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STATUTORY RULES OF NORTHERN IRELAND

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**2007 No. 476**

**The Police Pension (Northern Ireland) Regulations 2007**

**PART 7**

**MEDICAL QUESTIONS AND APPEALS**

*Eligibility for awards — general*

**Eligibility for awards — general**

**62.** Subject to the following provisions of this Part, the question whether a person is entitled to any, and if so what, awards under these Regulations shall be determined in the first instance by the Board.

*Appeals*

**Appeals**

**63.—(1)** Where a member of the police service, or a person claiming an award in respect of such a member, is aggrieved by—

- (a) the refusal of the Board to admit a claim to receive as of right an award or a larger award than that granted;
- (b) a decision of the Board as to whether a refusal to accept medical treatment is reasonable for the purposes of regulation 3;
- (c) the reduction under regulation 50 by the Board of the amount of any pension payable to such a member, or
- (d) the forfeiture under regulation 52 by the Board of any award granted to or in respect of such a member,

he may, subject to regulation 64, give notice of appeal to the Board and the Secretary of State; and any such notice shall be in writing and shall specify the grounds of the appeal.

(2)

- (a) The Secretary of State, on receiving such notice of appeal, shall appoint an appeal tribunal (“the tribunal”);
- (b) The tribunal shall consist of three persons, including a barrister or solicitor of not less than seven years' standing who shall be appointed chairman and a former member of the police service or of a police force in Great Britain who, before he ceased to serve as such or retired, held a rank not lower than that of superintendent.

(3) The time and place for the hearing, or any postponed or adjourned hearing, of the appeal shall be determined by the tribunal, which shall give reasonable notice of it to the Secretary of State who shall notify the appellant and the Board.

(4) The Board and the appellant (“the parties”) may be represented before the tribunal by counsel, by a solicitor or by other appropriate person, adduce evidence and cross-examine witnesses.

(5) The tribunal shall apply the rules of evidence applicable in a hearing of an appeal to a county court under Article 28 of the County Court (N.I) Order 1980(1).

(6) Subject to the preceding provisions of this regulation, the tribunal shall determine its own procedure.

(7) The tribunal, after enquiring into the case and arriving at a decision thereon, may make such order in the matter as appears to it just—

- (a) which order shall state the reasons for the decision; and
- (b) each of the parties shall be entitled to a copy of any such order.

(8) An appeal shall lie on a point of law from any decision of a tribunal under this regulation to the High Court in accordance with rules of court.

### **Limitations on appeals**

**64.**—(1) An appeal shall not lie under regulation 63 against anything done by the Board in the exercise of a power conferred by these Regulations which is expressly declared by these Regulations to be a power which they are to exercise in their discretion.

(2) Subject to regulation 69(2), in any proceedings under regulation 63 the court or tribunal shall be bound by any final decision of a medical authority within the meaning of regulation 69(4).

### *Decisions on eligibility for pension awards payable on the ground of permanent disablement*

### **Reference to selected medical practitioner — eligibility for pension awards payable on the ground of permanent disablement**

**65.**—(1) For the purposes of a determination by the Board of a person’s eligibility to receive pension awards payable on the ground of permanent disablement in pursuance of regulation 6, the selected medical practitioner shall report to the Board his opinion on the likelihood and likely timing of that person becoming permanently disabled for the performance of the ordinary duties of a member of the police service, and such a report shall, subject to an appeal under regulation 66, be final.

(2) A copy of any such report shall be supplied to the person who is the subject of that report (“the claimant”).

### **Appeals against decisions on eligibility for pension awards payable on the ground of permanent disablement**

**66.**—(1) A person in respect of whom it has been determined under regulation 6(3) that the risk presented by him that he will retire on the ground that he is permanently disabled is such that the likely cost of providing him with benefits under these Regulations is disproportionately high and who is dissatisfied with the opinion of the selected medical practitioner may appeal against the practitioner’s report if—

- (a) within 28 days of receiving notice of the Board’s decision under regulation 6(3) he gives notice that he intends to make such an appeal, and
- (b) within two months (or such longer period as may be agreed by the Board) of receiving notice of the Board’s decision he supplies evidence that a registered medical practitioner (“the appellant’s practitioner”) has examined him and disagrees with the selected medical

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(1) S.I. 1980/397 (N.I.).

practitioner’s opinion on the likelihood or likely timing (or both) of that person becoming permanently disabled for the performance of the ordinary duties of a member of the police service.

