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HANDBOOK FOR MEDICAL ADVISORS

(WAR PENSIONS)

FOREWORD

The present edition of the Handbook for Medical Advisors is dated 1992

Since then much has changed in War Pensions and although the contents remain broadly correct the handbook is due for review. Unfortunately due to resource constraints and other priorities that work has not yet been undertaken.

It is appropriate that this handbook can be accessed by the Intranet. To support quality decision making where the approach to topics has changed or is under review, the document has been amended simply by removal of paragraphs.

Otherwise it is suggested that Medical Advisors considering the issues listed below, discuss with their EO C/W, prior to actioning files.

These topics are:

- Period of assessment (paras 227 - 232)
- Greater disablement (paras 132 - 140, 251 - 257)
- Reviews (paras 269 - 270)
- Joint application (paras 166 - 167)
- Hastening/Substantial hastening (paras 174 - 175)
- Sensitive evidence (paras 153 - 154)

Medical Advisors will be able to continue use of the printed handbook. A note will be issued identifying paragraphs which should be deleted.

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HANDBOOK FOR MEDICAL ADVISORS

(WAR PENSIONS)

CHAPTER 1

INTRODUCTION

HISTORY
GENERAL

History

1. The Ministry of Pensions was established under the Ministry of Pensions Act 1916 to take over the powers and duties of the Admiralty and the War Office for pensions and grants to servicemen killed or disabled in the 1914 War. Later the Ministry, at various times, undertook similar duties for a number of other groups, including civilians. The War Pensions Manual, Volume 2 lists these groups and the earlier Acts and Orders under which they were authorised. This Handbook deals mainly with the medical aspects of adjudication of pension claims and appeals under current legislation, though some details of the previous handling of 1914 war claims are given in Appendix 14 and of 1939 War claims at Appendix 13.

2. The payment of pensions and allowances to members of the armed forces and their dependents is now authorised by an Order in Council under Section 12(1) of the Social Security (Miscellaneous Provisions) Act 1977. All previous Instruments have been consolidated in the 1983 Order No 883 entitled The Naval, Military and Air Forces Etc (Disablement and Death) Service Pensions Order 1983 (abbreviated in this Handbook to SPO 1983).

3. The awards of pensions and allowances to other groups including civilians, Poles who served under British Command in World War II and merchant seamen from both World Wars are governed by different Acts and Schemes which are similar in general to the SPO 1983 but differ in several important details (see Appendices 17-21).

4. The Ministry of Pensions merged with the Ministry of National Insurance in 1953 to become the Ministry of Pensions and National Insurance and in October 1966 the Ministry of Pensions and National Insurance and the National Assistance Board merged to form the Ministry of Social Security. In April 1968 the Ministry of Social Security and the Ministry of Health were joined to become the Department of Health and Social Security. In 1988 this Department was split into the Department of Health and the Department of Social Security. On 10 April 1991 Agencies were established within the Department of Social Security. The War Pensions Directorate, as part of the Benefits Agency within the Department of Social Security, now deals with pensions and other grants for disablement and death from service in the Armed Forces during the 1914 War and since 3 September 1939, under certain conditions for service in the Mercantile Marines during the 1914 and 1939 Wars, for members of recognised Civil Defence Organisations disabled or killed on duty, for civilians disabled or killed as a result of enemy action during the 1939 War, for members of the Home Guard and for ex-members of the Polish Forces who served under British Command during the 1939 War.

5. In 1953 the Ministry of Health took over the administration of the former Ministry of Pensions hospitals and hospital units. These are now part of the National Health Service. All NHS hospitals are expected to give priority to the treatment of war pensioners when their accepted disablement requires it (see HM(72)74 Appendix 23). Leopardstown Park Hospital, Dublin, remained in Departmental hands until 1979 when it was transferred to the Eastern Health Board, Dublin. Here too priority for admission of war pensioners has been maintained. In 1953 the responsibility for prescribing and fitting artificial limbs and appliances was transferred to the Ministry of Health. This work is now administered by a branch of the Department of Health.

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General

6. When a claim for a War Pension is received a file is opened by the lay officers, the claimant's record of service clarified and the medical records sought (see Appendix 3). Though service records are the property of the Defence Department the bulk of medical records are held by the Department of Social Security (DSS). The lay officers examine the claim, determine various non-medical aspects and then send the file to Medical Branch for consideration. If need be the Medical Advisor will specify what further evidence is required before the medical aspects can be determined. A final decision is made by the Secretary of State (in practice a lay officer at Norcross acting on his behalf) based on the medical determinations and is notified to the claimant with details of his appeal rights.

7. Should the claimant wish to appeal to the Pensions Appeal Tribunal all the evidence is arranged chronologically in a typed statement of case, submitted to the Medical Branch for a written medical opinion and then sent to the Tribunal with the Secretary of State's submission.

8. The Tribunal's decision is binding on both the appellant and the Department though an appeal can be made to the High Court on certain specific grounds.

9. Both the lay and medical officers have clearly defined tasks and responsibilities and these are explained in detail in this Handbook.

10. Certain words and phrases have by usage or statute acquired a precise and limited meaning in war pension practice. Those most commonly used are listed under Appendix 2. It is essential that Medical Advisors should be familiar with these and adhere to them.

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CHAPTER 2

THE PRINCIPLES OF ENTITLEMENT

General

16. This Chapter discusses the principles of entitlement to pension for disablement or death arising from service in the 1914-1918 World War and from service or enemy action after 2 September 1939.

17. Awards of entitlement for service in the inter-war years (officially 1 October 1921-2 September 1939) are a responsibility of the Ministry of Defence and are not discussed here. These inter-war awards are often paid by DSS, particularly when there is also entitlement for war time service.

18. This Chapter deals only with claims for members of the armed forces as these form the great majority of all claims. Legislative provision is also made for civilians and civil defence volunteers, mercantile mariners, naval auxiliary personnel, members of the Ulster Defence Regiment, Coastguards, the Home Guard and for Polish forces who served under British command. The same medical principles apply to the consideration of these claims but the relevant instruments for deciding which injuries may be accepted and the conditions for the awards are more restrictive than for service personnel.
[See Appendices 17-21].

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War Pensions Legislation

21. All claims for disablement or death from service after 2 September 1939 by members of the British armed forces including the Reserve and Auxiliary forces are decided under the provisions of SPO 1983.

22. Disablement is defined in Schedule 4 of the SPO 1983 as "physical or mental injury or damage or loss of physical or mental capacity". It is therefore a wider concept than "loss of faculty" in the Industrial Injuries Instruments. It embraces both "impairments" and "disabilities" in the International Code of Impairments, Disabilities and Handicaps (ICIDH).

23. SPO 1983 does not cover disablement claims arising from Great War service. The War Pensions Act 1921 limited the period for claiming a disablement pension under Statutory Instruments. Disablement awards for this service are now made under the Dispensing Instruments (see paragraph 185) though the principles underlying Articles 3 and 5 of the SPO 1983 are applied when considering these claims. [The historical notes in Appendix 14 include reference to the earlier handling of 1914 war claims]

24. The War Pensions Act 1921 did not limit the time during which "death claims" could be made. Since 1 October 1964 these claims have all been considered under 1939 War Statutory legislation ie at present under Articles 3 and 5 of SPO 1983. [Appendix 14 contains information about the provisions before 1 October 1964.]

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High Court decisions and legal interpretations

27. The definitive guidance on the legal interpretation of the Statutory Instruments is found in the judgements of the High Court in England and Wales, the Court of Sessions in Scotland and the Supreme Court in Northern Ireland on appeals against Pensions Appeal Tribunal decisions. When these Courts have pronounced upon a question of legal principle their decision is absolutely binding both on the Tribunals and the Department. Many of these judgements were given in the early post-war years but this in no way lessens their significance. Only another High Court decision can alter these determinate interpretations (see para 91 et alia).

28. A list of selected High Court decisions, with a brief discussion on the judgement, is given at Appendix 4. The various topics in the present Chapter will include discussion on some High Court decisions which have major significance for war pension medical considerations. [Appendix 6 includes the dates of the High Court decisions where the exact date of the decision is critical for war pension awards]

29. Appendix 5 lists **"Signpost Cases"**. These were High Court decisions, not on legal principles, but on specific conditions and diseases and the system was designed to ensure uniformity of treatment and uniformity of decision in war pension claims. In testing the original appeal all the available evidence was assembled and the most authoritative medical opinions were obtained. These decisions were then followed in subsequent cases in which the evidence,for all practical purposes, was identical. The signpost cases were "signposts" or "pointers" to the entitlement decision. They were not binding on the adjudicator in the same way as were High Court decisions on legal principles. For many years the Tribunal's attention was drawn to the relevant signpost case. The system is no longer followed. These cases are listed in Appendix 5 for completeness as they may still be helpful.

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The Role of Medical Advisors and Lay Officers

32. The SPO 1983 Article 1(4) establishes the duties of the Medical Officer. The High Courts have clarified the respective roles of the lay officers and Medical Advisors in the consideration of War Pension claims.

"..... Many of the claims involve both questions of fact and also medical questions, to say nothing of legal questions on the interpretation of the Warrant. In so far as they involve questions of fact or legal questions the Minister must now decide these himself; but, in so far as they involve medical questions, he must submit these questions to a Medical Advisor or board of Medical Advisors, and his ultimate determination must be in accord with their certificate ....." [Starr RSWPA Vol 1, Page 109]

Lay Officers

33. This judgment specified some of the responsibilities of the lay officers at Norcross who act on behalf of the Secretary of State. They, and not the Medical Officers, must determine "questions of fact" and "legal questions". The lay officers may well seek guidance on legal questions from the Department's legal experts and they keep in mind the Pensions Appeal Tribunal's role as the final arbiters in deciding questions of fact. For it is the Tribunals who have the final decision on establishing the facts. Not even the High Courts can overule the Tribunals. "They are masters of the facts". The Tribunals are required to justify their decisions "it is the duty of Tribunals to set out the facts which are admitted or which they find proved and not merely narrate what (is) said". (Findlay RSWPA Vol 2 page 583.)

34. In those cases which have not been to a Tribunal, the Secretary of State, in practice the lay officers at the War Pensions Directorate, must assume this duty and decide which `facts' are accepted. For example if an incident occurs during service it is not for the Medical Advisor to decide whether or not that incident can be accepted as a service factor, that decision must be made by a lay officer. Injuries may occur during service which are not due to service and, alternatively, injuries may occur while the member is off duty or on leave which may be accepted as due to service factors. [Williams RSWPA, Vol 1, page 755.]

35. Another lay responsibility is the consideration of evidence in confusing or contradictory statements. If there is a discrepancy in the evidence it is for a lay officer to decide which version is to be accepted.

36. The lay officer has other duties in addition to clerical and administrative ones. Claims to pension must specify which pension or allowance is being claimed and be "in a form approved" by the Secretary of State for that purpose or in "such other manner, whether in writing or otherwise as he may accept as sufficient in any case". [Article 3 SPO as amended by SI 1986 No 592]. The lay officer must decide whether or not a claim has been made, what has been claimed and the date of the claim. This date also establishes which Article applies to the disablement entitlement considerations. (In death claims the date of death decides the Article).

Medical Advisors

37. In all these matters the Medical Advisor must base his decision regarding certification on the facts accepted by the lay officer. The Medical Advisor may be asked for medical guidance but the responsibility for the determination of the facts lies with the lay officer and ultimately with the Tribunals.

38. Neither does the Medical Advisor have any responsibility for interpreting the law. When a High Court judgement on the interpretation of the law is not available it is not the Medical Advisor's responsibility to do so. This is the duty of the Department's lawyers and their decision must be followed. The Medical Advisor must apply their interpretation.

39. Each Medical Advisor must ensure he has legal authority for all his decisions. Administrative practice must not be allowed to affect statutory entitlements. An individual's legal entitlement cannot be taken away except by legislation. Administrative practice which has the effect of not meeting an

entitlement in full must not be followed. Each Medical Advisor is responsible for acting within the law and should any practice appear to be contrary to the law, no matter how reasonable and sensible it may appear, the officer must not proceed with it. It is for the lawyers to decide the legality of the practice. (See Legal Entitlements and Administrative Practices: a Report by Officials. Civil Service Department. HMSO Publication, Medical Library) [often referred to as **LEAP**].

EXAMPLE

Until 1984 the Schedule for Gratuities payable for Specified Minor Injuries for fingers referred only to amputations through a joint (apart from guillotine amputations of the tip of a finger without loss of bone). A pensioner whose amputation was through a bone was not included in these SMI categories and could receive a significantly different award under the 1-5 per cent, 6-14 per cent, or 15-19 per cent categories even though the disablement was not markedly different. To avoid this anomaly, in 1958 the Department devised a table relating amputations through bones to the existing SMI categories. It was sensible and it resulted in reasonable awards. It was not challenged by outside authorities but it was challenged by medical staff as it was not in accord with the SPO 1983 and was not legal. In 1984 Table 1 of the SPO 1983 Schedule 1 Part III was altered to include amputations through bones.

41. All these varied actions and responsibilities by lay and medical groups must be viewed as essential interdependent parts of the Secretary of State's final decision on awarding. As SPO 1983 Article 1(4)(b) indicates, the Secretary of State must base his decision on the medical certificate but this does not alter the Secretary of State's responsibility. "Awarding" remains entirely his responsibility (para 139 etc.)

42. The requirement in SPO 1983 that the Secretary of State must base entitlement and assessment decisions on the medical certificates is not one which applies to the Tribunals. They are not restricted in this way. (See paragraph 151.)

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Evidence

45. In the context of War Pensions reliable evidence means evidence which, could in the opinion of the determining authority be relied upon to establish the facts. A mere statement by a doctor does not of itself constitute reliable evidence. What is required is an opinion supported by reasoned argument.

46. Evidence can be either oral or written and all of it requires equal consideration. The applicant's statements can all be accepted as evidence and due regard must be paid to them.

47. The Medical Advisor has a responsibility to ensure that he has all the **relevant** evidence before him when he is considering the medical questions. If he has any reason to think that there may be other relevant evidence it is his responsibility to make certain that every reasonable effort is made to obtain the missing evidence. He should not decide without it. It is sometimes possible for the Medical Advisor to certify acceptance of disablement knowing there is some evidence which is not before him, but confident that it will not cause him to alter his decision, but he must not reject unless satisfied there is no other relevant evidence.

48. Though in practice the Department assembles the evidence for the claimant, it is an accepted part of law that if a person does not produce documents which are within his own possession or give information within his own knowledge, a failure to produce such evidence can be taken into account in deciding the claim. [Childs RSWPA Vol 1, Page 679, Hunt RSWPA Vol 1, Page 1093]. The failure to produce the evidence does not confer an advantage; in Article 4 cases it does not ensure automatic entitlement to pension. The Medical Advisor should take this into consideration when deciding whether or not he holds all relevant evidence.

49. A medical opinion on diagnosis does not of itself constitute `a material fact'. The signs and symptoms are facts but the diagnosis based on these facts is not in itself a `fact', it is an opinion. Both the "consensus of medical opinion" on the aetiology and the Medical Advisor's opinion on the case form part of the evidence which must be evaluated when considering the case.

50. When considering entitlement the medical officer must ensure that the question to be resolved is clearly framed and that the evidence is relevant to the question. [Morrison RSWPA Vol 5 page 495]. Claims are not always absolutely clear and a lay officer's further decision on what is being claimed may be required. The claimant can be asked to clarify the claim. The evidence too may be confusing and much of it often irrelevant. The Medical Advisor has to decide both its relevance to his medical considerations and its significance, for example the importance of a history of otitis media in childhood in a claim for deafness.

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SPO 1983

53. Article 1(4)(b) SPO 1983 governs the role of the Medical Advisor.
It establishes the need for a medical certificate whenever a medical question is involved and the responsibility for the Secretary of State to act in accordance with that certificate.
In practice, the Medical Advisor at Norcross gives this certificate

54. The basic condition for an award under SPO 1983 is given in Article 3. It is essential for a connection to be established between service and disablement or death for this Article to be satisfied. Because a condition develops in service it does not signify that it is caused or worsened by a service factor

"I think the argument which has been advanced in this case really goes so far as to amount to a submission that anything that befalls a serving soldier in the course of his service at his place of duty necessarily becomes attributable to war service..... That is not the language of the Royal Order or the Act of Parliament. The words used are "attributable to" and I think they have a different significance from "in the course of"." [Horsfall RSWPA Vol I page 7.]

55. Article 4 SPO 1983 covers claims for disablement or death within 7 years of the termination of service.

Article 5 covers claims for disablement or death more than 7 years after the termination of service.

Articles 4(1) and 5(1) lay down the criteria which are to be satisfied for a condition to be accepted as attributable to or aggravated by any service factor.

All Article 4 cases must first be considered under Article 4(2). Article 4(2) indicates that the claimant does not have to prove the fulfilment of the requirements of Article 4(1) and any reasonable doubt must be given to the claimant. In short, the Secretary of State has to prove BEYOND REASONABLE DOUBT that the conditions of Article 4(1) are not satisfied. THERE IS NO ONUS ON THE CLAIMANT. In current invaliding cases, if the condition was noted on entry the case must be considered and decided under Article 4(2).

In addition to the advantages conferred by Article 4(2), Article 4(3) adds yet another benefit. When a condition leading to a medical discharge (invaliding) **was not noted at entry** Article 4(3) establishes a COMPELLING PRESUMPTION that the requirements of Article 4(1) are satisfied. A compelling presumption takes the place of evidence and it follows that under Article 4(3) there is already established evidence that the invaliding condition was caused or aggravated by service factors. It is from this basis that the Secretary of State has to prove beyond reasonable doubt that the condition is not related to service in any way.

Article 4(4) applies to disablement and death claims under Article 4(1) for members of the Reserve or Auxiliary Forces. It removes the benefits of Article 4(2) and 4(3) when disablement or death is due to a disease other than one caused or aggravated by an accident. This is because such service is not full time and the claimed disablement is just as likely to have arisen when the claimant was not serving. When the claimed disablement is the result of an accident accepted by the Secretary of State as due to service then the principles of Articles 4(2) and 4(3) apply, in addition to Article 4(4).

NOTE:

The High Court has ruled that there is an initial onus on a claimant to show a disablement before the benefits of Article 4 can be claimed. (RSWPA Royston Vol III Pg 1593 see paragraph 91 et alia.) As it is difficult for the ordinary individual to collect medical evidence, the DSS acts as an agent and with signed approval does this on the claimant's behalf.

Article 5 establishes that the claimant must, on RELIABLE EVIDENCE, raise a REASONABLE DOUBT that the conditions of Article 5(1) are satisfied ie the ONUS OF PROOF IS ON THE CLAIMANT in Article 5 cases. The STANDARD OF PROOF however ie REASONABLE DOUBT

remains the same as for Article 4 cases.

Article 9 is concerned with the assessment of disablement.

Article 67 governs the REVIEW and REVISION of decisions on entitlement and assessment (see paragraphs 132 et alia).

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Injury/Injurious process

58. Decisions under SPO 1983 are concerned with "disablement" or "death". The SPO specifies "disablement due to an injury", "death due to or hastened by an injury". "Injury" is thus crucial to both considerations and its legal interpretation must be clearly understood. Early legislation specified "wound, injury and disease" and though more recent legislation refers only to "injury", Schedule 4 of the SPO 1983 indicates that "injury" includes wound or disease and this wider interpretation of the word must be used.

59. A traumatic injury or wound as a cause of disablement is usually easily recognisable. "Disease" has been the subject of High Court deliberation.

"a disease is an injurious process ... which will in its natural progress .... operate to cause illness or incapacity even though no other cause may operate". [Marshall RSWPA Vol 1, Page 785].

"the disease commences when the injurious process commences" [O'Neill RSWPA Vol 1, Page 839 and Vol 4, page 825].

