

NORTHERN IRELAND POLICING BOARD POLICE FORFEITURE PROCEDURE

INTRODUCTION

This document sets out the procedure to be followed by the Board's Human Rights and Professional Standards Committee when considering cases under Regulation K5 and H5 of the RUC Pensions Regulations 1988 section 52 of the Police Pension Scheme (Northern Ireland) Regulations 2007 and regulation 38 of the PSNI and PSNI Reserve (Injury Benefit) Regulations 2006. Regulation K5 is reproduced at the end of this document at Annex 1.

There are three potential stages under Regulation K5.

1. Whether a person has been convicted of an offence committed in connection with his service as a member of the Police Service and whether an application should be made to the Secretary of State for a certificate of forfeiture ("Certificate Decision").
2. Whether the offence is certified by the Secretary of state to be gravely injurious to the interests of the State or to be liable to lead to serious loss of confidence in the public service.
3. Whether the pension should be forfeit and, if so, by what percentage and for how long ("Forfeiture Decision").

The Board is responsible for determining the Certificate Decision and the Forfeiture Decision. The Human Rights and Professional Standards Committee takes the Decisions under delegated authority from the Board. The procedure to be followed in relation to the Decisions is examined below.

CERTIFICATION DECISION

Prior to Receipt of Matter by Board

The issue of forfeiture will only arise in the event of an officer being convicted of a criminal offence. The PSNI will normally convene a misconduct hearing after the officer or former officer has been convicted of a criminal offence. In the event of the court imposing a custodial sentence, the officer may be dismissed from the PSNI. Pleas of mitigation in such circumstances may make reference to the prospect of a police pension being liable to forfeiture. Such pleas of mitigation in relation to possible forfeiture of pension in this context refer to the criminal process rather than the PSNI disciplinary process.

Receipt of Matter by the Board

Within 28 days of the misconduct hearing, the PSNI should inform the Board that the officer / former officer has been convicted of a criminal offence and should supply a factual report with the information and papers listed at Annex 2.

The PSNI should not make any comment as to whether forfeiture is appropriate or the level of any forfeiture. To do so would be usurping the role of the Board under the legislation.

Invitation to Officer / Former Officer to Supply Written Submissions

Within 21 days of receipt of information from the PSNI, the Board should write to the officer / former officer, or his representative, inviting submissions to be placed before the Committee who will determine whether:

- the conviction was in connection with the officer / former officer's service as a member of the police force.
- an application should be made to the Secretary of State for a certificate of forfeiture.

With the invitation to supply written submissions, the officer / former officer should be sent copies of the information received by the Board from the PSNI unless there is an overriding public interest in specific papers being withheld. For example, where a document is protected from disclosure owing to public interest immunity.

The officer / former officer should be asked to submit, within 28 days, any written representation that he or she wishes to the Board for consideration by the Human Rights and Professional Standards Committee. There may be circumstances where a longer time period is appropriate and an extension can be provided. The officer / former officer should be informed that any submissions he makes will be sent to the Secretary of State with any application for a certificate and this may also be passed to the PSNI.

Response by the PSNI

In certain circumstances, for example, if there is a dispute as to fact or an issue which the PSNI could clarify, any submissions received by the officer / former officer may be passed through to the PSNI to respond or provide clarification. The PSNI should be asked to respond to any information supplied by the officer / former officer within 21 days of receipt of the request.

Conviction under Appeal

If an officer / former officer is intending to appeal against conviction or sentence, the pension forfeiture procedures should be stayed pending the conclusion of appeal proceedings.

Consideration of Certification Decision by the Committee

Following receipt of the officer / former officer's submission (and any response by the PSNI), the case should be scheduled for consideration by the Human Rights and Professional Standards Committee. If an officer has not supplied written submissions, the Committee can continue to consider a case provided it is content that the officer / former officer has been given the opportunity to make written representations.

Meetings of the Committee will be arranged on a monthly basis, as necessary. The Committee will meet in private and make the decision whether or not to apply for a Certificate to the Secretary of State based on the information contained in the papers presented to the Committee.

