

PART H

DETERMINATION OF QUESTIONS AND APPEALS

Part H deals with medical questions which may arise (H1) and allows for an appeal to an independent medical referee (H2) where the decision is disputed. The detailed procedure for medical appeals is in Schedule 9, Part I. With certain restrictions there is provision for an appeal to the courts if the dispute as to entitlement is not based on a medical matter (H3). Schedule 9, Part II deals with the arrangement for reference to a tribunal in the event of an appeal in an overseas service case.

①

Questions which
must be referred
to a medical
practitioner

It is for your fire authority to decide in the first place whether you or your dependents are entitled to any award under the pension scheme.
* Whenever such an entitlement depends on a medical question your fire authority must refer the question to a medical practitioner, (see "POINTS TO NOTE 1", H1-2).

②

Under A15 your fire authority may require you to retire on the ground that you are permanently disabled for the performance of your duties.

Before doing so they must refer to a medical practitioner the questions:

- * whether you are disabled, and
- * whether your disablement is likely to be permanent (see A10-1).

If you are a regular firefighter and retire on the ground that you are permanently disabled, you will be entitled to an ill-health award under B3.

If your fire authority is further considering whether you are entitled to an injury award under B4, they must also refer the following questions to a medical practitioner:

- * whether your disablement results from an injury on duty, and
- * the degree of your disablement.

(In rare cases a fire authority may need to consider, for the purposes of F2(2)(b), whether a firefighter's sickness or injury is due to misconduct, or, for the purposes of K3, whether he or she has brought about, or substantially contributed to the disablement by his or her own default. This question also must be referred to a medical practitioner.)

Definitions

The meanings of:
"Disablement"
"Permanent disablement"
"Qualifying injury"
"Degree of disablement" and
"Default"
are explained at A9 to A11.

How medical
questions are
decided

The doctor will see you and may also call for medical reports to help him form his opinion.

He will then provide your fire authority with a certificate, similar to the one in H1 - Medical certificate, setting out his opinion. Unless you decide to appeal, or H3 applies, this will be final.

If you have been certified as permanently disabled your fire authority will decide on your effective date of retirement (see A15-1).

DETERMINATION BY
FIRE AUTHORITY

POINTS TO NOTE

1. A fire authority must obtain the opinion of a medical practitioner in respect of the medical questions set out in the FPS. It may appoint any qualified person of its choosing, but it may well decide to refer medical questions under the FPS to its brigade medical officer if it employs such a person.
2. It is helpful if medical practitioners are asked to consider all the questions on the certificate of disablement in each case, even where they do not appear to be relevant to an individual's circumstances. In this way there will be no room for doubt about the practitioner's opinion on each question if there is an appeal. Medical practitioners may wish to add a supplementary statement to a certificate, about factors affecting a particular question. This can prove useful if there is an appeal.
3. Please note that if you refuse to submit to a medical examination so that the medical practitioner is unable to provide the required opinion, the fire authority have discretion to make their decision without medical evidence.
4. If an injury award is being considered, it will be for your fire authority to inform the medical practitioner whether the incident occurred in the "execution of duty". It will be for the medical practitioner to give an opinion on what effect a particular injury may have had. It is always advisable to report any significant incident on duty, in case a question of disablement should arise later.
5. If, while you are receiving an ill-health pension, your fire authority are considering whether your disability has ceased under K1, with a view to your possible reinstatement, they must base this decision on medical advice.
6. If, while you are entitled to an injury pension under B4, your fire authority are considering whether your injury pension should be reassessed under K2, they must base their final decision on medical advice.
7. When the question of medical retirement is under consideration fire authorities should bear in mind the principle established in a Court of Appeal case involving a police officer. (Regina.v. Kent Police Authority Ex parte Godden (1971) QB.662.) The Court ruled that the action of a force medical officer in certifying as permanently disabled an individual in respect of whom he had previously issued a certificate of permanent disablement against which a successful appeal had been made, gave rise to an appearance of bias and amounted in the particular circumstances of the case to a breach of natural justice. This principle would appear to apply equally to cases under the FPS. Under the provisions of both schemes authorities are required to refer medical questions to duly qualified medical practitioners. The precedent established in the Godden case is most likely to apply where a person has been retired on grounds of ill-health and has successfully appealed to a medical referee, resulting in reinstatement. If the question of permanent disablement arises again it would be advisable for the case to be referred to a different medical practitioner - i.e. not the one responsible for the earlier retirement decision.

