
SCOTTISH STATUTORY INSTRUMENTS

2006 No. 610

The Police (Injury Benefit) (Scotland) Regulations 2006

PART 1

GENERAL PROVISIONS

Citation, commencement, effect and extent

1.—(1) These Regulations may be cited as the Police (Injury Benefit) (Scotland) Regulations 2006 and come into force on 1st February 2007 but shall have effect from 6th April 2006⁽¹⁾.

(2) These Regulations extend to Scotland only.

Meaning of certain expressions and references – general provisions

2. In these Regulations, unless the context otherwise requires—

- (a) the expressions defined in the glossary set out in Schedule 1 shall have effect;
- (b) any reference to a member of a police force, however expressed, includes a reference to a person who has been such a member; and
- (c) any reference to an award, however expressed, is a reference to an award under these Regulations.

Meaning of certain expressions in relation to persons who are not members of a home police force

3.—(1) Except where the context otherwise requires, for the purposes of these Regulations an inspector of constabulary or a police officer engaged on relevant service shall be deemed to be a member of a home police force.

(2) In relation to an inspector of constabulary or a police officer engaged on relevant service, any reference in these Regulations to the police authority shall be construed as a reference to the Scottish Ministers.

Pensionable and average pensionable pay and aggregate pension contributions

4.—(1) For the purposes of calculating an award to or in respect of a member of a police force their pensionable pay shall be calculated in the same way as if the award were one payable under the 1987 Regulations⁽²⁾, in accordance with regulation G1(1) and (1A) of those Regulations.

(2) For the purposes of calculating an award to or in respect of a member of a police force their average pensionable pay shall be calculated in the same way as if it were an award payable under the 1987 Regulations, in accordance with regulation G1(2) to (9) of those Regulations, and as if—

⁽¹⁾ Retrospective effect is permitted by section 1(5) of the Police Pensions Act 1976.

⁽²⁾ S.I.1987/257; relevant amendments were made by S.I. 1988/1339, 1989/733, 1990/805, 1990/2005, 1992/343, 1992/2349, 1994/641, 1996/867 and 1997/2852 and S.S.I. 2001/459, .2003/406, 2004/486, 2005/200 and 495 and 2006/285.

- (a) the relevant date for the purposes of the regulation were the date of their last day of service as a regular police officer in the force of the police authority by whom the award is payable; and
- (b) the provisions specified in paragraph 4(4) of Part VI of Schedule J (part-time service) to the 1987 Regulations included regulations 13(2) and (3), 14(2)(a) and 17(3), (4), (5) and (6), and paragraphs 1, 2 and 4 of Schedule 5.

(3) For the purposes of an award calculated in accordance with paragraphs (1) and (2), references in such provisions of the 1987 Regulations as are mentioned in those paragraphs to a person's pensionable service shall in the case of a regular police officer who has made an election under regulation G4(1) of those Regulations include references to the pensionable service which would have been reckonable by that officer if they had not made such an election.

(4) For the purposes of calculating an award to or in respect of a regular police officer their aggregate pension contributions shall be calculated in the same way as if it were an award payable under the 1987 Regulations, in accordance with regulation A10 of those Regulations.

Weekly rate of pensions and allowances

5.—(1) Where the rate at which a pension or allowance is payable or the amount thereof is expressed as an annual rate or amount then, for the purposes of these Regulations, the weekly rate or amount of that pension or allowance shall be determined as if there were 52# weeks in each year.

(2) Where for the purpose of calculating an award to an adult survivor, child or adult dependent relative it is necessary to determine average pensionable pay for a week, it shall be taken to be average pensionable pay divided by 52#.

Injury received in the execution of duty

6.—(1) A reference in these Regulations to an injury received in the execution of duty by a member of a police force means an injury received in the execution of that person's duty as a constable and, where the person concerned is an auxiliary police officer, during a period of active service as such.

(2) For the purposes of these Regulations an injury shall be treated as received by a person in the execution of their duty as a constable if—

- (a) the member concerned received the injury while on duty or while on a journey necessary to enable that member to report for duty or return home after duty;
- (b) the member would not have received the injury had they not been known to be a constable; or
- (c) the police authority is of the opinion that the preceding condition may be satisfied and that the injury should be treated as one received in the execution of duty.

(3) In the case of a person who is not a constable but is within the definition of "member of a police force" in the glossary set out in Schedule 1 by reason of their being an officer there mentioned, paragraphs (1) and (2) shall have effect as if the references to a constable were references to such an officer.

(4) For the purposes of these Regulations an injury shall be treated as received without the default of the member concerned unless the injury is wholly or mainly due to their own serious and culpable negligence or misconduct.

(5) Notwithstanding anything in the 1987 Regulations relating to a period of service in the armed forces, an injury received in the execution of duty as a member of the armed forces shall not be deemed to be an injury received in the execution of duty as a member of a police force.

(6) In the case of a regular police officer who has served as a police cadet in relation to whom the Police Cadets (Pensions) (Scotland) Regulations 1973(3) had taken effect,

- (a) a qualifying injury within the meaning of those Regulations shall be treated for the purposes of these Regulations as if it had been received by that officer as mentioned in paragraph (1); and
- (b) where such a qualifying injury is so treated, any reference to duties in regulation 14(1) (adult survivor's augmented award) shall be construed as including a reference to duties as a police cadet; and,

in this paragraph the reference to the Police Cadets (Pensions) (Scotland) Regulations 1973 is a reference to the Regulations from time to time in force made, or having effect as if made, under section 27 of the Police (Scotland) Act 1967(4).

Disablement

7.—(1) Subject to paragraph (2), a reference in these Regulations to a person being permanently disabled is to be taken as a reference to that person being disabled at the time when the question arises for decision and to that disablement being at that time likely to be permanent.

(2) In the case of a person who is totally disabled, paragraph (1) shall have effect, for the purposes of regulations 12 and 21 of these Regulations, as if the reference to “that disablement being at that time likely to be permanent” were a reference to the total disablement of that person being likely to be permanent.

(3) For the purposes of deciding if a person's disablement is likely to be permanent, that person shall be assumed to receive normal appropriate medical treatment for their disablement, and in this paragraph “appropriate medical treatment” shall not include medical treatment that it is reasonable in the opinion of the police authority for that person to refuse.

(4) Subject to paragraph (5), disablement means inability, occasioned by infirmity of mind or body, to perform the ordinary duties of a member of the force except that, in relation to the child or to the widower or surviving civil partner of a woman member of a police force, it means inability, occasioned as, to earn a living.

(5) Where it is necessary to determine the degree of a person's disablement it shall be determined by reference to the degree to which their earning capacity has been affected as a result of an injury received without their own default in the execution of their duty as a member of a police force:

Provided that a person shall be deemed to be totally disabled if, as a result of such an injury, that person is receiving treatment as an in-patient at a hospital.

(6) Notwithstanding paragraph (5), “totally disabled” means incapable by reason of the disablement in question of earning any money in any employment and “total disablement” shall be construed accordingly.

(7) Where a person has retired before becoming disabled and the date on which that person becomes disabled cannot be ascertained, it shall be taken to be the date on which the claim that they are disabled is first made known to the police authority.

(8) In this regulation, “infirmity” means a disease, injury or medical condition, and includes a mental disorder, injury or condition.

(3) S.I. 1973/434 as amended by S.I. 1979/783, 1980/1410, 1982/1660, 1987/1699 and 1700.

(4) 1967 c. 77.