The Committee will receive a covering report and papers at least 7 days before the meeting. The papers will include:

- the documents received from the PSNI.
- any submissions received from the officer / former officer.
- any further response from the PSNI.

Only in exceptional circumstances should the Committee see documents that have not been made available to the officer / former officer.

When considering the Certification Decision, the Committee do not determine whether the officer / former officer's police pension should be forfeit. At the first consideration of a case, the Committee are required to determine whether:

- the officer / former officer has been convicted of an offence in connection with his / her service as a member of a police force.
- an application should be made to the Secretary of State for a Certificate.

In Connection with Police Service

It is not sufficient for the officer / former officer to be convicted of any offence; the offence must be connected with his or her service. This is a question of fact for the Committee to determine. From case law and the Home Office Guidance (HOC 56/98) it is clear that:

- it is not necessary for the officer / former officer to have been in service at the time of the offence.
- an offence may be connected with an individual's service as a member of a police force where he or she uses knowledge as a police officer, or police systems, or police contacts in the commission of the offence.

The requirement that the conviction is as the result of an offence connected with an individual's police service does not apply in cases where the conviction is for an offence of treason or some other conviction under the Official Secrets Act.

Application for a Secretary of State Certificate

In determining whether to apply to the Secretary of State for a certificate, it is open for the Committee to consider whether the offence was serious and there is, or might be public concern about the officer/ former officer's abuse of a position of trust in deciding whether an application for a certificate should be made to the Secretary of State.

In assessing the seriousness of an offence and the potential for public concern, the Committee should take into account the issues that the Secretary of State will consider in deciding whether to issue a certificate. The Secretary of State is required by the 1988 Pensions Regulations to consider whether or not to issue a certificate where an offence was:

- (a) gravely injurious to the interests of the State; and / or
- (b) liable to lead to a serious loss of confidence in the public service.

The Secretary of State will review the following criteria in deciding whether either or both of the determining factors at points (a) and (b) are satisfied:

- the seriousness with which the Court viewed the offence (as demonstrated by the punishment imposed and the sentencing remarks).
- the circumstances surrounding the offence and the investigation.
- the seniority of the officer / former officer (the more senior, the greater the loss of credibility and confidence).
- the extent of publicity and media coverage.
- whether the offence involved:
 - an organised conspiracy amongst a number of officers.
 - active support for criminals.
 - the perversion of the course of public justice.

- the betrayal of an important position of trust for personal gain.
-
- the corruption or attempted corruption of junior officers.

Full reasons for the Committee's decision should be provided to the Northern Ireland Office for consideration by the Secretary of State.

AFTER THE COMMITTEE

The officer / former officer should be informed, in writing, of the Board's Human Right and Professional Standards Committee's decision and its reasons. The notification should be sent within 5 days of the Committee meeting.

If the Committee has determined that the offence for which the officer / former officer was convicted is connected with his service and an application is to be made for a certificate to the Secretary of State, the officer / former officer should be informed that any submissions he made to the Committee will be included in the papers sent to the Secretary of State.

The officer / former officer should also be informed that he will have an opportunity to make submissions to the Board's Human Rights and Professional Standards Committee on the question of whether his police pension should be forfeit or not if the Secretary of State issues a certificate.

If the Committee decide that an application should be made for a certificate to the Secretary of State, a letter with supporting documentation should be prepared for the Police Division of the Northern Ireland Office. The information that should be included with the application, where applicable, is outlined in Appendix 3. An application should be made within 1 week of the Committee meeting.

The PSNI Pensions Branch should be informed of the Committee's decision to ensure the pay and pension administrators are notified of the potential of forfeiture.

FORFEITURE DECISION

The Board should request updates, from the Northern Ireland Office, as to the position of the application at monthly intervals. The position of each application should be reported to the Board's Human Rights and Professional Standards Committee at its monthly meetings.

Upon receipt of the Secretary of State's decision, the Board should inform the officer / former officer and the PSNI of the Secretary of State's decision. If the

Secretary of State has issued a certificate, the officer / former officer should be notified and:

- invited to make submissions as to whether his / her police pension should be forfeit at all, in whole or in part or on a permanent or temporary basis.
- asked to indicate whether he / she wishes to make oral representations to the Committee.
- asked whether he / she wishes the proceedings to be held in public or in private. If the officer / former officer is serving a prison sentence and intends to attend the Committee meeting, the Committee's proceedings will be in private in the interests of security. The officer / former officer should be advised of this condition.