How to appeal

When informed of your fire authority's decision in a matter involving a medical opinion:

- * you have 14 days in which to ask for a copy of the relevant certificate.

Once you have received the certificate:

- * you have 14 days in which to lodge an appeal, if you are dissatisfied with the certificate.

Your fire authority may be prepared to extend the second of these time limits (up to a maximum of 6 months from the date you received the certificate), but only if they think there is good reason for doing so (see "POINTS TO NOTE 1", H2-3).

Notice of your appeal must be given in writing to your fire authority, and must include your general grounds of appeal. They will be forwarded to the medical referee when he is appointed and you can send him any further information you wish before your interview (See "Arrangements for the hearing", H2-1).

How the referee is appointed

Medical appeals are considered by an independent referee nominated by the Home Secretary, or the Secretary of State for Scotland.

Your fire authority will forward to the relevant Secretary of State:

- 2 copies of your notice of appeal,
- 2 copies of the certificate you are appealing against
and
- your full name and address (See "POINTS TO NOTE 4,5" H2-3 and H2-4).

The medical referee will be a specialist in the medical condition which is under consideration and practising as near as can be arranged to your home. A specialist who has previously treated you for the complaint in question will not be appointed to act as the referee in your appeal.

Where the circumstances of your appeal relate to more than one major ailment, specialists for each condition will be appointed to decide the appeal jointly.

Arrangements for the hearing

You will be notified of the name and address of the medical referee as soon as he has been appointed. The referee will fix a time for hearing the appeal and give you and your fire authority reasonable notice of when and where it will be held. If he wishes to interview you, or examine you, more than once he will let you know. The same arrangements will apply on each occasion.

You should let the referee know immediately if you cannot attend at this time. If you should fail to attend without good reason, your appeal may be decided by the referee on such information as is available.

**APPEAL TO
MEDICAL REFEREE**

Before your interview with the referee you may send him any statement or written evidence you wish relating to the grounds of your appeal. If you do so, you should also send a copy to your fire authority (see also under "How to appeal" H2-1). Similarly your fire authority may send the referee any material relating to the subject of your appeal and should send you a copy. Your fire authority will advise the referee of the operational requirements of the brigade and any other relevant circumstances about your duties. Referees find it helpful to receive from fire authorities as much information as possible relating to the health and fitness standards expected of firefighters.

The rules for the conduct of the appeal allow both you and the fire authority to bring one or more personal representatives to the interview. The proceedings are intended to be informal and it is hoped that in normal circumstances both parties would not have more than one representative.

Result of the hearing The medical referee will send you and your fire authority written notice of his decision.

Your fire authority are bound by the decision of the medical referee which is final (See H3-1).

The pages of the commentary dealing with rules:

- * A15 - compulsory retirement on grounds of disablement,
 - * B3 - ill-health award,
 - * B4 - injury award,
 - * K1 - cancellation of ill-health and injury pensions,
 - * K2 - reassessment of injury pension, and
 - * K3 - reduction of pension in case of default,
- describe the results of the determination of a medical question.

If your fire authority require you to retire on grounds of disablement under A15 and you appeal against the medical decision that you are disabled:

- * if the medical referee finds that you were not permanently disabled, your retirement would be void and you would be due to receive back pay accordingly.

For this reason your fire authority may:

- a. delay your retirement until your appeal is decided, or
 - b. withhold payment of your pension and commuted lump sum using the discretion in L3(1) and instead make payments to you "on account".
- * When your appeal is decided the payments on account would be attributed to pay, or pension and commuted lump sum, as appropriate, and made up to the full amount due in either case.

In practice there is an agreement through the National Joint Council that retirement in such cases will be held in abeyance until the appeal is settled so that the above provisions should not normally arise. (See "POINTS TO NOTE 1," A15-1).

APPEAL TO
MEDICAL REFEREE

If your fire authority decide that your disablement was not caused by an injury on duty, and they reverse this decision following a successful appeal, you will be entitled to an injury award under B4:

- * from the date of your retirement, or
- * the date of your disablement, whichever is later.

If you appeal successfully against a decision regarding your degree of disablement, you will be entitled to an award based on the revised degree of disablement, again:

- * from the date of your retirement, or
- * from the date of your disablement, whichever is later.

