



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Police Service of Northern Ireland and Police
Service of Northern Ireland Reserve (Injury
Benefit) (Amendment) Regulations 2020

14 January 2021

NORTHERN IRELAND ASSEMBLY

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Police Service of Northern Ireland and Police Service of Northern Ireland Reserve
(Injury Benefit) (Amendment) Regulations 2020

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Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)
Ms Linda Dillon (Deputy Chairperson)
Mr Doug Beattie
Ms Sinéad Bradley
Ms Jemma Dolan
Mr Paul Frew
Ms Emma Rogan
Miss Rachel Woods

Witnesses:

Ms Maura Campbell	Department of Justice
Mr William Dukelow	Department of Justice
Mrs Antonia Hoskins	Department of Justice

The Chairperson (Mr Givan): We have officials with us via StarLeaf. Again, Maura, you will lead on this from the Department's point of view, and William Dukelow is joining you.

Mr William Dukelow (Department of Justice): Chair, I am taking the lead on the opening remarks. I will provide some context and background on the legislation and seek to address the issues that members raised at the Committee meeting on 17 December.

The amendments to the Police Service of Northern Ireland and the Police Service of Northern Ireland Reserve (Injury Benefit) Regulations 2006 will help to ensure that the PSNI injury-on-duty (IOD) scheme works more effectively and equitably for officers regardless of which police pension scheme they belong to. By way of background, every PSNI officer is entitled to an injury-on-duty award if they are permanently disabled because of an injury received on duty. The injury benefit is payable on the basis that it is a minimum income guarantee and is designed to supplement an officer's income. It should therefore be reduced to take account of a police pension or of certain benefits awarded in respect of the same injury. Due to an oversight following the introduction of the 2015 police pension scheme, members of the 2015 scheme who are in receipt of an injury-on-duty award do not currently have the award offset against their police pension and so they receive, in effect, an enhanced award compared with officers who are members of the 1988 and 2006 pension schemes. The Northern Ireland Audit Office report on injury-on-duty schemes for PSNI officers and the officers in the Northern Ireland Prison Service, which was published last year, identified that anomaly and recommended that the 2006 regulations be amended as soon as possible to allow for any injury-on-duty award to be offset against their 2015 pension. The regulations contain provisions for doing that and effectively

mean that the 2015 pension scheme will be aligned to match the interaction that the other two schemes already have with the police injury-on-duty scheme.

The regulations will also allow for some technical updates relating to employment and support allowance (ESA). An earlier amendment determined that, from 1 April 2007, the amount of injury-on-duty award received by a person who is also in receipt of ESA must be reduced by the amount of that ESA award. However, that is now being amended to reflect specific circumstances in which there has been a previous reduction of an individual's injury award based on entitlement to incapacity benefits and, post-retirement, the individual has a subsequent new entitlement to ESA. In those circumstances, no reduction in respect of ESA will occur. Finally, the regulations will also make consequential amendments to the Police Pensions Regulations (Northern Ireland) 2015 to ensure that deferred members of the 2015 scheme, who also accrued benefits under an earlier pension scheme, cannot suffer any detriment when their entitlement to benefits is calculated.

If I may, Chair, I will now turn to the issues raised by members about the legislation on 17 December. Members asked whether the proposed rule would change actual payments. The rule would allow for a reduction in the amount of injury benefit paid if a police pension is also payable under the 2015 pensions scheme. That creates a level playing field with those officers in the 1988 and 2006 pension schemes and implements the Northern Ireland Audit Office recommendation.

The amendment affects a relatively small number of officers. The pension administrator has advised that 33 members are currently in receipt of an injury-on-duty award that includes a 2015 pension element. Although each injury-on-duty award is unique to the officer concerned, depending on their circumstances, the PSNI has provided a typical example in which the current IOD award of about £14,600 per annum will be corrected to £12,300 per annum to account for the offset relating to the 2015 scheme. That is a reduction of approximately £190 per month.