Disablement, death or treatment in hospital the result of an injury

8. For the purposes of these Regulations disablement or death or treatment at a hospital shall be deemed to be the result of an injury if the injury has caused or substantially contributed to the disablement or death or the condition for which treatment is being received.

Transitional provisions

9.—(1) These Regulations shall have effect as if anything done, or treated as done, under or for the purposes of the Police (Injury Benefit) Regulations 1987⁽⁵⁾ or those provisions of the 1987 Regulations as are specified in paragraph (3) had been done under or for the purposes of the corresponding provision of these Regulations.

(2) Without prejudice to the generality of paragraph (1) references in that paragraph to anything done shall include—

- (a) the determination of a question;
- (b) the exercise of a discretion;
- (c) the decision that a provision should apply;
- (d) the making of a payment; and
- (e) the giving of a notice.

(3) The provisions of the 1987 Regulations referred to in paragraph (1) are—

- (a) regulation B4 (policeman's injury award);
- (b) regulation C2 (widow's special award);
- (c) regulation C3 (widow's augmented award);
- (d) regulation D2 (child's special allowance);
- (e) regulation D3 (child's special gratuity);
- (f) regulation E1 (adult dependent relative's special pension);
- (g) Part H (appeals and medical questions);
- (h) regulation K2 (reassessment of injury pension);
- (i) regulation K3 (reduction of pension in case of default);
- (j) regulation K4 (withdrawal of pension during service as a regular policeman); and
- (k) regulation K5 (forfeiture of pension).

Revocations and amendments

10.—(1) The 1987 Regulations shall be amended in accordance with Part 1 of Schedule 2.

(2) The Police Pensions (Supplementary Provisions) Regulations 1987⁽⁶⁾ shall be amended in accordance with Part 2 of Schedule 2.

(3) The Regulations specified in Part 3 of Schedule 2 are hereby revoked to the extent there mentioned.

⁽⁵⁾ S.I. 1987/156.

⁽⁶⁾ S.I. 1987/256.

PART 2

AWARDS ON INJURY OR DEATH

Police officer's injury award

11.—(1) This regulation applies to a person who ceases or has ceased to be a member of a police force and is permanently disabled as a result of an injury received without their own default in the execution of their duty (in Schedule 3 referred to as the “relevant injury”).

(2) A person to whom this regulation applies shall be entitled to a gratuity and, in addition, to an injury pension, in both cases calculated in accordance with Schedule 3; but payment of an injury pension shall be subject to the provisions of paragraph 5 of that Schedule and, where the person concerned ceased to serve before becoming disabled, no payment shall be made on account of the pension in respect of any period before that person became disabled.

Disablement gratuity

12.—(1) This regulation applies to a person who—

- (a) receives or received an injury without their own default in the execution of their duty;
- (b) ceases or has ceased to be a member of a police force; and
- (c) within 12 months of so receiving that injury, becomes or became totally and permanently disabled as a result of that injury.

(2) Subject to the provisions of regulations 22 and 23, the police authority for the force in which a person to whom this regulation applies last served shall pay to that person a gratuity of an amount equal to whichever is the lesser of the following amounts, namely—

- (a) five times the annual value of their pensionable pay on their last day of service as a member of a police force; or
- (b) the sum of four times their total remuneration during the 12 months ending with their last day of service as a member of a police force and the amount of their aggregate pension contributions in respect of the relevant period of service.

(3) For the purposes of paragraph (2)(b) the amount of aggregate pension contributions in respect of the relevant period of service shall be calculated in the case of a person by whom, immediately before their last day of service as a member of a police force, pension contributions were payable under regulation G2(1) of the 1987 Regulations or would have been so payable but for an election under regulation G4(1) of the 1987 Regulations, in the same way as if the award were one payable under those Regulations, calculated in accordance with regulation A10 of those Regulations.

Adult survivor's special award

13.—(1) This regulation applies to a surviving spouse or surviving civil partner (“an adult survivor”) of a member of a police force who dies or has died as the result of an injury received without their own default in the execution of their duty (“the deceased officer”).

(2) An adult survivor to whom this regulation applies shall, subject to paragraph (6) and regulation 15, be entitled to an award which shall comprise—

- (a) an adult survivor's special pension calculated in accordance with paragraphs (3) to (5) subject, however, to regulation 28; and
- (b) subject to paragraphs (7) and (8), a gratuity of an amount equal to 25% of the deceased officer's average pensionable pay together with, where the officer died while serving as a member of a police force, an amount equal to whichever is the greater of the following amounts—

- (i) the deceased officer's average pensionable pay,
- (ii) 2¼ times the annual amount of the ill-health pension which would have been payable under regulation B3 of the 1987 Regulations to the deceased officer had they retired on the ground that they were permanently disabled on the day on which the officer died.

(3) Subject to paragraphs (4) and (5), the weekly amount of an adult survivor's special pension shall be equal to 45% of the deceased officer's average pensionable pay for a week.

(4) Where, in respect of any week, a pension is payable to the widow in pursuance of section 67 of the Social Security Act 1975(7) in consequence of her husband's death and the amount of that pension exceeds that of a widow's pension under section 26 of that Act as specified in Part I of Schedule 4 thereto at the time of the husband's death, then the amount of her special pension in respect of that week shall be reduced by that excess.

(5) Where the provisions governing the amount of pensions under section 67 of the Social Security Act 1975 have changed after the death of the husband, the reduction under sub paragraph (4) in respect of any week shall not exceed the amount which would have been the amount thereof in respect of that week had those provisions not changed.

(6) An adult survivor shall not be entitled to an adult survivor's special award unless the surviving spouse was married to the deceased officer or, as the case may be, the surviving civil partner and the deceased officer were civil partners, during a period—

- (a) before the deceased officer last ceased to be a regular police officer, if the officer received the injury while serving as such; or
- (b) before the end of the continuous period of service during which the officer received the injury, in any other case.

(7) An adult survivor who, but for paragraph (6)(a), would be entitled to an award under paragraph (2) shall, instead, be entitled to a pension calculated in accordance with the provisions of paragraphs (8) to (12); and such pension shall be treated for the purposes of paragraph (14) and regulation 28 (increase during first 13 weeks) as if it were a special award under this regulation.

(8) The annual amount of a pension under paragraph (7) shall be one half of the appropriate proportion of the ill health pension under regulation B3 of the 1987 Regulations to which the deceased officer would have been entitled had the officer, when they ceased to serve, retired because the officer was disabled in circumstances entitling them to such a pension.

(9) Subject to paragraphs (10), (11) and (12), for the purposes of paragraph (8) the appropriate proportion means the proportion which the deceased officer's pensionable service reckonable by reason of service or employment after 5th April 1978 bears to their total pensionable service; and for these purposes, in a case where the deceased officer had made an election under regulation G4 of the 1987 Regulations, their pensionable service shall be calculated as if such election had not been made.

(10) Where a pension becomes payable under paragraph (7) to a widower or to the surviving civil partner of a female police officer, paragraph (9) has effect with the substitution for "5th April 1978" of "16th May 1990" or, as the case may be, the day before the date from which service before 17th May 1990 counts in consequence of an election under regulation G6 of the 1987 Regulations (payments by women members to enhance widowers' and surviving civil partners' awards).

(11) But where a pension becomes payable under paragraph (7) to the surviving civil partner of a female police officer and as a consequence of an election under regulation G6 paragraph (9) would, but for this paragraph, have effect with the substitution for "5th April 1978" of a date before 6th April 1988, then paragraph (9) shall have effect with the substitution for "5th April 1978" of "5th April 1988".

