken the prescribed training, and therefore has the same skills, where the designated person is driving for police purposes (or, in the case of NCA, law enforcement purposes), and has undertaken prescribed training.

6.3 Section 7 of the PCSCA amends section 195 of the 1988 Act to provide that the power to make regulations prescribing training or skills for the purposes of the new comparator may make different provision for different persons or areas, as the case may be.

6.4 These regulations apply within the framework of law governing police driving, which forms part of the law of England, Scotland and Wales. The main underpinning legislation is: sections 1-5 and 41-42 of the Road Traffic Act 1988; section 87 of the Road Traffic Regulation Act 1984; The Motorway Traffic (England and Wales) Regulations 1982; Motorways Traffic (Scotland) Regulations 1995; Traffic Signs Regulations and General Directions 2016; The Motor Vehicles (Wearing of Seatbelts) Regulations 1993; The Highways Act 1980; Roads Scotland Act 1984.

7. Policy background

What is being done and why?

7.1 As set out in paragraph 6.1, prior to the commencement of sections 5 – 7 of the PCSCA, no account could be taken of a police driver's skill or training when deciding whether their driving was careless or dangerous. The Police Federation and others raised concerns about the fairness of this position.

7.2 As a result, the Government introduced this new test within the PCSCA. Should an officer or other 'designated person' be involved in a road traffic collision while

driving for policing purposes, this new test will allow the courts to judge their standard of driving against a competent and careful peer with the same prescribed training, rather than with a member of the public as at present. The new comparison with a careful and competent police driver takes into account whether a similarly trained police driver would be expected to drive in the same manner and whether it would have been obvious to them that driving in that manner was either dangerous or careless.

7.3 This new test is provided for in the amendments made to the 1988 Act by sections 5 and 6 of the PCSCA. Section 5 applies the new test to the offence of dangerous driving while Section 6 applies the same principle to the offence of careless driving. The new tests only apply where the driver has undertaken prescribed training and that driver will be compared against a careful and competent constable who has undertaken the same prescribed training. These regulations set out the requirements for the prescribed training. Section 7 provides that regulations prescribing the training for police drivers may make different provisions for different persons. In particular, this provision will enable different provision to be made for Scotland, recognising that the College of Policing's remit is confined to England and Wales and that there are differences in the Scottish Justice System, including the role of the Crown Office and Procurator Fiscal Service (COPFS) which is the independent public prosecution service in Scotland.

7.4 The National Police Chiefs' Council (NPCC) have been working closely with the College of Policing police forces to standardise police driver training across England and Wales. This will ensure that police drivers, depending on their role, are trained to a similar standard, and the legal test for police drivers will have a fairer comparator. This will also include different levels of training to reflect the training and skills required for different roles. This training will be aligned with the College of Policing's Authorised Professional Practice and national police driver training curriculum.

7.5 The courses within the national police driver training curriculum are as follows: Standard response driving, Advanced driving, Initial phase pursuit (IPP), Tactical phase pursuit (TPaC), Riding with a pillion passenger, Response motorcycling, Advanced motorcycling, Evasive and offensive driving, Protected convoy driving, VIP protection motorcycle escorts, Escorting vehicles (abnormal loads etc), Off-road motorcycling, Off-road driving, Category B vans & passenger vehicles, VIP protection driving, Pre-surveillance motorcycle Riding.

7.6 In Scotland, Police Scotland and the Scottish Police College are responsible for the police driver training curriculum and guidance. Within the Regulations, the prescribed minimum standards of police driver training will recognise differences in governance in Scotland (e.g. that the College of Policing's remit is confined to England and Wales), whilst ensuring that a consistent, shared standard is set across Great Britain.

Explanations

What did any law do before the changes to be made by this instrument?

7.7 Prior to the commencement of the Road Traffic Act 1988 (Police Driving: Prescribed Training) Regulations 2022, on 30 November 2022, police driver training standards were not previously prescribed in law. These regulations are materially the same as the Road Traffic Act 1988 (Police Driving: Prescribed Training) Regulations 2022, except technical changes have been made.

Why is it being changed?

7.8 For a police officer, or police driving instructor, to benefit from this change to the dangerous and careless driving offences, they must have undertaken prescribed driver training. If a police driver has not received the additional training their driving would be compared to an ordinary motorist as this is a more appropriate comparison for their skills.

What will it now do?

7.9 The regulations will set out the prescribed training which must have been completed by a police officer in order for the changes to the dangerous and careless driving offences to apply.