Subject to the Committee's approval of the regulations, the offset would only be applied once the new rule comes into operation and would be implemented on a point-forward basis. That is to say, it would not be retrospectively applied to payments that have already been made, and the pension administrator would inform those officers who are affected in advance.

Members also queried whether the legislation would provide a vehicle to make changes in the future. The rule would not do that. The regulations purely amend the Police Service of Northern Ireland and Police Service of Northern Ireland Reserve (Injury Benefit) Regulations 2006 to ensure that the offset rules for an injury-on-duty award are applied in the same way to all three pension schemes in line with the Audit Office recommendation. The Department is working with the Department of Finance, the Policing Board and the PSNI and is reviewing the whole injury-on-duty scheme as recommended by the Audit Office. When that review is complete, the Department will consult on any changes that may be proposed, including any possible change to the legislation.

Finally, members also enquired whether the rule is consistent with similar schemes across the UK. Similar legislation has been introduced in England and Wales under the Police and Firefighters' Pensions (Amendment) Regulations 2018 and in Scotland under the Police Pensions (Miscellaneous Amendments) (Scotland) Regulations 2019. The amendment to our legislation will bring the injury-on-duty scheme in Northern Ireland into line with the equivalent schemes in Great Britain.

My colleagues and I are happy to answer any questions that the Committee may have.

The Chairperson (Mr Givan): OK. Thank you.

Ms Dillon: I have one quick question for clarity. Thank you for the presentation. It is more or less straightforward.

On the ESA issue, is that where they are no longer entitled to incapacity benefit but would become entitled to ESA for the same injury? Why is that not taken into account?

Mrs Antonia Hoskins (Department of Justice): When the injury-on-duty award is calculated, an incapacity benefit award will have been taken into account. It is really just to provide clarity. If officers subsequently claim ESA for something different, that will not be taken off the injury-on-duty award, because it is a different thing that they are applying for. It could be a different injury or disability. It could be something completely unrelated to the injury-on-duty benefit.

Ms Dillon: That is what I am trying to clarify. Is it the case that it is not taken into account only where it is an illness or a health problem that is unrelated to the original injury?

Mrs Hoskins: What the regulations are saying is that, where somebody has already had the incapacity benefit side already accounted for in the injury-on-duty award, we will not look at it again if that person converts from incapacity benefit to ESA, because we have already looked at that part of that benefit. At the time at which an assessment was being done of how much the person would get, it would have been incapacity benefit. It is just the case that, when people have been moved from incapacity benefit to ESA, the claim will not be revisited.

Ms Dillon: I think that you have just cleared it up, but, to be sure, what will happen is that the deduction in incapacity benefit will continue.

Mrs Hoskins: Yes. It is part of the award. The amount that they *[Inaudible.]*

Ms Dillon: That is fair enough. That is absolutely sound.

Mr Frew: Will you clear up some confusion for me on that point? ESA is not the same as personal independence payment (PIP), so how does that effect PIP, especially if the personnel involved have obtained PIP for a reason other than the injury on duty?

Mrs Hoskins: When the injury-on-duty award is being considered by the Policing Board, the medical examiner will look at the reasons for which an officer is being awarded it. An officer would be required to apply for ESA for that injury. If he is applying for something else, I suggest that the board would take that into account. If it is not related to the injury on duty, it is not an issue for the board. It will not make an award for something that has nothing to do with the officer's policing.

Mr Frew: If an officer is injured on duty and has to apply for PIP, the way in which PIP works is that it is for both daily living activity and mobility. It is about points that you obtain through a spectrum of questions and scenarios. It is therefore not related to your physical injury but to how your injuries or illnesses affect you. There are many people out there with multiple health problems. How can a body, whether it be the Policing Board, or anyone else for that matter, attribute points from PIP to the actual injury sustained on duty?

Ms Maura Campbell (Department of Justice): I cannot tell you, simply because that is a medical decision. It is a decision that the board would take into account when it makes its decision.