(2) The Board shall ask the selected medical practitioner to reconsider his report in the light of that evidence and, if necessary, to produce a revised report on the likelihood and likely timing of that person becoming permanently disabled for the performance of the ordinary duties of a member of the police service, and that revised report shall be final.

*Medical questions — permanent disablement*

**Reference of medical questions — permanent disablement**

**67.**—(1) Where the Board is considering for the purposes of these Regulations whether a person is permanently disabled, they shall refer for decision to a duly qualified medical practitioner selected by them the following questions—

- (a) whether the person concerned is disabled for the performance of the ordinary duties of a member of the police service;
- (b) whether any such disablement as is mentioned in sub-paragraph (a) is likely to be permanent;
- (c) whether the person concerned is also disabled for engaging in any regular employment otherwise than as a police officer; and
- (d) whether any such disablement as is mentioned in sub-paragraph (c) is likely to be permanent.

(2) Where the Board is considering whether the disablement of a person such as is mentioned in regulation 18(3) or 48(1)(a) has ceased, significantly worsened or significantly improved, they shall refer for decision to a duly qualified medical practitioner selected by them the following questions—

- (a) whether the person concerned continues to be disabled for the performance of the ordinary duties of a member of the police service; if so;
- (b) whether the person concerned is also disabled for engaging in any regular, employment; and
- (c) whether any such disablement as is mentioned in sub-paragraph (b) is likely to be permanent.

(3) Where the Board is considering whether the disablement of a person such as is mentioned in regulation 48(1)(b) has ceased, or significantly improved, they shall refer for decision to a duly qualified medical practitioner selected by them the following questions—

- (a) whether the person concerned continues to be disabled for engaging in any regular employment; and, if not;
- (b) whether the person concerned continues to be disabled for the performance of the ordinary duties of a member of the police service.

(4) Where, in pursuance of a reference under paragraph (2) or (3), the selected medical practitioner decides that the question mentioned in paragraph (2)(a) or either of the questions referred to in paragraph (3)(a) and (b), as the case may be, is to be answered in the affirmative, no question as to the likelihood of such disablement continuing permanently is to be considered by him.

(5) Where the Board is considering the exercise of their powers under regulation 50 (reduction of pension in case of default), they shall refer for decision to a duly qualified medical practitioner selected by them the question whether the person concerned has brought about or substantially contributed to the disablement by his own default.

(6) The Board may decide to refer a question in paragraph (1), (2), (3) or (5), as the case may be, to duly qualified medical practitioners instead of to a single duly qualified medical practitioner, and in such a case references in this regulation and regulations 68, 69 (4) and 70 (8) to a selected medical practitioner shall be construed as if they were references to more than one selected medical practitioner.

(7) The decision of the selected medical practitioner on the question or questions referred to him under this regulation shall be expressed in the form of a report and certificate and shall, subject to regulations 68 and 69, be final.

(8) A copy of any such report and certificate shall be supplied to the person who is the subject of that report.

### **Appeal to independent medical referee (IMR)**

**68.**—(1) Where a person is dissatisfied with the decision of the selected medical practitioner, (SMP), on the question or questions referred to him as set out in a report and certificate under regulation 67(7) he may, within 28 days after he has received a copy of the report and certificate, or such longer period as the Board may allow, and subject to and in accordance with the provisions of regulation 70, give notice to the Board that he appeals against that decision.

(2) In any case where within a further 28 days of that notice being received (or such longer period as the Board may allow) that person has supplied to the Board a statement of the grounds of his appeal, the Board shall, except in a case where the person concerned and the Board agree to a further reference to the selected medical practitioner in accordance with regulation 69(1), notify the Secretary of State accordingly.

(3) The Board shall send to the Secretary of State two copies of the notice of appeal, and the report and certificate appealed against, with the name and address of the appellant and any other information required by the Secretary of State.

