
SCOTTISH STATUTORY INSTRUMENTS

2007 No. 68

The Police (Injury Benefit) (Scotland) Regulations 2007

PART 4

APPEALS AND MEDICAL QUESTIONS

Reference of medical questions

30.—(1) Subject to the 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.

(2) Subject to paragraph (3), where the police authority are considering whether a person is permanently disabled, they shall refer for decision to a duly qualified medical practitioner selected by them the questions—

- (a) whether the person concerned is disabled;
- (b) whether the disablement is likely to be permanent,

except that, in a case where those questions have been referred for decision to a duly qualified medical practitioner under regulation H1(2) of the 1987 Regulations⁽¹⁾, a final decision of a medical authority on those questions under Part H of the 1987 Regulations shall be binding for the purposes of these Regulations; and, if they are further considering whether to grant an injury pension, shall so refer the questions—

- (c) whether the disablement is the result of an injury received in the execution of duty; and
- (d) the degree of the person's disablement,

and, if they are considering whether to revise an injury pension, shall so refer the question in sub paragraph (d).

(3) Where the police authority are considering eligibility for an award under regulation 12, paragraph (2) shall have effect as if the questions to be referred by them to a duly qualified medical practitioner were—

- (a) whether the person concerned is totally disabled;
- (b) whether that total disablement is likely to be permanent;
- (c) whether the disablement is the result of an injury received in the execution of duty; and
- (d) the date on which the person became totally disabled.

(4) A police authority, if they are considering exercising their powers under regulation 38, 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 their own default.

⁽¹⁾ S.I.1987/257; relevant amendments were made by S.I. 1988/1339, 1989/733, 1990/805, 1992/343 and 2349, 1994/641, 1996/867 and 1997/2852 and S.S.I. 2001/459, 2003/406, 2004/486, 2005/200 and 495 and 2006/285.

(5) The police authority may decide to refer a question in paragraph (2) or, as the case may be, (3) or (4) 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, regulations 31 and 32 and paragraphs 6(1)(a) and (2) of Schedule 6 to a medical practitioner shall be construed as if they were references to such a board.

(6) The decision of the selected medical practitioner on the question or questions referred to them under this regulation shall be expressed in the form of a report and shall, subject to regulations 31 and 32, be final.

(7) 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

31.—(1) Where a person is dissatisfied with the decision of the selected medical practitioner as set out in a report under regulation 30(6), the 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 Schedule 6, give notice to the police authority that the 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 their appeal, the police authority shall notify the Scottish Ministers of the appeal and provide as necessary documentation in relation to that appeal and the Scottish Ministers shall appoint a board of medical referees to decide the appeal.

(3) The decision of the board of medical referees 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 board of medical referees shall, subject to the provisions of regulation 32, be final.

Further reference to medical authority

32.—(1) A court hearing an appeal under regulation 34 or a tribunal hearing an appeal under regulation 35 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 them, 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 their, or as the case may be its, decision and, if necessary, issue a fresh report which, subject to any further reconsideration under this paragraph, shall be final.

(2) The police authority and the claimant may, by agreement, refer any final decision of a medical authority who has given such a decision to that medical authority for reconsideration, and the medical authority shall accordingly reconsider the decision and, if necessary, issue a fresh report, which, subject to any further reconsideration under this paragraph or paragraph (1) or an appeal, where the claimant requests that an appeal of which the claimant has given notice (before referral of the decision under this paragraph) be notified to the Scottish Ministers under regulation 31, shall be final.

(3) If a court or tribunal decide, or a claimant and the police authority agree, 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 selected by the court or tribunal or, as the case may be, agreed upon by the claimant and the police authority, and the duly qualified medical practitioner's or board of medical practitioners' 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 the selected medical practitioner, if the time for appeal from their decision has expired without an appeal to a board of medical referees 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 the board of medical referees, if there has been such an appeal.

Refusal to be medically examined

33. If a question is referred to a medical authority under regulation 30, 31 or 32 and the person concerned wilfully or negligently fails to submit to such medical examination or to attend such interviews as the medical authority may consider necessary in order to enable such medical authority to make its decision, then—

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

Appeal by a member of a home police force

34. Where a member of a home police force, or a person claiming an award in respect of such a member, is aggrieved by the refusal of the police authority to admit a claim to receive as of right an award or a larger award than that granted, or by a decision of the police authority as to whether a refusal to accept medical treatment is reasonable for the purposes of regulation 7(3), or by the forfeiture under regulation 40 by the police authority of any award granted to or in respect of such a member, the member may, subject to regulation 36, appeal to the sheriff who, after enquiring into the case, may make such order in the matter as appears to be just.

Appeal by inspector of constabulary or police officer engaged on relevant service and any other overseas police officer

35.—(1) This regulation applies in relation to an inspector of constabulary or a police officer engaged on relevant service and any other overseas police officer, and any such person is 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—

- (a) by 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) by 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 7(3); or
- (c) by the forfeiture under regulation 40, 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 36, 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 paragraphs (4) to (9) 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(2) or at least 7 years standing as a member of the Bar of Northern Ireland or solicitor of the Supreme Court

(2) 1990 c. 41; as amended by the Access to Justice Act 1999 (c. 22), sections 43 and 106 and Schedule 6 paragraphs 4 and 9.

of Northern Ireland and a retired member of a police force who, before that member retired, 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 (in paragraphs (5) and (8) referred to as the parties).

(5) Either party may be represented before the tribunal by counsel, by a solicitor or by such other person as appears to them 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 34 or regulation H5 of the 1987 Regulations 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.

Limitations on appeals

36.—(1) An appeal shall not lie under regulation 34 or 35 against anything done by a police authority in the exercise of a power conferred by these Regulations which is expressly declared thereby to be a power which they are to exercise in their discretion.

(2) Subject to regulation 32(1), in any proceedings under regulation 34 or 35 the court or tribunal shall be bound by any final decision of a medical authority within the meaning of regulation 32.