These judgments indicate that the underlying pathological condition, the "injurious process", is the critical consideration in deciding War Pension claims.
This term "injurious process", or "basic injurious process", has become part of the vocabulary of war pensions and is used to particularise the underlying pathological process. It is this that the Medical Advisor must establish when considering a claim.

60. In dealing with a War Pension claim for disablement or death the medical adjudicator must first determine the underlying pathological condition and then consider the aetiology. If there is more than one possible cause for the pathology each one must be examined to determine whether or not it is related to service.

EXAMPLE

"Poor sight" is claimed. Examination indicates that this disablement is due to bilateral cataract formation. As there are several possible causes of this (trauma, senility, diabetes etc) unless the exact one can be determined each cause must be considered and a decision reached as to whether that cause is service related. The label "Bilateral Cataract" can be used as this is the pathology causing the claimed diasblement ie it is the basic injurious process.

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Label

62. A label must specify the basic injurious (pathological) process underlying the claimed disablement. It must be suitable for use in certifying or refusing to certify under Articles 4 or 5 of the SPO 1983. It should be precise though comprehensive and indicate what pathology is accepted or not accepted. When the basic injurious process has been labelled this label should not be extended to show symptoms, complications etc.

63. It must not include words which prejudge entitlement decisions eg congenital, idiopathic, familial, traumatic etc.

64. If possible, the use of the word "injury" should be avoided and the pathology eg fractured humerus specified. If the word "injury" is included, the label should be as exact as possible eg soft tissue injury Left Thigh, June 1944, not simply injury Left Thigh.

65. It is seldom necessary to include the **dates** of service in the label but it may sometimes be helpful to specify the period under discussion eg a man claims that a condition developed during his first period of service. The evidence however indicates that it began between the first and second periods of service but was aggravated by the second period. This claim must be answered in full including the supposition that it developed during the first period. In such a case the entitlement position is clarified by specifying the dates:-

Multiple sclerosis 1940-1943 NANA
Multiple sclerosis 1946-1947 AGG

This can be important too when the member's military rank has changed.

EXAMPLE

A private soldier fractures his leg during his first period of service. After release Fractured Left Femur attributable 20 per cent is awarded. He re-enlists and rises to the rank of Captain.

If there is no aggravation of the fracture during the second period of service the subsequent award will be paid at the rate appropriate to a private soldier. If aggravation has occurred he will be paid at a Captain's rate. Including the dates of the periods of service in the label the award should be clear to everyone, lay and medical.

66. The same considerations apply when an injurious process acts both during service and at other times. For example it can apply in certain cases such as asthma or psychiatric disorders when it is necessary to clarify the periods during which service factors are accepted or not accepted as having affected the condition.

67. A date may also be used in the label when its inclusion clarifies the disablement under examination eg adding the date 3.1.44 to a label Laceration right forehead will specify exactly which laceration is accepted or not accepted. All other lacerations to the right forehead are thus excluded.

68. In certain diseases such as "short lived" ones from which a full recovery is expected and no deterioration anticipated adding a date may help to ensure that the decisions are understood.

EXAMPLE

Chronic bronchitis is claimed but cannot be accepted as attributable to or aggravated by service factors.

Chronic bronchitis NANA

The claimant postulates an in-service attack of acute bronchitis as a causative factor and this attack can be accepted as attributable to service.

Acute bronchitis 4.8.43 ATTRIB NIL

By including the date of the in-service infection it is clear that the in-service infection has been taken fully into account in the consideration of the claim for chronic bronchitis.

69. If the correct label may cause distress to the claimant a **euphemistic label** may be notified, but the correct label must be certified and used for all determinations.

70. Even though a **symptomatic label**, eg sciatica, may appear to express the main "disablement", Section 1 of the PAT Act 1943 specifies that it is "the injury" ie the injury, wound or disease which must be considered for entitlement ie PID, lumbar spondylosis etc. The High Courts have stressed this.

"A symptom of a disease cannot itself be a separate entity attributable to or aggravated by service. It seems to me impossible to say that what is merely a symptom of a disease can itself be an attributable injury, particularly when the underlying disease is found to have been neither attributable to nor aggravated by service." Yates RSWPA Vol 5, Page 765.

71. Labels of consequential conditions and sequelae are discussed at paragraphs 118-119.

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Attributable to service

75. It does not automatically follow that a condition which develops during service is attributable to service. SPO 1983 Article 3 requires the disablement to be "due to service". [Horsfall RSWPA Vol 1, Page 7, Blenkinship RSWPA Vol 4, page 851.]

76. It is not necessary for service factors to be the sole cause or sole aggravating factor. It is sufficient if they play any part. "A cause" is "the cause". [Freeman RSWPA Vol 5, Page 721.]

"If war service is a cause of the disease arising, even though not a predominant cause, the disease is attributable to war service; but, if it is not a cause of it arising the only remaining question is one of aggravation, which depends on whether the injurious process is accelerated or intensified by war service. The burden is upon the Minister on all these questions to negative firstly, attributability, and secondly, aggravation." [Marshall RSWPA Vol 1, Page 785.]

77. When deciding entitlement the correct test to apply is what effect service had on this particular person, not what effect service would have had on a "normal person". [Duff RSWPA Vol 2, Page 753].

EXAMPLE

During training a recruit bumps his head on a beam. Surprisingly the skull x-ray shows a fracture in a significantly thin skull. This fracture must be accepted as attributable to service even though such slight trauma would not have caused a fracture in a skull of normal thickness.

78. This principle was not always followed. In an early judgment, often referred to as the "frayed rope" judgment (RSWPA Stubbing Vol I page 369, February 1947) the nominated judge indicated that in an inherently abnormal condition, one which might break down under civilian or service stresses, war service was only the "circumstance" in which the cause operated and was not the cause. This view was held until a later judgment reversed this interpretation (Duff RSWPA Vol II page 753, December 1948).

79. Service causes must be separated from causes which operate during service but in the member's own "personal sphere". Separation from home and family is a factor of service and if it leads directly to some disablement then that disablement will be attributable to service. If there is some intervening cause in the member's personal sphere eg a wife's infidelity and this is shown to be the cause of the disablement then disablement is not due to service. [RJ RSWPA Vol 1, Page 351].

When the cause of death or disablement lies in the man's own personal or domestic sphere and war service did no more than provide the circumstances in which the cause operated, it is not attributable to war service. [Wedderspoon RSWPA Vol 1, Page 347].

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Aggravation by Service

81. If a condition is not attributable to service it must then be examined to determine whether or not it was aggravated by service. It is important to note that aggravation includes not only the **worsening of a condition** already manifest but the **hastening of onset of a condition** which would sooner or later have emerged, it being medically present prior to the aggravation although not manifest. [Lowe RSWPA, Vol 3, Page 1283]

EXAMPLE

Static pes planus was not clinically observable at entry but became manifest during service due to a service factor. As it is developmental in origin it cannot be attributable to service but it may be accepted that the service factor hastened the onset of a condition which would sooner or later have become overt.

82. Disablement which is worsened but not caused by service factors can only be certified "aggravated by service" if the disablement "existed before or arose during service and has been and remains aggravated thereby". In Article 5 cases, Article 5(3) adds "..remains so aggravated at the time when the claim is made".

83. As the injurious process must have existed before service or have arisen during service any injurious process arising after service cannot be accepted as "aggravated" under SPO 1983. This does not mean that the aggravation must arise during service. Provided the injurious process existed before or began during service the aggravation, even the first indication of such aggravation, can occur after service and a certificate can be given, always provided the aggravation is due to service factors. [Sullivan RSWPA Vol 5, Page 799].

EXAMPLE

A fractured right femur was accepted as attributable to service. Some years after service an above knee amputation was required. Still later the pensioner claimed atherosclerosis. In view of the amputation it was accepted that service factors had aggravated the atherosclerosis. This could be certified even though the amputation did not occur until some years after service ended.

84. In deciding the question of aggravation in invaliding cases ie Article 4(3) and some Article 4(2) cases, the first consideration is whether the effects of the aggravation remained at the date of discharge, that date being the effective date of claim -

- if they did not, entitlement should not be certified.
- if they did, but no longer remained at a date prior to the date of determination, entitlement should be certified BUT only to the date on which the effects of the aggravation no longer remained, at which date entitlement should be revoked.

In deciding the question of aggravation under Article 5 and non-invaliding Article 4(2) cases, the first consideration is whether the effects of the aggravation remained at the date of the claim. The date of discharge is not relevant to entitlement considerations although, as will be seen at paras 233 et alia, it may be relevant to assessment.

- if they did not remain at the date of claim, entitlement should not be certified.
- if they did, but no longer remained at a date prior to the date of the determination, entitlement should be certified BUT only to the date on which the effects of the aggravation no longer remained, at which date entitlement should be revoked.

85. In both Article 4 and 5 cases, aggravation may "pass away" at some later date; in which case entitlement can be revoked. SPO 1983 does not refer to aggravation "passing away". It refers to "remains so aggravated". The term "aggravation passed away" was used in High Court decisions and is part of war pension terminology. Provided the evidence indicates that aggravation no longer

remains, the aggravation can be passed away (APA) at any assessment of disablement. When the entitlement is one of "aggravation", TLTY and TMTY Agg awards imply that aggravation will pass at the end of the period (unless followed by an ID award) and this should be stated at the time of certifying entitlement. (See paragraph 227 et alia.)

86. Entitlement under SPO 1983 does not depend upon the assessment of the degree of disablement but, when aggravation has occurred, consideration must have regard to the degree of disablement at the appropriate dates to establish whether or not it "remains". If the degree of disablement present at the appropriate date is no worse than would be expected if he had not served then aggravation does not remain and the entitlement criteria are not fulfilled.

"If, however, the disease is aggravated by war service and the disease existed before war service and is only aggravated by it, then, the pension continues only so long as it remains aggravated thereby. If the aggravation passes away so that the man is no worse than he would have been apart from war service the pension ceases even though some disablement may remain, because that disablement is not due to war service." [Marshall RSWPA Vol 1, Page 785.]

87. To demonstrate that aggravation has passed away the evidence must show either that the condition is no worse now than it was before service, or, a rather more difficult task, that the condition while being worse than before service is no worse than it would be by now if the pensioner had not served.

88. There is one further consideration in cases which have been accepted as "aggravated by service" ie whether or not the assessment should be limited. This consideration is not an entitlement one and will be considered under Principles of Assessment (paragraphs 236, 237).

89. When a claim is made but no evidence can be found that the condition has ever existed and it does not now exist then a **NOT FOUND** decision should be recorded. All claimants have a responsibility to show disablement [Royston RSWPA Vol 3, Page 1593]. (Contrast nil disablement paragraph 232.)

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Onus of Proof

91. There is an initial common law principle applicable in War Pensions:-

"In every case of disputed facts between 2 parties, the onus of proof must inevitably be either on the one or on the other". [Moxon RSWPA Vol 1, Page 63].

92. In an Article 4 case there is only one onus on the claimant, to show disablement.

"There is an initial onus of proof on a claimant to show a disablement. Once she shows a disablement there is afterwards no onus on her to prove the fulfilment of the conditions under Article 4 ... and the benefit of any reasonable doubt has got to be given to her ... but ... Article 4(2) ... does not come into operation until she first shows a disablement." [Royston RSWPA Vol 3, Page 1593].

93. This judgement indicates that there is an onus on a claimant to show that there is, or has been, a disablement, disablement being defined as 'physical or mental injury or damage or loss of physical or mental capacity'.

In this matter the Department's solicitors have advised that the claimant's evidence should be judged on a basis of 'balance of probabilities'.

Only when the claimant satisfies this onus do the benefits of Art 4 apply. These are that there is no onus on the claimant to prove the fulfilment of the conditions and the claimant will be given the benefit of any reasonable doubt.

94. The onus of proving that the requirements of Article 4(1) are satisfied does not rest upon the claimant (other than ex-members of the Reserve and Auxiliary Forces under certain circumstances - see Para 55). This onus is removed by Article 4(2).

95. In an Article 5 case the initial onus to show disablement still applies but Article 5 does not then specify on whom the onus of proof should rest. In such circumstances the common law principle comes into effect.

"It is I think axiomatic in the administration of our law that, if a person thinks he has a claim against another man, or against a Ministry, the duty is upon him to establish that claim." "... I am satisfied that the intention of the paragraph (Article 5(4)) is that it is the duty of the claimant to produce reliable evidence, to establish his claim, but if (after hearing and considering that reliable evidence and making a comparison between such evidence and other evidence which is called on behalf of the Ministry to contradict or to controvert it) the Tribunal has a reasonable doubt, then under those circumstances the plain meaning of that paragraph of the Article is that the benefit of that doubt shall be given to the claimant." [Dickinson RSWPA Vol 5, Page 211]

96. Article 5(4) does however ease the onus on the claimant. Once there is reliable evidence to raise a reasonable doubt in his/her favour that the conditions for an award are satisfied the benefit of that reasonable doubt must be given to the claimant. In practice, once this is done, the onus is lifted from the claimant.

97. Article 5(5) enables corroborative evidence of a fact material to the claim to be accepted when the contemporary official records have no entry for that fact. In the absence of such corroborative evidence the decision to accept the claimed fact is taken on the balance of probabilities, not on reasonable doubt.

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Burden (Standard) of Proof

99. High Court decisions have proved to be essential in explaining the standard of proof required in war pension determinations, though there has been an interesting change in High Court decisions on the standard of proof required in Article 4(2) cases. In July 1947 and again in October 1965 the nominated Judge pronounced on the burden of proof required in Article 4(2) and 4(3)cases. The judgements are sufficiently important to be quoted fairly fully.

100. The summary of the judgement on the 2nd and 25th July 1947 [Miller RSWPA Vol 1, Page 615] includes:

"(a) In cases falling under Article 4(2) and Article 4(3) of the Royal Warrant there is a compelling presumption in the claimant's favour which must prevail unless the evidence proved beyond reasonable doubt that the disease was not attributable to or aggravated by war service; and for that purpose the evidence must reach the same degree of cogency as is required in a criminal case before an accused is found guilty. That degree need not reach certainty but must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond a shadow of a doubt. If the evidence is so strong against a claimant as to leave only a remote possibility in his favour which can be dismissed with the sentence "of course it is possible but not in the least probable" the case is proved beyond reasonable doubt; but nothing short of that will suffice.

(b) In cases falling under Article 4(2) there is no compelling presumption in a claimant's favour and the case must be decided according to the preponderance of probability. If at the end of the case the evidence turns the scale definitely one way or the other the Tribunal must decide accordingly; but if the evidence is so evenly balanced that the Tribunal is unable to come to a determinate conclusion one way or the other, then the claimant must be given the benefit of the doubt. This means that the case must be decided in favour of the claimant unless the evidence against him reaches the same degree of cogency as is required to discharge a burden in a civil case. It must carry a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that the Tribunal can say "we think it more probable than not" the burden is discharged; but if the probabilities are equal it is not discharged."

In England and Wales, Article 4(2) cases were considered on the preponderance of probability from the time of the judgement in 1947 until 1965.

101. On 4 October 1965 the interpretation of Article 4(2) was reconsidered (and inter alia Article 5 too) and the nominated Judge disagreed with the 1947 interpretation. [Judd RSWPA Vol 5, Page 679]. After discussing various judgements he continued

"... the task of interpreting Article 4(2) has been bedevilled by the presence of Article 4(3) ..... the effect of Article 4(2) cannot be cut down thereby if its own wording is clear and unambiguous. .... All claims fall primarily to be decided in accordance with Article 4(2). I .... hold that the standard of proof applicable to pensions claims is identical with that required in criminal trials. What that standard involves has been expounded with .... classical clarity in Miller's case .... It is wrong to judge a pension claim on the basis of a simple preponderance of probability.

In an Article 5 case the Appeal Tribunal must ask itself whether a reasonable doubt, in the ordinary acceptance of that term, exists as to whether the conditions set out in Paragraph (1) are fulfilled; and if the answer is in the affirmative the benefit of that reasonable doubt must be given to the claimant .... I see nothing inconsistent in holding that notwithstanding the existence of a definite preponderance of probability, or even a strong preponderance of probability there may also exist a reasonable doubt within the meaning of Paragraph (4) of Article 5..."

The judgement includes -

"... the standard of proof applicable to pensions claims under the Royal Warrant is identical with that required in criminal trials, with the result that a claim which falls to be determined

under Article 4(2) should not be rejected unless it is established beyond reasonable doubt that the conditions for an award are not fulfilled."

102. The Court of Session in Scotland did not follow the 1947 Miller judgement. [Irving RSWPA Vol 2, Page 401 and Greer RSWPA Vol 2, Page 957].
This Court based it's decisions on reasonable doubt, not balance of probabilities.

103. There have been other significant judgements on "reasonable doubt" and"compelling presumption".

"The doubt must of course be a reasonable doubt and not a strained or fanciful acceptance of remote possibilities." [Moxon RSWPA Vol 1, Page 70].

"The effect of Article 4(2) is to raise a provisional presumption in his favour. The strength of that presumption depends upon the facts of the case. It may be strong or it may be weak .... The difference between a compelling presumption and a provisional presumption is that a compelling presumption has the force of law and draws its strength from the law, whereas a provisional presumption depends for its strength solely on the facts of the case". [Webster RSWPA Vol 1, Page 823].

From our point of view this means that the "compelling presumption" of Article 4(3) takes the place of evidence. Before a condition can be rejected it is essential to have evidence to prove, beyond reasonable doubt, that service factors played no part in the onset or course of the condition.

104. **Summary.** For rejection of an Article 4 claim (except when Article 4(4) applies) there must be proof beyond reasonable doubt that service played no part in the onset or course of the condition; for acceptance of an Article 5 claim there must be reliable evidence to raise a reasonable doubt that service played a part in the onset or course of the condition.

105. There is an onus on all claimants to show disablement. This is the only onus when the case is to be considered under Article 4. However when Article 5 applies the claimant has another onus, to produce reliable evidence which is sufficient to raise a reasonable doubt that service factors have played a role in causing or aggravating the claimed condition. From a practical viewpoint the Department seeks the evidence for the claimant and once a reasonable doubt is raised there is no further onus on the claimant under Article 5. In all cases the burden or standard of proof must be similar to that in criminal cases ie the case is decided on reasonable doubt not on the balance of probabilities.

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Treatment Entitlement

107. Treatment of a condition, including surgical treatment, is not a separate "disablement" and should not be considered for entitlement. However, should service factors delay or in any other way adversely affect the treatment any adverse effects of the treatment must be regarded as due to service and examined for entitlement and assessment.

108. Even when the treatment is carefully, expeditiously and skillfully completed if the condition under treatment is attributable to or aggravated by service factors any untoward effect of treatment must still be considered for entitlement.

109. If the condition under treatment is attributable to service then the consequences of treatment are also regarded as attributable to service for these effects would not have developed had not the accepted condition required treatment. This applies whether the treatment is given during or after service.

110. If the original condition was aggravated by service then the situation is somewhat more complex. It depends upon whether the treatment was given during or after service.

111. The considerations of a condition treated during service were clarified in a High Court Judgement,

"a. The disease would in any event, apart from war service, sooner or later have necessitated an operation; in which case the complications would only be accelerated by war service and being only accelerated the proper finding would be of aggravation of the original disease, or

b. the disease, apart from war service, might not have necessitated an operation at all so that aggravation by war service is really the cause of the operation; in which case the complications which follow directly on the operation are attributable to war service." [Pilbeam RSWPA Vol 4, Page 129; see also Dent RSWPA Vol 4, Page 121, Congress RSWPA Vol 4, Page 241].

112. As stated, these considerations apply only when the treatment is given during service. The certifying Medical Advisor must decide whether or not treatment would, at some time, sooner or later have been necessary for the original condition. If it would, then service factors have merely moved forward the date of treatment. Any untoward effects of such treatment have not resulted from any service factors, they are an integral part of the original condition. There is no separate entitlement for these untoward effects. Aggravation of the original condition is confirmed and disablement assessed.