Mr Frew: Yes, but PIP changes periodically. You could be awarded PIP, and, in three years' time, it will be reviewed. The payment could be changed dramatically, which then means that the person has to go to appeal, where it could be changed dramatically again, because the person would be before an independent board. A medical practitioner sits on that board, but so do a layperson and a legal expert. What someone should obtain through PIP is therefore not purely a medical decision.

Mr Dukelow: Injury-on-duty awards are made through assessment by a selected medical practitioner, who provides a report to the board. That practitioner takes into account a whole range of evidence and information about that officer's medical condition. If the officer's medical condition were to change or other material information were to change for the PIP calculation, that officer would be entitled to request a reassessment of his or her case. That would be outside of the appeals process. He or she would be entitled to a reassessment based on any change to circumstances.

Mr Frew: There is therefore an ongoing process whereby someone can go back and ask for mitigation of or changes to aspects of their injury-on-duty claim.

Mr Dukelow: That is correct, if there is a material change.

Mr Frew: OK. That sums it up.

There may be some confusion on this. I am one of the members, along with, I think, Doug, who wanted more information on this. In the Department's letter of 11 January, you state:

"A Steering Group, led by the Department, to take forward all of the recommendations in the NIAO report has been established and the Justice Committee was provided with an Action Plan in September. A sub-group has been established to review specifically the PSNI Injury on Duty Scheme and it is currently considering a range of issues including the provisions for review and reassessment of cases and the backdating of injury on duty awards. In doing so, the sub-group are working in parallel with another sub-group, led by the Department of Finance, which is reviewing the NICS Injury Benefit Scheme."

You say that you guys are going to report to this Committee in February on those proposed changes. Can you outline to me why that steering group and those changes, whatever they are going to be and whatever you propose, are necessary when we have the procedure that we are talking about today? Why is there a need for a parallel process?

Mr Dukelow: The Audit Office report indicated a wide range of recommendations, which the Minister has accepted. One of those was for a fundamental review of the injury-on-duty scheme, which is what the steering group and the subgroups are dedicated to doing. In line with and in common with the Department of Finance approach, we have decided on a two-phase approach. That is also in line with the recommendation in the Audit Office report that indicated that the offset issues, which, effectively, we are dealing with in this legislation, are particularly urgent and need to be legislated for in the short term. That is why we are bringing forward the legislation now in the shorter term as phase 1. Phase 2 will be a fuller examination and review of the entire scheme, and that will take some more time. We will provide a progress report to the Committee next month, but it is likely to be the end of this year or the beginning of 2022 before that will be brought before the Committee, if we propose any change to the legislation. There is therefore quite a difference in timescales between phase 1 and phase 2.

Mr Frew: Recommendation 4 from that Audit Office report states:

"The Department of Justice, Department of Finance and the Northern Ireland Policing Board should take action in the short term to mitigate the issues arising within the current schemes. This should include: timely amendments to legislation to resolve offset issues"

What do "offset issues" entail?

Mr Dukelow: Offsetting is the main amendment that we are taking forward as part of the legislation. That is to ensure that members of the 2015 pension scheme will have their pension offset against any injury-on-duty award, in the same way in which all members of all other schemes currently have their pension offset against any awards that they may receive. That is what "offset" means.

Mr Frew: I understand why you have moved fast on recommendation 4, but that recommendation also talks about:

"ensuring any further legislation to facilitate payments to individuals who also receive IoD awards includes offset provisions (for example, the impending Victims Payment Scheme)"

Does what you are proposing to the Committee today also offset future provision?

Mr Dukelow: No, it does not in this legislation. We have taken the view that we will need to consider, as part of the full and fundamental review of the injury-on-duty scheme, what other elements might need to be offset against an award, including issues that require a fair amount more consideration. Those include, for example, private compensation and its potential, if awarded, to be offset against an injury-on-duty award. That is a rather more thorny issue, and it is one with which colleagues in the Department of Finance are also grappling.

I should say, as I pointed out at the start, that the Department of Finance, in a similar way to us, is also engaged in the two-phase process. It is taking into consideration private compensation in phase 2, as we are.