Should the officer / former officer request the opportunity to make oral submissions, arrangements should be made to hold such an oral hearing.

If the officer / former officer wishes the hearing to be in public, he or representative he instructs, will be entitled to address the Committee, but the press and the public will be excluded from the committee meeting.

The officer should be asked to provide any further submissions and responses to the questions raised within 28 days, unless there are circumstances that suggest a longer period would be appropriate.

Should the Secretary of State decide not to issue a certificate the question of possible forfeiture may not be pursued and ex officer, PSNI and Pensions Branch should be advised accordingly.

CONSIDERATION OF FORFEITURE DECISION BY THE BOARD'S HUMAN RIGHTS AND PROFESSIONAL STANDARDS COMMITTEE

- In advance of the Committee meeting on the question of a forfeiture decision, members will receive a covering report, together with appropriate paperwork. The documents provided to the Committee will include:
 - the papers presented to the Committee in relation to the certification decision.
 - the certificate of forfeiture.
 - any further submissions supplied by the officer / former officer.

If the PSNI have supplied any further paperwork between the Certification Decision and the convening of the Committee to determine the question of forfeiture, the documents should be made available to the officer / former officer for comment unless non-disclosure is justified by an overriding public interest.

Although proceedings may be held in public, the documents presented to the Committee will not be released to the press or public.

When the case before the Committee is for a Forfeiture decision, the following procedure will be followed:

1. A Chair of the Committee meeting will be elected.
2. The press and the public will be excluded, if appropriate.
3. The Board (through an official of the Board) will address the Committee on the issue.
4. The Chair should invite the officer / former officer or his representative to make oral submissions to the Committee.
5. Members of the Committee may ask relevant questions.
6. The Committee will convene in private to consider the Forfeiture Decision (see below).

Even if the officer / former officer has requested a hearing in public, the Committee may, at any time following an application by either the officer / former officer or the Board official or of its own volition, exclude the press and public if it considers that it is appropriate to do so and in accordance with the provisions of Schedule 12a of the Local Government Act 1972.

Another Board official will sit with the Committee. This officer will play no part in the presentation of information to the Committee or in the Committee's decision-making. This official will record the reasons for the Committee's determination and will attend upon the Committee when it convenes in camera / private session to consider the question of forfeiture.

FORFEITURE DECISION

In considering a Forfeiture Decision, the Committee must determine whether or not a pension should be forfeit and, if so, the extent of forfeiture both in terms of the proportion and the period. In making a decision, the Committee should note the following:

1. The Committee has no jurisdiction to forfeit an allowance, a gratuity, a lump sum or an award by way of repayment of aggregate pension contribution.

2. The Committee can forfeit a pension (including an ordinary, short service, ill health, or deferred pension), a widow's pension or a dependent relative special pension.
3. A commuted lump sum may not be forfeit. Home Office Guidance recognises that, if a police pension is forfeit before it becomes payable (e.g. an ordinary pension before the age of 50 or a deferred pension before the age of 60), there will be little or no pension left to commute for a lump sum.
4. The Committee has discretion as to whether or not to forfeit a pension over which it has jurisdiction.
5. Forfeiture can be temporary or permanent. A decision may be made to review a decision on forfeiture and restore some or all of the pension to the pensioner or someone receiving an award in respect of the pensioner.
6. An officer's own contributions or the secured element of a pension are protected from forfeiture on a permanent basis. Actuarial calculations have assessed the officer's contributions as 35%. Consequently, the maximum amount that the Committee can permanently forfeit is currently assessed at 65%.
7. It is possible to forfeit the secured portion of a pension on a temporary basis but only until the officer / former officer reaches state pensionable age (unless he or she is imprisoned or in custody).
8. If the pension is a deferred pension, the Committee may decide to stay consideration of the forfeiture question and keep this under review. Such a decision may be subject to challenge and any delay in reaching a decision may be a breach of the officer / former officer's human rights. There are, however, circumstances in which deferment may be appropriate – for example, if an appeal has been lodged.
9. If a number of officers were involved in the commission of the offence, the Committee can reflect the different levels of culpability in the extent of forfeiture for each officer / former officer.