(12) Where a pension becomes payable under paragraph (7) to the surviving civil partner of a male police officer, paragraph (9) has effect with the substitution for “5th April 1978” of “5th April 1988”.

(13) Where the deceased officer was entitled to a gratuity under regulation 11 then—

- (a) if it equalled, or exceeded, the gratuity under paragraph (2)(b), the gratuity under paragraph (2)(b) shall not be payable; and
- (b) in any other case, the gratuity under paragraph (2)(b) shall be reduced by the amount of the deceased officer’s gratuity.

(14) The amount of an adult survivor’s special pension or gratuity determined in accordance with the preceding provisions of this regulation shall be increased in accordance with regulation 29 (increase by reference to the Pensions (Increase) Acts).

Adult survivor’s augmented award

14.—(1) This regulation applies, subject to regulation 15, to an adult survivor of a member of a police force whose death is the result of an injury received without their own default in the execution of their duty where one of the following conditions is satisfied, namely that—

- (a) the officer was attacked by a person or persons in a manner which was intrinsically likely to cause death and death ensued as a result of the attack;
- (b) the injury was received in the course of duties performed for the immediate purpose of effecting an arrest or of preventing an escape or rescue from legal custody;
- (c) the injury was received in the course of duties performed—
 - (i) for the immediate purpose of saving the life of another person or of preventing loss of human life, and
 - (ii) in circumstances in which there was an intrinsic likelihood of their receiving a fatal injury;
- (d) the police authority are of the opinion that one of the preceding conditions may be satisfied and that this regulation should apply; or
- (e) the police authority are of the opinion that the injury was received otherwise than as aforesaid but in the course of duties performed in such circumstances that it would be inequitable if there were not payable in respect of that officer such an award as would have been payable had one of the conditions specified in sub paragraphs (a), (b) and (c) been satisfied.

(2) An award under regulation 13(2) to an adult survivor to whom this regulation applies shall comprise—

- (a) an adult survivor’s special pension calculated as provided in regulation 13(3) to (5) but as if for the reference in regulation 13(3) to 45% of the deceased officer’s average pensionable pay for a week there were substituted a reference to 50% of such pay; and
- (b) a gratuity of an amount equal to twice the annual pensionable pay, at the date of the deceased officer’s death, of a person holding the rank of constable in the metropolitan police force and entitled to reckon 30 years’ service for the purposes of pay; and the provisions of regulation 13(2)(b), (6) and (7) shall not apply except that where those provisions are more favourable in their case the gratuity shall be of an amount determined in accordance with those provisions.

Limitation on award to adult survivor living apart from the deceased officer

15. An adult survivor shall not be entitled to an award under regulation 13 or 14 if, at the time of the deceased officer's death—

- (a) they were separated from each other by an order or decree of a competent court; and
- (b) the deceased officer was not required by an order or decree of a competent court to contribute to the support of the adult survivor and was not in fact regularly contributing to their support;

and, for the purposes of this regulation, contributions to an adult survivor for the support of a child shall be treated as contributions for their support.

Termination of adult survivor's award on remarriage or other event

16.—(1) Where a widow entitled to a special pension under regulation 13 (including such a pension granted by way of an augmented award under regulation 14) was widowed before 5th December 2005 or was widowed after that date but their husband or wife had ceased to serve as a member of a police force before that date, and—

- (a) remarries or has remarried;
- (b) forms or has formed a civil partnership; or
- (c) with a person to whom they are not married, lives together as husband and wife,

that widow shall not be entitled to receive any payment on account of the pension in respect of any period after their marriage, or after the formation of their civil partnership, or after their cohabitation begins.

(2) Where the surviving civil partner of a member of a police force who had ceased to serve as a member of a police force by 5th December 2005 is entitled to a special pension under regulation 13 (including such a pension granted by way of an augmented award under regulation 14) and—

- (a) marries or has married;
- (b) forms or has formed a new civil partnership; or
- (c) with a person who is not their civil partner, lives together as if they were civil partners,

that surviving civil partner shall not be entitled to receive any payment on account of the pension in respect of any period after their marriage, or after the formation of their civil partnership, or after their cohabitation begins.

(3) Where a widow who does not fall within paragraph (1) or a surviving civil partner who does not fall within paragraph (2) is entitled to a special pension under regulation 13 (including such a pension granted by way of an augmented award under regulation 14) and—

- (a) marries or has married;
- (b) remarries or has remarried;
- (c) forms or has formed a civil partnership or new civil partnership;
- (d) with a person to whom they are not married, lives together as husband and wife; or
- (e) with a person who is not their civil partner, lives together as if they were civil partners,

that widow shall not be entitled to receive any payment on account of the pension in respect of any period after their marriage or remarriage, or after the formation of their civil partnership, or after their cohabitation begins.

(4) But if, at any time after their marriage, remarriage, the formation of their civil partnership or the beginning of their cohabitation, a person in any of paragraphs (1) to (3) has again become a widow or their civil partner dies, or that marriage or civil partnership has been dissolved or that cohabitation ceases, the police authority may, in their discretion, bring the pension into payment.

(5) Where a widow or widower entitled to a gratuity under regulation 13 or 14 was widowed before 5th December 2005 or was widowed after that date but their husband or wife had ceased to serve as a member of a police force before that date, and—

- (a) remarries or has remarried;
- (b) forms or has formed a civil partnership; or
- (c) with a person to whom they are not married, lives together as husband and wife,

so much of the gratuity as has not been paid before their remarriage or the formation of their civil partnership or the beginning of their cohabitation shall not be payable thereafter.

(6) Where the surviving civil partner of a member of a police force who had ceased to serve as a member of a police force by that date and—

- (a) marries or has married;
- (b) forms or has formed a new civil partnership; or
- (c) with a person who is not their civil partner, lives together as if they were civil partners,

so much of the gratuity as has not been paid before their marriage or remarriage or the formation of their civil partnership or the beginning of their cohabitation shall not be payable thereafter.

(7) Where a widow who does not fall within paragraph (5) or a surviving civil partner who does not fall within paragraph (6) is entitled to a gratuity under regulation 13 or 14 and—

- (a) marries or has married;
- (b) remarries or has remarried;
- (c) forms or has formed a civil partnership or new civil partnership;
- (d) with a person to whom they are not married, lives together as husband and wife; or
- (e) with a person who is not their civil partner, lives together as if they were civil partners,

so much of the gratuity as has not been paid before their remarriage or the formation of their civil partnership or the beginning of their cohabitation shall not be payable thereafter.

(8) But if, at any time after their marriage, remarriage, the formation of their civil partnership or the beginning of their cohabitation, a person in any of paragraphs (5) to (7) has again become a widow or their civil partner dies or that marriage or civil partnership has been dissolved or that cohabitation ceases, the police authority may, in their discretion, pay to that person the sums which they were actually or contingently liable to pay to them in respect of the gratuity immediately before their remarriage or the formation of their civil partnership or the beginning of their cohabitation.

Child's special allowance

17.—(1) This regulation shall apply to a child of a member of a police force who dies or has died as the result of an injury received without their own default in the execution of their duty.

(2) Subject to regulations 19 and 28, a child to whom this regulation applies shall be entitled to a special allowance calculated in accordance with the following provisions of this regulation.

(3) Where one of the child's parents is alive, the child's special allowance in respect of the death of a member of a police force ("the relevant parent") shall, subject to paragraphs (4) and (7), be of an amount equal to 10% of the average pensionable pay for a week of the relevant parent.