113. Should however the Medical Advisor decide that treatment might never have been required then the service aggravation of the original condition is really the cause of the treatment and any sequelae which arise are attributable to service factors and must be labelled and assessed as separate conditions.

114. When treatment is required after service has ended for a condition which was aggravated by service, then the considerations are different. The Medical Advisor must first decide whether or not the aggravation by service has played any part in the need for treatment (see paragraph 336). If it has not, there is no need for the untoward effects of the treatment to be considered for war pension purposes. If it has, though this new condition has developed after service, it has developed as a result of a service factor ie as an untoward effect of the treatment of the aggravation by service of the original condition. The new condition should then be regarded as attributable to that service factor. This applies only when the treatment is required after service has ended.

115. Even when there are no untoward effects of treatment, if the treatment is undertaken purely to make the member a better soldier then the "new" condition is regarded as attributable to service. For example, if a man has a finger deformity at enlistment and during service has the finger amputated to make him a "fitter" soldier then the disablement from the amputation is attributable to service. Without war service he would probably not have required the operation.

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Consequentials & Sequelae

116. Sequelae are developments in the natural history of a disease and can be anticipated. Consequentials are unexpected developments, a new pathology arising as an indirect result of the original condition. For example constrictive pericarditis may follow an attack of tuberculous pericarditis. This is part of the initial disease process and is a sequela. Lumbar spondylosis developing as a result of thoracoplasty for pulmonary tuberculosis is a new pathological process, not part of the original. It is a consequential condition.

117. Sequelae, as part of the injurious process, do not require further entitlement considerations or a fresh label.

118. Consequentials need to be labelled and their entitlement decided. If they arise as a result of the AD and are not part of a separate generalised injurious process, they are "consequential attrib" to service and are treated in every way as attributable cases.

119. If they are part of a separate injurious process and the AD only aggravates this process, or part of it, then the considerations are more complex. They are "consequential agg" to service but under the terms of Articles 4 and 5 SPO 1983 only if the injurious process "existed before or arose during such service and has been and remains aggravated thereby" can the consequential disablement be accepted as aggravated by service. If the injurious process began after service then under the terms of SPO 1983 it cannot be accepted as aggravated by service and it cannot be given an entitlement. (It is accepted for assessment purposes under the Greater Disablement Principle. See paragraph 251 et alia).

120. **Amputees** are at risk of developing a number of consequential disablements which are discussed in full in the amputee section of the War Pension Medical Officer's Instructions and Procedures (Chapter 12).

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Conflict of medical opinion

121. The Courts have laid it down that a conflict of medical opinion does not of itself mean that there is a reasonable doubt in the case and the claim must therefore succeed. This applies even if eminent physicians express the opinions and it applies even in Article 4(3) cases. [Chorley RSWPA Vol 4, Page 263 Howard, Vol 5, Page 515, Tigg, Vol 5, Page 141 and Brisbane, Vol 5, Page 645].

122. The Court has ruled that "when it is a matter of weighing conflicting medical opinions, that is a matter of fact..." and as such it is for the Tribunals to decide which "fact" is to be accepted. The Court will only intervene if the Tribunal could not reasonably reach the decision it did on the evidence before it. [Viner, RSWPA Vol 1, Page 997]. At the pre-Tribunal stage the Department must decide. **It is not sufficient simply to choose one of the opinions** as preferable. Convincing reasons for the choice are required and **it should be considered whether the alternative commands the support of a body of authoritative medical opinion** and, if so, whether a reasonable doubt exists and the claim should succeed.

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Predisposition/Predestination

124. High Court judgements have been helpful in clarifying the significance of conditions in which the accepted medical view is that there is "a predisposition", "an inherent constitutional tendency" or "a diathesis" to a disease eg bronchial asthma.

"The fact that a person is predisposed to a particular disease is no ground for holding that it cannot be attributable to war service. Predisposition is not a disease, and to say that a person is predisposed to a certain disease only means that, if he is exposed to the conditions which result in the onset of the disease and the appearances of overt symptoms, the disease will find in his constitution congenial soil in which to develop" [Fourteen appeals, Brown and others RSWPA Vol 2, Page 461].

125. A clear distinction was however made in diseases in which there is more than a predisposition, there is a predestination, ie the disease is one in which the consensus of medical opinion is that the disease is known to develop, invariably, of its own accord, without the stimulus of any extraneous precipitating factors.

"A congenital and inherited weakness which is part of a man's make-up and which will sooner or later cause the emergence of symptoms of a disease the cause of which is already present is something quite different from a predisposition which merely provides a suitable medium in which the cause of a disease not already present may operate. In the former case the disease is predestined. It is an ever present injurious process or morbid condition whose active emergence may be delayed but cannot be avoided. In the latter one cannot affirm that the disease will occur but only that if it does it will find congenial surroundings; a predisposition is not in itself an injurious process or a morbid condition." [Holland RSWPA Vol 2, Page 901].

126. Considerable care must however be exercised when applying the principle of predestination. The judgement in the Duff case (Duff RSWPA Vol 2 pg 753) enunciated the principle that the adjudicator has to consider the effects of service on that particular individual, not on a "normal" person (see para 77/78). The more recent High Court judgments have stressed the view that in accepting a member into service the authorities have accepted responsibility for all untoward effects of service on that particular individual. "Predestination" can only apply when service factors play no role in causing or aggravating a condition

SUMMARY

Whereas there must be a trigger to initiate a disease to which an individual is predisposed, no such trigger is required if the individual is predestined to suffer that disease.

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Conditions of unknown aetiology

127. The aetiology of disease is the basis for war pension considerations. When the aetiology is unknown or poorly understood entitlement considerations are difficult. The High Court has clarified the handling of these cases. In an early Judgment in an Article 4(3) case the nominated Judge upheld a Tribunal decision:

"that, while the precise cause of cancer may remain obscure, there may be adequate material of a scientific or statistical nature, as known to the Medical Profession, to enable doctors to exclude external factors as having any influence upon the disease". [Starr and others RSWPA Vol 1, Page 109].

128. Later a Higher Court laid down 3 rules, commonly referred to as the **"Coe Rules"** [Coe RSWPA Vol 5, Page 725];

"(1) If the medical evidence is simply to the effect that nothing is known about the cause of the disease, the presumption of entitlement in the claimant's favour created by Articles 4(2) and 4(3) is not rebutted, and an application for a pension on the ground of attributability must succeed.

(2) If there is evidence that, although its aetiology is unknown, the disease is one which arises and progresses independently of service factors, the claim may be rejected.

(3) It will not suffice to rebut the presumption in the claimant's favour to offer evidence merely to the effect that ".... in the light of modern knowledge, it cannot be accepted that service factors are associated in any way with the onset of the disease or that any circumstances of service hastened its course". Evidence of that nature does not establish that service factors played no part, but merely declines to accept the positive assertion that service factors played a part in causing a disease."

129. Rule 2 of Coe must not be regarded as varying the interpretation of Article 4. For Rule 2 to apply there must be "evidence that the disease is one which occurs and progresses independently of service factors". It follows that if some factor is known to be significant in the aetiology of a disease, even though the full aetiology is still obscure, then the evidence must show that that factor did not arise due to service. This was clearly enunciated in a High Court judgement in 1984.

"It was not for the appellant to prove that he had been exposed to some relevant infection, it was for the Secretary of State to prove that he had not. .... Each of these cases depends on its own facts and on the evidence put before the Tribunal. In some cases a short period of service and the age of the appellant on joining may effectively exclude any real possibility that the appellant could have been infected during service. In other cases the medical records and the other evidence may be so compelling that the burden of proof can be satisfactorily discharged. It will be for the Tribunal to look at each case individually." [Bennett versus Secretary of State for Social Services 6 June 1984].

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Reviews

131. One Article of the SPO 1983, Article 67, deals with `reviewing' (looking again at) entitlements, assessments and awards and establishes the basis for `revising' (altering) them. Only entitlement reviews are considered in this chapter. Assessments will be discussed in paragraphs 269-270 and awarding is not a medical responsibility.

132. **Article 67** is a rather complex article and has itself been revised several times. There are 11 paragraphs in the Article. The ones most relevant to medical decisions are 1, 3, 5 and 11; these will be considered in detail. Paragraphs referring to awarding, 2, 4 and 6, need not be considered here. Paragraph 7 excludes Tribunal decisions from any review and paragraph 8 explains that paragraphs 1-6 do not apply to Great War cases but that paragraphs 9-11 do. Paragraphs 9 and 10 deal with Great War Disablement decisions. Great War cases are discussed in detail in Appendix 14.

133. Paragraph 1 allows reviews of entitlement decisions at any time and on any grounds, apart from PAT decisions and Great War disablement decisions.

134. Paragraph 3 is the main paragraph governing the revisions which follow a review under paragraph 1. It places stringent restrictions on detrimental revisions ie those resulting in any loss to the member, legal or financial. It refers only to decisions in which a claim is accepted. When a claim has not been accepted that decision can be reviewed and revised. Paragraph 3 places no restrictions on this. If there is no medical certificate there is no entitlement and the decision can be revised. The paragraph places no restrictions on revisions beneficial to the claimant. Any entitlement decision can be improved.

135. Paragraph 3a specifies only three circumstances which allow a revision which is detrimental to the member of any entitlement decision:
The decision can be changed when the original was "made in consequence of"

ignorance of a material fact
or a mistake as to a material fact
or a mistake as to the law

[A material fact, as the term suggests, is a fact material or critical to the decision. A mistake as to the law would include the application of the wrong Order or Article, or a misunderstanding of the onus or burden of proof or other incorrect interpretation of the relevant Order or Scheme.]

Article 67(3)(aa). If evidence shows that a medical certificate is incorrect and that the claimant was not suffering from the certified condition at the date the earlier certificate was given, then that original certificate can be revised and the correct injurious process considered. This Article extends the Secretary of State's powers and enables him to revise his earlier decision when a medical certificate is altered in these circumstances. This amendment was necessary as a medical opinion on diagnosis is not a fact. These cases are therefore not covered by Article 67(3)(a): "a mistake as to a material fact"

136. Paragraph 5 details the possible actions the Secretary of State can take when a decision is reviewed and revised. He can maintain, continue, change or cancel a decision. A change of label is a change in a decision and the criteria for Article 67 must apply eg it may be possible to reconsider the label under Article 67(3)(aa). If any change is necessary the change should not reduce the members appeal rights eg an appeal against an award of aggravation for psychoneurosis allows the Tribunal to find the condition attributable to service factors. If the label is changed to personality disorder a decision to accept attributability is probably precluded. There are no restrictions in Article 67 to changing labels in rejected conditions.

137. Para 11 deals with the rights of 1914 War death claims. Appeals against rejections in these cases are handled in the same manner as appeals in 1939 War death claims. There is no right of appeal against decisions in 1914 War Disablement claims (see paragraph 147 and Appendix 14).

138. It should be noted that all the entries in Article 67 refer to the Secretary of State. That officer alone has the responsibility and power to award and to revise. The Department's solicitors regard the notification of the award or revision as the "final decision" of the Secretary of State. It follows that any

determinations preceding this notification can be altered. The Secretary of State must base his decision on all relevant evidence, but if during the consideration of the case it is realised that an error has been made or some factor not given the correct consideration then that initial incorrect determination can be altered. A medical certificate can therefore be changed provided the Secretary of State has not yet notified the decision based on that certificate.

139. In practice, at any time a pensioner may ask for a review of an entitlement or assessment decision or may appeal against it. The SPO 1983 places no time limit on reviews of entitlement decisions. In non-statutory reviews, (termed a Departmental or D Review) all the facts and previous actions are looked at again. Entitlement may be confirmed, raised from aggravation to attributable, or the decision that aggravation had passed away may be confirmed or withdrawn. Should the Medical Advisor consider the entitlement certificate too generous, then the Secretary of State must act within the limitations imposed by Article 67(3).

140. Statutory appeals are dealt with in paragraphs 143 et alia.

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Appeals to Pensions Appeal Tribunals

142. The Pensions Appeal Tribunals Acts 1943 and 1949 with subsequent rules and amendments provide for the hearing by independent Tribunals of appeals against Departmental decisions on entitlement. These Tribunals are set up by the Lord Chancellor's Department in England and Wales and analogous legal departments in Scotland and Northern Ireland. Entitlement Tribunals consist of a legally qualified Chairman, a Medical Member and a third member of the same sex and of similar status in the service or in civil life. (PAT Act 1943 Schedule I Paras 1-3).

143. Various sections of the PAT Acts provide for entitlement appeals from members of the Forces, the Home Guard, Mercantile Marines, Naval Auxiliary Personnel, members of the Ulster Defence Regiment, Coastguards and Civilians including Civil Defence Volunteers. There is provision too for appeals against awards being withheld or reduced on grounds of negligence or misconduct under SPO 1983 Article 6. There are no rights of appeal for 1914 War disablement claimants. There are rights of appeal for 1914 War death claimants (see Appendix 14).

144. When a decision on entitlement is notified the claimant is informed of his appeal rights. Appeals may be made against complete rejection, against the rejection of attributability only, against the decision that aggravation no longer remains (aggravation passed away) or against the date on which the aggravation passed away.

145. In 1939 War Cases, during the lifetime of a member, there is no **time limit** for appeals against entitlement or assessment decisions. After the death of the member, since the 1 September 1980 the Pensions Appeal Tribunal (Posthumous Appeal) Order 1980 has authorised the "designated person" to lodge an appeal against entitlement decisions which were made during the member's lifetime, provided that this is done within 3 years of the date of death. There is no time limit for appealing against decisions in death cases. (For assessment appeals see paragraphs 273 et alia.)

146. In 1914 War Cases there is no right of appeal against entitlement or assessment decisions. There is a right of appeal in death cases (see Appendix 14 paragraphs 29-32) and these appeals must be made within 12 months of the date of notification of rejection.

147. The Pensions Appeal Tribunal Rule 5 requires the Secretary of State to "prepare a document (to be called a **Statement of Case**) containing .... the relevant facts relating to the appellant's case as known to the Secretary of State, including the relevant medical history ...." and "the Secretary of State's reasons for making the decision".

148. This Statement of Case is a detailed chronological compendium of the appellant's full medical history, pre and post service as well as service, the member's claims and submissions, previous Tribunal and Secretary of State's decisions, the Secretary of State's "Reasons for Decision" and the Terms of Reference to the Tribunal in the current claim. There is no reference in the Pensions Appeal Tribunal Rules to the need for any medical submission. However as the Secretary of State is directed by the SPO 1983 Article 1(4)(b)(1)

"where any matter is required by this Order to be certified .... and the matter involves a medical question - that matter shall be determined in accordance with a certificate on that matter of a Medical Advisor ....".

an Opinion of Medical Division (OMD) is included in the evidence and referred to by the Secretary of State in his Reasons for Decision.

149. This OMD explains the medical reasons and specifies the Article under which the decision is made. Since 1945 it has been prepared as a separate document and since the Moxon judgement in May 1945 the OMD has been signed by a medical officer with medical qualifications recorded.

"...Where it is intended to lay before the Tribunal expert medical evidence in documentary form, it is desirable that such evidence should show the name and qualifications of its author" [Moxon RSWPA Vol 1, page 63].

"Opinions on a medical question are of no value unless they are the opinions of medical experts, and, in order to have probative force they should be authenticated by a medical

man." [Starr and others RSWPA Vol 1, Page 109].

150. Though the Secretary of State must base his decisions on the Medical Advisor's certificate this restriction does not apply to the Tribunals. (See paragraph 42). [Starr and others RSWPA Vol 1, Page 109. Martin RSWPA Vol 2, Page 515].

"In adjudicating on an appeal a Tribunal is not affected by the fact that the Minister of Pensions is required by Article 2(2)(b) of the pensions instruments to take and act upon a medical opinion on any medical question which arises." 14 appeals RSWPA Vol 2, Page 461.

151. In entitlement claims the Tribunal must confine itself to the condition(s) under appeal.

"Where a Tribunal takes the view that a diagnosis is wrong they must not substitute their own diagnosis but must adjourn the case for reconsideration by both sides". [Windman RSWPA Vol 4, Page 225].

The Tribunal can decide whether the injury is attributable to or was aggravated by service and, if it was aggravated -

"It is right and proper that the Tribunal should consider not only the question whether aggravation remained at the date of discharge, but also the question whether it remained at the date of hearing; and if it had passed away, at what date it passed away. There is no legal objection to this course so long as both parties have notice of the case they have to meet." [Ansell RSWPA Vol 3, Page 2237].

152. **Sensitive evidence.** A statutory rule of the PAT Acts, and one of the basic tenets of natural justice, is that evidence on which decisions are made should be known to both the claimant and the adjudicator. Difficulties can however sometimes arise when an appeal is lodged and the evidence contains harmful or embarrassing material or references to custodial sentences which according to PAT Rules should then appear in the Statement of Case.

153. Under Rule 5 of the PAT Rules 1946, 1971 and 1980 only evidence which is not relevant to the appeal may be excluded from the Statement of Case. However if the medical history (in the widest sense of the word - including reports of examinations etc) comprises relevant evidence which, in the opinion of the Secretary of State, it would be undesirable in the interests of the appellant to disclose to him [eg if the appellant does not know he has cancer] this evidence is included in the Statement of Case but handled under **Rule 22** PAT Act 1943. It is excluded from the claimant's copy of the typed Statement of Case but the appellant's representative, the Pensions Appeal Tribunal and the Department have full copies with the Rule 22 material included, but `blacklined'. This action is the responsibility of the lay officers but the Medical Advisor may be approached for guidance. Ultimately, under Rule 5 of the PAT Rules it is for the Tribunal to decide, in the interests of the appellant, whether the excluded portions should or should not be disclosed to him. The PAT Act places this responsibility on Tribunals.

154. Under the **Rehabilitation of Offenders Act 1974** persons who have been convicted of certain offences and who have not been re-convicted of any serious offence during the periods specified in Section 5 of the Act "shall ... be treated as a rehabilitated person ... and the conviction ... be treated as spent". It is an offence to disclose `spent' convictions or the conduct constituting the offence which led to the conviction. The Department does not hold immunity against this section. Considerations under the Rehabilitation of Offenders Act arise almost exclusively in certain psychiatric cases.

155. Very many service offences can be involved for example looting and other offences relating to property, making false statements, falsifying documents etc. In every case the crucial factor is the conviction. Disciplinary proceedings during service which lead to cashiering, discharge from the service with ignominy, imprisonment or detention for a term of 3-30 months are covered by this Act. Less serious offences are not covered, nor does the Act apply to more serious offences which result in imprisonment or detention of 30 or more months.

156. The legal advice which should be followed regarding spent convictions is:-

"Section 1 makes it clear that the Act refers only to a conviction and the circumstances leading up to it. The Act is not concerned with evidence which has not resulted in a conviction.

Under Section 9(2) an offence is committed if evidence obtained in the course of a person's

official duties is disclosed to another person "otherwise than in the course of those duties". If the medical officer decides that in his professional judgement disclosure to a consultant or to the Tribunal is necessary for the proper formulation of their opinion or decision the medical officer is not in breach of this section of the Act.

Under Section 4(1)(a) the evidence is inadmissible before judicial authorities (including Pensions Appeal Tribunals). The Pensions Appeal Tribunal has therefore to exercise its discretion under Section (7)(3) to admit such evidence if it is satisfied justice cannot otherwise be done."

In practice in an appeal case in which the medical officer considers the spent conviction a necessary part of the total evidence an advance copy of the Statement of Case is sent to the President of the Pensions Appeal Tribunal highlighting the convictions. His agreement is sought for disclosure under Section (7)(3) and if he agrees then the references to spent convictions are included and the case forwarded to the Tribunal.