(4) The Secretary of State shall appoint the IMR, which shall consist of one or more independent medical practitioners, and where more than one medical practitioner is appointed, the Secretary of State shall designate one of them as the principal independent medical referee (PIMR).

(5) The IMR shall report on the question or questions which subject to appeal, except that where there is a PIMR designated only he shall so report, after taking into account the assessment of all other IMR's appointed by the Secretary of State .

(6) The decision of the IMR shall, if he disagrees with any part of the report of the SMP, be expressed in the form of a report and certificate of his decision on any of the questions referred to the SMP on which he disagrees with the latter's decision.

(7) The report of the IMR in pursuance of paragraph (4) shall, subject to the provisions of regulation 69, be provided to the Board and the appellant ("the parties to the appeal").

(8) The Board shall determine the appeal after considering the report of the IMR, and that report shall supersede any other medical report.

### **Further reference to medical authority**

**69.**—(1) The Board and the person in respect of whom a medical authority has given a final decision ("the claimant") may, by agreement, refer such decision to the said medical authority, for reconsideration of the decision and the medical authority shall accordingly reconsider the said decision and, if necessary, issue a fresh report and certificate, which, subject to—

(a) any further reconsideration under this paragraph or paragraph (2), or

- (b) an appeal, where the claimant requests that the appeal of which he has given notice (before referral of the decision under this paragraph) be notified to the Secretary of State and referred to an IMR,

shall be final.

(2) A tribunal hearing an appeal under regulation 63 may, if they consider that the evidence before the medical authority who has given the final decision was inaccurate or inadequate, refer the said decision to the medical authority for reconsideration in the light of such facts as the tribunal may direct, and the medical authority shall accordingly reconsider the said decision and, if necessary, issue a fresh report which, subject to any further reconsideration under this paragraph, shall be final.

(3) If a claimant and the Board agree, or the tribunal decide, to refer a decision to the medical authority for reconsideration under this regulation and that medical authority is unable or unwilling to act, the decision may be referred to a duly qualified medical practitioner or practitioners agreed upon by the claimant and the Board or, as the case may be, selected by the tribunal, and his or, as the case may be, their decision shall have effect as if it were that of the medical authority who gave the decision which is to be reconsidered.

(4) In this regulation a medical authority who has given a final decision, and cognate expressions, means—

- (a) the SMP, if the time for appeal from his decision has expired without an appeal to an appeal board being made or if, following a notice of appeal to the Board, the Board have not yet notified the Secretary of State of the appeal, and
- (b) the IMR, if there has been such an appeal.

### **Procedure and costs on appeals under regulation 68**

**70.**—(1) Every notice of appeal under regulation 68(1) and statement of grounds under regulation 68(2) shall be in writing.

(2) On receiving a notice of appeal against a decision made under regulation 67(7) and the appellant's statement of grounds for appeal, the Board, unless regulation 69(1) applies, shall forward to the Secretary of State copies of those documents and all other documents determined as necessary by the Secretary of State.

(3) The IMR shall—

- (a) appoint a time and place at which he, or they, as the case may be, shall examine the appellant (“medical assessment”);
- (b) appoint any such further dates as he, or they, as the case may be, may consider necessary, and
- (c) shall give not less than two months' notice, or such shorter period as the parties to the appeal may agree, of that appointment to the Secretary of State.

(4) The Secretary of State shall inform the parties to the appeal of the date appointed for the medical assessment.

(5) The appellant shall ensure all papers to be considered by the IMR are sent to the Secretary of State not less than 14 days before the date of the medical assessment.

(6) The Secretary of State shall ensure all relevant documents are sent to the IMR and the parties to the appeal before the date of the medical assessment.

(7)

- (a) Where a party to the appeal intends to submit written evidence or a written statement, that party shall, subject to sub-paragraph (b), submit it to the Secretary of State not less than 14 days before the date appointed for the medical assessment;

- (b) where any written evidence or statement has been submitted under sub-paragraph (a), the other party may provide written evidence or statement in response, which shall be submitted to the Secretary of State not less than seven days before the date appointed for the medical assessment;
- (c) the IMR may postpone or adjourn the date appointed for the medical assessment where any written evidence or statement is submitted in contravention of sub-paragraphs (a) and (b) or it appears necessary to do so for the proper determination of the appeal.