(4) Where five or more children's special allowances are payable in respect of the death of the same person, an allowance determined in accordance with paragraph (3) shall be of an amount equal to 40% of the average pensionable pay for a week of the relevant parent divided by the total number of allowances so payable.

(5) Where the relevant parent was the child's only surviving parent, or in respect of the period after the death of the child's other parent, the child's special allowance shall, subject to paragraphs

(6) and (7), be of an amount equal to 20% of the average pensionable pay for a week of the relevant parent.

(6) Where five or more children's special allowances are payable in respect of the death of the same person, an allowance determined in accordance with paragraph (5) shall be of an amount equal to 80% of the average pensionable pay for a week of the relevant parent divided by the total number of allowances so payable.

(7) The amount of a child's special allowance determined in accordance with the preceding paragraphs of this regulation shall be increased in accordance with regulation 29 (increase by reference to the Pensions (Increase) Acts).

Child's special gratuity

18.—(1) This regulation applies to a child of a member of a police force who dies or has died as the result of an injury received without their own default in the execution of their duty where one of the conditions set out in regulation 14(1) is met and the member does not leave an adult survivor entitled to a gratuity under regulation 13 or 14.

(2) Subject to regulation 19 but without prejudice to the provisions of regulation 17, a child to whom this regulation applies shall be entitled to a gratuity as provided in this regulation.

(3) The gratuity under paragraph (2) shall be of the amount mentioned in paragraph (4) except that, where two or more such gratuities are payable in respect of the same person, each gratuity shall be of that amount divided by the number of such gratuities.

(4) That amount shall be an amount equal to twice the annual pensionable pay, at the date of that parent's death, of a person holding the rank of constable in the metropolitan police force and entitled to reckon 30 years' service for the purposes of pay.

Child's special allowance or special gratuity – limitations

19.—(1) A child's special allowance or special gratuity under regulation 17 or 18 shall not be granted—

- (a) to a child born on or after the relevant date specified in paragraph (3) otherwise than of a marriage which took place or of a civil partnership that was formed before the relevant date;
 - (b) by reason of their being a step-child—
 - (i) to the child of a spouse whose marriage to the relevant parent took place on or after the relevant date, or
 - (ii) to the child of a civil partner whose civil partnership with the relevant parent was formed on or after the relevant date;
 - (c) by reason of the child being substantially dependent on the relevant parent, to a child who was not so dependent before the relevant date;
 - (d) by reason of the child being an adopted child, to a child adopted on or after the relevant date; or
 - (e) except in the case of a legitimate or adopted child of the relevant parent, to a child who was not substantially dependent on that parent at the time of their death.
- (2) The reference in paragraph (1)(a) to a child born of a civil partnership means a child—
- (a) who is a child of a member of a civil partnership and has been adopted by the other member of that civil partnership; or
 - (b) who has been adopted by two persons who have formed a civil partnership.
- (3) For the purposes of paragraph (1) the relevant date—

- (a) if the relevant parent received the injury while serving as a regular police officer, is the date on which the officer last ceased to be a regular police officer; and
- (b) if the officer received the injury while serving as a member of an overseas corps otherwise than as a regular police officer or while engaged on a period of relevant service, is the date of the end of the tour of overseas service or the period of relevant service during which they received the injury.

(4) In the case of a child who has attained the age of 16 years but not that of 17 years, a special allowance shall not be payable in respect of any period for which the child is in full time employment unless that employment constitutes full time training, of at least a year's duration, for a trade, profession or calling.

(5) In the case of a child who has attained the age of 17 years but not that of 19 years, a special allowance shall only be payable in respect of a period throughout which the child satisfies one of the conditions set out in paragraph (9).

(6) Without prejudice to paragraph (1), in the case of a child who has attained the age of 19 years, a special allowance shall not be payable (and, where the child attained that age before the date of the relevant parent's death, shall not be granted) unless—

- (a) the child satisfies one of the conditions set out in paragraph (9); and
- (b) in the case of condition (a), also satisfied that condition immediately before the child attained the age of 19 years and throughout the entire period thereafter,

except that the payment (or granting) of a special allowance shall not be precluded by reason only of sub paragraph (b) if the police authority, having regard to all the circumstances of the case, in their discretion so decide:

Provided that a special allowance shall not be payable after the date on which the child attains the age of 23 years unless he satisfies the conditions mentioned in paragraph (9)(b).

(7) Without prejudice to paragraphs (4), (5) and (6), in the case of a child entitled to a special allowance who is—

- (a) in full-time training for a trade, profession or calling; and
- (b) in receipt of remuneration in respect of such training,

and in the case of any other child entitled to a special allowance in respect of the death of the same person, Schedule 4 shall have effect in relation to their allowances.

(8) A special gratuity shall not be granted to a child who attained the age of 17 years before the date of the relevant parent's death unless at that date the child satisfied one of the conditions set out in paragraph (9) (disregarding conditions (b)(ii) and (iii)).

(9) The conditions referred to in paragraphs (5), (6) and (8) are that the child—

- (a) is or was undergoing full-time education or in full-time training of at least a year's duration for a trade, profession or calling; or
- (b) is or was permanently disabled and either—
 - (i) was both so disabled and substantially dependent on the relevant parent at the time of their death;
 - (ii) became so disabled while in receipt of a special allowance; or
 - (iii) the police authority, having regard to all the circumstances of the case, in their discretion decide to pay (or grant) a special allowance to that child.

(10) Any reference in this regulation to the relevant parent is a reference to the parent in respect of whose death the special allowance or special gratuity is, or but for the provisions of this regulation would be, payable.

Adult dependent relative's special pension

20.—(1) This regulation applies in the case of a member of a police force who dies as the result of an injury received without their own default in the execution of their duty and, in such case, shall apply—

- (a) to a parent or (without prejudice to the following sub paragraph) to a brother or sister of the member who had attained the age of 19 years before the member's death;
- (b) subject to their having attained the age of 19 years, to any child of the member whether or nor they had attained that age before the member's death;
- (c) where the member was a married woman whose husband was permanently disabled at the time she died, to her widower; or
- (d) where the member was a woman in a civil partnership whose civil partner was permanently disabled at the time the member died, to the surviving civil partner,

subject, in each case, to the person in question being substantially dependent on the member immediately before the member's death.

(2) If the police authority, having regard to all the circumstances of the case, so determine, they may grant a special pension to any such dependent relative.

(3) A dependent relative's special pension shall be calculated in accordance with Schedule 5 and, subject to paragraph 4 of that Schedule, shall be payable for such period or periods as the police authority may, in their discretion, from time to time determine.

Death gratuity

21.—(1) Subject to paragraph (2), this regulation applies to a member of a police force who receives or received an injury without their own default in the execution of their duty and within 12 months of receiving that injury dies or has died as a result of it.

(2) In the case of a person who had ceased to serve as a member of a police force before their death, this regulation shall apply to him only if their death also occurred before any decision by a medical authority under regulation H1, H2 or H3 of the 1987 Regulations that the officer was totally and permanently disabled as a result of that injury; and where this regulation so applies it shall apply to the exclusion of regulation 12.