157. Entitlement **Tribunals are not limited to medical matters.** They have ultimate responsibility for deciding the facts (vide para 33). They decide the acceptance or non-acceptance of an injury. Cases where awards are withheld or reduced because of negligence or misconduct (SPO 1983 Article 6) also fall under their jurisdiction.

158. Normally **the claimant must attend** the Pensions Appeal Tribunal hearing. He may request the Tribunal to hear the appeal in his absence but the Statutory Instruments empower the Tribunal to insist upon attendance. (Rule 20, the Pensions Appeal Tribunals (England and Wales) Rules 1980). This does not mean that the claimant is bound to give evidence in support of his appeal. He may do so but is not obliged to do so. (Rule 12 PAT Rules 1980) [Hunt RSWPA Vol 1, Page 1092.]

159. Under Rules 15, 21 and 23 the Tribunal may arrange for medical examination of an appellant (see Chapter 13 of WP MO Instructions and Procedures, the Appendix on Collection of Evidence).

160. In widows and widowers cases **appeals are usually made against total rejection** but it is legally possible for an appeal to be lodged against the decision that death was hastened rather than caused by service.

161. PAT Act 1943 Section 6 provides that **Tribunal decisions are final and binding** on both the appellant and the Department.

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Appeals against Pensions Appeals Tribunal decisions

163. Although Tribunal decisions are final and binding there are provisions for appeals against these decisions in certain circumstances.

164. Under Section 6(2) of the PAT Act 1943 either the appellant or the Secretary of State may appeal to the High Court (Court of Sessions in Scotland, Supreme Court in Northern Ireland) on a point of law, providing that leave to appeal is given by the Tribunal or by the nominated Judge of the High Court. (In practice the President of the Pensions Appeal Tribunals is approached for permission.) The point of law must be stated. As explained in paragraph 27 of this Handbook the judgements in these cases have clarified the principles in the Statutory Instruments. The High Court can either record its own judgement or can remit the case for a fresh Pensions Appeal Tribunal hearing. The High Court may for example decide that there was an error in law but cannot say whether the ultimate conclusion was wrong and in such a case the only course is to remit the case for reconsideration. [Haines RSWPA Vol 1, Page 29].

165. In 1948 the nominated Judge, Mr (later Lord) Justice Denning, dealing with the case, Armstrong v Minister of Pensions (RSWPA, Vol 3, Page 1449), enumerated the categories of cases which warrant remitting:-

1. Cases where evidence has been wrongly admitted when it should have been rejected.
2. Cases where evidence has been wrongly excluded or rejected.

3. Cases where the Tribunal have misdirected themselves as to the law.
4. Cases where there is a reasonable doubt whether the Tribunal directed themselves properly in law.
5. Cases where the procedure before the Tribunal has been contrary to the Rules or to the requirements of justice.
6. Cases where there is reasonable ground for thinking that the decision of the Tribunal may be erroneous in point of law, but the facts are not sufficiently stated to enable the Superior Court to come to a decision on the matter.
7. In cases where a disease of obscure origin first comes before the Court, the parties often agree for it to be remitted for reconsideration for the express purpose of obtaining an authoritative decision on it.
8. Cases where leave to appeal is granted long out of time, this Court, if it allows the appeal, will not as a rule award entitlement straight away but will remit it for reconsideration.
9. Finally, there are cases where there is no error in point of law but the parties agree to the case being remitted for consideration.

When this Court remits a case for reconsideration it invariably allows either party to adduce fresh evidence if so advised.

166. PAT Act 1943 Section 6(2A), which was introduced in 1970, allows the Secretary of State and the appellant to make a joint application to the President of the Pensions Appeal Tribunal for the appeal to be heard again

(b)(i). if there is additional evidence; or
(b)(ii). if the appellant and the Secretary of State are of the view that the Pensions Appeal Tribunal's decision was wrong on a point of law, but an appeal to the High Court has not been made.

Applications under (b)(ii) are uncommon, but the submission of additional evidence is not.

The following points should be noted:-

a. Additional evidence is that which adds either fact or reasoned argument to that which was before the Tribunal.
b. This does not include a fresh medical opinion which merely repeats a view which has already been before the Tribunal, unless this view is now supported by fact or reasoned argument which, itself, was not before the original Tribunal.
c. When only one view was put before the original Tribunal - that of Medical Division, even if

supported by medical opinion from outside the Department - and, subsequently, a contrary medical opinion is given, there is then a conflict of expert opinion, and this conflict can be regarded as a "fact" which was not before the original Tribunal.
d. Accepting that there is additional evidence, the proper course under Section 6(2A) of the PAT Act 1943 is for the Secretary of State to join with the appellant in an application to the President of the Tribunal (the "appropriate authority" under Section 6(2A)) to have the Tribunal Decision set aside. The question of the weight to be attached to the additional evidence is one for the President to decide and not for the Department. The President does not have to agree to set the Decision aside. In the words of Section 6(2A), he "....may, if he thinks fit, direct ..."
e. Prior to 1970, when Section 6(2A) was introduced, this area was covered by a Decision in the High Court [Grand RSWPA Vol 5, Page 187] wherein the Nominated Judge stated, inter alia, "It is undesirable to send a case back for hearing by the Tribunal because new evidence has become available, unless that evidence is so cogent and so strong that it is unlikely that the Tribunal would be able to disregard it." This Decision has been overtaken by Section 6(2A), but until 1970 cases were considered under this High Court decision.
f. Consideration of requests for action under Section 6(2)(A) are, at present, dealt with by SMO Special Section BAMS 3.
g. Though under Section 6(2) the Secretary of State joins the appellant in the joint application to the President of Pensions Appeal Tribunal this does not mean that when the case is remitted that entitlement will be conceded. The Secretary of State may consider the condition is attributable to service or has been aggravated by service or is totally unconnected with service and the case will be submitted to the Tribunal on these lines (In practice if the condition is regarded as attributable to service, to avoid an unnecessary submission to PAT, Norcross lay officers contact the President of the PAT and ask his permission for an award to be made. All the details of the proposed award are outlined and permission is normally granted.).

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Death Claims

168. Death claims are new claims, from a new claimant (the widow or widower), **and are always considered de novo.** All the evidence is looked at afresh and a decision given on the total evidence.

169. Decisions on disablement claims are not binding on the decision on the death claim. This applies even when a Tribunal has given the disablement decision. If, however, there has been a decision during life there must be cogent reasons for reaching a different decision when the death claim is under consideration.

170. The same legal and medical principles governing disablement claims apply to the consideration of death claims. Once again "a cause" is "the cause". If the evidence indicates that a condition is one of the causes of death then that condition must be examined to establish any relationship to service factors. If it is related then a certificate should be given.

171. Deaths during service are decided under Article 4(3) unless the injury which led to death was noted at entry when Article 4(2) will apply.

172. In death claims it is the date of death which determines the relevant Article, not the date of claim. As the Article depends on the date of death the determinations in the death claim are often made under a different Article to that which applied when the disablement claim was being considered eg though Article 4(3) may apply to the disablement claim Article 5(1)(b) could well apply to the death claim.

173. Under both Article 4 and Article 5 death claims are decided under sub paragraphs quite distinct from those governing disablement claims ie Article 4(1)(b) and 5(1)(b). Both sub paragraphs have a direct reference to "hastening".

Article 4(1)(b) death was due to or hastened by ...

Article 5(1)(b) death was due to or substantially hastened by ...

If death was not due to service factors the evidence must be scrutinised to ensure it was not hastened (Article 4) or substantially hastened (Article 5).

174. The concept of `hastening' is embodied in disablement claims when `aggravation by service' is being considered (para 81 et alia) but there is no definition of hastening and very little guidance as to the correct interpretation of hastening in either death or disablement cases. In an Article 4 death case the nominated Judge was invited to comment as to how many months should be regarded as `hastening'

"...I certainly do not propose to draw the line and certainly would not propose to go further than to say that if a life had been perceptibly shortened, then, it may be that the widow would be entitled to a pension, certainly not otherwise. ... It is impossible to say there may not have been some shortening in any condition by almost any incident which occurs in a man's life, but that is not, I am sure, what is meant by the Warrant". [Cook RSWPA Vol 4, page 625].

175. Though death certificates, autopsy reports, coroner's decisions and coroner's inquest reports are important as evidence none is binding on the Secretary of State or on the Pensions Appeal Tribunal. The cause of death must be established from all the evidence and the entitlement decision then made on medico-legal principles. Even if the accepted disablement appears on the death certificate, possibly under Part II, it does not follow automatically that a death claim must succeed. [If the full evidence indicates that the entry on the death certificate is misleading or incorrect the author can be approached for clarification]. The true cause of death must always be established and its relationship to service decided. When considering the evidence the cause of death must be carefully distinguished from the mode of dying eg a terminal pneumonia may develop after prolonged disability from carcinoma. The cause of death is the carcinoma.

176. Though the accepted disablement, or any other factor of service, may play no direct role in causing or (substantially) hastening death it is possible for it to play an indirect role both on the

cause of death and on the mode of dying:

1. Delay in diagnosis may occur due to any service factor and if this delays effective treatment then death may possibly be (substantially) hastened. If effective treatment has not been delayed then a certificate cannot be given.
2. The same principle applies when the accepted disablement masks the onset of the cause of death and so delays effective treatment.
3. If the accepted disablement interacts with an non-accepted disablement it may possibly play a part in causing or (substantially) hastening death.
4. If an accepted disablement or its treatment interferes with the treatment of the condition which causes death once again a certificate can be given.
5. A somewhat more direct role may be involved when the treatment of an accepted disablement is a factor in causing death.

177. When service has aggravated but not caused some condition the actual effect of service must be carefully analysed. If the aggravation has "passed away" (para 85) the widow's claim cannot succeed. If the true aggravation by service was minimal then a decision must be reached whether the actual aggravation was a cause of death. In these cases the assessment of disablement may well have been limited (para 236, 237) though this in itself does not preclude the widow's claim succeeding.

178. SPO 1983 Article 27(3) enables a war widow's pension to be awarded automatically, irrespective of the cause of death, when at the date of death **Constant Attendance Allowance** was payable or would have been so payable if the pensioner had not been in a hospital or other institution. This applies irrespective of the nature of the accepted disablement or the cause of death. It applies to deaths occurring after 22 November 1916, so includes 1914 War cases. Until 13 November 1978 the CAA had to be payable at the "normal maximum rate" (ie full day rate). The SPO 1978 changed this. [see too para 193]

179. Under the early statutory 1939 war pensions instruments widows claims could be accepted only when the condition causing death had been accepted for a disablement award during the member's life. This no longer applies. (See Appendix 6. This Appendix also includes other dates when restrictions were removed eg 1973).

180. Funeral Grants - see paragraph 363.

181. Battle casualty formula - see paragraph 190.

182. 1914 War death claims (see para 138, 147, 202 and Appendix 14)

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Dispensing Warrants and Treasury Authorities

184. On occasion the facts of a case invite an award even though the rules of the Statutory Instruments preclude it. In such cases it may be possible for grants to be made under the Dispensing Instruments which authorise the Treasury to make extra-statutory awards under specific conditions. There are Dispensing Instruments for the three main services:

Dispensing Order-in-Council 19 December 1881 for the Navy

Dispensing Warrant of 27 October 1884 for the Army

Dispensing Order by His Majesty 14 January 1922 for the Air Force

There are no Dispensing Instruments specifically for Civilian, Mercantile Marine or Polish cases but if a case falls outside the strict provisions of the appropriate Scheme an award may still be made under extra-statutory authority from the Treasury.

185. Any award under one of the Dispensing Instruments or Orders is subject to the overall conditions that there must be Treasury concurrence with the award and that a list of these awards must be laid before Parliament annually. Certain types of cases have arisen so frequently that the Treasury has prepared letters giving general authority for awards in certain clearly defined circumstances. Occasionally, when the special circumstances of a case do not allow an award under any of these general authorities, an approach can still be made to the Treasury for individual consideration.

186. Many of the Treasury awards have been overtaken by events and the principles incorporated into more recent legislation.

187. The Medical Advisor is not able to issue a certificate under the SPO or under any of the appropriate schemes in these cases, but will advise the Secretary of State the medical details of the case and the role service factors have played. He will give his opinion as to whether or not the criteria for an extra-statutory award are satisfied.

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Battle Casualty Formula

189. Disablement pensioners (from 1914 War or after 2 September 1939) who sustained severe wounds in combat with the enemy may die from disease in circumstances in which a certificate in the strict terms of the SPO 1983 cannot be given. Instances of this kind occur in which the wounds were so severe that the pensioner's physical condition was weakened to such an extent that he became more susceptible to the ordinary ailments of life and, having acquired such an ailment, was less able to resist it. In such circumstances it would be inequitable to refuse a widow's pension and it may well be possible to take the view that the deceased man's severe battle injury had inevitably shortened his life. War Widow's pension can be awarded with Treasury authority under the Battle Casualty Formula when an SMO at War Pensions Directorate, Norcross gives a certificate in the following terms:-

"In my opinion, the wounds were of such severity that they had a profound effect on the man's whole physical and mental make-up and on his power to resist disease and, although the connection between the immediate cause of death and the wounds is not clear enough to justify certification under the terms of SPO 1983, nevertheless it is not possible to dissociate death from the effects of war service."

190. The certificate is applicable where:

1. The pensioner received severe wounds or injuries in actual engagement with the enemy; and
2. either

a. the disablement arising from the deceased's wounds or injuries was actually assessed at 100 per cent at death;
or
b. although the assessment at death was less than 100 per cent, it was 80 per cent or more and it can be certified that an assessment of 100 per cent would have been appropriate for the wounds and injuries for at least twelve months immediately before death.

191. When the evidence shows that the certificate should be given but all the specific conditions are not met it may still be possible for special Treasury authority to be sought for an award on an individual basis. For example this may apply if it cannot be certified that an assessment of 100 per cent would have been appropriate for twelve months before death. Treasury authority can also be sought when certain peace-time injuries are involved.

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Constant Attendance Allowance - Widows' Claims

192. When a member dies from causes not related to service and a Widows Pension cannot be authorised under the SPO 1983 Articles 4(1)(b) or 5(1)(b) it may still be possible to authorise an award under SPO 1983 Article 27(3) (see para 179).

193. CAA is one of the allowances for which a claim is necessary and there is no provision for a posthumous claim to be made. It follows that under Article 27(3) a claim for CAA must be made before death.

194. However it may still be possible to make an award under Treasury authority when a claim has not been made before death. The Constant Attendance Allowance must have been medically merited for an accepted disablement for a 26 week period before death.

195. Under earlier Treasury rules eligibility for a War Widow's pension under this authority was not considered in the absence of a specific request, but the Treasury has removed this restriction and widows cases are now automatically scrutinised for this possible basis for an award. (1914 War cases can also be considered under this authority).

"Consequential Aggravation" Claims Prior to 4 October 1972

196. Entitlement cannot be certified under the SPO 1983 or other Orders, Schemes and Warrants for conditions which commence after service but which, whilst not attributable to service, are then worsened by a service factor, such as an accepted disablement. Until 4 October 1972 Treasury authority had to be sought for these `Consequential Agg' cases, as they were termed. In 1972 the Department's Lawyers decided that SPO Article 9 covered such cases. Since 4 October 1972 these cases have been considered under SPO 1983, using the Greater Disablement principle. (see composite assessments paras 251 et alia).

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Malignancy

197. When a claim is made for a condition which is shown by the evidence to be due to a malignancy the serious nature of the disease and the fear and sense of dread engendered by the diagnosis has led the Department and the Treasury to evolve a special set of rules when there is no entitlement under SPO 1983.

198. There are several Treasury letters authorising the award and specifying criteria. The Secretary of State may make an award under the Dispensing Warrant for all disablement due to a malignant condition, without a further approach to Treasury, providing the following conditions are fulfilled:-

1. the malignant condition has been firmly diagnosed;
2. it is certified that the accepted disablement aggravated the malignant condition and there is a short expectation of life;
3. the pensioner's own medical advisor has confirmed that the pensioner is not aware that he is suffering from a malignant condition and considers that he should not be informed of its true nature;
4. the Department would otherwise be obliged to explain the real reason for withholding pension or treatment allowances or at least run the risk of arousing in the pensioner's mind strong suspicions as to the true nature of his condition;
5. the Department's Medical Advisors expect to be able to certify that the pensioner's early death was substantially hastened by the accepted disablement.

Though the second criterion specifies that the accepted disablement has aggravated the malignant condition the medical officer is unable to issue a certificate to this effect as the malignancy is post service. He could include GD in the composite assessment as paragraph 248 explains, but he cannot certify entitlement under the SPO. However, he can advise the Secretary of State that all 5 criteria are satisfied and an award can then be made under Treasury authority.

199. Even where an award is still not admissible as these criteria are not fulfilled an approach may be made to the Treasury for an award on the grounds that an alternative "label" cannot be used to reject the claim without arousing the pensioner's suspicions as to the nature of his illness. Should such an award be made, the pensioner's wife or a third party is informed confidentially of the circumstances of the award, through a Welfare Officer, who will also explain that such awards do not lead to Widows Pensions. The award is subject to review at intervals to determine whether the circumstances have changed.

200. The Treasury has laid down that the pensioner's own General Practitioner must provide answers to three questions before any award on humanitarian grounds can be made.

1. confirmation that the pensioner is unaware that he is suffering from malignant disease;
2. assurance that in his opinion the pensioner should not be informed of the true diagnosis;
3. an indication of what disease the pensioner believes or has been told he is suffering from. (This may prove to be a suitable label for rejection).

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1914 War Disablement Claims

201. The War Pension Act 1921 limited the time allowed for making claims for disablement pensions for service in the 1914 War to seven years after the date on which the claimant was discharged from the Forces, or after 30 September 1921, whichever date was the earlier. Claims continued to be received and from 1925 Treasury authority was obtained for awarding such claims. The Treasury letter of 4 August 1972 is the current authority. The principles underlying Articles 3, & 5 SPO 1983 are applied to claims and reviews but there is no right of appeal against the decision.

NOTE:

No time limit was laid down for claims in respect of death due to 1914 War service so these have been considered under the appropriate statutory instruments all along, at present under Article 5 SPO 1983. There is a right of appeal.

202. Details of the handling of 1914 War claims can be found in Appendix 14.

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CHAPTER 3

PRINCIPLES OF ASSESSMENT

Degrees of Assessment

220. Assessment in war pension considerations is the quantitative estimate of the degree of disablement caused by a pathological condition.

221. As assessment is a "medical matter" it is governed by Article 1(4)(b) SPO 1983 and it is the Medical Advisor's responsibility to certify the assessment. The Secretary of State's award is based on this certificate though it takes many other factors into account eg date of claim, War Pensions (Commencing Dates of Past Awards) Order 1982/1046 etc.

222. The assessment is a medical judgement as to the degree of disablement present and is determined according to SPO 1983 Article 9. It represents the extent by which disablement has reduced the physical and mental capacity for the exercise of the necessary functions of a normally occupied life, one which can be expected in a healthy person of the same age and sex. Earning capacity in a specific trade or occupation and the effects of any individual factors or extraneous circumstances are not taken into account. However, although earning capacity in a specific trade or occupation is not considered inability to work can be taken into account. It should be noted that the same criteria for assessing disablement apply to Home Guard and Ulster Defence Regiment members and to claimants under the Civilian, the Mercantile Marine, the Naval Auxiliary and the Polish Schemes.

223. The assessment should have regard to probable fluctuations in the condition as judged from its nature and previous history. For example, in the case of a condition such as bronchitis a person may be comparatively well in the summer and severely incapacitated during the winter. An assessment, to be equitable, must therefore reflect the average assessment of disablement over a reasonably long period.