(8) Any medical assessment may be attended by—

- (a) the SMP or, in his absence, a duly qualified medical practitioner appointed for the purpose by the Board;
- (b) any duly qualified medical practitioner appointed for the purpose by the appellant, and
- (c) a person whom the appellant wishes to accompany him,

although they may only observe any examination.

(9) If any medical assessment includes a medical examination then only medical practitioners may be present for that part of the assessment.

(10) Each party shall, not less than 14 days before the date appointed for the medical assessment, inform the Secretary of State whether they intend that a person described in paragraph (8) will attend the medical assessment.

(11) The IMR shall supply the Secretary of State with a written report of his decision in accordance with regulation 68(4) and (5).

(12) The Secretary of State shall provide the parties to the appeal with a copy of the IMR's report and certificate, if any.

(13) There shall be paid to the IMR—

- (a) such fees as are determined in accordance with arrangements made by the Secretary of State; or
- (b) where no such arrangements have been made, such fees and allowances as the Secretary of State may from time to time determine,

and any fees or allowances so payable shall, subject to paragraph (14)(c) and (e), be paid by the Board and shall be treated as part of the expenses of the Board for the purposes of this regulation.

(14)

- (a) Subject to the following provisions of this paragraph, the expenses of each party to the appeal shall be borne by that party.
- (b) Where a medical assessment has been cancelled, adjourned or postponed at the request of, or due to the actions or omissions of, the Board less than 11 days (excluding weekends and public holidays) before the date appointed for the medical assessment, the IMR shall require the Board to pay to the appellant any expenses actually and reasonably incurred by him in respect of attending or arranging to attend the cancelled, adjourned or postponed medical assessment, as the case may be.
- (c) If the IMR determines that a medical assessment has been cancelled, adjourned or postponed at the request of, or due to the actions or omissions of, the appellant less than 11 days (excluding weekends and public holidays) before the date appointed for the medical assessment the Board may, subject to sub-paragraph (d), require the appellant to pay towards the cost of the cancellation, adjournment or postponement, as the case may be, such sum not exceeding the total costs of the cancellation, adjournment or postponement, as the case may be, as the Board thinks fit.

- (d) If the IMR, after taking account of any representations from either party, decides that the cancellation, adjournment or postponement, as the case may be, was not due to any fault on the part of the appellant and the appellant should not pay towards the cost of the said cancellation, adjournment or postponement, he or they shall state that this is the case and the Board shall not require the payment of any such costs.
  - (e) Where the IMR decides in favour of the Board and reports that in his, or, as the case may be, their opinion the appeal was frivolous or vexatious, the Board may, subject to subparagraph (f), require the appellant to pay towards the cost of the appeal such sum not exceeding the total fees and allowances of the IMR as the Board thinks fit.
  - (f) If the IMR, after taking account of any representations from either party, decides there are exceptional reasons why the appellant should not pay towards the cost of the appeal, he, or as the case may be, they, shall state that this is the case and the Board shall not require the payment of any such costs.
  - (g) Where the IMR decides in favour of the appellant, the Board shall refund to the appellant any expenses actually and reasonably incurred by the appellant in respect of attending any medical assessment.
- (15) For the purposes of this regulation a medical assessment shall include questioning, and may include either physical or other examination of the appellant.
- (16) References in this regulation to periods of days shall include weekends and public holidays, unless expressed otherwise.

#### **Refusal to be medically examined**

**71.** If a question is referred to a medical authority under regulation 67, 68 or 69 and the person concerned wilfully or negligently fails to submit himself to such medical examination or to attend such assessments as the medical authority may consider necessary in order to enable him to make his decision, then—

- (a) if the question arises otherwise than on an appeal under regulation 68, the Board may make their determination on such evidence and medical advice as they in their discretion think necessary;
- (b) if the question arises on an appeal under regulation 68, the appeal shall be deemed to be withdrawn.