(3) Subject to the provisions of regulations 22 and 23, where a member to whom this regulation applies—

- (a) leaves an adult survivor (unless, by reason of regulation 15 or 16, he would not qualify for a special award under regulation 13);
- (b) does not leave any such adult survivor, but leaves a child (unless, by reason of regulation 19(1), (4), (5) or (6) that child would not qualify for a special allowance under regulation 17); or
- (c) does not leave any such adult survivor or child, but leaves a dependent relative to whom a special pension may be paid under regulation 20,

the police authority shall pay to their adult survivor or, as the case may be, to the child or dependent relative, a gratuity of an amount equal to whichever is the lesser of the following amounts, namely—

- (i) five times the annual value of their pensionable pay on their death or, if earlier, on their last day of service as a member of a police force; or
- (ii) the sum of four times their total remuneration during the 12 months ending with their death or, if earlier, with their last day of service as a member of a police force and the amount of their aggregate pension contributions in respect of the relevant period of service.

(4) Where a member of a police force to whom this regulation applies leaves two or more children or two or more dependent relatives, then the amount of the gratuity so payable shall be divided by the police authority among the children or dependent relatives (as the case may be) in their discretion.

Abatement of certain gratuities in respect of gratuities otherwise payable

22.—(1) The amount of any gratuity payable to a member of a police force under regulation 12 shall be reduced by deducting from it the amount of any gratuity paid, or treated as paid, to that member under regulation 11 or under regulation B2(4) or B3(4) of the 1987 Regulations.

(2) The amount of any gratuity payable to any person under regulation 21 in respect of the death of a member of a police force shall be reduced by deducting from it—

- (a) the amount of—
 - (i) any gratuities paid, or treated as paid, to the member or their estate under regulation 11 above or under regulation B2(4), B3(4) or E3 of the 1987 Regulations; and
 - (ii) any death grant paid under regulation E3A of the 1987 Regulations;
- (b) in the case of an adult survivor, where a gratuity under regulation 13(2) is payable to them or their estate—
 - (i) unless paragraph (ii) below applies, the amount of the gratuity;
 - (ii) where the said amount falls to be calculated in accordance with regulation 14(2), an amount equal to the amount of the gratuity which would be payable to them or their estate under regulation 13(2) if—
 - (A) regulation 14 had not applied;
 - (B) the deceased officer had died while serving as a member of a police force (whether or not the officer was in fact so serving when they died); and
 - (C) the deceased officer's average pensionable pay was greater than $2\frac{1}{4}$ times the annual amount of the ill health pension which would have been payable under regulation B3 of the 1987 Regulations to the deceased officer if the officer had retired on the grounds of permanent disability on the day on which they had died (whether or not it was in fact greater); and
- (c) in the case of any other person, the amount of any gratuity paid to that person or their estate in respect of the death of that member under regulation 18 above or regulation E2 of the 1987 Regulations.

(3) In any case where, by reason of regulation 21(4), a payment in respect of the death of a member of a police force falls to be divided among two or more persons, that payment shall, before it is so divided, be reduced by deducting from it the amount of any gratuities paid as mentioned in paragraph (2).

Abatement of certain gratuities in respect of damages or compensation

23.—(1) The police authority shall take into account against any gratuity payable under regulation 12 or 21 any damages or compensation which are recovered by any person in respect of the death or disability to which the gratuity relates and the gratuity may be withheld or reduced accordingly.

(2) For the purposes of this regulation—

- (a) a person shall be deemed to have recovered damages—

- (i) whether they are paid in pursuance of a judgment or order of the court or by way of settlement or compromise of their claim and whether or not proceedings are instituted to enforce the claim, or
 - (ii) if they are recovered for that person's benefit in respect of a claim under the Fatal Accidents Act 1976⁽⁸⁾;
- (b) "compensation" does not include an award of compensation made to a person in accordance with the Criminal Injuries Compensation Scheme if the amount of the award was reduced by the amount of any gratuity paid or payable to him under regulations 12 or 21.
- (3) No payment in respect of a gratuity under regulation 12 or 21 shall be made to a person unless the person has given to the police authority a written undertaking that if the person recovers any damages or compensation in respect of the death or disability to which the gratuity relates the person will inform the authority thereof and, unless the damages or compensation have been taken into account in pursuance of paragraph (1), will pay to the police authority such sum as they may demand not exceeding—
- (a) where the amount of the payment made by the police authority is less than the net amount of the damages or compensation, the amount of that payment; or
 - (b) where the amount of that payment is not less than the net amount of the damages or compensation, an amount equal to the net amount of the damages or compensation,
- and, in this paragraph, "the net amount" in relation to damages or compensation recovered by any person means the amount of the damages or compensation after deducting tax payable in the United Kingdom or elsewhere to which the damages or compensation are subject.
- (4) The police authority shall not demand any payment in pursuance of such an undertaking as is mentioned in paragraph (3)—
- (a) after the death of the person to whom the payment in respect of a gratuity under regulation 12 or 21 was made; or
 - (b) after the expiration of two years from the date on which the final determination of the amount of the damages or compensation first came to the knowledge of the police authority.

PART 3

SUPPLEMENTARY PROVISIONS

Gratuity in lieu of adult survivor's special pension

24.—(1) Where on the death of the deceased officer before the officer attained state pensionable age an adult survivor became entitled to an adult survivor's special pension under regulation 13, the police authority may, subject to regulation 26, commute for a gratuity that special pension or so much of it as may be commuted without contravening regulation 26:

Provided that a police authority shall not exercise their discretion under this paragraph unless—

- (a) the adult survivor consents; and
- (b) they are satisfied that there are sufficient reasons for so doing.

(2) Where the annual amount of any adult survivor's special pension does not exceed £260, or any greater amount prescribed by regulations for the time being in force under regulation 55(5) of the

⁽⁸⁾ 1976 c. 30.

Pension Schemes Act 1993(9) (other than a pension which does not exceed that amount by reason of the commutation of part thereof under paragraph (1)), the police authority may, at their discretion, commute it for a gratuity.

(3) The provisions of regulation 16, relating to the termination of an adult survivor's special award on remarriage or the formation of a civil partnership or cohabitation, shall apply in relation to a gratuity under this regulation as they apply in relation to a gratuity under regulation 13 or 14.

(4) A gratuity under this regulation shall be calculated in accordance with paragraph (6).

(5) Where an adult survivor is entitled to more than one adult survivor's pension, under these Regulations or the 1987 Regulations, in respect of the death of the same person but, in pursuance of regulation 27, is not entitled to receive, in respect of any particular period, payment on account of more than one of those pensions, those adult survivor's pensions shall be treated for the purposes of this regulation as a single adult survivor's pension and, where one of those pensions is an adult survivor's special pension under regulation 13 or 14, that single pension shall be treated for the purposes of paragraph (1) as if it were an adult survivor's special pension.

(6) A gratuity under this regulation shall be of an amount equal to 11 times the annual value of the special pension or, as the case may be, of that part thereof which is commuted or of such greater amount as may be agreed between the police authority and the adult survivor not exceeding the capitalised value of the pension or, as the case may be, that part thereof which is commuted, calculated in accordance with tables prepared from time to time for the purpose by the Scheme actuary.

Gratuity in lieu of child's special allowance

25.—(1) Where a child is entitled to a child's special allowance, the police authority may, subject to regulation 26, commute it for a gratuity.

(2) Provided that a police authority shall not exercise their discretion under this paragraph unless—

- (a) the child's surviving parent or guardian consents or, where the child has no such parent or guardian, the child himself consents; and
- (b) they are satisfied that there are sufficient reasons for so doing.

(3) Where the police authority are precluded by reason of the provisions of regulation 26 from exercising their discretion under paragraph (1) but otherwise would exercise it, they may, subject to those provisions, exercise that discretion in relation to part only of the allowance.