7.10 The training must meet the requirements set out in the schedule to the regulations. Table 1 sets out each training course and this is identified by title, course lengths, the required minimum number of trainers to maximum number of students ratio and the period training is valid for before refresher training is required. Table 2 of the Schedule lists the requirements of the refresher training where required.

7.11 Regulations 3 and 5 provide additional requirements for the initial training in England and Wales, and Scotland, respectively: and will detail the course provider, the necessary training standards of the instructor or trainer and essential components of the training. Regulations 4 and 6 make provision for refresher training to be undertaken for training in England and Wales, and Scotland, respectively.

7.12 Regulation 7 sets out requirements for training which was completed prior to the 30 November 2022 to be prescribed training.

7.13 These regulations revoke the Road Traffic Act 1988 (Police Driving: Prescribed Training) Regulations 2022, which are materially the same as these regulations, in order to make technical changes as set out in paragraph 3.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act

9. Consolidation

9.1 This instrument does not amend other secondary legislation.

10. Consultation outcome

10.1 Following a campaign by the Police Federation of England and Wales, in September 2017, the then Minister for Policing and the Fire Service, Rt Hon Nick Hurd MP, commissioned a Home Office review of the law, guidance, procedures and processes surrounding police pursuits. The review had a particular focus on identifying the reasons why the current legal framework was seen as falling short, identifying options for improvement and developing recommendations.

10.2 In May 2018, the Home Office published a consultation, “The Law, Guidance and Training Governing Police Pursuits”, which set out the findings of the review and options for changes in the law. In particular, the consultation sought views on: whether any legislative change should apply only to police pursuits or to police response driving as well; whether to revise the various exemptions from certain areas of road traffic legislation to make them clearer and more consistent; amending the

definitions in the offences of careless and dangerous driving to take account of the training and experience of police drivers; and making clear that a suspect being pursued is responsible for their own decision to drive dangerously and that blame should not be attached to the pursuing police officer.

10.3 The Home Office received 383 responses to the consultation with two-thirds of respondents (66.6%) agreeing that a police officer responding to an emergency or a pursuit should be compared to the standard of a police driver with similar training and skill. The Government published its response to the consultation[1] and the then Home Secretary issued a Written Ministerial Statement on 2 May 2019 announcing that the Government would seek to introduce a new test to assess the standard of driving of a police officer. The new test will allow the courts to judge their standard of driving against a competent and careful police constable with the same level of training, rather than a member of the public as at present.

10.4 The Home Office carried out a targeted stakeholder consultation between 8 August and 2 September 2022 on the proposals within the draft regulations. The Scottish Government was included in this consultation and throughout the development of the regulations. The final version of the regulations reflected stakeholder feedback. In reflection of this feedback we adjusted the schedule which details course lengths, trainee/instructor ratios and the frequency of refresher training and changed some of the structure of the SI in response to Police Scotland comments.

11. Guidance

11.1 A Home Office circular[2] was published on 23 November 2022 to alert police forces and other interested parties to the 2022 regulations, we will update the date in reflection of this new instrument.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector as the police driving training programme described with the regulations has already been implemented across England and Wales.

12.3 A full Impact Assessment has not been prepared for this instrument because it will not impact on business. The Equalities Impact Assessment which was published alongside the 31 October instrument is still relevant.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The aim of the police driver standards measures was to ensure that the law was fair to police drivers and took their advanced driving skills into account. The approach to monitoring of this legislation is for the Home Office to work closely with stakeholders including the NPCC, College of Policing, the Independent Office of Police Conduct (IOPC) to monitor the implementation of this legislation. We will monitor IOPC and

[1] The law, guidance and training governing police pursuits (publishing.service.gov.uk)
[2] Circular 009/2022: Police, Crime, Sentencing and Courts Act 2022 - GOV.UK (www.gov.uk)

policing data, although there are low numbers of incidents where police drivers are prosecuted so it will take time to build up a picture of the effectiveness of the new prescribed training and how this assists the interpretation of the PCSCA. We will engage with the Police Federation to assess whether they feel that the law is now fairer to police drivers and how this is affecting their morale.

14.2 The instrument does not include a statutory review clause.

15. Contact

15.1 Tracy Catling at the Home Office Telephone: 07557 311770 or email: Tracy.Catling1@homeoffice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Mark Williams, Deputy Director for Police Powers Unit, at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Chris Philp MP at the Home Office can confirm that this Explanatory Memorandum meets the required standard.