
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations establish the Troubles Permanent Disablement Payment Scheme under the law of Northern Ireland.

Regulation 3 establishes the Victims' Payments Board ("the Board") and regulation 4 sets out principles that the Board must have regard to when exercising functions under these Regulations.

Part 3 of the Regulations makes provision for who is entitled to victims' payments, including the requirements that a person be permanently disabled as a result of injury caused by a Troubles-related incident. Regulation 6 makes provision for circumstances in which a person may, due to a conviction or other exceptional circumstances, not be entitled to victims' payments. Regulation 7 makes further provision about when injury may be said to be caused by a particular incident. A person entitled to victims' payments can nominate someone (their spouse, civil partner, cohabiting partner, or someone with regular and substantial caring responsibilities for them) to receive payments for ten years after their death. If no such person has been nominated, the Board has the power to decide if someone may apply to receive such payments.

Part 4 makes provision for the Board to determine whether someone is entitled to victims' payments and, if so, in relation to which particular incident. The determination is to be made on behalf of the Board by a panel, but the decision of the panel is subject to assessment by a medical health professional as to the degree the applicant has permanent disablement caused by the relevant incident. A health care professional may assess the applicant by considering information (such as medical records), carrying out an examination, or considering a report by another health care professional. In cases where the degree of permanent disablement cannot be assessed, regulation 14 provides for the degree of disablement to be assessed with reference to an interim period.

Part 5 makes provisions regarding payments. The amount of victims' payments a person is entitled to must be determined by the Board. This is done, as per regulation 18, using the table in Part 2 of Schedule 1 to The Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006 (S.I. 2006/606), as periodically updated, which sets out amounts of payments corresponding to particular degrees of disablement. Regulation 19 makes provision for this amount to be reduced in respect of other payments in respect of the same disablements, and regulation 20 allows the Board to adjust payments to reflect compensation received in the past and sets out factors the Board must have particular regard to in making such a decision. Regulation 21 provides that if a person applies in the period of three years beginning with the day applications are first advertised as possible, (or longer if the Secretary of State decides) the entitlement to victims' payments will be backdated to the date the applicant would have been entitled to victims' payments if the Scheme had existed since 23 December 2014. Regulation 24 provides that a person can opt to receive a lump sum equal to ten years of victims' payments, instead of regular payments, if they are 60 years old or terminally ill.

Part 6 makes provision regarding the obtaining and use of information by the Board. Regulation 29 allows the Board to require persons, by notice, to provide the Board with the information the Board needs in order to determine applications and appeals. Regulation 30 makes provision restricting the use by the Board of personal data obtained under notice or provided by an applicant and regulation 31 limits the circumstances in which such personal data can be disclosed by the Board or any person receiving the information from the Board.

Part 7 provides that determinations by the Board are final, subject to three exceptions. Regulation 33 makes provision for a situation in which a person's condition has worsened, allowing their degree of

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disablement to be reassessed by a health care professional. Regulation 34 sets out the circumstances in which a person can appeal against a determination or assessment. Regulation 35 provides that appeals are to be determined by an appeal panel of three members and regulation 36 provides that the appeal panel is to reconsider the determination or assessment. Regulation 37 confers on an appeal panel the ability to require that the appellant be reassessed by a health care professional for the purpose of determining the appeal. Regulation 38 provides that the appeal panel's powers include changing a determination or assessment and taking any action that a panel can take. Regulation 39 provides that a hearing can be held if the appellant reasonably requests one or if the Panel thinks it is necessary. Regulations 40, 41 and 42 make provisions for hearings, representation and case management. The third way a determination can be changed is set out in regulation 43, which allows a panel to review decisions in certain circumstances.

Part 8 makes miscellaneous provision. That includes, in regulations 44 and 45, that an applicant or appellant has the burden of proving matters on the balance of probabilities.

Schedule 1 makes provision regarding the Board. The Board is to be a body corporate, with administrative functions exercised on its behalf by a Northern Ireland Department which will also be responsible for providing the Board with staff and accommodation. The Board is to have a President, legal members, medical members and ordinary members and determinations will be taken by panels, consisting of those members, appointed by the President.

Schedule 2 sets out how a health care professional is to assess a person's degree of disablement. Disablement means the loss of physical or mental capacity caused by an injury or illness, whether mental or physical. It is assessed by comparing the person with the disablement with an average, healthy person of the same age and sex, ignoring such matters as occupation. The degree of disablement must be expressed as a percentage.

Schedule 3 makes consequential amendments.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.