(4) A gratuity under this regulation shall be of such amount as may be agreed between the police authority and the child's surviving parent or guardian, or between the police authority and the child where the child has no such parent or guardian, not exceeding the capitalised value of the special allowance or, as the case may be, that part thereof which is commuted, calculated in accordance with tables prepared from time to time for the purpose by the Scheme actuary.

Limitation on discretion to grant a gratuity in lieu of an adult survivor's special pension or a child's special allowance

26.—(1) This regulation applies in the case of a regular police officer who has died while in receipt of an ordinary, short service, ill health or deferred pension awarded under the 1987 Regulations ("the principal pension").

(2) The police authority shall not under regulation 24 or 25 substitute for the whole or any part of an adult survivor's special pension or child's special allowance payable in respect of such a police officer a gratuity the actuarial equivalent of which (within the meaning of paragraph (3)) when added to that of—

- (a) any other gratuity so substituted under regulation 24 or 25; and
- (b) any lump sum paid or payable under regulation B7 of the 1987 Regulations, where a portion of the principal pension has been commuted,

exceeds a quarter of the capitalised value of the principal pension, any reduction therein under the said regulation B7 being ignored.

(3) For the purposes of this regulation the actuarial equivalent of a gratuity or lump sum and the capitalised value of the principal pension shall, in each case, be at the time of deceased officer's retirement, as calculated by the Scheme actuary.

Prevention of duplication

27.—(1) Subject to paragraph (2), where, but for this regulation, a person would be entitled to receive, in respect of any particular period, payments on account of more than one award in respect of the death of the same person—

- (a) each of the awards being an adult survivor's special or augmented award under regulation 13 or 14 or an adult survivor's pension under Part C of the 1987 Regulations; or
- (b) each of the awards being a child's special allowance under regulation 17 or a child's allowance under Part D of the 1987 Regulations or an adult dependent relative's special pension under regulation 20,

the person shall be entitled to receive, in respect of that period, payment on account of one only of those awards; and the award payable shall be that from time to time selected by the person concerned or, in default of such selection where one award is for the time being greater than any other such award, the award which is for the time being the greater.

(2) Nothing in paragraph (1) shall prevent a person from being entitled to receive more than one such award as is mentioned in sub paragraph (a) or (b) of that paragraph if—

- (a) the awards in question are calculated, directly or indirectly, by reference to different periods of pensionable service; and
- (b) no award in question falls to be increased in accordance with regulation E8, or to be determined in accordance with regulation E10, of the 1987 Regulations.

Increase of adult survivor's special pension or child's special allowance during first 13 weeks

28.—(1) This regulation applies to an adult survivor's special pension or augmented pension under regulation 13 or 14 and to a child's special allowance under regulation 17 where the person in respect of whose death the award is payable was, immediately before their death—

- (a) serving as a member of a police force; or
- (b) in receipt of a pension under regulation 11 or Part B of the 1987 Regulations,

and, for the purposes of sub paragraph (b), the provisions of regulation A8 of the 1987 Regulations shall be disregarded.

(2) An adult survivor's special or augmented pension to which this regulation applies shall, so far as necessary, be increased in respect of the first 13 weeks for which it is payable so as to secure that, in respect of each such week, the aggregate amount of the pension and of any children's special allowances under regulation 17 or children's allowances under Part D of the 1987 Regulations payable in respect of the same person's death is not less than—

- (a) in the case mentioned in paragraph (1)(a), the police officer's relevant emoluments for the week immediately before the officer died; or

- (b) in the case mentioned in paragraph (1)(b), the weekly amount of their pension together with any increase in that pension, immediately before the officer died, under the Pensions (Increase) Acts.
- (3) For the purposes of paragraph (2)(a) a police officer's relevant emoluments for the week are—
 - (a) their pensionable pay for the week; and
 - (b) so much as is attributable to the week of any allowances to which the officer was entitled under regulation 38 of and Schedule 3 to the Police (Scotland) Regulations 2004⁽¹⁰⁾.
- (4) For the purposes of paragraph 2(b)—
 - (i) there shall be disregarded any reduction in the police officer's pension in consequence of paragraph 7 of Schedule 3, and
 - (ii) where the police officer died while in receipt of both an ordinary, short service or ill health pension awarded under Part B of the 1987 Regulations and an injury pension under regulation 11, the reference therein to the weekly amount of their pension shall be construed as a reference to the aggregate weekly amount of those pensions.

(5) Where a child's special allowance to which this regulation applies is payable in respect of the death of a person who did not leave an adult survivor entitled to a special or augmented pension which was payable for a continuous period of 13 weeks the special allowance shall, so far as necessary, be increased in respect of the first 13 weeks for which it is payable so as to secure that, in respect of each such week, it is not less than the amount specified in paragraph (2)(a) or (b) except that, where two or more such special allowances are payable in respect of the death of the same person, each allowance shall be so increased that it is of that amount divided by the number of such allowances:

Provided that where an adult survivor's special or augmented pension is payable in respect of any such week, a child's special allowance in respect of the death of the same person shall not be so increased in respect of that week.

Increase of awards by reference to the Pensions (Increase) Acts

29.—(1) Where it is provided that, for the purpose of calculating an award by way of periodical payments or a gratuity ("the relevant award"), an amount shall be increased in accordance with this regulation, it shall be increased by the amount, if any, by which a corresponding pension, within the meaning of the Pensions (Increase) Act 1971 ("the 1971 Act")⁽¹¹⁾, of the amount first mentioned would from time to time be increased under the Pensions (Increase) Acts if—

- (a) it were payable to the person entitled to the relevant award;
- (b) it were one of the pensions specified in paragraph 43 of Part II of Schedule 2 to the 1971 Act;
- (c) it were not a pension to which section 1(2)(a) of the Pensions (Increase) Act 1974⁽¹²⁾ applies; and
- (d) it began, within the meaning of the 1971 Act, and became payable when the relevant award so began and became payable.

(2) Where the relevant award is a child's special allowance, the Pensions (Increase) Acts as applied by paragraph (1) shall have effect as if section 3 were omitted from the 1971 Act and, accordingly, the amount first mentioned in paragraph (1) shall be increased so long as the special allowance is payable.

⁽¹⁰⁾ S.S.I. 2004/257.

⁽¹¹⁾ 1971 c. 56; as amended by the Police Act 1996 c. 16.

⁽¹²⁾ 1974 c. 9.

PART 4

APPEALS AND MEDICAL QUESTIONS

Reference of medical questions

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.

(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.

(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.

(4) A police authority, if they are considering exercising their powers under regulation 38, 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 their own default.

(5) The police authority may decide to refer a question in paragraph (2) or, as the case may be, (3) or (4) to a board of duly qualified medical practitioners instead of to a single duly qualified medical practitioner, and in such a case references in this regulation, regulations 31 and 32 and paragraphs 5(1)(a) and (2) of Schedule 6 to a medical practitioner shall be construed as if they were references to such a board.

(6) The decision of the selected medical practitioner on the question or questions referred to him under this regulation shall be expressed in the form of a report and shall, subject to regulations 31 and 32, be final.

(7) A copy of any such report shall be supplied to the person who is the subject of that report.

Appeal to board of medical referees

31.—(1) Where a person is dissatisfied with the decision of the selected medical practitioner as set out in a report under regulation 30(6), the person may, within 28 days after the person has received a copy of that report or such longer period as the police authority may allow, and subject

to and in accordance with the provisions of Schedule 6, give notice to the police authority that the person appeals against that decision.