In addition, in determining the forfeiture decision, the Committee may wish to take into account the matters listed at Annex 4, together with any written or oral submissions, or both, presented to it by the officer / former officer.

The Committee should provide full reasons for any decision it reaches. If the meeting has been held in public, the Chair of the Committee should announce the reasons in public. Any reasons announced publicly must not contain exempt information. If it is not possible to fully explain the Committee's reasons for its decision without revealing exempt information, the officer / former officer should be advised that he will be provided with comprehensive reasons in private.

The reasons for the Committee's decisions should also be notified to the officer in writing. This notification should be sent within 5 working days of the Committee's meeting.

The PSNI and the NIO should also be informed of the final outcome of the matter.

The forfeiture decision may be appealed under Regulation H5 of the 1988 RUC Pensions Regulations.

Appeal can be made in connection with the Certification Decision and the Forfeiture Decision. The Certificate Decision can only be appealed after the Forfeiture Decision.

An appeal should be lodged, in writing, with the Board within 21 days of the Forfeiture Decision being notified to the officer / former officer.

Section H5 of the RUC Pensions Regulations 1988 in respect of appeals is provided at Annex 5.

ANNEX 1

REGULATION K5, RUC PENSIONS REGULATIONS 1988 - FORFEITURE OF PENSION

K5 – (1) This regulation shall apply to a pension payable to or in respect of a member under Part B or C or under regulation E1 (*adult dependent relative's special pension*).

K5 – (2) Subject to paragraph (5), the NIPB may determine that the pension be forfeited, in whole or in part and permanently or temporarily as they may specify, if the pensioner has been convicted of an offence mentioned in paragraph (3) and, in the case of a widow's pension, that offence was committed after the death of the pensioner's husband.

K5 – (3) The offences referred to in paragraph (2) are:

- (a) An offence of treason.
- (b) one or more offences under the Official Secrets Acts 1911 to 1939(a), for which the grantee has been sentenced on the same occasion to a term of imprisonment of, or to two or more consecutive terms amounting in the aggregate to at least 10 years.

K5 – (4) Subject to paragraph (5), the NIPB may determine that the pension to which this regulation applies be forfeited, in whole or in part and permanently or temporarily as they may specify, if the grantee has been convicted of an offence committed in connection with his service as a member which is certified by the Secretary of State, either to have been gravely injurious to the interests of the State or to be liable to lead to serious loss of confidence in the public service.

K5 – (5) In the case of a pension to which this regulation applies, other than an injury pension, the NIPB in determining whether a forfeiture should be permanent or temporary and affect a pension in whole or in part, may make different determinations in respect of the secured and unsecured portions of the pension; but the secured portion of such a pension shall not be forfeited permanently and may be only forfeited temporarily for a period expiring before the grantee attains state pensionable age or for which he is imprisoned or otherwise detained in legal custody.

K5 – (6) To the extent to which a pension is forfeited under this regulation, the Police Authority shall be discharged from all actual or contingent liability in respect thereof.

K5 – (7) This regulation has effect subject to regulation J1 (6)(c).

Regulation J1 (6)(c)

Regulation K5 (*forfeiture of pension*) shall apply in relation to a pension under paragraph (2) or (4) {⁷³ or (4A)} as it applies in relation to a pension under Part B or C {⁷³ or under regulation E1} but as if paragraph (4) thereof were omitted.

Explanation Of K5

Paragraph 2 & 3 of Regulation K5 of the RUC Pensions Regulations 1988 and Section 52 of the Police Pension (Northern Ireland) Regulations 2007, enables the Board to determine forfeiture of a police pension in cases where a pensioner has been convicted of treason or of offences under the Officials secrets Act 1911 to 1939 and has been sentenced to a term of imprisonment of at least ten years. Forfeiture in these rare cases is a matter for the Board.

