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**GUIDANCE ON MEDICAL APPEALS
UNDER THE POLICE PENSIONS REGULATIONS 1987 AND THE POLICE
(INJURY BENEFIT) REGULATIONS 2006**

SECTION 2

MEDICAL DECISIONS UNDER REGULATIONS H1 AND 30

The provisions for referring medical decisions either to the police authority's selected medical practitioner (SMP) or to a board of referees on appeal are mostly set out in Part H of the Police Pensions Regulations 1987 and regulations 30-36 of the Police (Injury Benefit) Regulations 2006. This section does not go into the details of the medical questions put to the SMP, but sets out the relevant provisions of the regulations and explains the procedure which applies to the work of the SMP.

Specific provisions for putting medical questions to the SMP under the Police Pensions Regulations 1987

2. A list of the provisions which are dependent on the assessment of the SMP is given in the Annex to Section 1 of this Guidance. With the exception of the provisions for reviewing an ill-health pension under regulation K1, the procedure for medical referral in all the other provisions are set out in Part H of the Police Pensions Regulations 1987. The procedures for K1 are set out at the end of this section.

Reference of medical questions to the SMP

3. The relevant regulation governing referrals to the SMP is H1.

H1. - (1) Subject as hereinafter provided, 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.

This provision confirms that it is for the police authority, as administrator of the Police Pension Scheme for the force, to make the decision as to whether or not an officer is to receive a pension benefit. See also the provisions of regulation A20.

(2) 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 following questions-

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

This provision sets out the questions which must be put to the SMP if the police authority is considering the issue of permanent disablement.

(3) The police authority, if they are considering the exercise of their powers under regulation K3 (reduction of pension in case of default), 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.

The SMP is the authority to decide whether disablement was due to default.

Consideration of permanent disablement

4. The most common occasions where an SMP is asked to assess whether an officer is permanently disabled are when a police authority is considering possible ill-health retirement or a claim for an injury award made by an officer who has ceased to serve in the force other than reason of ill-health retirement. The procedure set out immediately below is set in the context of possible ill-health retirement, hence references to a serving officer. However, the procedure will be essentially the same in all other cases where the SMP is asked to assess permanent disablement, where the officer has retired. A separate description is given in this guidance sheet of the medical consideration of injury awards.

5. Where the police authority decides to refer the case to the SMP it should normally be via the force medical adviser (FMA). The purpose of the FMA's advice is to inform not determine the assessment by the SMP on whether the officer is permanently disabled. However, where the police authority is advised by the FMA that death is imminent or that the officer is totally incapacitated due to a physical condition, it should appoint the FMA as the SMP for expedited consideration.

6. To assist the SMP, the FMA's advice will consist of two sections: a medical background and opinion:

- The medical background will include all relevant medical details and history of the case. This section should take account of the assessments of the officer's GP and hospital specialist as appropriate and wherever possible should be supplemented with relevant records, reports, X-rays or scans. (The FMA should seek the written consent of the officer for this section to be referred to the SMP.)
- The opinion will be the FMA's advice to the SMP on the issue of permanent disablement in answer to the questions under regulation H1(2)(a) and (b). (This section will not include any confidential medical information and therefore no consent of the officer is required.)

7. Wherever possible the FMA should give a clear view on whether or not the officer is permanently disabled. However, the FMA should not feel obliged to strive for a conclusion on the balance of probabilities in finely balanced or complex cases. In difficult cases involving more than one medical condition the FMA may conclude his or her opinion by setting out the issues and advising that the police authority appoint a board of two or more SMPs.

8. In exceptional circumstances the function of the SMP may be carried out by a board of two or more doctors. It will be for the police authority to decide whether to do this, but it will look to the FMA in the first place to draw attention to whether the number or complexity of the medical issues in a case makes such a course worth considering.

9. The SMP will normally be required to examine the officer, but he or she may exercise discretion to consider the case on the papers if management, the officer and the FMA are all content with this. In all cases the SMP should complete a report to the police authority which is separate from the advice from the FMA and which confirms that he or she has not dealt with the case before.

10. The first question for the SMP is to determine whether the officer is permanently disabled within the meaning of regulation H1. Details of how this is to be assessed are set out in a separate guidance sheet on Permanent Disablement. The police authority should require the SMP to describe wherever possible any disease or medical condition causing

disablement by reference to internationally authoritative guides available to doctors such as ICD 10 (International Classification of Diseases) and DSM IV (Diagnostic and Statistical Manual).