(2) In any case where within a further 28 days of that notice being received (or such longer period as the police authority may allow) that person has supplied to the police authority a statement of the grounds of their appeal, the police authority shall notify the Scottish Ministers of the appeal and provide as necessary documentation in relation to that appeal and the Scottish Ministers shall appoint a board of medical referees to decide the appeal.

(3) The decision of the board of medical referees shall, if it disagrees with any part of the report of the selected medical practitioner, be expressed in the form of a report of its decision on any of the questions referred to the selected medical practitioner on which it disagrees with the latter's decision, and the decision of the board of medical referees shall, subject to the provisions of regulation 32, be final.

Further reference to medical authority

32.—(1) A court hearing an appeal under regulation 34 or a tribunal hearing an appeal under regulation 35 may, if they consider that the evidence before the medical authority who has given the final decision was inaccurate or inadequate, refer the decision of that authority to him, or as the case may be it, for reconsideration in the light of such facts as the court or tribunal may direct, and the medical authority shall accordingly reconsider their, or as the case may be its, decision and, if necessary, issue a fresh report which, subject to any further reconsideration under this paragraph, shall be final.

(2) The police authority and the claimant may, by agreement, refer any final decision of a medical authority who has given such a decision to that medical authority, for reconsideration, and the medical authority, shall accordingly reconsider the decision and, if necessary, issue a fresh report, which, subject to any further reconsideration under this paragraph or paragraph (1) or an appeal, where the claimant requests that an appeal of which the claimant has given notice (before referral of the decision under this paragraph) be notified to the Scottish Ministers, under regulation 31, shall be final.

(3) If a court or tribunal decide, or a claimant and the police authority agree, to refer a decision to the medical authority for reconsideration under this regulation and that medical authority is unable or unwilling to act, the decision may be referred to a duly qualified medical practitioner or board of medical practitioners selected by the court or tribunal or, as the case may be, agreed upon by the claimant and the police authority, and the duly qualified medical practitioner's or board of medical practitioners' decision shall have effect as if it were that of the medical authority who gave the decision which is to be reconsidered.

(4) In this regulation a medical authority who has given a final decision means the selected medical practitioner, if the time for appeal from their decision has expired without an appeal to a board of medical referees being made, or if, following a notice of appeal to the police authority, the police authority have not yet notified the Scottish Ministers of the appeal, and the board of medical referees, if there has been such an appeal.

Refusal to be medically examined

33. If a question is referred to a medical authority under regulation 30, 31 or 32 and the person concerned wilfully or negligently fails to submit to such medical examination or to attend such interviews as the medical authority may consider necessary in order to enable such medical authority to make its decision, then—

- (a) if the question arises otherwise than on an appeal to a board of medical referees, the police authority may make their determination on such evidence and medical advice as they in their discretion think necessary; or

- (b) if the question arises on an appeal to a board of medical referees, the appeal shall be deemed to be withdrawn.

Appeal by a member of a home police force

34. Where a member of a home police force, or a person claiming an award in respect of such 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 a decision of the police authority as to whether a refusal to accept medical treatment is reasonable for the purposes of regulation 7(3), or by the forfeiture under regulation 40 by the police authority of any award granted to or in respect of such a member, the member may, subject to regulation 36, appeal to the Sheriff Court and that court, after enquiring into the case, may make such order in the matter as appears to it to be just.

Appeal by inspector of constabulary or police officer engaged on relevant service and any other overseas police officer

35.—(1) This regulation applies in relation to an inspector of constabulary or a police officer engaged on relevant service and any other overseas police officer, and any such person is in this regulation referred to as an officer to whom this regulation applies.

(2) Where an officer to whom this regulation applies, or a person claiming an award in respect of such an officer, is aggrieved—

- (a) by the refusal of the Scottish Ministers as police authority to admit a claim to receive as of right an award or a larger award than that granted;
- (b) by a decision of the Scottish Ministers as police authority as to whether a refusal to accept medical treatment is reasonable for the purposes of regulation 7(3); or
- (c) by the forfeiture under regulation 40, by the Scottish Ministers as police authority, of any award granted to or in respect of such an officer,

the officer may, subject to regulation 36, give notice of appeal to the Scottish Ministers; and any such notice shall be in writing and shall specify the grounds of the appeal.

(3) The Scottish Ministers, on receiving such notice of appeal, shall appoint an appeal tribunal (in paragraphs (4) to (9) referred to as the tribunal), consisting of three persons, including a person who has at least 7 years standing as an advocate or solicitor admitted in Scotland, or a 7 year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990⁽¹³⁾ or at least 7 years standing as a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland and a retired member of a police force who, before that member retired, held a rank not lower than that of superintendent.

(4) 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 Scottish Ministers as police authority (in paragraphs (5) and (8) referred to as the parties).

(5) Either party may be represented before the tribunal by counsel, by a solicitor or by such other person as appears to them appropriate, adduce evidence and cross examine witnesses.

(6) In the case of an appeal under this regulation the tribunal shall have regard to the practice of the Sheriff Court in the case of an appeal under regulation 34 or regulation H5 of the 1987 Regulations and the rules of evidence applicable in the case of such an appeal shall apply in the case of an appeal under this regulation.

(7) Subject to the preceding provisions of this regulation, the tribunal shall determine its own procedure.

⁽¹³⁾ 1990 c. 41; as amended by the Access to Justice Act 1999 (c. 22), sections 43 and 106 and Schedule 6 paragraphs 4 and 9.

(8) The tribunal, after enquiring into the case and arriving at a decision thereon, may make such order in the matter as appears to it just, which order shall state the reasons for the decision; and each of the parties shall be entitled to a copy of any such order.

(9) An appeal shall lie on a point of law from any decision of a tribunal under this regulation to the Court of Session.

Limitations on appeals

36.—(1) An appeal shall not lie under regulation 34 or 35 against anything done by a 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.

(2) Subject to regulation 32(1), in any proceedings under regulation 34 or 35 the court or tribunal shall be bound by any final decision of a medical authority within the meaning of regulation 32.

PART 5

REVISION AND WITHDRAWAL OR FORFEITURE OF AWARDS

Reassessment of injury pension

37.—(1) Subject to the provisions of this Part, where an injury pension is payable under these Regulations, the police authority shall, at such intervals as may be suitable, consider whether the degree of the pensioner's disablement has altered; and if after such consideration the police authority find that the degree of the pensioner's disablement has substantially altered, the pension shall be revised accordingly.

(2) Where the person concerned is not also in receipt of an ordinary, ill health or short-service pension under the 1987 Regulations, if on any such reconsideration it is found that their disability has ceased, their injury pension shall be terminated.

(3) Where payment of an ill health pension is terminated in pursuance of regulation K1(4) of the 1987 Regulations, there shall also be terminated any injury pension under regulation 11 above payable to the person concerned.

(4) Where early payment of a deferred pension ceases in pursuance of regulation K1(7) of the 1987 Regulations, then any injury pension under regulation 11 above payable to the person concerned shall also be terminated.