Paragraph 4 enables the Board to determine forfeiture where a member of a police service has been convicted of an offence certified by the Secretary of State either to have been gravely injurious to the interests of the State or to be liable to lead to serious loss of confidence in the public service

Paragraph 5 enables the Board to determine the extent to which the pension should be forfeited. This may be permanent or temporary and may up to a maximum of 65% of the pension being forfeited.

The ex officer may appeal the Board's decision by virtue of Regulation H5 of the RUC Pensions Regulations 1988.

A Secretary of State Certificate is not required in respect of the offences specified in Regulation K5 (3) (a) (b) of the RUC pensions Regulations 1988. The Policing Board therefore considers straight away the question of the extent of forfeiture. In such cases the Chief Constable should prepare a report to the Board setting out his view of whether or not the pension should be forfeited in whole or in part and permanently or temporarily.

ANNEX 2

REGULATION 38 OF THE PSNI and PSNI RESERVE (INJURY BENEFIT) REGULATIONS 2006

Forfeiture

38 – (1) This regulation applies to a pension payable to or in respect of a police officer under regulation 10, regulation 12 or regulation 19.

38 – (2) The Board may determine that a pension to which this regulation applies be forfeited, in whole or in part and permanently or temporarily as it may specify, if the pensioner has been convicted of an offence mentioned in paragraph (3) and, in the case of an adult survivor's pension, that offence was committed after the death of the pensioner's spouse or, as the case may be, civil partner.

38 – (3) The offences referred to in paragraph (2) are:-

- (a) an offence of treason;
- (b) one or more offences under the Official Secrets Act 1911 to 1989 for which the grantee has been sentenced on the same occasion, to a term of imprisonment of, or to two or more consecutive terms amounting in the aggregate to, at least ten years.

38 – (4) The Board may determine that a pension to which this regulation applies be forfeited, in whole or in part and permanently or temporarily as it may specify, if the grantee has been convicted of an offence committed in connection with his service as a police officer which is certified by the Secretary of State either to have been gravely injurious to the interests of the State or to be liable to lead to serious loss of confidence in the public service.

38 0 (5) To the extent to which a pension is forfeited under this regulation, the Board shall be discharged from all actual contingent liability in respect of that pension.

Note:

Regulation 10	Relates to a police officer's Injury on Duty Awards
Regulation 12	Relates to an Adult Survivor's Special Award
Regulation 19	Relates to an Adult Dependent Relative's Special Pension

ANNEX 3

LIST OF INFORMATION AND PAPERS TO BE SUPPLIED BY THE PSNI

1. Information about the offence(s) including:
 - (a) The charge(s) brought against the officer / former officer.
 - (b) The offence(s) for which the officer / former officer was convicted.
 - (c) The sentence imposed.
 - (d) The circumstances surrounding the offence(s) and the investigation
 - (e) Whether the offence(s) involved:
 - an organised conspiracy among a number of police officers.
 - active support for criminals.
 - the perversion of the court of public justice.
 - the betrayal of an important position of trust for personal gain.
 - the corruption or attempted corruption of junior officers.
 - (f) Details of any appeal.
2. Judge's sentencing remarks.
3. Press and media coverage of the conviction.
4. Details of any disciplinary action taken against the officer / former officer and the outcome of such action.
5. Details of any pending appeal.
6. Details of the officer / former officer's service history and rank at the time of the offence.
7. The officer / former officer's current address and / or contact details of any legal representative.
8. An estimate of the officer / former officer's pension.
9. Details of any dependents.
10. Any other factors such as:

- (a) Disability in the family.
- (b) illness at the time of the offence.
- (c) Assistance or information given to the police during the investigation or following conviction.
- (d) Any other mitigating factors.