224. The degree of disablement is assessed on a scale Nil-100 per cent. Article 9(3) establishes 100 per cent as the maximum assessment (composite or individual) and indicates the quantitative divisions to be used for lesser degrees of disablement. Nil disablement indicates that the condition is causing no disablement. Except for Specified Minor Injuries (SMIs) and disablement assessed at less than 20 per cent the scale rises in steps of 10 per cent to 100 per cent. SMIs are assessed in numerical units. Less than 20 per cent assessments are recorded in one of three ranges, 1-5 per cent, 6-14 per cent, 15-19 per cent.

225. In Articles 9(4) and 9(5), SPO 1983 certain assessments are specified, Specified Injuries (SIs) and Specified Minor Injuries (SMIs), sometimes referred to as scheduled or prescribed. These are listed in Schedule 1 Part V "Assessment of Disablement caused by Specified Injuries of certain other disablements" and Schedule I Part III Table 1 "Gratuities payable for Specified Minor Injuries". (For convenience these are reproduced in the desk card MPM 200). These assessments are obligatory. They must be used, but only when the condition exactly matches that in the Schedule and is stable and without complication. If the condition does not exactly match then a higher assessment may be justified. When there are complications such as infection or pain then the prescribed assessments no

longer apply. For example a stable, uncomplicated amputation of 2 phalanges of the ring finger is assessed at 6 per cent. If there is pain an assessment in the appropriate less than 20 per cent band, 6-14 per cent, is certified.

226. 1914 War. Most of the prescribed assessments in the SPO 1983 followed the recommendations of the Hancock Committee of 1946. Article 9 SPO 1983 does not relate to disablement from the 1914 War. Under the First Schedule of the 1919 Royal Warrant certain assessments were more favourable than those recommended by the Hancock Committee. SPO 1983 Article 67(9) ensures the right of the 1914 War Pensioner to retain the benefit of these higher 1919 rates. These higher assessments are included on the Desk Card.

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Period of Assessment

227. Though Article 9 does not refer directly to the period of any assessment it states that the **less than 20 per cent** awards shall "be certified in a manner suitable for purposes ..." of the Schedules. As the Schedules refer to the periods Temporary Less Than a Year (TLTY), Temporary More Than a Year (TMTY) and Indeterminate Duration (ID) it follows that in less than 20 per cent cases the periods are laid down in the SPO 1983 and the Medical Advisor certifies assessment according to these periods. A period of "temporary less than a year" is appropriate where it is considered that the effects of service will disappear during the ensuing year leaving the condition no worse that it was at entry. "Temporary more than a year" implies that the effects of service will not disappear within one year but will disappear within some period not definitely indicated but not unduly prolonged. "Indeterminate duration" denotes that the effects of service will not pass away within a calculable period, if at all. Most conditions justify an ID award though some eg migraine may be recorded as TLTY or TMTY. TLTY and TMTY awards will cease at the end of the award period and should therefore always be reviewed for confirmation. See Chapter 14B of the WP MO's Instructions and Procedures.

228. There is however no directive as to the period to be used when the assessment is **20 per cent or over** [though Article 9(2)(d) does indicate that interim assessments should be employed unless the condition permits a final assessment]. This means that in certifying assessments the Medical Advisor is issuing a certificate which must stand until some action is taken to alter it.

229. To comply with the instruction in the SPO Article 9(2)(d) that the degree of disablement should be assessed on an interim basis unless the condition permits of a final assessment, the Department seldom finalises the over 20 per cent assessments. Less than 20 per cent assessments are only finalised when the accepted disablement is clearly stable.

230. SMI awards are always ID. Specified injuries (SI) always LTA (on the Long Term Assessment List) (previously UFI (Until Further Instruction)).

231. When the assessment is 20 per cent or over the period of award notified to the pensioner by the Secretary of State is not one for the medical officer to decide. It is the Secretary of State's decision. In practice the Medical Advisor advises a period for the award bearing in mind the nature of the accepted disablements and the pensioner's condition. To avoid lengthy periods which may cause difficulties when the accepted disablement alters, an appropriate period is advised for disablements which are likely to change, usually 2 years but varying from six months to four years. Assessments which are stable are advised LTA. The pensioner is notified at four yearly intervals that it is proposed to continue the assessment for a further four years and is asked to report any change.

232. If there is no evidence that a claimed condition has ever existed the condition should be regarded as "not found" (see paragraph 89).If however there is evidence that a condition has existed but there is now no remaining disablement the assessment should be certified "nil disablement" eg Malaria attrib nil FFS.

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Aggravation

233. SPO 1983 Article 9(2)(b) deals with the assessment when the condition has been aggravated but not caused by service.

234. **At the termination of service**, the total disablement present - ie from the original injury and the service aggravation - must be assessed and accepted (Article 9(2)(b)(i)). The actual severity of the aggravation by service is not taken into consideration in deciding this assessment.

235. **At any subsequent review** of this assessment SPO Article 2(ii) indicates that "any increase in the degree of disablement which has occurred since the said date of termination shall only be taken into account in so far as that increase is due to the aggravation by service of that injury". The Medical Advisor has no authority to certify disablement not caused by service.

236. In practice, when reviewing the case after the termination of service (Article 9(2)(b)(ii)) the Medical Advisor must first decide whether or not the aggravation by service still remains. If it does not, the entitlement must be reviewed (see paragraphs 84 to 88 of this Handbook). If it does, then the assessment of disablement should be reviewed. If there has been worsening the Medical Advisor is required to decide whether the increased disablement is due to the "aggravation by service" or not due to the "aggravation by service". If worsening is due to the "aggravation by service" the full disablement is accepted but if it is due to some non-service cause - eg natural progress - the Medical Advisor must consider "limiting" the assessment at the degree of disablement which has resulted from service aggravation.

237. The decision to limit the assessment must be based not only on the present state of the accepted disablement but on the medical nature of the condition, its natural history, the pre-service history, the extent of service aggravation, the time interval since service and the post service history of the condition taking note of its stability, remissions etc. See too the WP MA's Instructions and Procedures.

238. **In post service claims** in which it is accepted, either by the Medical Advisor or by the PAT, that service aggravation of a condition still persists Article 9 does not specify how the disablement should be assessed. Article 9(2)(b)(i) refers only to assessment at the date of termination of service and Article 9(2)(b)(ii) only to increases in disablement at any date subsequent to the termination of service. Nor does Article 67 indicate how these assessments should be determined as it is concerned only with reviews and revisions of existing assessments. In the absence of statutory directives the normal principles of assessment must be applied.

239. The assessment at the date of claim should first be established. This may not all be due to service factors. It may include the assessment of an increase in disablement since service but not due to service. Limitation should be considered. The assessment at termination of service should then be estimated and the history of the condition since discharge examined. All these aspects should be taken into consideration, the assessment at discharge, the history since discharge and the present assessment.

NOTE:

1. Though it is legally permissible to limit an assessment of a condition which was caused by pre 3 September 1939 service but aggravated by post 3 September 1939 service, in practice we would not do so. The Department has agreed that the total assessment will be included in the award.

2. When industrial disablement benefit is in payment for a condition for which there is entitlement to war pension the disablement must be carefully analysed. The lay officer will adjust the award as explained at Appendix 9.

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Composite Assessment

240. When there is more than one accepted injury Article 9(2)(c) indicates that "a composite assessment shall be made by reference to the combined effects of all such injuries". This composite assessment is the only one notified to the pensioner and it is the one used as the basis for any award (Article 9(6)).

241. When both an **SMI** and some other accepted disablement are present, the question to be determined is whether the sum of the 2 assessments is greater than the assessment for the non SMI alone. If it is greater, then the combined assessment is certified and awarded. If it is not, then 2 assessments are certified, one for the SMI and one for the other disablement. In the former case, an award is made under Article 10 or 11. In the latter case, an award is made under Article 11 for the SMI as well as under Article 10 or 11 for the other disablement.

EXAMPLES

Non SMI assessed at 20 per cent
SMI assessed at 3 per cent
Total = 23 per cent

This is rounded down to 20 per cent so the sum of the assessments is not greater than the non SMI. Two assessments are awarded, 20 per cent and 3 per cent.

Non SMI assessed at 20 per cent
SMI assessed at 6 per cent
Total = 26 per cent

This is rounded up to 30 per cent and as this is greater than the assessment for the non SMI, 30 per cent is awarded.

242. In those cases in which the composite assessment is awarded if the non SMI is assessed TLTY or TMTY the addition of an SMI will automatically result in a composite award on an ID basis.

243. When 2 or more accepted SMIs are present, as well as the composite assessment of disablement, Medical Branch should report each assessment separately (SPO Article 11). If the composite assessment is 20 per cent or more, this composite assessment should be awarded by the lay awarding section. If the composite assessment is less than 20 per cent separate payments for each item could be more advantageous.

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Overlapping/Interaction

244. When separate conditions have entirely independant functional effects the composite assessment of disablement is most often the arithmetical sum of the individual assessments. However, there are occasions when disablements may overlap and a composite assessment be less than the sum of the individual ones and occasions when interaction of disablements may result in an increase in disablement and thus an increase in composite assessment.

245. When the functional effects of conditions **overlap**, the overall disablement is lessened and the composite assessment should reflect the degree of overlapping eg an assessment of 20 per cent for psychoneurosis and an assessment of 20 per cent for duodenal ulcer may result in a composite assessment of 30 per cent, not 40 per cent.

246. When disablements **interact** the overall disablement may be greater than the arithmetical sum of the separate disablements, the enhanced composite assessment has to be calculated. The Schedule of Assessments of Specified Injuries (SPO 1983 Schedule 1 Part V) contains examples of an increase in disablement due to interaction of separate conditions. The amputation of one foot resulting in an end-bearing stump is assessed at 30 per cent. Amputation of both feet resulting in end bearing stumps is assessed at 90 per cent, not 60 per cent. In this case there is an increase of 30 per cent in the composite assessment even though the individual conditions have not been worsened.

247. This is but one form of enhancement. One condition can have an aggravating affect on another, either on the condition itself or on its symptoms. If a condition which is attributable to service is worsened by a non-accepted condition the total worsening of the attributable condition must be accepted. The assessment for the non-accepted condition need not be considered.

248. When an accepted condition worsens a non-accepted condition or when the overall disablement is increased as in the example at paragraph 246 2 methods are used to calculate the increase in composite assessment, the Paired Organs Rules and the Greater Disablement Principle.

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Paired Organs/Limbs Rules

249. There are 2 Rules, Rule 1, known as the Hancock Rule, as it was approved by the Hancock Committee in 1946, and Rule 2, the "Halving" Rule, announced by the Minister of Pensions in the House of Commons on the 15 February 1954.

Rule 1 - This rule was clearly outlined in paragraph 3(ii) of the original report by the Hancock Committee. This applied to cases where the service injury occurred prior to the non-service injury ie
Where one organ is damaged or lost from a service cause and the other subsequently, from a non-service cause, and the assessment appropriate to the double injury is less than 100% but more than twice the assessment for the single, the Ministry accepts liability for one half the total loss of function resulting from the injuries to both organs. (For example, a pensioner with an award at the 30% rate for one of a pair of organs sustains injury to the other of the pair through a non-service cause, and the overall disablement is assessable at 80%, the award may be increased to the 40% rate.) (NB The original Hancock Report used the eyes as an example, this is not now appropriate to present day practice.)
Rule 2 - Where the assessment of the accepted disablement is *40 per cent or more and the accepted disablement and the non-accepted disablement of the other organ or limb are together assessable at 100 per cent, the assessment for pension purposes may be increased by one half of the difference between the current assessment and 100 per cent. For example, a pensioner with an award at the 60 per cent rate for a gunshot wound of an arm who later develops severe arthritis in his other arm may qualify for a revised award at the 80 per cent rate.

NOTE:

Though the assessment of *40 per cent applies to limbs, 30 per cent applies to eyes and 20 per cent to ear cases.

250. In the past paired organ/limb cases were referred to Medical Branch at Norcross with the following five questions.

1. the assessment of the overall service disablement in the organs or limbs;
2. where the entitlement has been admitted for bilateral disablement, the assessment of the service disablement of each organ or limb by itself, the other being normal;
3. the assessment of the disablement from all causes, service and non-service, of both organs or limbs taken together;
4. the separate assessment of total disablement, service and non-service, in each organ or limb, the other being normal;
5. the assessment of the overall non-service disablement in the organs or limbs.

The appropriate addition was then calculated by the lay awarding officer.

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Greater Disablement

251. By definition the paired organ rules apply only to organs which are in pairs: arms, legs, eyes, ears, kidneys, testes. Lungs are not regarded as paired as they function as an entity. But other conditions also interact eg a visual handicap is more disabling in a deaf person than in one with normal hearing. To enable complementary organs to be considered the greater disablement (GD) principle has been used from earliest days but not clearly defined until 1972 when it was appreciated that it was covered by Article 9.

252. Though the GD principle is not difficult to enunciate it is sometimes difficult to apply. It was outlined in full by the Assistant Secretary in 1972 when he approached the President of Tribunals (see Appendix 25). In essence it requires the total disablement to be assessed and then only the disablement which is not due to service to be subtracted. The remainder is awarded. This will include both the assessment of the accepted disablement and the assessment of the interaction of the disablements.

253. There is only one exception to the rules of calculating Greater Disablement. It applies when the AD is "total loss of vision in one eye" (with or without loss of eye). Should the pensioner subsequently lose the sight of the other eye due to a non AD we do not follow the normal rules of calculation. The total disablement is now 100 per cent but we do not substract the assessment of the non AD (30 per cent). Instead, we award the total 100 per cent. This only applies in cases of total blindness and is the only exception in applying the GD principle. (It will be noted from the Hancock Report at paragraph 257 that the Department has always accepted a generous application of the Paired Organ Rules and has awarded 100 per cent in the rare cases where the member was enlisted with total loss of vision in one eye and during service lost the sight of the good eye due to service factors.)

254. In practice the appropriate addition to the assessment is calculated under both the Greater Disablement Principle and the Paired Organ/Limb Rule and the more favourable addition accepted. The Greater Disablement Principle will usually prove to be the more generous, but there are cases in which the calculation under the Paired Organ/Limb Rule is more beneficial. When the assessment of non-accepted disablement is high, eg 70 per cent for the non-accepted disablement, right above knee amputation, and the assessment of the accepted disablement is relatively low, eg 40 per cent for osteoarthritis left ankle; in this case the composite assessment would be 100 per cent and under the Greater Disablement Principle 10 per cent or at most 20 per cent, could be added to the 40 per cent accepted assessment, making a total of 50 or 60 per cent. Under Rule 2 of the Paired Organs 30 per cent can be added and the assessment raised to 70 per cent.

255. Cases which have been aggravated by service require special care as only the assessment of disablement due to aggravation by service can be included in these calculations. In practice Greater Disablement is very seldom accepted in cases in which the assessment is limited (see para 236), though occasionally Paired Organ/Limb considerations are possible in these cases. Paired Organ rules are not applied if disablement in both of a pair of organs or limbs has been accepted on an "aggravated" basis.

256. The Hancock Committee in 1946 also described a generous application of the rules of interaction when the service injury occurs before the non-service injury (paragraph 3 of the report - medical library):

"....if one of the paired organs is already lost or damaged, an injury to the other organ of the pair obviously involves a greater loss of function than if both had been normal. War Pensions cases in which this situation arises are the subject of a special arrangement of the Ministry of Pensions.

Where one organ of a pair is damaged or lost from a non-service cause, and the second, subsequently, from a service cause, the Ministry accepts liability for the whole of the resulting loss of function. Thus, a one-eyed man entering the Army and losing his remaining eye as a result of war service is awarded pension at the rate for total blindness (ie 100 per cent).

Our proposed Schedule has been framed on the assumption that war-service cases will continue to be dealt with on this basis."

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Miscellaneous

Extinguished Disablement

257. When an accepted disablement is extinguished by a non-accepted injury, wound or disease the several actions in War Pension considerations, entitling, assessing and awarding, must all be carefully reviewed.

EXAMPLE

The accepted disablement is a below knee amputation with a stump length of 20cms attributable to service. An above knee amputation for an injury unconnected with any service factor extinguishes the accepted disablement.

258. As stated, all aspects must be reconsidered.

1. Entitlement - The accepted condition has been extinguished but there is no provision in War Pension Statutory Instruments for removing entitlement in these circumstances. The original entitlement must remain ie Below knee amputation, attributable.
2. Assessment - the disablement has been extinguished so the assessment is nil.
3. Certificate - "Below knee amputation attributable nil" should be given.

4. Award - an award of "Below knee amputation Attributable nil" would reflect the certificate, but when an accepted condition is extinguished in this way the Secretary of State is empowered to continue payments under Treasury sanction. Medical Branch will be asked if the assessment of the below knee amputation would ever have dropped below the level in payment at the time this accepted disablement was extinguished. In the example in paragraph 258, as the assessment would never have dropped below that level, the award can be continued under Treasury authority even though there is no longer any entitlement to a below knee amputation.

259. The further handling of such cases can be difficult. There is no remaining accepted disablement but there is entitlement and there is an award under Treasury authority. In the example quoted at para 258, should the pensioner later develop atherosclerosis, entitlement of aggravation for atherosclerosis should be given. If the accepted disablement had not been removed by an above knee amputation, atherosclerosis would have been accepted as aggravated by the below knee amputation. Entitlement still remains for the original 20 cm below knee amputation.

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1 Centimetre Rule (1/2 Inch Rule)

260. The **1 cm rule** (previously the **1/2 inch rule**) is a formula used in war pension cases when on remeasurement a stump is found to be so much shorter than the measurement on which the current assessment is based as to raise doubts as to the correctness of the earlier measurement.

261. The rule provides that the earlier measurement may be deemed erroneous when the new measurement is more than 1 cm (previously more than 1/2 inch) within the zone qualifying for the higher assessment (all measurements up to 22 July 1974 were in Imperial terms)

262. Assessments increased under the 1/2 inch rule are paid from the date of the original claim eg 1946. Assessments increased under the 1 cm rule can be paid from 22 July 1974, "Metrication Day".

1914 War

263. There is authority under Dispensing Instruments for dealing with **1914 War cases** when their preserved rights cause anomalies under the Greater Disablement or Paired Organ/Limb principles.

264. If a 1939 War pensioner has a disablement pension for pre-1939 service, Articles 49 and 51 of SPO 1983 enable a composite assessment to be determined for all service related disablement.

Desk Card

Some conditions allow quantitative measurements of functional loss and in some cases these measurements have been translated into percentage disablement tables. A table for Pulmonary Function and tables for Visual Acuity have been included on the **desk card MPM 200.** This also includes a list of Suggested Assessments for Ankylosed Joints and "Suggested Assessments" for a variety of other conditions. These are for help and guidance only but useful in maintaining consistency in assessing disablement.

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Reviews

269. Alterations in assessment are governed by Article 67 as well as Article 9. Article 67 gives the Secretary of State the same wide powers to review assessments as it does to review entitlements (see para 134) and Article 67(3) gives power to revise the assessment to the detriment of the member when "in the case of an interim assessment there has been a change in the degree of disablement due to service since the assessment was made".
It must be remembered that the period of assessment continues until the assessment itself has changed under Article 67.

270. Once an assessment has been finalised by the Pensions Appeal Tribunal it can be altered only under the Dispensing Instruments and there is no right of appeal. In practice the Directorate seldom finalises over 20 per cent assessments. Less than 20 per cent assessments are only finalised by the Directorate when the accepted disablement is clearly stable.

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Appeals

273. Appeals to the Pensions Appeal Tribunal can be made against the composite assessment, the period and finality. Assessment Appeal Tribunals have 2 Medical members, one appointed as Chairman, and a third member similar to the third member on Entitlement Appeal Tribunals (see paragraph 143). The appeals are handled in much the same way as entitlement appeals but the Statement of Case is usually confined to recent evidence and the inclusion of an Opinion of Medical Division is at the discretion of the Medical Advisor.

