
SCOTTISH STATUTORY INSTRUMENTS

2007 No. 201

The Police Pensions (Scotland) Regulations 2007

PART 7

MEDICAL QUESTIONS AND APPEALS

Eligibility for awards – general

Eligibility for awards – general

65. 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 police authority.

Appeals

Appeal by a member of a home police force

66. Where a member of a home police force, or a person claiming an award in respect of such a member, is aggrieved by—

- (a) the refusal of the police authority to admit a claim to receive as of right an award or a larger award than that granted;
- (b) a decision of the police authority as to whether a refusal to accept medical treatment is reasonable for the purposes of regulation 4;
- (c) the reduction under regulation 53 by the police authority of the amount of any pension payable to such a member; or
- (d) the forfeiture under regulation 55 by the police authority of any award granted to or in respect of such a member,

that person may, subject to regulation 68, appeal to the sheriff, and the sheriff, after enquiring into the case, may make such order in the matter as appears to the sheriff to be just.

Appeal by inspector of constabulary or police officer engaged on relevant service

67.—(1) This regulation shall apply in relation to—

- (a) an inspector of constabulary; or
- (b) a police officer engaged on relevant service,

and any such person is hereafter in this regulation referred to as an officer to whom this regulation applies.

(2) Where an officer to whom this regulation applies, or a person claiming an award in respect of such an officer, is aggrieved by—

- (a) the refusal of the Scottish Ministers as police authority to admit a claim to receive as of right an award or a larger award than that granted;
- (b) a decision of the Scottish Ministers as police authority as to whether a refusal to accept medical treatment is reasonable for the purposes of regulation 4;
- (c) the reduction under regulation 53 by the Scottish Ministers as police authority of the amount of any pension payable to such an officer; or
- (d) the forfeiture under regulation 55 by the Scottish Ministers as police authority of any award granted to or in respect of such an officer,

the officer may, subject to regulation 68, give notice of appeal to the Scottish Ministers; and any such notice shall be in writing and shall specify the grounds of the appeal.

(3) The Scottish Ministers, on receiving such notice of appeal, shall appoint an appeal tribunal (in this regulation referred to as “the tribunal”), consisting of 3 persons, including a person who has at least 7 years standing as an advocate or solicitor admitted in Scotland, or a 7 year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990⁽¹⁾ or at least 7 years standing as a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland and a former member of a police force who, before ceasing to serve as such or retiring, held a rank not lower than that of Superintendent.

(4) 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 thereof to the appellant and to the Scottish Ministers as police authority (“the parties”).

(5) Either party may be represented before the tribunal by counsel, by a solicitor or by such other person as appears to that party appropriate, adduce evidence and cross-examine witnesses.

(6) In the case of an appeal under this regulation the tribunal shall have regard to the practice of the Sheriff Court in the case of an appeal under regulation 66 or under regulation H5 of the 1987 Regulations⁽²⁾, and the rules of evidence applicable in the case of such an appeal shall apply in the case of an appeal under this regulation.

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

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

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

Limitations on appeals

68.—(1) An appeal shall not lie under regulation 66 or 67 against anything done by a police authority 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 73⁽²⁾, in any proceedings under regulation 66 or 67 the court or tribunal shall be bound by any final decision of a medical authority within the meaning of regulation 73.

(1) 1990 c. 41; relevantly amended by the Access to Justice Act 1999 (c. 22), sections 43 and 106 and Schedule 6, paragraphs 4 and 9.

(2) S.I. 1987/257. Regulation H5 was amended by S.S.I. 2003/406, Schedule 1, paragraph 12.

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

69.—(1) For the purposes of a determination by the police authority of a person’s eligibility to receive pension awards payable on the ground of permanent disablement in pursuance of regulation 8, the selected medical practitioner shall report to the police authority the selected medical practitioner’s 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 force, and such a report shall, subject to an appeal under regulation 70, be final.

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

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

70.—(1) A person in respect of whom it has been determined under regulation 8(3) that the risk presented by that person that that person will retire on the ground that that person is permanently disabled is such that the likely cost of providing that person with benefits under these Regulations is disproportionately high, 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 police authority’s decision under regulation 8(3) the person gives notice that that person intends to make such an appeal; and
- (b) within 2 months (or such longer period as may be agreed by the police authority) of receiving notice of the police authority’s decision the person supplies evidence that a registered medical practitioner (“the appellant’s practitioner”) has examined that person and disagrees with the selected medical 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 force.

(2) The police authority shall ask the selected medical practitioner to reconsider the selected medical practitioner’s 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 force.