Reduction of pension in case of default

38.—(1) Where a member of a police force or a person who has been a member of a police force becomes permanently disabled and has brought about or substantially contributed to the disablement by their own default, the police authority may reduce the amount of any injury award payable to that person by them by an amount not exceeding a half of that to which the person would otherwise be entitled:

Provided that—

- (a) this regulation shall not apply where the person concerned has been a regular police officer and is in receipt of an ill health pension under regulation B3 of the 1987 Regulations and would, if the officer had continued to serve instead of retiring with that pension, have been entitled to reckon for the purposes of those Regulations 25 years' pensionable service (and, for the purposes of this proviso, in the case of a regular police officer who has spent one or more periods in part time service, in determining the number of years of pensionable service the officer would have been entitled to reckon a period of service by virtue of

which their pensionable service is reckonable is reckonable as if it were a period of full time service); and

- (b) where the injury pension of a regular police officer by whom pension contributions were payable under regulation G2 of the 1987 Regulations has been reduced under this regulation, then if when the officer attains the age of 60 years the reduced pension is less than the amount of the deferred pension which would have been payable had the officer been granted such a pension under regulation B5 of the 1987 Regulations on the date of their ceasing to serve it shall be increased to that amount.

Withdrawal of pension during service as a regular police officer

39.—(1) Subject to paragraph (2), a police authority by whom an injury pension is payable under regulation 11 or under regulation 20 may, in their discretion, withdraw the whole or any part of the pension for any period during which the pensioner is serving as a regular police officer in any police force; and, where they have done so, they shall be discharged from all actual or contingent liability in respect of the pension or the part thereof withdrawn for the period in question.

(2) This regulation does not apply to a pension under regulation B9(7)(b) of the 1987 Regulations (allocation).

Forfeiture

40.—(1) This regulation applies to a pension payable to or in respect of a member of a police force under regulations 11, 13 or 20.

(2) A police authority responsible for the payment of a pension to which this regulation applies 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 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.

(3) The offences referred to in paragraph (2) are—

- (a) an offence of treason; and
- (b) one or more offences under the Official Secrets Acts 1911 to 1989(14) for which the member 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.

(4) A police authority responsible for payment to a member of a police force of a pension to which this regulation applies may determine that the pension be forfeited, in whole or in part and permanently or temporarily as they may specify, if the member has been convicted of an offence committed in connection with their service as a member of a police force which is certified by the Scottish Ministers 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.

(5) 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 of that pension.

PART 6

PAYMENTS BY AND TO POLICE AUTHORITIES

Authorities responsible for payment of awards

41.—(1) An award which is payable to or in respect of a person by reason of their having served as a regular police officer shall be payable by the police authority of the force in which the officer last served as such.

(2) An award which is payable to or in respect of a person by reason of their having been injured while serving as a member of a police force other than a regular police officer shall be payable by the police authority of the force in which the officer was serving when the officer received the injury.

Funds out of which and into which payments are to be made

42. All payments for the purpose of these Regulations made by or to a police authority will be the responsibility of the police authority except there shall be paid out of moneys provided by Parliament or, as the case may be, into the Scottish Consolidated Fund all payments for the purposes of these Regulations made by or to the Scottish Ministers by reason that they are treated as the police authority in relation to an inspector of constabulary or a police officer engaged on relevant service.

Payment and duration of awards

43.—(1) Subject to the provisions of these Regulations, in particular of regulation 11(2) and Part 5, the pension of a member of a police force under these Regulations shall be payable in respect of each year as from the date of their retirement.

(2) Subject to the provisions of these Regulations, in particular of regulation 19, an adult survivor's special pension or child's special allowance shall be payable in respect of each week as from the death of the spouse or, as the case may be, the deceased civil partner or parent or, in the case of a special allowance payable to a posthumous child, as from the birth of the child.

(3) Subject to the provisions of these Regulations, in particular of—

- (a) regulation 16;
- (b) regulation 19;
- (c) regulation 20(3); and
- (d) Part 5,

a pension or allowance shall be payable for life and shall be discharged by payments in advance at such reasonable intervals as the police authority may, in their discretion, determine except that payment on account of a pension or allowance may be delayed, in whole or in part, pending the determination of any question as to the liability of the police authority in respect thereof, including any question as to the continuance of that liability.

(4) Where a person dies after receiving a sum paid in advance on account of a pension or allowance, neither that sum nor any part of it shall be recoverable although referable to a period after their death.

(5) Where an adult survivor remarries or enters into a civil partnership after receiving a sum paid in advance on account of a pension, neither that sum nor any part of it shall be recoverable although referable to a period after their remarriage or civil partnership.

(6) Subject to the provisions of these Regulations, a gratuity under these Regulations shall become payable as soon as the entitlement to it arises and shall be paid forthwith in one sum except that—

- (a) payment on account thereof may be delayed, in whole or in part, pending the determination of any question as to the liability of the police authority in respect thereof; and
- (b) where the police authority are satisfied that it would be for the advantage of the beneficiary to pay a gratuity in instalments, they may pay it in instalments of such reasonable amounts and over such reasonable period as they think fit.

Payment of awards otherwise than to beneficiary and application of payments

44.—(1) This regulation applies to the payment of any award under these Regulations to or in respect of a member of a police force, and any reference in it to the beneficiary is a reference to the person to whom, this regulation apart, the award is payable.

(2) Where the beneficiary is a child under the age of 18, the police authority may, if they think fit, in lieu of paying any sum on account of an award to that child, pay it to such other person as they may determine. A person who receives any sum in pursuance of this paragraph shall, subject to and in accordance with any directions of the police authority, apply the said sum for the benefit of that child under the age of 18.

(3) On the death of the beneficiary to whom a sum is due on account of an award which does not exceed £30,000 or such higher amount as may from time to time be prescribed for the purposes of section 1(3) of the Confirmation to Small Estates (Scotland) Act 1979(15), the police authority may, without probate, confirmation or any other formality or proof of title, pay the said sum to the persons appearing to the authority to be beneficially entitled to the personal estate of the deceased or, as the authority think fit, pay the said sum to one or more of those persons or distribute it among all or any of those persons in such proportions as the authority may determine.

(4) Where it appears to the police authority that the beneficiary is by reason of mental disorder or otherwise incapable of managing their affairs, in lieu of paying any sum on account of an award to that beneficiary—

- (a) they may, in their discretion, pay it in whole or in part to a person having the care of the beneficiary or such other person as they may determine; and
- (b) in so far as they do not so discharge their liability in respect thereof, the authority shall apply it in such manner as they think fit for the benefit of the beneficiary or their dependants.

A person who receives any sum in pursuance of sub paragraph (a) shall, subject to and in accordance with any directions of the police authority, apply the sum for the benefit of the beneficiary or their dependants.

(5) Where, as a result of any fraud, theft or negligence on the part of a regular police officer in connection with their service as such, a loss has occurred to the fund out of which an award is payable to the officer under these Regulations, in lieu of paying the whole or any part of any sum on account of the award to that beneficiary, the police authority may, if they think fit but subject to paragraph (6), apply it in making good the loss by retaining it in that fund:

Provided that the aggregate amount retained in pursuance of this paragraph shall not exceed whichever is the lesser of the following amounts, namely—

- (a) the amount which is the actuarial value, at the time of the first retention, of the sums then or prospectively due to the regular police officer on account of the award; and
- (b) the amount of the said loss,

and, in the event of any dispute as to the amount of that loss, the power conferred by this paragraph shall not be exercisable save to the extent of any sum adjudged due to the police authority by an order of a competent court.

(6) Where the police authority exercise the power conferred by paragraph (5) they shall furnish the regular police officer concerned with a certificate showing the amount retained and the effect on the award.

(7) A police authority shall obtain a good discharge by paying or applying any sum in the manner provided by this regulation.

St Andrew's House Edinburgh
19th December 2006

GEORGE LYON
Authorised to sign by the Scottish Ministers