Mr Frew: Private compensation and the victims payment scheme are issues that lie ahead of us. Is that what the steering group that you talk about, which is working in parallel, is grappling with?

Mr Dukelow: Amongst many other issues, yes.

Ms Campbell: The matters that we are talking about today are part of the overall action plan that is being overseen by the steering group. There is a reason that we have a steering group and two subgroups. I know that it sounds very bureaucratic, but the steering group brings together the lead officials, who look both at the police scheme and the Northern Ireland Civil Service (NICS) scheme, which includes provision for prison officers, and, because they are two separate schemes, the subgroup sits beneath that. We thought it useful to have a steering group to bring both together, because one of the findings of the Audit Office report was that there are slight differences here and there between the two schemes. The Audit Office recommended that we seek to align the two so that there is consistency. Why we have been working very closely with the Department of Finance is so that what we do is in line with its direction of travel.

Mr Frew: That nearly gets me on to my next point. In your letter of 3 December, you state:

"The Regulations also allow some minor corrections to the provisions relating to the 1988 and 2006 Police Pension Schemes and provide for the reduction of the amount of a police injury on duty award".

Will you explain to me how you are impacting on the 1988 and 2006 schemes?

Mrs Hoskins: All that it really involves are a couple of tidy-ups to make it a little clearer for the 1988 and 2006 schemes. I am just having a look. It relates to some of the stuff to do with transition members. These are little tidy-ups that administrators have picked up on, where there has been found to be incompatibility between what we want the scheme to do and what the scheme allows the board to do. It is that kind of thing. I am just checking how final pay is calculated for disablement.

Mr Frew: You use the terminology "tidy-ups", and the wording in the letter is "minor corrections". Will any of that impinge on someone's injury-on-duty claim or pension?

Mrs Hoskins: No. It is just making clear to pension administrators how to calculate for the likes of the transitional members. It is talking about somebody who has membership under the 1988 scheme and has transferred across to the 2015 scheme. It is talking about how you would calculate for that particular injury-on-duty scheme.

Mr Frew: How many transitional personnel do we have? What would be the advantage of or the rationale behind transferring from the 1988 scheme to the 2015 scheme?

Mrs Hoskins: They have no choice. Under the Hutton review, officers were transferred across from the legacy schemes on to the 2015 scheme on 1 April 2015. About two thirds of the officers and others are transitioning along the way. That is the basis of the McCloud judgement. All that the amendments are doing is smoothing the path until the McCloud judgement has been resolved.

Mr Frew: Thank you.

The Chairperson (Mr Givan): Are 33 members impacted on by the 2015 scheme? The basis of your report that I have read states that this relates to 33 people. William or someone else, is that the figure?

Mr Dukelow: Yes, Chair, there are 33 officers who are affected by the amendment.

The Chairperson (Mr Givan): OK. Do any other members wish to raise anything?

Miss Woods: I would like to tease out the question around PIP a bit more. For the purposes of this award, does a PIP award come into consideration as income?

Mrs Hoskins: *[Inaudible.]*

Mr Dukelow: We will have to get back to you on that. I am afraid that I do not have the answer to hand.

Miss Woods: OK. I cannot speak for anybody else, but I think that that is what we are trying to get at. PIP does not take your income into consideration, whereas ESA is income-related and contribution-based. If PIP were to be a problem, I would welcome some information on why it is being considered

by the Policing Board in making an injury-on-duty award, because it is based not on income but on daily living, as we know. It is not a medical exam. Despite what we have to deal with, it is not supposed to be a medical exam. I would welcome some clarity that PIP is not taken into consideration when those awards are being made.

Mr Dukelow: We will get back to you on that.

Miss Woods: Thank you.

The Chairperson (Mr Givan): If there are no other points of clarity needed, I will ask members whether they are content with the proposed statutory rule. Unless further information is required, are members content?

Members indicated assent.

The Chairperson (Mr Givan): Thank you for that, William.