11. Where the SMP concludes that the person is permanently disabled, he or she should go on to complete a supplementary report (Part 2 of the report) to the police authority on the officer's capability. This is not an issue on which an officer can appeal to a medical appeal board and will only come into play once an appeal has been determined.

Decision by the police authority

12. The report of the SMP will be addressed to the police authority and will answer only questions put to it by that police authority. Once the police authority has received the report from the SMP, it will be for it to make its decision in accordance with regulation H1(1). In the case of early payment of a deferred pension the police authority has no discretion over whether or not to bring in the early payments, but in the case of ill-health retirement the police authority has discretion under regulation A20 not to retire an officer who has been assessed by the Selected Medical Practitioner (SMP) as permanently disabled. Under A20 the police authority is required to take other factors, such as his or her capability of completing a police career despite the disablement and the wishes of the officer, into account in coming to a final decision.

Specific provisions for putting medical questions to the SMP in the Police (Injury Benefit) Regulations 2006

13. A list of the provisions which are dependent on the assessment of the SMP is given in the Annex to Section 1 of this Guidance. With the exception of the provisions for reviewing an injury pension under regulation 37 and reduction in the case of default in regulation 38, the procedure for medical referral in all the other provisions are set out in regulations 30-36 of the Police (Injury Benefit) Regulations 2006. The procedures for regulations 37 and 38 are set out at the end of this section.

Reference of medical questions to the SMP

14. The relevant regulation governing referrals to the SMP is 30.

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.

This provision confirms that it is for the police authority, as administrator of the Police Pension Scheme for the force, to make the decision as to whether or not an officer is to receive a pension benefit. For instance the police authority may refuse an application for an injury award if the injury was received by reason of the officer's default.

(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 following questions—

(a) whether the person concerned is disabled;

(b) whether the disablement is likely to be permanent,

except that, in a case where the said questions have been referred for decision to a duly qualified medical practitioner under regulation H1(2) of the 1987 Regulations, a final decision of a medical authority on the said 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 following 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 question (d) above.

This provision sets out the questions which must be put to the SMP if the police authority is considering the issue of permanent disablement or whether to grant an injury award. The two questions on the issue of an injury award can be asked together or separately from those on permanent disablement depending on the circumstances of the case.

Where there is a review of an injury award under regulation 37 the question at (d) is put to the SMP by itself.

(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 the following—

(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.

The provision applies to cases where the police authority are considering a case for awarding a disablement gratuity under regulation 12.

(4) A police authority, if they are considering exercising their powers under regulation 38 (reduction of award in case of default), 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.

The SMP is the authority to decide whether disablement, as opposed to injury, was due to default. The issue of injury due to default is for the police authority.

Consideration of injury awards

15. An injury award is payable under Regulation 11 to a person who has ceased to be a member of a force and is permanently disabled as a result of an injury received without his or her own default in the execution of his or her duty.

Cases where an injury award is considered separately from permanent disablement

16. Where a police officer is to be assessed by the SMP for permanent disablement in circumstances which do not require urgent consideration of an injury award the police authority may decide not to consider the question of granting such an award unless and until the officer is subsequently found to be permanently disabled and retired under the Police Pensions Regulations.

17. Where an officer has been assessed as permanently disabled under H1 and is being retained in the force, any related injury award would not fall to be considered until the officer had retired. The police authority should ensure that all relevant contemporary medical and

non-medical records are kept to enable full consideration of a potential future claim for an injury award. The officer may also wish to keep personal copies of any relevant medical and non-medical records for future reference.

Cases where an injury award is considered in conjunction with permanent disablement

18. There are three sets of circumstances in which a police authority may decide to refer questions at 30(2) (c) and (d) to the SMP at the same time as the questions either at H1(2) or at 30(2)(a) and (b):

- in conjunction with H1(2) - serving officers who are seriously disabled; where the procedures set out in the third sentence of paragraph 5 apply, or in other cases where it is clear from the outset that there is little prospect of retaining the officer in the force; and
- in conjunction with H1(2) - injury claims arising after retirement where the officer has not previously been assessed as permanently disabled but also has a claim to early payment of deferred pension benefit on the grounds of permanent disablement.
- in conjunction with 30(2)(a) and (b) - injury claims arising after retirement where an officer already has a police pension in payment and has no claim for further pension benefits.
- in conjunction with 30(2)(a) and (b) - injury claims arising after retirement where an officer has no police pension entitlements – either through having opted out or transferred out of the scheme or through having been given a refund of contributions.

