

**NORTHERN IRELAND
POLICING BOARD POLICY ON
THE ASSESSMENT OF
'DEGREE OF DISABLEMENT'
(2006 REGULATIONS)**

NIPB POLICY ON THE ASSESSMENT OF 'DEGREE OF DISABLEMENT' (2006 REGULATIONS)

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NIPB POLICY ON THE ASSESSMENT OF 'DEGREE OF DISABLEMENT' (2006 REGULATIONS)

This policy has been prepared by the Northern Ireland Policing Board in order to provide instruction to the Selected Medical Practitioner (SMP) with respect to the assessment of Injury on Duty Awards.

This is the first version of this policy and it is a living document. It will be updated on a regular basis to reflect any changes in legislation, policy, procedure or guidance. Following any changes a copy of the revised policy will be issued to the SMP and uploaded to the Board's website.

1. THE LEGAL FRAMEWORK

The following regulations govern Injury on Duty Awards:

- The Police Service of Northern Ireland and Police Service of Northern Ireland Reserve (Injury Benefit) Regulations 2006 (the 2006 Regulations).

Provisions for Ill Health Retirement, which are referenced in this document, are contained within the following regulations:

- The Royal Ulster Constabulary Pensions Regulations 1988 (the 1988 Regulations);
- The Police Pension (Northern Ireland) Regulations 2009 (the 2009 Regulations);
- The Police Pensions Regulations (Northern Ireland) 2015 (the 2015 Regulations).

2. ROLE OF THE NORTHERN IRELAND POLICING BOARD

The Northern Ireland Policing Board (hereafter the Board) was established on 4th November 2001, under the Police (Northern Ireland) Act 2000. It is the role of the Board to secure the delivery of an effective, efficient and impartial policing service for the entire community in Northern Ireland and to hold the Chief Constable to account for the exercise of his functions and those of the police service in an open and transparent manner.

In accordance with the Police Service of Northern Ireland and Police Service of Northern Ireland Reserve (Injury Benefit) Regulations 2006 (the 2006 Regulations) the Board has a statutory responsibility for administering all applications made by officers and former officers for an Injury on Duty Award.

An explanation of the criteria for an Injury on Duty Award is provided in Section 3.

3. INJURY BENEFIT REGULATIONS 2006

In accordance with Regulation 10 of the 2006 Regulations an Injury on Duty Award may be granted to a *person who ceases or has ceased to be a police officer and is permanently disabled as a result of an injury received without his own default in the execution of his duty.*

3.1 *Ceases or has ceased to be a police officer*

In order to apply for an Injury on Duty Award a serving officer must be in the process of consideration for retirement on ill-health grounds. Only where the serving officer is determined to be permanently disabled and therefore meets the criteria for ill-health retirement will a determination then be made on their entitlement to an Injury on Duty Award.

For former officers who have already ceased to serve, an application can be made retrospectively at any time after they left the police service.

3.2 *Permanently disabled*

An applicant must be disabled at the time of the assessment and their disablement must be likely to be permanent (on the balance of probabilities) – Regulation 6(1). For the purposes of the assessment an applicant's disablement is considered likely to be permanent if it is determined the disablement will last for the remainder of the applicant's life.

It will also be assumed that the officer/former officer is receiving normal appropriate medical treatment for the disablement. This does not include medical treatment which the Board determines is reasonable for the officer/former officer to refuse – Regulation 6(3).

3.3 *Without his own default*

The injury is not due to the default of an officer/former officer unless the injury is wholly or mainly due to his own serious and culpable negligence or misconduct – Regulation 5(4).

3.4 *Injury received in the execution of duty*

An injury is treated as received in the execution of duty:

- a) where the officer/former officer received the injury while on duty or while on a journey necessary to enable him to report for duty or return home after duty; or
- b) the officer/former officer would not have received the injury had they not been known to be an officer; or
- c) the Board determines one of the above conditions may be satisfied and the injury should be treated as such – Regulation 5(2).

The injury must also have caused or substantially contributed to the officer/former officer's disablement – Regulation 7.

3.5 Reference of medical questions

As part of the application process an officer/former officer will be referred for assessment by the Board's Selected Medical Practitioner who will determine:

- a) whether (s)he is disabled;
- b) whether the 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 degree of the officer/former officer's disablement.

In the case of a decision taken under the 1988 Regulations that an officer should retire on ill-health grounds this is binding for the purposes of consideration of an IOD Award application. The SMP must therefore go on to assess questions c) and d) assuming the applicant is permanently disabled.

3.6 Degree of loss of earning capacity

In order to ensure there is no confusion between the different uses of 'disablement' under the regulations the degree of disablement will be referred to as the degree of loss of earning capacity in this document.

Disablement means inability, occasioned by infirmity of mind or body, to perform the ordinary duties of a police officer – Regulation 6(4). Where the Selected Medical Practitioner is determining the degree of loss of earning capacity it must be calculated by reference to the degree to which the officer/former officer's earning capacity has been affected as a result of an injury received without his own default in the execution of his duty as a police officer – Regulation 6(5).