(3) In any case in which, following such reconsideration, the person concerned remains dissatisfied with the opinion of the selected medical practitioner, the authority shall arrange for a third registered medical practitioner to examine the person; and in any case, any report produced in accordance with paragraph (2) as revised (as the case may be) by the third registered medical practitioner shall be final.

(4) The third medical practitioner shall be acceptable to the selected medical practitioner and to the appellant’s practitioner, except that in the event of a failure to agree, the police authority may appoint such third medical practitioner as it considers appropriate.

(5) The third medical practitioner shall supply the police authority and the appellant with a written statement of opinion, which, if it disagrees with any part of the report of the selected medical practitioner, shall take the form of a revised report on the likelihood and likely timing of that person becoming permanently disabled for the performance of that person’s duty, which shall be final.

Medical questions – permanent disablement

Reference of medical questions – permanent disablement

71.—(1) Where the police authority are 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 force;
- (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 regular police officer; and
- (d) whether any such disablement as is mentioned in sub-paragraph (c) is likely to be permanent.

(2) Where the police authority are considering whether the disablement of a person such as is mentioned in regulation 21(2) or 51(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 force; and, 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 police authority are considering whether the disablement of a person such as is mentioned in regulation 51(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 force.

(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 the selected medical practitioner.

(5) Where the police authority are considering the exercise of their powers under regulation 53, 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 that person's own default.

(6) The police authority may decide to refer a question in paragraph (1), (2), (3) or (5), as the case may be, to a board of duly qualified medical practitioners instead of to a single duly qualified medical practitioner, and in such a case references in this regulation and regulations 72, 73(4) and 74(7) to a selected medical practitioner shall be construed as if they were references to such a board.

(7) The decision of the selected medical practitioner on the question or questions referred to that practitioner under this regulation shall be expressed in the form of a report and shall, subject to regulations 72 and 73, be final.

(8) Where, in pursuance of a reference under paragraph (2) or (3), the selected medical practitioner is of the opinion that sub-paragraphs (a) and (b) of regulation 51(7) apply in the case of the person concerned, the practitioner shall give written notice of that opinion to the person concerned in accordance with regulation 51(7)(d)(i) and inform the police authority of such opinion in the practitioner's report; and in such a case the opinion to which the notice relates shall be treated for the purposes of paragraph (7) as if it were a decision on a question referred to the practitioner under this regulation.

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

Appeal to board of medical referees

72.—(1) Where a person is dissatisfied with the decision of the selected medical practitioner on the question or questions referred to the practitioner as set out in a report under regulation 71(7) that person may, within 28 days after the person has received a copy of that report or such longer period as the police authority may allow, and subject to and in accordance with the provisions of regulation 74, give notice to the police authority that that person 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 police authority may allow) that person has supplied to the police authority a statement of the grounds of that person's appeal, the police authority shall, except in a case where the person concerned and the police authority agree to a further reference to the selected medical practitioner in accordance with regulation 73(1), notify the Scottish Ministers accordingly and refer the appeal to a board of medical referees ("the appeal board"), appointed in accordance with arrangements approved by the Scottish Ministers, to decide.

(3) The decision of the appeal board shall, if it disagrees with any part of the report of the selected medical practitioner, be expressed in the form of a report of its decision on any of the questions referred to the selected medical practitioner on which it disagrees with the latter's decision, and the decision of the appeal board shall, subject to the provisions of regulation 73, be final.

Further reference to medical authority

73.—(1) The police authority and the person in respect of whom a final decision of a medical authority has been given ("the claimant") may, by agreement, refer such decision to the medical authority for reconsideration, and the practitioner or, as the case may be, it, shall accordingly reconsider the said decision and, if necessary, issue a fresh report, 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 the claimant has given notice (before referral of the decision under this paragraph) be notified to the Scottish Ministers and referred to an appeal board,

shall be final.

(2) A court hearing an appeal under regulation 66 or a tribunal hearing an appeal under regulation 67 may, if they consider that the evidence before the medical authority who has given the final decision was inaccurate or inadequate, refer the decision of that authority to that authority or, as the case may be, it, for reconsideration in the light of such facts as the court or 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 police authority agree, or a court or 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 board of medical practitioners agreed upon by the claimant and the police authority or, in the absence of such agreement, selected by the court or tribunal, and the practitioner's or, as the case may be, its

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 means—
- (a) the selected medical practitioner, if the time for appeal from the practitioner's decision has expired without an appeal to an appeal board being made or if, following a notice of appeal to the police authority, the police authority have not yet notified the Scottish Ministers of the appeal; and
 - (b) the appeal board, if there has been such an appeal.

