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POLICING DIVISION CIRCULAR 6/2007

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THIS CIRCULAR contains guidance regarding the role of the selected medical practitioner (SMP) and the Independent Medical Referee (IMR) in the consideration and review of Injury on Duty (IOD) as set out in the RUC Pensions Regulations 1988, and the PSNI and PSNI Reserve (Injury Benefit) Regulations 2006

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THIS CIRCULAR IS ADDRESSED TO: Northern Ireland Policing Board

COPIES ARE BEING SENT TO: Chief Constable
Association of Chief Police Officers
Superintendents' Association (NI)
Police Federation (NI)
Police Negotiating Board

Dear Chief Executive

Role of the Selected Medical Practitioner (SMP) and the Independent Medical Referee (IMR) in the consideration and review of IOD

In August 2004 the Home Office issued a circular to Chief Officers of the Police in England and Wales and the Clerks to the Police Authorities regarding the role of the SMP and IMR in the consideration and review of IOD. The Home Office issued this circular to bring uniformity and standardisation amongst all the police forces in England and Wales in the way that they processed applications. When the Home Office issued this circular it was decided that the Northern Ireland Policing Board (the Board) did not need a Northern Ireland version as they had only one police service and did not have the same inconsistency problems as England and Wales forces.

The NIO in conjunction with the Board and PSNI have been recently reviewing the payment of an enhanced pension after ex-officers have reached pensionable age and following further representation from NIPB for clarity it was agreed that a circular should be issued in Northern Ireland to provide greater clarity on this matter. The attached circular will help the Board develop appropriate policies in this area, in line with practice in police forces and authorities across the United Kingdom.

Regulations covering police medical appeals, disablement and police injury pension reviews can be found in Regulations 29, 33 and 35 of the PSNI and PSNI Reserve (Injury Benefit) Regulations (Prior to 2006 the relevant legislation can be found in the RUC Pensions Regulations 1988).

For further copies of this Circular please contact:

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ROLE OF THE SELECTED MEDICAL PRACTITIONER (SMP) AND THE INDEPENDENT MEDICAL REFEREE (IMR) IN THE CONSIDERATION AND REVIEW OF IOD

The Home Office* issued guidance to Chief Officers and Police Authorities in England and Wales to ensure uniformity throughout England and Wales when dealing with injury on duty claims. Northern Ireland Office Ministers agree that the Police Service of Northern Ireland and the Northern Ireland Policing Board should follow similar guidance.

2. The purpose of this circular is to draw attention to the current legislation and provide guidance.

Please find attached NIO Circular.

Annex A describes the new disablement guidance.

** In the form of a circular reference HOC 46/2004*

POB Circular 06/07

ROLE OF THE SELECTED MEDICAL PRACTITIONER (SMP) AND THE INDEPENDENT MEDICAL REFEREE (IMR) IN THE CONSIDERATION AND REVIEW OF IOD

LEGISLATION

The relevant legislation concerning this circular can be found in Regulation 29, 30 and 35 of the PSNI and PSNI Reserve (Injury Benefit) Regulations 2006 (286) (Prior to 2006 the relevant legislation can be found in the RUC Pensions Regulations 1988 Regulations H1, H2, H5 and K2). That legislation provides an ex-officer to the right to apply for injury on duty award, and appeal against the SMP's decision. The legislation (K2) also provides for the Board to reassess the award the award. A brief overview of the regulations is given below:-

Regulation 29~

Allows the NIPB (the Board) to refer an injury on duty request to a Selected Medical Practitioner (SMP) to determine whether to grant an injury on duty pension and if so the degree of disablement and for the certificate and report to be forwarded on to the person concerned.

Regulation 30~

Allows an officer or person claiming an award in respect of an officer to appeal the SMP's decision, and details the processes.

Regulation 33~

Allows an officer to appeal to the Secretary of State for a tribunal if they are dissatisfied with the decision made by the Board about an award.

Regulation 35~

Requires the Board to review and reassess injury pensions and provides guidance.

Police Medical Appeals

1. Guidance is held and issued by the NIO to provide greater detail for Independent Medical Referees (IMR) on the following areas:-

- how to assess degree of disablement in an injury award, including how to apply apportionment. Guidance has been drafted to include how to assess the degree of disablement in cases where the former officer is above the compulsory retirement age for his or her last-held rank (see Annex A below); and
- the IMR should consider the question of permanent disablement on the evidence before them at the time of the appeal, not whether the appellant was permanently disabled at the time the selected medical practitioner (SMP) made the decision under appeal (contained within Regulation 29~).

2. The Board will also wish to know that the courts in GB have also held that an appeal about degree of disablement should be considered on the basis of the evidence at the time of appeal, and not on the basis of the circumstances at the time the SMP made the Regulation 29 decision under the appeal. It is therefore important to keep the time-lag between the Regulation 29 decision and the appeal hearing as short as possible.