274. The Assessment Appeal Tribunal has power to uphold, increase or decrease an interim assessment and/or reduce the period. The tribunal has no power to increase the period. In a final award it can uphold or set aside a final decision, raise or lower the assessment, or make a new interim assessment for any period up to 2 years.

275. The right of appeal is against the composite assessment as a whole even if part of it has been made or upheld by a Pensions Appeal Tribunal

276. If the award consists of an SMI and another disablement there are dual rights of appeal. The SMI award will of course always be final.

277. During the lifetime of a pensioner there are time limits for appeals against assessment decisions. A notice of appeal against an interim assessment must be given within 3 months of the despatch of the notification of decision, and against a final assessment within 12 months of the despatch of the notification of decision. PAT can allow "late appeals" to be made.

278. After the death of a pensioner there is no right of appeal against an assessment decision.

279. There is no right of appeal to a High Court against a Tribunal's decision on assessment.

280. Though the "designated person" (SPO 1983 Article 678(1)(b)) can continue an appeal after a pensioners death (Pensions Appeal Tribunal Posthumous Appeal Order 1980) there is no right of appeal against the assessment which follows a successful posthumous entitlement appeal.

281. There is no provision for the designated person to open an assessment appeal after a pensioners death.

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CHAPTER 4

ALLOWANCES, APPLIANCES, TREATMENT

General

287. Articles 12 to 26A SPO 1983 are concerned with various allowances and supplements which can be awarded to pensioners. In several of these allowances there is no medical content but in others the medical aspects are crucial, even definitive. In none is certification by a medical officer required. The Medical Advisor acts in an advisory capacity, the lay officer making the decision.

288. There are 2 allowances which are not authorised by the SPO 1983: Section 3(1)(j) The Naval and Military War Pensions etc Act 1915 enables the Department of both to meet the cost of Convalescent Holidays and to care permanently for certain pensioners. (See Paragraphs 354 and 360.)

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Constant Attendance Allowance (CAA) Article 14

289. SPO 1983 Article 14 enables a pensioner whose accepted condition is assessed at 80 per cent or more and who is so severely handicapped mainly by his accepted condition that he must depend to a greater or lesser degree upon "attendance" from some other person, to be awarded an allowance which varies according to the amount of attendance required. Attendance in this context includes supervision.

290. The attendance must not be solely of a domestic nature ordinarily provided by a member of the pensioner's family eg shopping, housekeeping etc. It must be in connection with functions a fit person would normally perform for himself, such as dressing, eating, drinking, bathing and going to the toilet.

291. Supervision should be required to avoid danger to the pensioner or to someone else eg the possibility of a pensioner with epilepsy dropping a baby. The risk should not be only a remote possibility, it must be likely to occur and the pensioner must be unable to avoid the risk.

292. CAA is awarded for the amount of attendance required, not necessarily the amount of attendance received. The Statutory Instruments do not make the award dependent on the presence of an attendant; the need for attendance is all that is required.

293. War Pension considerations follow the ruling by the Commissioners in Attendance Allowance cases that the "night" should be regarded as the period when the household "closes down".

294. The following conditions must be satisfied for an award to be made.

1. The composite assessment must be at 80% or more. [This can include any **Greater Disablement or Paired Organ addition**.]
2. Constant Attendance from another person must be necessary.
3. The need for attendance must arise wholly or mainly from the AD.

295. There are four rates of CAA according to the amount of attendance required.

1. Part-day rate. To qualify for the part-day rate the applicant must require the help of an attendant at certain predictable times of the day for routine attendance, but be capable of being left for other periods. Attendance should be required for not less than one quarter of the day and not more than half the day.
2. Full day rate. To qualify for the full day rate, the applicant must require the help of an attendant for more than half of the day. If attendance at night is also required but only occasionally and in no way regularly (ie not every night), or if minimal attendance is necessary during the day but regularly during part of the night (ie at least twice every night) the full day rate may be appropriate.
3. Intermediate rate. The intermediate rate is payable where the applicant, although he cannot be regarded as completely helpless (eg because he has some use in his limbs - particularly the upper limbs), requires a considerable degree of attendance day and night. To qualify for the intermediate rate the applicant must require a considerable amount of attendance either during most of the day and regularly throughout the night (ie at least twice every night) or frequently throughout the night and part of the day. Occasional attendance at night will not normally qualify him for the intermediate rate.
4. Exceptional rate. To qualify for the exceptional rate the applicant must be completely or almost completely helpless and require constant attendance day and night. This rate is also awarded if the Directorate is notified that the pensioner is terminally ill due to an AD. Confirmation of this by the family doctor is sufficient.

296. Though the supervision requirements are less easily quantified the need for supervision must be assessed for the same four rates.

297. If the ADs are assessed at 80 per cent or more but the overall need for CAA is partly dependent on the presence of a non accepted condition, the rate of CAA which can be paid depends on the part the AD plays in the need for CAA. If the AD is the main factor in the overall need for

CAA then the rate appropriate to the overall condition can be paid. If the AD is not the main factor CAA can be paid at a lower rate, provided the AD alone accounts for at least half the need (ie it is the main factor in the need) for that lower rate.

298. CAA is not paid during hospitalisation but the entitlement continues and during any prolonged hospitalisation it may be necessary to confirm the rate is still appropriate.

299. A guide to rates of CAA for specified conditions is in the War Pensions Medical Advisor's Instructions and Procedures. Paragraphs 179 and 193 of this Handbook should be consulted if CAA is a factor when widows claims are decided.

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Exceptionally Severe Disablement Allowance (ESDA) Article 15

301. Article 15 introduced ESDA in March 1966 for war pensioners entitled to receive CAA **permanently** at the intermediate or exceptional rate. It can be awarded even when the pensioner is in a hospital or other institution provided he would qualify if he were not in an institution.

302. "Permanently" in this context means that the pensioner is likely to remain eligible for CAA indefinitely at a rate higher than the full day rate. The award at the intermediate or exceptional rate can be subject to review to keep a check on deterioration or improvement within those rates.

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Severe Disablement Occupational Allowance (SDOA) Article 16

304. Under Article 16 SDOA may be paid to a pensioner who is receiving CAA at either the intermediate or exceptional rate but who is nevertheless ordinarily in gainful employment. The allowance, introduced in 1961, cannot be paid concurrently with unemployability supplement, injury benefit under the Industrial Injuries Scheme, Severe Disablement Allowance, retirement pension or contributory old age pension under the National Insurance Scheme. Where a pensioner has been awarded SDOA if treatment allowances or injury benefit is paid for a period of 26 weeks the award must be reviewed and the question of the pensioner's future capacity to resume employment decided.

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Allowance for Wear and Tear of Clothing (Clothing Allowance) Article 17

306. A pensioner who regularly wears an artificial limb for an amputation due to service may be awarded a clothing allowance to compensate for the extra wear and tear the prosthesis causes. Article 17(1)(a) specifies a rate for a single artificial limb (other than a tilting table limb); Article 17(1)(b) specifies a rate, higher than the first, when more than one limb or when a tilting table limb is worn; Article 17(2) extends the allowance to non-amputees at rates "not exceeding" that for more than one limb when "exceptional war and tear" of a member's clothing results from the accepted condition. This allowance was first introduced in 1946.

307. For non-amputee pensioners Medical Branch will be asked if there is exceptional wear and tear and if there is whether it approaches more nearly to that caused by wearing a single artificial limb or more nearly that caused by wearing more than one artificial limb. Medical examination may be necessary.

308. The War Pensions Medical Officer's Instructions and Procedures lists various appliances and the appropriate rate of clothing allowance.

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Unemployability Supplement (UnSupp) Article 18

310. Under Article 18(1) this allowance is awarded when "a member of the armed forces is in receipt of .... a pension in respect of disablement so serious as to make him unemployable."

311. The War Pensions Instruments do not define "unemployable", nor do they specify a period during which the pensioner must remain unemployable. It is not necessary for the pensioner to be permanently unable to follow any occupation. This is however a long-term supplement for pensioners who because of their accepted disablement will be unable to follow a remunerative occupation for a prolonged period, and 2 years is regarded as the period to be considered.

312. The medical question is whether for a minimum of 2 years the pensioner will be prevented by reason of the pensioned disablement from following his own or some other remunerative occupation. The Medical Officer must first decide if, medically, the pensioner is unable to follow his normal occupation. If he is unable, is he able to follow some other occupation or is he unemployable? Finally it must be decided whether the restriction in the employment capacity is caused by the pensioned disablement. The disablement need not be assessed at 100 per cent though the allowance cannot be awarded if the assessment is less than 20 per cent.

313. The pensioned disablement does not have to be the sole cause of the restriction in working ability but it must be a serious factor.

1. If the pensioned disablement is the only cause of the unemployability then obviously an award should be made.
2. If the pensioned disablement is only a trivial contributory factor in a pensioner's unemployability no award can be made.
3. When there is accepted and non-accepted disablement, if the pensioner would be unemployable even if he was not suffering from the non-accepted disablement, an award should be made.

4. If the pensioned disablement together with any non-accepted disablement makes the pensioner unemployable an award will be appropriate provided the pensioned disablement is a serious factor and the non-accepted disablement is not in itself sufficient to make him unemployable.

NOTE:

The question to be answered is this:- "If he had not served would this man now be unemployable". If he would, then service is not the cause of the man being unemployable.

314. The lay officer has several other factors to consider including the pensioner's age, his work record and earnings and the availability of suitable work in his home area. An award can still be made even when the Medical Advisor does not regard the pensioner as medically unemployable. If the lay officer establishes that a suitable alternative occupation is not available then an award on "placement" grounds is made as the pensioner cannot be "placed" in employment.

315. This supplement was first introduced in August 1943 but in 1985 Article 18(2A) restricted eligibility. Those over pensionable age (at present 60 years for women and 65 for men) do not qualify "unless, on the relevant day" [ie the day before 60th or 65th birthday, or on the day after the final day he received earnings] "the pensioner was unemployable" due to the AD. Prior to 1985 unemployability supplement was decided as at the date of claim.

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Allowance for Lowered Standard of Occupation (ALSO) Article 21

317. Article 21 provides for an allowance to be paid to a partially disabled pensioner when the accepted disablement results in the pensioner being likely to remain permanently unable to follow his regular, or equivalent, occupation and his earning power is reduced. The Article indicates that the assessment of the AD must be less than 100 per cent, that unemployability supplement must not be in payment and it defines in detail "regular occupation" and specifies the rate of the award. This allowance was first introduced in 1946 for 1939 War Pensioners and in 1948 for 1914 War Pensioners.

318. The lay officer normally decides this allowance without reference to Medical Branch, but if in doubt whether or not the accepted disablement prevents or handicaps the pensioner from following a particular line of work he may seek medical help. The details of the duties and the stresses of the post will be recorded for the medical officer's guidance.

Comforts Allowance Article 20

319. This allowance was introduced in 1951. It may be paid to a pensioner who has been awarded an unemployability supplement or constant attendance allowance (or who would be receiving a constant attendance allowance if he was not in hospital). There are 2 rates of comforts allowance - a lower rate payable in addition to either unemployability supplement or constant attendance allowance and a higher rate payable when both the supplementary allowances have been awarded or in certain circumstances where constant attendance allowance only is in issue.

Mobility Supplement (WPMS) Article 26A

320. Article 26A was inserted into the SPO in 1983. The supplement replaces the War Pensioners Vehicle Scheme under which motor cars, adapted when necessary, or three wheelers, petrol or electrical, had been supplied, or a private car allowance paid. WPMS is a cash payment and there is a privately run scheme (MOTABILITY) to enable the pensioner to use the cash to lease or purchase a car.

321. Pensioners who had entitlement under the Vehicle Scheme were "passported" into the new allowance. Double leg amputees are automatically awarded mobility supplement and since 1991 this has been defined as "at levels which are either through or above the ankle". Any other pensioner is eligible whose disablement is, and is likely to remain for at least 6 months, wholly or mainly responsible for

i. rendering him unable to walk, or
ii. restricting his leg movements to such an extent that his ability to walk without severe discomfort is of little or no practical use to him, or
iii. restricting by physical pain or breathlessness his ability to walk to such an extent that it is of little or no practical use to him, or
iv. rendering the exertion required to walk a danger to his life or a likely cause of serious deterioration in his health.

322. In 1990 the criteria were extended to include the "blind and deaf". Disablement from blindness should be certified as amounting to more than 80 per cent and disablement from deafness assessed at not less than 80 per cent.

323. Article 26A(1) specifies that the claimant must be in receipt of retired pay or a pension - ie his disablement must be assessed at 20 per cent or more. Leaving aside double leg amputees, the Article specifies that the disablement must be "wholly or mainly" responsible for the restricted mobility. Our legal colleagues advise us that this wording means that the disablement must be "at least 50 per cent of the cause" of the restricted mobility and not merely a contributory factor. If a non-accepted disablement is the main cause of the restricted mobility then an award cannot be made.

324. Article 26A(2) specifies that "regard shall be had to his ability to walk with a suitable prosthesis

or artificial aid which he habitually wears or uses or which he might reasonably be expected to wear or use".

325. The pensioner's walking ability must be examined in great detail, not only the distance he can walk but the speed, the length of time he can walk, the manner of walking, any problems with balance, ability to negotiate slopes, whether a prosthesis is used and whether guidance or support is required.

326. The Articles lay down no criteria for any of these factors and the determination is a medical one based on all the evidence, even though, as with all the allowances, the lay officer has the responsibility for taking the final decision. The pensioner must "walk" ie his gait must be such that both feet are never off the ground at one time. Hopping or "swinging through" on crutches is not walking and any pensioner who progresses by this method would be entitled to WPMS. Ability to walk a distance of 200 yards or more at a reasonable speed without discomfort and without any major difficulty would normally disqualify the pensioner.

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Treatment and Treatment Allowances (TAs) Articles 23 to 26

General

330. After the Great War the Ministry of Pensions provided hospital treatment in Ministry of Pensions Hospitals for pensioners for their accepted disablements. Ministry Medical Officers were employed on clinical duties. For illnesses not requiring hospitalisation and when out-patients attendances were impracticable the pensioners had to attend private practitioners. Because the cost of the medical treatment added to the loss of earnings deterred pensioners from seeking treatment, treatment allowances were introduced to encourage pensioners to attend for treatment. The cost of treatment, travelling and out-of-pocket expenses were defrayed "the amount determined according as the man is considered to be unable to provide for the support of himself and his family".

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Treatment

333. Medical treatment has been free to all United Kingdom citizens, including war pensioners, since the National Health Service started in 1948. Initially the War Pension Hospitals remained under the Ministry of Pensions, but in 1953 the Ministry of Health took over their administration and gave an undertaking that all National Health Service hospitals would give pensioners priority for the treatment of their accepted disablements (see HM(72)75 at Appendix 23). No such agreement was sought from the "independently contracted" family doctor service but pensioners have usually been able to obtain medical treatment without undue delay from the general practitioners. The Department accepts responsibility for ensuring that treatment is available for the pensioned disablements, but the war pension medical officers are no longer involved in the clinical care of pensioners. If treatment is not available under the National Health Service, or if the pensioners live outside the United Kingdom, the Department is still responsible for ensuring that treatment can be obtained for the accepted disablement. Private treatment in the United Kingdom can therefore be accepted but only if that treatment is not available under the National Health Service. (See too Appendix 24, Treatment in MOD Hospitals.)

334. The SPO places no limitation on what treatments can be provided for the AD. It is a medical question as to what is required and if in an exceptional case the National Health Service cannot provide it, it can still be given under the authority of Article 26.

335. Entitlement must first be decided. If treatment is requested but the condition requiring treatment is not included in the list of ADs, it may be found to be part and parcel of the accepted disablement, or a sequela (part of the natural progress), or a consequential condition (an indirect result) but entitlement must always be decided first. [Quite exceptionally TAs may be authorised if the diagnosis cannot be established without investigation and there is a reasonable doubt that the problematic condition will be accepted once the diagnosis is established.]

336. If the condition is attributable to service treatment can be accepted (with caution in attrib nil cases) but if the condition has been aggravated by service treatment can only be accepted if the aggravation by service plays a part in the need for the treatment. The seriousness of the aggravation, the time lapse and the medical history since service must all be considered. Limitation of the aggravation does not automatically exclude eligibility for treatment, if the continuing effects of service play a part in the need for treatment the pensioner is eligible. In practice treatment can be accepted by the lay officer when the entitlement is attrib or, if the entitlement is agg, the aggravation is assessed at 30% or more and the assessment has not been limited. If the assessment has been limited or if the assessment is below 30% then eligibility for treatment must be carefully examined. Previous decisions on accepting treatment should also be taken into account. If, before treatment is authorised, fresh evidence is required, a report from the family doctor or from the hospital may suffice but, if not, the pensioner should be examined. A Permanent Certificate of Eligibility for Treatment (PCE) should only be given when it is fully justified.

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Treatment Allowances

340. Despite the various medical and social changes since treatment allowances were introduced in 1917 this allowance still continues. It still reflects the original intention of the allowance, to ease loss of earning when attending for treatment (see paragraph 330).

341. Article 23(6) defines "treatment" in the context of treatment allowances. It will be discussed in detail:

Treatment -

1. must be for the accepted disablement;

2. must be

a. in-patient treatment in hospital, or similar institution, or
b. a course of remedial treatment;

3. must cause "interruption" in the "member's normal employment".

342. **Treatment must be for the AD.** (see paragraphs 335-336)

343. **In-patient hospital treatment.** As admission to hospital automatically results in a period off work in-patient treatment allowances (IPTAs) are payable. A certificate of inability to work is given for the full in-patient period. It is the lay officer's responsibility to avoid overpayment of TAs. The hospital notifies the Department when the patient is discharged.

344. If the hospital admission is for a non-accepted condition but during the admission the pensioner is also treated for the accepted condition then treatment allowances can be paid if the in-patient treatment would have been necessary for the AD, whatever the reason for the present hospital admission. In these circumstances the period should be limited to the period the accepted disablement is actually treated.

345. When a pensioner is discharged from hospital, treatment may be continued at home but under hospital surveillance with the pensioner attending the out-patient department at regular intervals. Out-patient treatment allowances (OPTAs) should then follow the in-patient treatment allowances. OPTAs can be paid for out-patient treatment even if the pensioner has not been an in-patient - see paragraph 348.

346. When on discharge from hospital there is no further treatment Article 24(1) gives authority for TAs to be continued if, on the completion of a course of in-patient treatment, the member "should abstain from work in consequence of the condition which necessitated that treatment". Special treatment allowances (STAs) are then authorised, the period depending on the nature of the AD and of the treatment. STAs are not awarded if the pensioner is still on treatment.

347. **A course of remedial treatment.** A "course" implies a limited period, one with a beginning and an end. "Remedial" limits treatment to that which is intended to cure or improve a condition. Palliative treatment is not authorised by the SPO and treatment allowances cannot be sanctioned for it.If the treatment has no foreseeable end it is probable that the AD is preventing the pensioner working and the treatment is purely palliative.

348. A course of treatment can be arranged by a hospital or by the family doctor. If the pensioner has to attend the out-patient department 3 or more times a week it is accepted that this will prevent him working and OPTAs can be awarded.

349. If the pensioner attends the out-patient department once or twice a week OPTAs are not merited but the necessary expenses, travelling expenses, subsistence allowance and loss of earnings can be reflected in an award of Hospital Travelling Expenses (HTEs) under Article 26. HTEs are not paid for attendances at the family doctor's surgery nor for attendances at any building which is substituting for the family doctor's surgery. These payments were formerly known as Out-Patient Treatment - No Treatment Allowances (OPNAs).

350. When the course of treatment is arranged by the family doctor and the pensioner is treated at home, Home Treatment Allowances (HTAs) are authorised, the same awarding principles being applied.

351. **"Interruption of member's normal employment".** Whether or not the pensioner could manage lighter work is not of relevance. If the treatment interrupts his normal employment treatment allowances are justified. In practice it is accepted that an eight day interruption of work fulfils Article 23(6), shorter periods than this do not.