Procedure and costs on appeals under regulation 72

74.—(1) Every notice of appeal under regulation 72(1) and statement of grounds under regulation 72(2) shall be in writing.

(2) On receiving a notice of appeal against a decision made under regulation 71(7) and the appellant's statement of grounds for appeal, the police authority, unless regulation 73(1) applies, shall forward to the Scottish Ministers copies of the appeal documents and all other documents determined as necessary by the Scottish Ministers.

(3) The Scottish Ministers shall refer an appeal to a board of medical referees and shall supply the board with documents supplied under (2) and any other relevant information.

(4) The appeal board shall consist of not less than 3 medical practitioners, appointed by, and in accordance with, arrangements approved by the Scottish Ministers, of whom at least 1 member shall be a specialist in a medical condition relevant to the appeal and 1 member shall be appointed chairman; and where there is an equality of voting among members of the appeal board, the chairman shall have a second or casting vote.

(5) The appeal board shall appoint a time and place for hearing the appeal ("the hearing"), at which it may interview or examine the appellant, and for any such further hearings as it may consider necessary, and shall give not less than 2 months' notice, or such shorter period as the police authority and appellant may agree, of the hearing to the appellant and police authority ("the parties to the appeal").

- (a) (6) (a) Where either party to the appeal intends to submit written evidence or a written statement at a hearing arranged under paragraph (5), that party shall, subject to sub-paragraph (b), submit it to the appeal board, the other party and Scottish Ministers not less than 10 days before the date appointed for the hearing;
 - (b) where any written evidence or statement has been submitted under sub-paragraph (a), any written evidence or statement in response may be submitted by the other party to the appeal board and the party submitting the first-mentioned evidence or statement at any time not less than 5 days before the date appointed for the hearing;
 - (c) the appeal board may postpone or adjourn the date appointed for the hearing 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; and
 - (d) References in sub-paragraphs (a) and (b) to periods of days shall exclude weekends and public holidays.
- (7) Any hearing (including any medical examination) may be attended by—
- (a) the selected medical practitioner or, in the practitioner's absence, a duly qualified medical practitioner appointed for the purpose by the police authority; and
 - (b) a duly qualified medical practitioner appointed for the purpose by the appellant,

although they may only observe any examination; and if any hearing includes a medical examination then only medical practitioners may be present for that part of the hearing.

(8) The appeal board shall supply the police authority, the appellant and the Scottish Ministers with a written statement of its decision. Where the appeal board disagrees with any part of the selected medical practitioner's report, the appeal board shall supply a revised report.

(9) There shall be paid to the members of the appeal board—

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

and any fees or allowances so payable shall, subject to paragraph (10)(c) and (e), be paid by the police authority and shall be treated as part of the expenses of the police authority for the purposes of this regulation.

- (10) (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 hearing has been cancelled, adjourned or postponed at the request of, or due to the actions or omissions of, the police authority less than 22 days (excluding weekends and public holidays) before the date appointed for the hearing, the appeal board shall require the police authority to pay to the appellant any expenses actually and reasonably incurred by the appellant in respect of attending or arranging to attend the cancelled, adjourned or postponed hearing, as the case may be;
- (c) if the appeal board determines that a hearing has been cancelled, adjourned or postponed at the request of, or due to the actions or omissions of, the appellant less than 22 days (excluding weekends and public holidays) before the date appointed for the hearing the police authority 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 authority thinks fit;
- (d) if the appeal board, 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, it shall state that this is the case and the police authority shall not require the payment of any such costs;
- (e) where the appeal board decides in favour of the police authority and reports that in its opinion the appeal was frivolous or vexatious, the authority may, subject to sub-paragraph (f), require the appellant to pay towards the cost of the appeal such sum not exceeding the total fees and allowances of the members of the appeal board as the authority thinks fit;
- (f) if the appeal board, 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, it shall state that this is the case and the police authority shall not require the payment of any such costs;
- (g) where the appeal board decides in favour of the appellant, the police authority shall refund to the appellant any expenses actually and reasonably incurred by the appellant in respect of attending any such hearing as is mentioned in sub-paragraph (5).

Refusal to be medically examined

75. If a question is referred to a medical authority under regulation 71, 72 or 73 and the person concerned wilfully or negligently fails to submit to such medical examination or to attend such

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interviews as the medical authority may consider necessary in order to enable the medical authority to make a decision, then—

- (a) if the question arises otherwise than on an appeal under regulation 72, the police authority may make their determination on such evidence and medical advice as they in their discretion think necessary; and
- (b) if the question arises on an appeal under regulation 72, the appeal shall be deemed to be withdrawn.