B. Degree of Disablement Guidance

4. Following consultation with the Board, PSNI, the Police Federation, and the Superintendents Association guidance has now been produced on reviews of injury awards. A copy of this guidance is provided at **Annex A**. This guidance is intended to help ensure a standardised and consistent approach in line with that taken by the English and Welsh forces when reviewing injury awards for former officers who are above the compulsory retirement age for their last-held rank.

D. Police Injury Pension Reviews under Regulation 35~

5. Under Regulation 35~ NIPB have a duty to keep existing injury pensions under review at such intervals as may be suitable. In planning a programme of reviews involving a number of former officers, account should be taken of the need to ensure that any appeal against an SMP's decision can be processed satisfactorily, both in terms of there being a timely appeal hearing and in terms of the NIPB having the necessary paperwork and representatives sent to the NIO for onward transmission to the IMR.

6. It is requested that when NIPB plan to undertake such a programme of reviews they should give adequate notice to Capita Health Solutions (CHS). A large-scale programme of reviews should entail at least 3 months' notice to CHS so that they can ensure that the cases can be heard as quickly as possible and to a manageable timetable.

NORTHERN IRELAND OFFICE GUIDANCE FOR THE PSNI AND NIPB ON REVIEWS OF INJURY AWARDS

This Guidance is being issued in line with similar guidance issued by the Home Office to help ensure a fairer, a standardised and consistent approach is taken to the payment of injury benefits to ill-health retired officers who have reached the compulsory retirement age in PSNI.

After consultation, the following Guidance has been agreed:

NIPB have the duty to keep all current injury pensions under review at such intervals as they consider appropriate, including where the former officers concerned are now above the compulsory retirement age.

Review of Injury Pensions once Officers reach Compulsory Retirement Age

Once a former officer receiving an injury pension reaches what would have been his compulsory retirement age under the RUC Pension Regulations 1988, Regulation A16 and Regulation A18 (55, 57, 60 or 65 if under the pre October 2006 CRA's and 60 or 65 if under the post October 2006 CRA's depending on the person's force and rank at the point of leaving the police service) the Board should consider a review of the award payable, since it is no longer appropriate to use the former officer's police pay scale as the basis for his or her pre-injury earning capacity.

In the absence of a cogent reason for a higher or lower outside earnings level, it is suggested that the new basis for the person's earning capacity, had there been no injury, should be the figures arising from the Annual Survey of Hours and Earnings (ASHE)* at the time of the review. The ASHE figure is based on salaries in Northern Ireland and is taken as the average for the population overall, separate figures for males and females are not considered. The loss of earning capacity for the purpose of establishing Degree of Disablement should therefore be assessed by reference to the % proportion the person's actual earning capacity bears to ASHE.

This procedure should help to ensure that former officers are treated in a consistent way across the PSNI and across the UK. They will be placed on an equal financial footing with others in the employment market at a time when they could not have been assumed to be earning a police salary.

After a review at compulsory retirement age the Board should determine the need and date for the next review. In some cases there may be particular circumstances which make it undesirable to conduct a further review.

Review of Injury Pensions once Officers reach Age 65

Once a former officer receiving an injury pension reaches the age of 65 they will have reached their State Pension Age irrespective of whether they are male or female. The Board then has the discretion, in the absence of a cogent reason otherwise, to advise the SMP to place the former officer in the lowest band of Degree of Disablement. At such a point the former officer would normally no longer be expected to be earning a salary in the employment market.

A review at age 65 will normally be the last unless there are **exceptional** circumstances which require there to be a further review.

Suitable Intervals for Review

In line with practice in the Home Office, we believe it is reasonable for most cases to be reviewed at the compulsory retirement age stage; not all such cases need to be reviewed again at age 65. NIPB would, after concluding the review at compulsory retirement age, be entitled to judge it reasonable not to review a case further where the injury award is already small. This will normally be the case with former officers who were retired injured early in their career. In line with Home Office thinking we do not think we can create a specific “minimum” income guarantee under the Regulations~ in their present form. Each case will have to be considered on the basis of its individual circumstances.

New Cases

Applications received for injury awards from former officers who are already over 65 should not normally be referred to the SMP for consideration.

*The ASHE figure used should be the one, not inclusive of overtime, in the most recent New Earnings Survey. This is an annual pounds figure calculated by using National Insurance contributions. It is validated and produced each year and is, in our opinion, the most robust method.

Note 1 - *In the case of an officer who is under retirement age but has already left the service for reasons other than ill-health retirement, it is suggested that the comparator used should still be equivalent police salary. This is because, even if the ex-officer had been dismissed, the Board would still have discretion to re-employ and he or she could therefore still be deemed capable of earning that salary.*

Note 2 - *It is clear that ASHE will not be a suitable benchmark in all cases - especially on occasion with higher ranking officers who may claim to be capable of earning substantially more than this figure. It was suggested that this Guidance should contain some kind of formulae to proportionately enhance ASHE to the level of the higher ranked salary. We would advise PSNI and NIPB to use their discretion as to whether they would like to adopt this approach.*

~ PSNI and PSNI Reserve (Injury Benefit) Regulations 2006