If an officer/former officer is receiving treatment as an in-patient at a hospital, as a result of a duty injury, they must be deemed to be totally disabled i.e. incapable by reason of the disablement of earning any money in any employment – Regulations 6(5) & (6).

4. ASSESSMENT METHOD TO BE USED BY MEDICAL PRACTITIONERS

When assessing the effect of the duty/qualifying injury on the officer/former officer's earning capacity the Medical Practitioner is not being asked to measure how disabled the officer/former officer is i.e. the extent to which they can partially perform the ordinary duties of an officer.

The Medical Practitioner is instead to make a judgment on the extent to which the officer/former officer's disablement affects their earning capacity i.e. the consequences of the duty/qualifying injury for the officer/former officer's capacity to earn money. In order to do so, the Medical Practitioner should compare the situation with the injury present to a notional situation where it has not occurred i.e. a hypothetical person of the same age and sex without any injuries. The loss of earning capacity will then be the difference between these two situations.

As part of the assessment the Medical Practitioner should take into account the officer/former officer's medical condition and the level of their skill/experience. The Medical Practitioner should then determine which of the bandings best describes the officer/former officer's ability to work.

The Medical Practitioner should set out in the report and certificate whether the officer/former officer's loss of earning capacity is:

- **slight disablement;**
- **minor disablement;**
- **major disablement;** or
- **very severe disablement.**

As set out at Sections 3.6 above if the officer/former officer is being treated as an in-patient at a hospital at time of the assessment, as a result of a duty/qualifying injury, they must be recorded as **very severe disablement** or **severe loss**, as applicable, on the report and certificate. This will only apply where the Medical Practitioner determines the officer/former officer is totally disabled, i.e. incapable as a result of the disablement of earning any money in any employment, and the total disablement is likely to be permanent.

5. REASSESSMENT

Where the Medical Practitioner is asked to carry out a reassessment, in line with Regulation 35(1) of the 2006 Regulations, of the former officer's Injury on Duty Award they must consider only whether the loss of earning capacity has substantially altered.

There should not be any consideration of the basis on which the award was originally granted, including whether the duty injury caused or substantially contributed to the former officer's disablement, as this would be revisiting causation.

Whilst the Medical Practitioner will assess whether the former officer's medical condition has changed this is not the only factor which can alter their earning capacity. For example, a new job opportunity may arise which was not previously available to the former officer and which they are capable of undertaking without any change in their medical condition having taken place.

Only if there has been an alteration in the former officer's condition or employment circumstances is the Medical Practitioner permitted to go on to assess whether the alteration is substantial. In doing so the Medical Practitioner will first consider the former officer's earning capacity as at the last assessment and compare it to the former officer's current earning capacity. The latter will require the Medical Practitioner to make a judgment on how the former officer's earning capacity is currently affected by the duty/qualifying injury.

The former officer's Injury on Duty Award payment will only be revised where the Medical Practitioner determines there has been a substantial alteration in their loss of earning capacity.

A substantial alteration is taken to be a movement in the bandings e.g. from **very severe disablement** to **major disablement**. The alteration may result in an upward or downward movement in the bandings and a resultant increase or decrease in the former officer's Injury on Duty Award payment.

6. IMPACT OF NON-RELATED FACTORS

Non-related factors such as pre-existing injuries/conditions, or those which develop subsequent to the granting of an Injury on Duty Award, can have a varying impact on a former officer's earning capacity over time. On future reassessment non-related factors may become a more or less dominant factor in a former officer's ability to work.

In line with relevant case law the following practice should be adopted in assessing a former officer's earning capacity:

- Where two distinct conditions have separately caused some degree of loss of earning capacity, one a duty injury and the other a non-duty injury, it is the effect of the former injury alone which should be considered by the Medical Practitioner when assessing the former officer's earning capacity;
- If a former officer's medical condition is exacerbated by a subsequent non-duty injury it is only the effect of the duty injury on the former officer's earning capacity that should be taken into account on reassessment;
- An underlying condition which of itself had not, or did not, cause a loss of earning capacity should not be taken into account. The former officer's loss of earning capacity should be attributed wholly to the duty injury which has directly caused the loss of earning capacity;
- By contrast if an underlying condition had to some extent caused a loss of earning capacity prior to the duty injury occurring, the Medical Practitioner should identify the portion of the total loss that relates to the duty injury alone;
- In cases of one injury with multiple causes, only one of which is a duty injury, so long as the duty injury has been determined to have substantially contributed to the former officer's disablement, the impact of the injury on the former officer's earning capacity should be assessed as a whole.

As outlined in Section 6 the Medical Practitioner on reassessment should not revisit the question of whether a duty injury has caused or substantially contributed to the former officer's disablement. The Medical Practitioner must take as given that a duty injury caused the disablement however, they may determine the loss of earning capacity (as it relates to the duty injury) has substantially altered by virtue of non-related factors.