ANNEX 4

LIST OF INFORMATION TO BE INCLUDED IN AN APPLICATION TO THE SECRETARY OF STATE FOR A CERTIFICATE

1. A statement that, in the view of the Policing Board, the offence was committed, by an then serving officer/s or ex officer/s, in connection with service as a member of the Police Service and is liable to lead to serious loss of confidence in the public service.
2. Full details of the offence(s) committed and the perceived connection with the Police Service.
3. Details of the circumstances surrounding the offence/s and investigation, in particular, whether the offence/s involved:
 - Organised conspiracy amongst a number of officers.
 - Active support for criminals.
 - Perversion of the administration of justice.
 - Betrayal of an important position of trust for personal gain; and / or
 - Corruption or attempted corruption of junior officers.
4. Details of the punishment imposed by the Court and the judge's sentencing remarks, if known.
5. Details of publicity and media coverage.
6. Brief details of the officer's service, in particular, length of service and seniority; and
7. Financial implications, including pension details, widower's and / or children's allowances.

ANNEX 5

MATTERS THE HUMAN RIGHTS AND PROFESSIONAL STANDARDS COMMITTEE MAY WISH TO TAKE INTO ACCOUNT IN RELATION TO THE FORFEITURE DECISION

1. The seriousness with which the Court viewed the offence (as demonstrated by the punishment imposed and the sentencing remarks).
2. The circumstances surrounding the offence and the investigation.
3. The seniority of the officer / former officer (the more senior, the greater the loss of credibility and confidence).
4. The extent of publicity and media coverage.
5. Whether the offence involved:
 - An organised conspiracy amongst a number of officers
 - Active support for criminals
 - The perversion of the course of public justice
 - The betrayal of an important position of trust for personal gain
 - The corruption or attempted corruption of junior officers.
6. The seniority of the officer.
7. Disability in the family.
8. Illness at the time of the offence.
9. Assistance or information given to the police during the investigation or following conviction.
10. Any other mitigating circumstances.

The secured portion cannot be forfeited permanently and the guaranteed minimum pension payable at 65 cannot be forfeited at all.

The maximum that can be forfeited is 65%.

Forfeiture in the range of 25% to 65% would normally be expected to be imposed. **The Board however must show that they have considered the whole range of forfeiture options from 0 – 65%.**

The imposed forfeiture would be for a specific period, to be reviewed at a specified future date or permanent.

Any temporary forfeiture would normally relate to the secured portion of the pension with a guaranteed minimum payable at age 65.

ANNEX 6

REGULATION H5, RUC PENSIONS REGULATIONS 1988 – FORFEITURE OF PENSION

Appeals

H5 – (1) Where a member or a person claiming an award in respect of a member is aggrieved by the refusal of the Police Authority to admit a claim to receive as of right an award or a larger award than that granted or by the forfeiture under regulation K5 by the Police Authority, of any award granted to or in respect of that member, he may, subject to regulation H6, give notice of appeal to the Department.

H5 – (2) The Department, on receiving such notice of appeal, shall appoint an appeal tribunal (hereinafter in this regulation referred to as “the tribunal”) consisting of 3 persons, including a barrister or solicitor of not less than 7 years standing who shall act as Chairman, and a retired member of the force or of a police force in Great Britain who, before he retired, held a rank not lower than that of superintendent or district inspector.

H5 – (3) The time and place for the hearing, or any postponed or adjourned hearing, of the appeal shall be determined by the tribunal, which shall give reasonable notice thereof to the Appellant and to the Police Authority (hereinafter in the regulation described as “the parties”).

H5 – (4) Either party may be represented before the tribunal by counsel or by a solicitor, or by some other person approved by the tribunal, and may adduce evidence and cross-examine witnesses.

H5 – (5) The rules of evidence applicable in the case of an appeal to a county court under Article 28 of the County Courts (Northern Ireland) Order 1980(a) shall apply in the case of an appeal under the regulation.

H5 – (6) Subject to the preceding provisions of the regulation, the tribunal shall determine its own procedure.

H5 – (7) The tribunal, after enquiring into the case, shall make such order in the matter as appears to it to be just.

H5 – (8) An appeal shall lie on a point of law from any decision of a tribunal under this regulation to the High Court in accordance with rules of court.

Limitations on Appeals

H6 – (1) An appeal shall not lie under regulation H5 against anything done by the Police Authority in the exercise of a power conferred by these regulations which is expressly declared thereby to be a power which they are to exercise in their discretion.

H6 – (2) Subject to regulation H3(1), in any proceedings under regulation H5, the tribunal shall be bound by any final decision of a medical authority within the meaning of regulation H3.