If you appeal successfully against a reassessment of your injury pension, the revision or termination of your pension under K2 will be void and your pension reinstated from the date the reassessment took effect.

POINTS TO NOTE

1. The purpose of the appeal is to decide whether the medical referee agrees with the medical opinion on which the fire authority based its decision was correct at the time it was made. It is therefore important that an appeal is made as soon as possible after the decision in question.
2. If your medical condition changes after your retirement, it will normally be a question of reviewing your award, rather than questioning the basis on which it was awarded. However, you should bear in mind the following:
 - * If you retire voluntarily on grounds other than ill-health, and you find later that you are permanently disabled, you will not become entitled to an ill-health pension (See "POINTS TO NOTE 1", B3-1).
 - * If after your retirement on some other ground, you become permanently disabled as a result of an injury on duty, you will then become entitled to an injury award. (This award does not depend on your having retired on the ground that you were permanently disabled at that time - See "POINTS TO NOTE 4", B4-1). This is sometimes known as "an after-appearing injury". Again, the sooner the facts can be established the better. The longer the period that elapses, the more difficult it may become to assess the effect of an injury.
3. Medical appeals are given priority by the Home Departments, but the process is bound to take time because:
 - * specialists with the necessary qualifications and experience are usually busy people with competing calls on their time,
 - * the necessary exchange of correspondence takes time, and
 - * there is bound to be delay if it turns out that the first specialist who is approached is unable to act as a referee.If you are worried about the time being taken, your fire authority can usually find out for you where matters stand.
4. Fire authorities are asked to send the appeal documents in duplicate as appropriate to:
 - Home Office, Finance Division 2, 50 Queen Anne's Gate, London SW1H 9AT, or
 - Scottish Office Superannuation Division, St Margaret's House, 151 London Road, Edinburgh EH8 7TG.

Briefing for the referee and any supporting medical evidence or statement provided by the appellant should not be forwarded to the Home Office. It should be sent direct to the medical referee once his or her appointment is notified. The notice of appeal, certificate and appellant's full name and address (with the information in "POINTS TO NOTE 5", H2-4 below) are forwarded immediately, so that a start can be made in selecting a suitable referee.

APPEAL TO MEDICAL REFEREE

5. The following information should always accompany the appeal documents:
- (a) Appellant's date of birth and full home address;
 - (b) Nature of disability - this should be clearly expressed so that there is no doubt about the category of specialist required.
 - (c) Notice of appeal should be dated by the appellant or if not the date of receipt should be recorded by the authority: it should also give the grounds of appeal.
 - (d) A doctor who has previously treated the appellant for the condition in question would not be expected to act in an appeal and it would be helpful if authorities could give the name of any such specialist (where known) to avoid unnecessary correspondence.
6. If you are a retained firefighter you have a right of appeal to a medical referee only if a potential entitlement to an award under the FPS is at issue. There is, however, an agreed NJC procedure under which you can dispute retirement on health grounds (See POINTS TO NOTE 4, J4-1).

Fees and expenses The medical referee's fees will normally be paid by your fire authority. The fees are agreed by the Home Department concerned at the time of the referee's appointment and, if exceptionally high, after consultation with the fire authority.

You will need to meet your own expenses of attending any interview with the referee in the first place. If your appeal is successful (unless the referee otherwise directs) your fire authority will refund to you any such expenses you have reasonably incurred, so it is advisable to keep a record of them, with any receipts.

If the referee decides in favour of your fire authority (unless the referee otherwise directs) the authority can require you to meet part of the cost, not exceeding the referee's total fees and allowances. However, this rarely happens - (it might, for example, if an appeal were deemed to be frivolous).

How to appeal If you are:

- * a former member of a fire brigade, or
- * a person claiming an award in respect of a former member of a fire brigade,

and you are dissatisfied with:

- a. the refusal of an award by your fire authority,
- b. the refusal of a larger award than the award granted, or
- c. the withdrawal (forfeiture) of a pension on conviction of an offence.

Initially you should ask your former fire authority to reconsider your case. If you are dissatisfied with the outcome of this reconsideration you may appeal:

- * to the Crown Court, in the case of a member of an English or Welsh brigade, or
- * to the Sheriff Court, in the case of a member of a Scottish brigade.

