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STATUTORY INSTRUMENTS

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**2020 No. 103**

**The Victims' Payments Regulations 2020**

**PART 4**

**Determination of entitlement**

**Priority of applications**

**11.**—(1) The Board may decide the order of priority in which applications for victims' payments are to be determined.

- (2) In making a decision under paragraph (1), the Board must, in particular, have regard to—
- (a) whether evidence provided with an application, or otherwise in the possession of the Board, is likely to allow the application to be determined quickly;
  - (b) the age of each applicant, and
  - (c) so far as it is disclosed in the application, the health of each applicant.
- (3) The Board must give priority to applications made by applicants who—
- (a) are terminally ill, and
  - (b) disclose that fact to the Board.

**Determination by the Board**

**12.**—(1) This regulation applies on receipt by the Board of an application made in accordance with regulation 8.

- (2) The Board must determine whether the applicant is entitled to victims' payments.
- (3) A panel appointed for this purpose by the President of the Board must—
- (a) consider the application on behalf of the Board;
  - (b) determine whether (subject to assessment by a health care professional of the degree of relevant disablement of the applicant) the applicant is entitled to victims' payments, and
  - (c) where an application relates to more than one Troubles-related incident, determine (subject to assessment by a health care professional of the degree of relevant disablement of the applicant) in relation to which of the incidents the applicant is entitled to victims' payments.
- (4) Where an applicant has a relevant conviction (and accordingly the panel must consider whether the conviction makes the applicant's entitlement to victims' payments inappropriate) the panel must consist of three members.
- (5) In making determinations under paragraph (3)(b) and (c) a panel (other than an appeal panel) is bound by the assessment by a health care professional of the degree of relevant disablement of the applicant.

### **Assessment of degree of relevant disablement**

13.—(1) If the determination of the panel is (subject to assessment by a health care professional of the degree of relevant disablement of the applicant) that the applicant is entitled to victims' payments, the Board must arrange for the applicant to be assessed by a health care professional.

(2) The health care professional must consider whether the condition of the applicant, having regard to the possibility of changes in that condition, allows the degree of permanent disablement to be assessed.

(3) Where the condition of the applicant allows the degree of permanent disablement to be assessed, the health care professional must—

- (a) assess the degree of permanent disablement, and
- (b) make a report to the Board—
  - (i) specifying the assessed degree of relevant disablement, and
  - (ii) reporting the reason for the assessment.

### **Interim assessments**

14.—(1) Where the condition of the applicant does not allow the degree of permanent disablement to be assessed, the health care professional must—

- (a) make an assessment of the period of time for which it is reasonable, having regard to the possibility of changes in the applicant's condition, to assess the degree of disablement of the applicant ("the interim period");
- (b) make an assessment of the degree of disablement of the applicant during the interim period ("an interim assessment"), and
- (c) make a report to the Board—
  - (i) specifying the interim period and the interim assessment, and
  - (ii) reporting the reasons for the assessments.

(2) The interim period is to be a maximum of 2 years (but this is subject to paragraph (5) and (6)).

(3) The Board must make arrangements for the applicant to be reassessed by a health care professional before the end of the interim period.

(4) Where, on reassessment under paragraph (3), the condition of the applicant allows the degree of permanent disablement to be assessed, the health care professional must—

- (a) assess the degree of permanent disablement, and
- (b) make a report to the Board of the assessed degree of permanent disablement and the reason for that assessment.

(5) But where the condition of the applicant still does not allow the degree of permanent disablement to be assessed, the health care professional must—

- (a) extend the interim period;
- (b) make an interim assessment, and
- (c) make a report to the Board—
  - (i) specifying the interim period and the interim assessment;
  - (ii) reporting the reasons for the extension and the interim assessment.

(6) The interim period may be extended more than once but is to be a maximum of 4 years.

(7) Where an interim period is extended, paragraph (3) applies at the end of the interim period as extended.

(8) Paragraph (9) applies if, at the end of an interim period of 4 years, a health care professional considers that the condition of the person still does not allow the degree of permanent disablement to be assessed.

(9) Where this paragraph applies, the health care professional must—

- (a) assess the degree of permanent disablement so far as it is possible, and
- (b) make a report to the Board of the assessed degree of permanent disablement and the reason for that assessment.

### **Assessment by a health care professional**

**15.**—(1) Where an assessment is to be carried out by a health care professional, the Board must provide that health care professional with any relevant information obtained under regulation 29 or otherwise in the possession of the Board.

(2) A health care professional must assess the degree of relevant disablement by doing one or more of the following—

- (a) considering any relevant information provided by the applicant or the Board;
- (b) carrying out an examination of the applicant;
- (c) considering the report of another health care professional who has considered any relevant information or carried out an examination of the applicant.

(3) Where a health care professional considers that an examination is necessary for the purpose of assessing the degree of relevant disablement, the health care professional may request that the applicant attends for, or submits to, an examination.

(4) Paragraph (5) applies where—

- (a) a health care professional has made a request under paragraph (3), and
- (b) the applicant has unreasonably refused to comply with the request.

(5) Any issue for which an examination is necessary for that issue to be proven is deemed not to be proven.

(6) The Board must make arrangements to ensure that only health care professionals with—

- (a) experience and training in disability assessment medicine, and
- (b) such other experience and training as the Board considers appropriate,

carry out assessments under these Regulations.

(7) In this regulation, “relevant information” means information relevant to the decisions the health care professional is required to make.

(8) Schedule 2 makes further provision regarding the assessment of the degree of relevant disablement.

### **Assessment of degree of disablement: posthumous applications**

**16.**—(1) This regulation applies where—

- (a) an application has been made in a case where regulation 10 applies, and
- (b) the determination of the panel is (subject to assessment by a health care professional of the degree of relevant disablement of the deceased) is that the applicant is entitled to victims’ payments.

(2) The Board must—

- (a) arrange for an assessment by a health care professional, and

- (b) provide that health care professional with any relevant information obtained under regulation 29 or otherwise in the possession of the Board.
- (3) The health care professional must—
  - (a) so far as possible, assess the degree of relevant disablement of the deceased before death by doing one or more of the following—
    - (i) considering any relevant information provided by the applicant or the Board;
    - (ii) considering the report of another health care professional who has considered any relevant information or carried out an examination of the deceased, and
  - (b) make a report to the Board—
    - (i) specifying the assessed degree of relevant disablement, and
    - (ii) reporting the reason for the assessment.
- (4) In this regulation, “relevant information” means information relevant to the decisions the health care professional is required to make.

**Notification to the applicant**

17. Following determination of eligibility for victims’ payments, the Board must as soon as reasonably practicable notify the applicant in writing of the following matters—
- (a) whether the applicant is eligible for victims’ payments;
  - (b) any determination under regulation 12(3)(c);
  - (c) the assessed degree of relevant disablement of the applicant or, as the case may be, the deceased;
  - (d) in any case where an assessment is made under regulation 14, the interim period specified or extended;
  - (e) a summary of the reasons for the matters in sub-paragraphs (a) to (d), and
  - (f) the right to appeal.