NOTE:

Under Article 23(6A), introduced in 1986, retired war pensioners and those not normally in employment can be regarded as unable to work and TAs authorised provided the requirements of treatment would have prevented the pensioner from working had he been in employment.

352. **Compensation for Loss of Earnings** Where the treatment involves only occasional interruption of employment, compensation may be paid for actual loss of earnings subject to a maximum amount in respect of any one day. Actual travelling expenses are also payable and subsistence allowances may be paid at certain specified rates. Similar payments are also available to pensioners attending Medical Boards or limb fitting centres.

353. **Rest.** Treatment is interpreted as a programme determined by the physician which the pensioner must follow so that his condition may be improved or cured or at least prevented from deteriorating. Rest plays a part in most programmes and it must be carefully analysed to determine whether or not it meets the criteria for treatment allowances. When a member has been medically advised to "rest" but no other treatment prescribed which itself could prevent work, rest can be accepted as "treatment" for treatment allowance purposes provided rest is essential for remedying or improving the accepted condition. It is reasonable to accept that rest is preventing work if circumstances are such that to continue to work during treatment would make the condition worse. Rest after hospital treatment is dealt with at paragraph 346 and rest before admission to hospital for an operation can be accepted under Article 23 if the rest is needed to prevent serious deterioration.

354. **Convalescence.** The general term "convalescence" covers a number of circumstances in which treatment allowances may be paid to pensioners receiving treatment or care in convalescent or nursing homes.

i A period of convalescence following hospitalisation advised by the hospital is really part of the in-patient treatment. The treatment is authorised by the original decision of the in-patient treatment or under Article 24(1) (see paragraph 346).
ii Convalescent holidays may be authorised under the Naval and Military War Pensions etc Act 1915, Section 3(1)(j) for severely disabled pensioners who normally reside at home and need a change of environment in their own interests, but who cannot take an ordinary holiday mainly because of their accepted disablement. The convalescent holidays can be taken in some suitable convalescent or nursing home and should not normally exceed 4 weeks in any 12 months. If the pensioner stays in a private convalescent or nursing home, the fees will be met from War Pension funds.
iii If a pensioner's attendant requires a break from looking after him and mainly because of his accepted disablement the pensioner needs to be admitted to a convalescent or nursing home to obtain the attention he requires, a respite break can be authorised. Pensioners receiving CAA normally qualify. Fees charged by private homes will be met from War Pension funds.

NOTE:

Admissions to the Ex-Servicemen's Mental Welfare Society's homes at Tyrwhitt House and Hollybush House are for remedial treatment and should be covered by paragraph 341.

355. **Chiropody.** The guiding rule is the same as for all treatments ie the foot condition which causes the need for chiropody must be part of or related to an accepted disablement and chiropody must be needed for the continuing effects of service. There is one apparent exception, the single leg amputee is always eligible for chiropody for the remaining foot. (This is based on the premise that the extra strain is a cause of the foot condition ie it is a consequential condition).

356. Pensioners who are prevented by their accepted disablement from caring for their feet are not eligible for chiropody. Arm amputees are not eligible because the foot condition is not part of the accepted disablement. There is no legislation to enable the Department to authorise eligibility. (In 1987, after prolonged discussions with the Department, the Joint Committee of the Order of St John of Jerusalem and the British Red Cross Society offered to meet the cost of chiropody for all arm amputees. This was on a 2 year experimental basis. In 1988 they agreed to extend the scheme to include other War Pensioners whose accepted disablement causes them difficulties in caring for their feet).

357. **Greater Disablement (GD).** When the non-accepted condition is worsened by an accepted disablement and GD has been awarded, treatment allowances can be accepted. When the non-accepted condition is not worsened but the symptomatology is increased by the presence of the accepted disablement and GD is awarded treatment allowances are not appropriate. For example, if the AD is a right above-knee amputation and there is Greater Disablement for worsening of a left knee condition which developed after service ended treatment allowances may be authorised for the left knee condition. If the AD is chronic bronchitis and GD is accepted because the pensioner's dyspnoea from a cardiac condition is increased by the chronic bronchitis the accepted disablement is not worsening the non-accepted condition and treatment allowances are not appropriate for the cardiac condition.

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Permanent Maintenance

360. There is no authority under SPO 1983 for the Department to care permanently for a pensioner, but Section 3(1)(j) of The Naval and Military War Pensions etc Act 1915 enables the Department to do so.

361. When, mainly as a result of the accepted disablement, a pensioner needs prolonged or permanent palliative treatment in an institution, the pensioner should be classified as requiring "Permanent Maintenance". The 2 main guiding considerations are:-

a. whether the pensioner needs regular palliative treatment of the type normally only available from trained nursing staff in a Hospital or Home. [A pensioner whose need is only for the kind of care and attention which can be provided by an attendant who has no nursing or medical training should not be classified as requiring permanent maintenance];
b. whether the need for the treatment results mainly from the accepted disablement. It is not sufficient for the accepted disablement to be a contributory cause or a factor which tips the balance. Extraneous factors such as non-accepted disablement and old age must be excluded.

362. If a severely disabled pensioner or his representative contacts the War Pensioners Welfare Office about admittance to a hospital or home the welfare officer should submit a report to NFCO giving full details of the pensioner's condition and home circumstances. The decision on eligibility will be made at Norcross on advice from Medical Branch. If permanent maintenance is approved NFCO will make the necessary arrangements although they may ask the welfare officer to assist.

Funeral Grant

363. The authority for paying towards the cost of a funeral derives from Treasury authority originally given to the Service Departments before the Ministry of Pensions was created in 1917. This is a single payment intended to meet the cost of a basic funeral. The grant may be paid where a war pensioner dies from his accepted disablement, or whilst receiving in-patient treatment for his accepted disablement irrespective of the cause of death or while in receipt of Constant Attendance Allowance. The grant can be claimed by anyone responsible for arranging the funeral.

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Appliances (Article 26)

364. Article 26 gives authority for "appropriate aids and adaptations for disabled living" to be accepted "in so far as not provided under legislation of the United Kingdom". Any appliance needed for treatment or for the control or amelioration of the accepted disablement can be supplied, maintained or renewed.

365. Most artificial limbs and surgical appliances are supplied through the Disablement Services Centres (DSCs). Most home nursing equipment should be supplied by Social Services Departments or Health Authorities. If they are unable to do so either a DSC can supply or War Pensions Directorate will arrange for payment, subject to confirmation that the need arises from the accepted disablement. Where a DSC is involved, the pensioner is examined by one of their medical officers who makes the ultimate decision. He may take advice from a therapist. Medical Branch, Norcross, is only required to confirm that the need arises from the accepted disablement.

366. Hearing aids are supplied by Hearing Aid Clinics. When a Consultant ENT Surgeon recommends the use of a hearing aid, the pensioner is referred to the Hearing Aid Clinic where the various NHS models are tested and the most suitable supplied. If NHS models are not suitable the DSC may arrange for the supply of a commercial model. It is not necessary to have Consultant reports when a hearing aid requires replacing.

367. Spectacles and contact lenses are supplied by opticians, sometimes on the recommendation of a Consultant Eye Surgeon though an optician's report is usually adequate. When a pensioner loses the vision of one eye as a result of service, eligibility for spectacles should always be advised regardless of the circumstances. When the spectacles are required for refractive errors the accepted disablement must be a significant factor.

368. When the Norcross Medical Advisor accepts that dentures are necessary for the accepted disablement they are supplied by dentists and the account sent to Norcross.

369. "Adaptations for Disabled Living". House adaptations, ramps, hoists etc are often installed by the local authority under the provisions of the Chronically Sick and Disabled Persons Act 1970. Additionally, to enable severely disabled war pensioners to live in their own homes, a House Adaptation Grant may be authorised to supplement Local Authority assistance in cases where the Local Authority contribution does not meet the full cost.

370. If a pensioner purchases an aid privately and them applies for reimbursement Medical Branch will be asked to decide eligibility and, if need be, establish whether or not there is a suitable Departmental or National Health Service model. The lay officer must then decide whether the circumstances justify reimbursement.

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APPENDICES

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APPENDIX 14

1914 WAR - LEGISLATION

Disablement

1914-1915

1. Under the early legislation in 1914 and 1915 servicemen did not have a right to a pension. Pensions were regarded as discretionary grants and the "merits" of the claimant were taken into account as well as service factors. There was no right of appeal against the decision.

1917-1919

2. The establishment of the Ministry of pensions in 1917, the Royal Warrants of 1917, 1918 and 1919 and the Pensions Appeal Tribunal Act 1919 resulted in fundamental changes. The basis for war pensions altered from compensation for loss of earnings to assessment of disablement and appeals were heard by Pensions Appeal Tribunals not Medical Appeal Tribunals. The serviceman, however, still had the onus of proving his claim.

3. Under the early Royal Warrants pensions, as distinct from final weekly allowances or gratuities, were granted on a temporary basis with the amount adjusted on the findings of fairly frequent, even three monthly, examinations. These repeated examinations with the resulting variations in the rate of pensions were a serious inconvenience and led to repeated complaints and protests.

1921

4. In 1921 it was decided to finalise the awards, the "final award scheme" was devised and the vast majority of Disablement Pensions were made final by Statutory process (War Pensions Act, 1921 section 4; War Pensions (Final Awards) Regulations, 1922 and War Pensions (Final Awards) Amendment Regulations, 1923). These sought both to finalise all awards and to limit the time allowed for making claims and appeals. For the purposes of administering the Act the 1914 War was regarded as terminating on 30 September 1921 (the Ministry of Pensions considered claims for pension up to 30 September 1921 and the Service Departments claims for pension after that date). Claims for disablement pensions for 1914 War service were not accepted 7 years after either the 30 September 1921 or the date on which the claimant was discharged from the Forces, whichever date was the earlier.

5. The "final award" represented "the considered judgement based on medical advice as to the final settlement of compensation in respect of the disablement by war service". It therefore represented the assessment of the average degree of disablement expected to be experienced by the disabled person.

6. Pensioners whose condition was not regarded as sufficiently stable for a final award received UFI awards. No further final awards were made after 1931, by which time 97 per cent had been finalised and only 3 per cent received Conditional Awards and had their disablement re-assessed at intervals.

7. There was a right of appeal against the final award but this was limited to 12 months from the date of notification of the award. There is now no question of Tribunal action in these final awards. Legally they are closed and there is no right of claim for an increase, no right of review or revision.

8. The final award scheme gave equitable settlements in the great majority of cases but experience showed that there were errors. In addition unexpected "material and permanent" worsening of the accepted conditions did occur. Treasury authority was obtained to make revised awards under the Dispensing Warrants. Action under this authority was referred to as the "Error in Final Award procedure" (EFA procedure).

9. Final awards were not altered under the EFA procedure without very good reason. These claims were not simply deterioration claims to be dealt with in the same way as deterioration claims in the Conditional Award cases. To regard them as deterioration claims would have nullified the whole concept of the final award scheme. They were regarded as claims for increased compensation, the

pensioner was medically boarded and at first a difference of 20% was necessary between the final award assessment and the new assessment before the decision to reopen the final award was taken. (As the years passed this was reduced to 10% (but not by Treasury authority) and eventually to any difference the medical officer certified as "material and permanent".)

10. The medical officer then had to decide whether or not the Final Award was correct or whether there had been an error of diagnosis or an error of prognosis in the final award. A difference of medical opinion as to the original diagnosis was not sufficient to establish an error of diagnosis, a definite and serious error of fact had to be found before an error of diagnosis was accepted. (The award for the original "condition" was not cancelled if the new diagnosis did not attract an award.) The error of prognosis was equally carefully considered.

After 1921

11. Despite the 1921 War Pension Act ex-servicemen still continued to submit claims for disablement pensions, "out of time" or "over 7 years" claims. Whenever possible, where such an application was received from a pensioner or ex-pensioner the claim was considered under the EFA procedure and the assessment adjusted. This applied when the claimed condition was a sequela or a consequential condition or if the injury had occurred at the same time as the injury previously pensioned. It applied too if the claimed condition had been considered some time earlier but given a nil disablement. When there was no connection with the accepted disablement(s) the new disablement could still be reflected in the composite assessment if the new condition was assessed at 20% or more. (If less than 20% it might well have been accepted for treatment purposes only.)

12. From about 1925 onwards the Treasury gave various authorities for new "over seven years claims" to be considered under the Dispensing Instruments. At first these were considered on the more restrictive principles of earlier legislation but after the 1939 War the general policy gradually developed of applying the more beneficial standards under which 1939 War claims were considered. The claimant still had to prove the claim and there still had to be "reliable evidence to show on the preponderance of probability that the disability claimed was related to the continuing effects of 1914 War service".

A continuous medical and lay history was generally required before entitlement could be admitted.

1972

13. In 1972 the Treasury agreed that from that time all 1914 war disablement claims should be considered under the same standards as apply to 1939 War claims. These awards are now made under the authority of the Treasury Letters of 4 August 1972 (2SS 151/80/01B) and 19 August 1974 and since 4 August 1972 all 1914 War disablement claims have succeeded "in a situation in which an award would be made in a similar 1939 War case". The 1914 claims therefore fall for consideration in accordance with Article 5 SPO 1983 but there is no right of appeal to a Tribunal.

14. **NOTE:**

1. For the Final Awards Scheme amputees were assessed in accordance with Schedule 1 of the 1919 Royal Warrant, those amputees assessed at a lower rate on Schedule 1 of the 1918 Royal Warrant were increased as necessary. Both 1918 and 1919 Royal Warrants differentiated between right and left arms but the 1946 Hancock Committee recommended assessing left arm amputees the same as the right arm ones. (Pensioners were advised of this change by leaflet, they had to apply, but not everyone did so.)

2. Parts III and V of Schedule 1 SPO 1983 dealing with Specified Injuries refer to disablement due to service during the 1914 War and after the 2 September 1939. Both 1914 and post 2 September 1939 cases should normally receive the same assessment for similar disablement but 1914 War pensioners still enjoy reserved rights to a higher assessment for certain specified amputations and for loss of vision of one eye (see the DESK CARD MPM 200). Care must be exercised when GD considerations involve these "reserved rights assessments".

DEATH

1919-1920

15. Article 11 of the Royal Warrants 1919 and 1920 limited the acceptance of claims following death through injury or disease to those occurring within 7 years of receiving the wound or injury or of the

removal from duty because of disease.

1921

16. The 1921 Act, though it limited the time allowed for making disablement claims, removed the limitation on the time allowed for submitting widows claims or appeals. Since 1921 there has been no time limit on widows claims and there is a right of appeal. (See paras 29 and 30 of this Appendix.)

1924

17. The Royal Warrant 1924 and other Statutory Instruments made significant alterations in death claims. Articles 16 and 17 of the earlier Warrants were replaced by Articles 16A and 16B for Officers, 17A and 17B for Other Ranks.

18. The State's liability was no longer limited to deaths within 7 years and no longer defined by reference to a label of attributability or aggravation, but the widow's claim was judged on the actual nature or condition of the pensioner's disability which caused his death, and whether that disability was due to war service or whether the effects of war service had materially hastened death. At the time of his death the deceased must have been in receipt of a disablement pension though it did not follow that the widow had a prescriptive right to a widows pension (it was not until Article 2 of the 1972 Instrument - wef 2.10.72 - that the requirement was removed that the member should have been in receipt of a disablement pension when he died.)

19. Articles 16B and 17B contain 2 conditions:-

1. Death was wholly due to the nature or condition of the pensioned disability.

2. Such nature or condition having resulted directly from his war service.

20. Articles 16A and 17A were for "meritorious cases" where the "wholly due" condition of Articles 16B and 17B was not fulfilled. Provided the pensioned disablement had played a predominant role in causing death or in materially hastening it the widow's claim could succeed. (There was a qualifying rule that the disablement had to be assessed at 40%.)

21. The widow was expected to claim under the correct Article, the Minister had no onus to discharge, no compelling presumption to rebut and strictly speaking the evidence had to exist or be provided by the claimant. In practice the Ministry considered the case under both Articles and gave the benefit of reasonable doubt, but before a claim could be admitted the Minister had to be satisfied that under Articles 16B and 17B no appreciable factor other than the actual effects of war service had influenced the death and that under Articles 16A and 17A each factor had been identified and appraised before it was decided that death had been materially hastened.

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1964

23. Articles 71(7) of the SPO 1964 revoked, as from the 1 October 1964, Articles 17A and 17B of the 1920 Order, Articles 16A and 16B of the 1921 Order and Article 14 of the 1949 Order. Claims in respect of deaths occurring before the 1 October 1964 are considered under the entitlement provisions of Article 11 or Article 16 and 17 of the 1919 and 1920 Instruments and Articles 14 of the 1949 Instruments. There is a right of appeal under Article 16B and 17B but not under Article 16A and 17A. The Tribunal can act in an advisory capacity in Articles 16A and 17A.

24. Claims in respect of deaths occurring after 30 September 1964 are all considered under the provisions of the current 1939 War legislation, at present Articles 3 and 5 SPO 1983. There is a right of appeal to a Pensions Appeal Tribunal. Until 2 October 1972 the right was limited (see 1972).

1972

25. Article 2 of the 1972 Statutory Instruments removed restrictions on widows right of appeal. Before 2 October 1972 a right of appeal existed only when the member at the time of his death was in receipt of a disablement award under the War Pensions Instruments or the Dispensing Instruments. Since the 2 October 1972, a full right of appeal to the Pensions Appeal Tribunal has existed against the rejection of a claim in respect of the death of a member who served in the 1914 War. There is a time limit, an appeal by a 1914 war widow must be made within 12 months of the notification of the

rejection.

1978

26. The SPO 1978 introduced the automatic award of a widows pension when Constant Attendance Allowance was payable to the member "in respect of a period ending with his death". Deaths after 22 November 1916 qualify but if death occurred before 13 November 1978 then the CAA had to be payable at a rate of not less than "the normal maximum rate" (full-day rate).

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CURRENT POSITION - SUMMARY

Disablement Claims

28. Awards and reviews are all now made under the authority of the Treasury Letter of 4 August 1972 The principles of Article 3 and 5 SPO 1983 apply. There is no right of appeal.

Death Claims

29. Deaths before the 1 October 1964 are considered under Articles 11 or 16A and B or 17A and B, of the 1919 and 1920 Royal Warrants, and Article 14 of the 1949 Royal Warrants. There is a right of appeal under Articles 16B and 17B but not under Article 16A and 17A though the Tribunal can act in an advisory capacity in Article 16A or 17A cases.

30. Deaths after the 30 September 1964 are considered under the Statutory Instruments current at the date of death, at present Articles 3 and 5 SPO 1983. There is a right of appeal to the Pensions Appeal Tribunal, though there is a time limit. The appeal must be made within 12 months of the date of notification of rejection. Until 2 October 1972 this right of appeal was limited to the deceased holding a disablement award at the time of death.

31. If Constant Attendance Allowance is in payment at the time of death a widows pension is automatically paid under Article 27(3) of SPO 1983 (see para 179 of this Handbook). This has applied since 22 November 1916 but until 13 November 1978 the CAA had to be in payment at a rate of not less than the normal maximum rate (full-day rate).

32. If Constant Attendance Allowance is not in payment but is merited 1914 (and 1939) war widows claims can be considered under the Dispensing Instruments (see para 193 of this Handbook).

NOTE:

There is a difficulty with the now very rare claim in respect of death which occurred within 7 years of the termination of 1914 War service. The War Pensions (pre-consolidation amendment) Act 1978 revoked, with effect from the 1 January 1979, the basic Instruments for the administration of pensions in respect of death or disablement due to 1914 War service. Since 1 January 1979 there has been no statutory provision for meeting this claim. In practice such a claim is decided under the standards of Article 4 SPO 1983 and awarded under the 4 August 1972 Treasury Letter. There can be no appeal.