19. In such cases referral of all four questions to the SMP will be via the FMA except in the special circumstances set out in paragraph 5. Save in cases where the FMA acts as the SMP, the FMA will include in the medical background he or she is providing the SMP all relevant medical records and reports to enable the SMP to make a decision on the additional question of an injury. The FMA should supplement his or her opinion on the issue of permanent disablement with a section relating to the question of an injury award if the SMP assesses the officer as permanently disabled. The FMA should include in that section of the opinion an outline of what he or she considers to be the key issues relevant to the question whether disablement is the result of an injury, but there is no need for the FMA to come to a conclusion on the matter. Copies of the FMA's advice will be sent to the police authority and the officer.

20. Where the SMP decides that the officer is permanently disabled as a result of an injury, he or she will go on to decide the issue of degree of disablement, taking advice as necessary from the force HR Department about the officer's salary and qualifications. The completed report will be sent to the police authority and from there to the officer.

Review of ill-health pension under the Police Pensions Regulations 1987

21. Under regulation K1 a police authority has the discretion to review whether an officer who retired with an ill-health pension on account of permanent disablement is still disabled. Such a review can take place only if the person concerned can still have his or her ill-health pension cancelled. This cannot happen once:

- the former officer has reached the compulsory retirement age for the rank which he or she last held; or
- the former officer would have been entitled to reckon at least 25 years' service, had he or she not been ill-health retired.

22. The procedure for reviewing an ill-health pension is not clearly set out in the regulations. Unlike other provisions involving a medical examination and decision, the procedure is not set out in regulation H1. However, it is advised that the police authority should follow the same process as in regulation H1(2), and ask the SMP whether the disablement, which was assessed as permanent at the time of the officer's retirement, has ceased. It is also advised that a medical decision under regulation K1 should attract the same right of appeal under H2 as under H1.

23. The SMP should be reminded that for the purposes of K1 disablement has the same meaning as in regulation H1, and is related to the ordinary duties of a member of the force. It will be appropriate to take a former officer back only where he or she is once again able to carry out such duties. The standard of fitness for resumption of duties need not be as high as the standard of fitness for recruits, since the purpose of K1 is to enable an officer to resume his or her police career, not start it afresh.

Reassessment of injury pension under the Police (Injury Benefit) Regulations 2006

24. Under regulation 37 a police authority is obliged, at such intervals as may be suitable, to consider whether the degree of disablement (i.e. loss of earning capacity) of a person in receipt of an injury pension has altered.

25. To do this the police authority will refer the question at 30(2)(d) to the SMP. He or she will decide the issue of degree of disablement, taking account of the person's current earnings and other relevant factors. The completed report will be sent by the SMP to the police authority and from there to the person. If the police authority finds that the degree of disablement has altered from one band of disablement to another, the pension shall be revised accordingly.

Reduction of pension in case of default under the Police Pensions Regulations 1987 and the Police (Injury Benefit) Regulations 2006

26. Where a police authority is considering whether to reduce an ill-health or injury pension in case of default under K3 or 38, regulation H1(3)/30(4) provides for the authority to refer to the SMP the question whether the person concerned has brought about or substantially contributed to the disablement by his own default. The completed report with his or her decision will be sent by the SMP to the police authority and from there to the officer.

27. Where there has been default, the police authority may reduce the amount of any ill-health or injury award by an amount not exceeding a half of that to which the person would otherwise be entitled.

Right to a medical appeal under the Police Pensions Regulations 1987 and the Police (Injury Benefit) Regulations 2006

28. In all these cases an officer will have a right of appeal against the SMP's decision to a medical appeal board. The police authority should send the officer's copy of the SMP's H1/regulation 30 report (including a report for the purposes of regulation K1 or K3, or regulation 37 or 38) under cover of a letter explaining his or her right of appeal against the medical basis for its decision and the availability of a dispute resolution procedure under regulation H3 or 32 which, if both parties are content, may settle the matter under appeal without need of being considered by the board.

29. An internal review of the decision under H3 or 32 would be carried out without prejudice to the medical appeal if the issue was not resolved to the appellant's satisfaction.