Arrangements for the hearing

<p>The rules of evidence and the rules relating to the time to appeal, of the Crown Court or the Sheriff Court, will apply to the hearing. You should check as soon as possible how long you have to give notice of appeal, or you might have to rely on the discretion of the court to extend the normal time limit and make out a case for their doing so.</p>
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Advice If you are in doubt you should consult your staff association or a solicitor.

What are the limitations? You cannot appeal against a decision which is expressly at the discretion of your fire authority other than in a case of forfeiture under K5 (see K5-2).

You cannot reopen any medical issue decided on an appeal under H2 (See H2-2).

You cannot question any certificate of pensionable service which has become conclusive under F1(5) (See F1-2).

POINTS TO NOTE

1. Decisions which are expressly declared to be within a fire authority's discretion include:
 - * resuming payment of a widow(er)'s award if the subsequent marriage ends (C9),
 - * paying a special pension to an adult dependent relative (E2),
 - * paying a gratuity to a dependent relative (E3),
 - * granting a gratuity to a widow(er) instead of a pension (E5),
 - * granting a gratuity to a child, instead of an allowance (E6),
 - * withdrawing a pension during employment as a regular firefighter (K4), and
 - * determining when to pay a widow(er)'s pension or child allowance (within a year of a firefighter's death) where the firefighter has received a gratuity other than an injury gratuity (L3).

How to appeal If you are:

- * a former regular firefighter whose claim arises from a period of temporary employment in connection with the training and organisation of fire-fighting forces in a country outside the UK (See A4-2), or
- * a person claiming an award in respect of such an individual,
and you are dissatisfied with:
 - a. the refusal of an award by the Secretary of State (who is your fire authority),
 - b. the refusal of a larger award than the award granted, or
 - c. the withdrawal (forfeiture) of an award on conviction of an offence,

① you should ask the Secretary of State to reconsider your case. If you are dissatisfied with the outcome of this reconsideration you may give notice of appeal to the Secretary of State. Your notice must be in writing and state your grounds of appeal.

The appointment of a tribunal

The Secretary of State will appoint an appeal tribunal with 3 members:

- * a barrister (or in Scotland an advocate), or solicitor of not less than 7 years' standing,
- * a retired member of a fire brigade, whose rank was at least divisional officer (Grade 1), and
- * a third member, of unspecified qualification.

Arrangements for the hearing

① The tribunal will decide the time and place of the hearing or hearings and give you and the Secretary of State reasonable notice of where and when it will be held.

- * You may be represented by counsel, a solicitor, or anyone else you choose and approved by the tribunal, bring evidence and cross examine witnesses. So may the Secretary of State.
- * The rules of evidence and the rules relating to the time to appeal, of the Crown Court or the Sheriff Court, will apply to the hearing (See H3-1).
- * Apart from this the tribunal will determine its own procedure.
- * The tribunal will make whatever order it regards as just, stating the reasons for its decision. You will be entitled to a copy.

Appeal from the decision of a tribunal

You may appeal to the High Court (or in Scotland the Court of Session) following any decision of the tribunal, but only on a point of law.

- * The rules of court will apply to such an appeal.

Advice If you are in doubt you should consult your staff association or a solicitor.

POINTS TO NOTE

1. The same limitations apply as to an appeal to a Crown Court or Sheriff (See What are the limitations, H3-1).

FIREFIGHTERS' PENSION SCHEME
CERTIFICATE OF PERMANENT DISABLEMENT

I have considered the medical history of

(Rank and name)

[Delete as necessary]

and also a report from Dr of.....

.....

and I have examined the firefighter on .../.../.....

I have decided:-

1	He/she is/is not suffering from
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2	He/she is/is not disabled from performing the duties of a regular firefighter.
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3	The disablement is/is not likely to be permanent. I recommend therefore that the fire authority should consider in..... months/years' time whether the disablement has ceased. I do not recommend that the fire authority should consider at any time whether the disablement has ceased.
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4	The above condition is/is not the result of any injury received in the execution of duty as a regular firefighter (see notes(a) and (b) below).
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5	The degree to which the firefighter's earning capacity has been affected is per cent (see note (c) below).
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I recommend that the fire authority should consider in months'/years' time whether the degree of disablement has altered.

Date:.../.../..... . Signed:

Qualification:

- Notes: (a) Includes any injury or disease whether of body or mind.
(b) Disablement is deemed to be the result of an injury if the injury has caused or substantially contributed to the disablement.
(c) For the purposes of the table in Part V of Schedule 2.