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APPENDIX 13

1939 WAR - EARLY LEGISLATION

1939

1. Under the 1939 Royal Warrant and other legislation a "member of the military forces" did not have a right to a pension. Pensions were rewards for service and not granted to persons the Minister regarded as "unworthy".

2. The 1939 Instruments enabled both disability and death awards to be made but the legislation limited disability awards to disability arising "during war service" and claimed within 7 years of the termination of service or the end of the war, and death awards to death within 7 years of the wound or injury or of first removal from duty in respect of the disease which caused death.

3. Under Article 4 of the 1939 Royal Warrant a member of the military forces "may be granted a **disability award**". Article 5 contained the criteria:

"disability shall not be accepted as attributable unless it is certified to be

a. directly attributable to military service during the war; or

b. due to a wound, injury or disease which

i. arose during war service or existed before such service, and
ii. was aggravated by war service to a material extent and remained so aggravated.

4. As disability had to be attributable to war service there were only two possible entitlements under the 1939 Instruments, "directly attributable" or "attributable (materially aggravated)" (Mat Agg as it was called). "Directly attributable" indicated that the disability resulted directly from war service. [For example an injury in the performance of duty or a disease due to the specific condition of service such as amoebiasis contracted in endemic areas.] For "attributable (Mat Agg)" to be certified the aggravation had to be "material" and had to remain "material".

5. "Mat Agg" was not clearly defined but slight or temporary increases in disablement due to service would not have justified an Attrib (Mat Agg) entitlement. After July 1941 it was agreed that when a member had been enlisted as "fit for general service" ie of full, normal standard of health and strength (A1 or Grade I) and was subsequently invalided for a condition which had existed when he was examined for enlistment, the condition had been aggravated by service and invaliding was due in part at least to the service aggravation, the fact of invaliding was regarded as justifying the acceptance of "Mat Agg". (This principle did not apply in psychiatric cases.)

6. Disablement involving serious negligence or misconduct could not be attributable to war service.

7. Death grants were covered by 3 separate Articles, 39, 53 and 67 for the 3 groupings, soldiers, officers and "women members", though the criteria were identical in all three. The Articles provided that widows and dependants "may be granted a pension" if death took place within 7 years of the wound, injury or disease, provided death was not due in any substantial measure to serious negligence or misconduct, and death was

a. Due to or materially hastened by a wound, injury or disease which was directly attributable to military service during the war; or
b. Due to a wound, injury or disease which:-
i. arose during war service or existed before such service;
and

ii. was aggravated by war service to a material extent, and but for such aggravation would not have taken place or was materially hastened by such aggravation.

NOTE:

Certification for both disability and death awards was by a medical officer or board of medical officers and there had to be definite evidence of the wound, injury or disease in contemporary official records or other "definite collateral evidence". (1940 Instruments, wef 1 June 1940, altered the wording to "other reliable corroborative evidence" "good and sufficient" to show the injury attributable to war service.)

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1943

9. Legislation effective from 12 January 1943 made small but significant changes in the criteria for "Mat Agg" in both disablement and death considerations. "So" was dropped from the final phrase in Article 5(b)(ii) in disability cases which then read "was aggravated by War service to a material extent and remains aggravated" (not, "remains so aggravated"). "Material" was dropped from the final phrase of Article 39(b)(ii), 53(b)(ii) and 57(b)(ii) in death cases and this phrase then read "was hastened by such aggravation" (not, "was materially hastened by such aggravation").

10. The PAT Act of 1943 came into effect on 16 August 1943. It provided for the establishment of entitlement and assessment Pensions Appeal Tribunals and allowed appeals on a point of law to the High Court.

Entitlement decisions before 16 August 1943 ie decisions made before the passing of the PAT Act did not confer a right of appeal. Subsequently, however, the provisions of Section 7 of the PAT Act gave a retrospective right of appeal in such cases.

11. A White Paper of 14 July 1943 foreshadowed the 1943 Royal Warrant and the Orders in Council and its radical far reaching modifications came to be known as "The White Paper Provisions". All the changes took effect from the 16 August 1943 and with hindsight it is clear that they established the basis for the future consideration of war pensions. Pensions were to be regarded as a right, not a reward. If the criteria were fulfilled, the disablement or death "shall be" accepted as due to service, not "may be". "Directly attributable" became simply "attributable" and "Mat Agg" became "Agg". There was no onus on the claimant to prove the claim and the benefit of any reasonable doubt was to be given to the claimant. "Other reliable corroborative evidence" could be used if there was no evidence in the official records.

NOTE:

White Paper reviews are still encountered, usually as "Departmental Reviews". All conditions rejected before 16 August 1943 are reconsidered on todays standards and decided under Article 4 SPO 1983.
This applies to all entitlement issues including Widows Claims.

12. Following the improved provisions under The White Paper there was such a sharp increase in the number of awards that for some years lay officers made certain decisions without medical certification or advice. Some were subject to "block certification" by medical branch.

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1946 War Pensions Special Review Tribunal

14. By 1946 the High Courts had clarified many of the legal principles embodied in the Royal Warrant and other war pension legislation. In addition they had given guidance on the handling of war pension claims by considering "signpost cases". It was clear that some of the earlier decisions, though confirmed by Tribunals, required review. The Ministry was given power to review these decisions in the light of the High Court clarification. It could change decisions made prior to 1 August 1946 but if the Ministry was unable to favourably revise the decision it could refer the claim to a War Pensions Special Review Tribunal. This was a non-statutory body charged with the duty of recommending to the Minister revisions of any of the previous decisions or appeals which were not in

accordance with High Court principles. Cases were referred to the Special Review Tribunal on the basis that both the Minister and the appellant would accept its recommendation and that the decision would be final. Applications to the Special Review Tribunal were not accepted after the 3 November 1949. (Though these awards by a non-statutory body were made under the Dispensing Warrant the PAT Act of 1949 allowed a statutory right of appeal against Agg Passed Away decisions by this Tribunal.)

1946 Hancock Committee

15. The Hancock Committee reviewed all the assessments of disablement and in March 1946 advised extensive revision, including changes in the scheduled assessments. It endorsed the First Rule for Paired Organs (see para 249 of this Handbook).

1947

16. Until 1947 there was no provision for "Over Seven Year Claims". In 1947, legislation restricted The White Paper Entitlement Provisions to cases where the claim was made or death occurred not later than 7 years after the end of service. The Royal Warrant of May 1947, with effect from 3 September 1946, introduced awards "where a disablement is claimed or death takes place more than 7 years after the end of war service". There was no presumption in these "over 7 year" claims, the onus of proof was on the claimant but the benefit of reasonable doubt on the basis of reliable evidence was given to the claimant and other "reliable corroborative evidence" could be accepted if the contemporary official records had no relevant notes of a material fact. In death claims the deceased must have held, either at time of death or any other time, an award for the "injury, wound or disease" which was a cause of death.

17. The PAT Act (modification order) of 1947 enabled the Pensions Appeal Tribunals to deal with the over seven year claims.

18. During 1947 the Crown Proceeding Act 1947 came into force. The main effect of the Act was to place the Crown in the same position with regard to liability in tort as any private citizen, but Section 10 provided that in certain circumstances neither the Crown nor any service member or other servant of the Crown should be liable in tort in respect of the disablement or death of a serviceman. To enable Section 10 to be implemented in war pensions a certificate of basic eligibility for entitlement to pension was required. It was requested by MOD and given by a Senior Medical Officer at Norcross. This Act took effect on the 3 February 1947. Section 10 was repealed on 15 May 1987 and the Crown or any servant of the Crown is not now protected in this way. Any disablement or death considerations for a period prior to 15 May 1987 remain subject to Section 10.

1949

19. The Royal Warrant of 1949 and other legislation amplified the medical criteria in Articles 4 and 5. If aggravation had occurred the certificate could only be given if the disablement remained aggravated by service at the time the claim was made. The restriction in death claims introduced in May 1947 still applied (see paragrah 16 of this Appendix). The word "injury" was to be used for the phrase "wound, injury or disease" and "service" for "war service". Article 4 was less favourable for the Reserve, Territorial and Auxiliary Forces, there was no presumption in their favour and they were not relieved of the onus of proof.

20. The PAT Act of 1949 extended the scope of the 1943 Act to enable PAT to consider claims other than those for war service in the armed forces and allowed a statutory Right of Appeal against the "APA" decisions of the 1946 Special Review Tribunals.

1964

21. In death cases considered under Article 5 the 1964 Royal Warrant and other Instruments removed the requirement that the injury in respect of which a disablement pension had been awarded should be a cause of death. The deceased must however have held a disablement pension at the time of death or at any time previously.

1966

22. In March 1966 the McCorquodale Committee undertook another review of assessments of disablements and made minor modifications, especially for amputees.

1971

23. The Ulster Defence Regiment was formed on 1 April 1970. To take account of the high proportion of part-time members and of the particular circumstances under which the regiment was required to operate the 1971 Order by Her Majesty concerning pensions and other grants in respect of disablement or death due to service in the Ulster Defence Regiment was promulgated on 4 January 1971. (See Appendix 21)

1972

24. With effect from the 2 October 1972 the Statutory Instruments dealing with death claims under Article 5 removed entirely the need for the deceased to have held a disablement pension either at the time of death or at any other time.

1973

Prior to 1973 for those widowed before 2 September 1939, the legislation prohibited the award of a War Widows Pension in cases where the marriage took place after the injury or the onset of the disease which resulted in the death of the husband. This condition was revoked on 1 October 1973 but the revocation stipulated that under such circumstances no payment could be made for any period earlier than that date.

1978

25. The SPO 1978 introduced the automatic award of a widows pension when Constant Attendance Allowance was payable to the member "in respect of a period ending with his death". Deaths after 22 November 1916 qualify but if death occurred before 13 November 1978 the CAA had to be payable at a rate of not less than "the normal maximum rate" (full-day rate).

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APPENDIX 17

PERSONAL INJURIES (CIVILIANS) SCHEME 1983

1. This is a comprehensive scheme covering civilians and civil defence volunteers for certain "personal injuries" sustained "during the period of emergency". Members of the general public, adult or child, and members of the civil defence organisations such as air raid wardens, Royal observer corps members etc are all included. Schedule 1 Article 4 of the Personal Injuries Civilian's Scheme 1983 has a full list of civil defence organisations to which the Scheme applies. There are various supplements and allowances similar to those for Service Personnel under SPO 1983.

2. The "period of emergency" was from the 3 September 1939 to the 19 March 1946. It was extended for members of the National Fire Service. Under Treasury letters certain other injuries may be considered as if covered by this scheme.

3. Entitlement depends upon a "qualifying injury" occurring on "a material date". It is essential to establish that a qualifying injury occurred and the onus for doing this is on the claimant. This qualifying injury is either a "war injury" in civilians [a physical injury sustained in a particular incident of war], or a "war service injury" in a civil defence volunteer [a physical injury arising out of and in the course of civil defence duties]. The full definition of these terms is contained in Article 2(23) of the Scheme and is included in Appendix 2 of this Handbook.

4. The questions of causation and aggravation are as fundamental to this scheme as they are to SPO 1983, but the issues are different. Even for civil defence volunteers "service factors" are not the relevant considerations. The lay officer must decide whether or not a qualifying injury has occurred and the medical officer must then decide whether the present disablement is related to the qualifying injury, not whether the disablement is due to or has been aggravated by service factors.

5. Though he may be asked for advice it is not the medical officer's responsibility to decide whether or not a qualifying injury has occurred. The lay officer, acting for the Secretary of State, must make this decision and determine whether or not the qualifying injury was sustained by a "gainfully occupied" person or one not gainfully occupied ("Gainfully occupied" means a person "wholly or substantially" dependent on a trade, business, profession, office, employment or vocation for a livelihood.). He must also determine that the claimant has attained the age of 15 years. These decisions have no medical content but are crucial and in certain cases can be difficult. They have many facets as the following examples show.

If a civilian suffered an injury in a car crash as a result of falling masonary during a bombing raid this would be accepted as a war injury but if the crash occurred because of the blackout this would not be accepted. Mr (later Lord) Justice Denning defined "an injurious act" as "an act which is intended to cause an injury, or the natural consequences of which is to cause injury" (Ffrench RSWPA Vol I pg 349). The blackout was not intended to cause injury.

If a civil defence volunteer was injured travelling from his home on an emergency call to duty this would qualify as a war risk injury. He was on duty from the time he started to respond to the call until he reached home again.

The "chain of causation" between the action of the enemy and the incident must not be broken. An intervening cause may or may not break the chain. In the case of Chennell RSWPA Vol I pg 253 children moved an incendiary bomb and one week later it exploded while they were playing with it. It injured a third child. It was decided that despite the bomb being moved and despite the time interval the chain of causation had not been broken. See too Wedderspoon RSWPA Vol I pg 349

6. The scheme refers to "physical injury" but this does not limit it to "traumatic injuries". Physical injury is regarded as "an injurious affection of the physical frame" and this is a wider concept than

"trauma". In addition Article 2 (18) states that "physical injury includes tuberculosis and any other organic disease and the aggravation thereof". Tuberculosis developing in a civil defence volunteer necessarily on duty in crowded accommodation can therefore be accepted as a "physical injury".

7. Psychiatric claims illustrate the difficulty. Though the definition in Article 2(23) of a war injury refers only to "physical injury", Article 8(2) defines the resulting disablement as "physical or mental injury or damage, or loss of physical or mental capacity, caused by that injury". "Mental damage" is therefore acceptable but there must be an "injury" and the meaning of this term, in this context, has been argued in a High Court judgement in a Civil Defence Volunteer's appeal.

> "I have arrived at the conclusion that the words "physical injuries" do not include injuries which are purely mental. This distinction in each case is, of course, one of fact and the decision may be difficult.
>
> (This) appeal has been rejected on the ground that the injury, admittedly not being an organic disease, had no traumatic origin. This appears to me to be importing something into the words "physical injury" which is not to be found in the Act..... I apprehend that a man may suffer serious physical harm or injury, for example from strain, exposure or shock without any trauma.... Any "injurious affection of the physical frame" is a physical injury within the meaning of a war service injury in the Act. On the facts set out in this case I am in some doubt whether the Tribunal has found that the injury which caused the disablement was purely mental or whether it was wholly or partly physical due to some such cause as strain, exposure or shock". Haines RSWPA Vol 1, Page 29.

This allows a broader acceptance of the term "injury", but it establishes there must be a "physical injury" whether it be trauma or strain or exposure or shock before "mental injury or loss of mental capacity" can be accepted. Purely "mental injuries" without any such physical injury cannot be accepted.

8. When any medical question is involved Article 56 specifies the need for medical certification similar to that under Article 1(4) of SPO 1983 (with an exclusion clause referring to treatment and those refusing medical treatment).

9. Article 5 records the entitlement criteria. Art 5(2) refers to under 7 year claims, 5(3) to over 7 year claims.

2. Where a claim other than one specified in the following paragraph of this Article is made, there shall be no onus on the claimant to prove that disablement was caused by, or that death was the direct result of, the relevant qualifying injury, and the benefit of any reasonable doubt on those questions shall be given to the claimant.

3. Where -

a. a claim is made within the time limit specified in Article 54(3) in respect of the death of a person, such death having occurred more than 7 years after the material date; or

b. the Secretary of State in any case or class of case has made a direction pursuant to Article 54(1) in respect of any time limit referred to in that Article and the claim -

i. is made more than 7 years after the material date in respect of disablement, or

ii. is made in respect of the death of a person, such death having occurred more than 7 years after the material date; and, upon reliable evidence, a reasonable doubt exists whether the disablement was caused by, or whether the death was the direct result of, the relevant qualifying injury, the benefit of that reasonable doubt shall be given to the claimant.

10. Article 5(2) applies in under 7 year claims. There is no "compelling presumption" in the claimant's favour, but there is no onus on the claimant to prove the connection between the qualifying injury and the claimed condition. The benefit of reasonable doubt "shall be given to the claimant". There is only the one onus on the claimant, to show a qualifying injury occurred.

11. Article 5(3) applies in over 7 year claims. It places a second onus on the claimant to produce reliable evidence to raise a reasonable doubt that the disablement was due to the qualifying injury, though once again the claimant "shall be" given the benefit of reasonable doubt and, as in SPO

1983 cases, the claimant need only raise a reasonable doubt.

12. In both Article 5(2) and Article 5(3), disablement must be caused by, or death be the direct result of, the qualifying injury. These claims, like those under SPO 1983, are decided on the basis of reasonable doubt not on the balance of probability. PRATT RSWPA Vol 1, Page 751.

13. It should be stressed there remains an initial onus on the claimant to prove that a qualifying injury was sustained. Neither Article 5(2) nor Article 5(3) relieves the claimant of this onus. He must establish his claim ie he must produce evidence in support of it. There is no statutory requirement to produce "reliable evidence", nor does this scheme require corroborative evidence and the claim must not be rejected on the lack of this alone. The Department assists the claimant in seeking evidence but the onus remains on the claimant. The claimant does not have to prove that disablement was caused by the qualifying injury though in Art 5(3) claims he must produce reliable evidence to raise a reasonable doubt that this is so. It should be noted that this is a personal injury scheme and although it may not be difficult to show that the claimant was present at an incident it is often difficult to show that a personal injury occurred. The lay officer will take all the relevant evidence into consideration if it is shown that the claimant was present at the time of the incident and he must then decide whether it is more likely than not that the claimed personal injury occurred.

14. **Assessment** criteria and provisions are contained in Article 10 and are similar to those in SPO 1983. Under SPO 1983 rules, in cases which have been aggravated by service, the total disablement at the date of discharge must be assessed and accepted. Here too the total disablement `immediately after the material date' is accepted. A composite assessment is calculated in the same way as in SPO 1983 cases and this "composite assessment" can be used as the basis for an award. Though the civilian scheme provides no guidance on how the less than 20 per cent awards are to be expressed, in practice the same categories 1-5 per cent, 6-14 per cent, 15-19 per cent are employed.

15. In this scheme the assessment of disablement is a factor in entitlement decisions. There are two relevant Articles. Article 9(1) "an award .... shall not be made unless the disablement is of a degree of not less than 20 per cent ...." and Article 8(1) "an award ... in respect of a persons disablement shall not be made unless the disablement is serious and prolonged". There is no definition in the scheme of the phrase "serious and prolonged". Originally it was interpreted as 20 per cent and over, but in 1944 it was decided that SMIs and other permanent injuries, even though assessed at less than 20 per cent, could reasonably be regarded as serious and prolonged. Less serious injuries and `under 20 per cent disablement due to disease' were still excluded for many years under this interpretation. An occasional case was awarded under individual Treasury authority and in 1979 Treasury agreed that there should be no differentiation between an injury and a disease for this purpose. Minor, non serious injuries and diseases are still not accepted, nor are TMTY and TLTY awards as they are not regarded as prolonged. There is no statutory basis for an award of "Nil" assessment in the scheme, there is no entitlement in these cases. (This does not apply in the Mercantile Marine Scheme.)

16. **Aggravation** is not mentioned in Article 5(2) or Article 5(3) but Article 2(18) indicates that physical injury includes "tuberculosis and any other organic disease and the aggravation thereof", so aggravation of a condition which pre-dates the material date can be accepted. It is the "aggravation" which is the `physical injury' under this concept and this must be kept firmly in mind when assessing or dealing with subsequent developments, deterioration, death etc. Disablement must be caused by, or death the direct result of, the aggravation of the condition. It follows that there cannot be any review or appeal to alter the "aggravation" entitlement to an "attributable" one. It is quite a different concept to that embodied in SPO 1983. It follows too that the award will terminate when there is no longer serious or prolonged disablement. The assessment consideration therefore again determines the entitlement decision. The aggravation is not being `passed away' as in SPO 1983 cases, rather the assessment of the attributable condition ie the `aggravation of the qualifying injury', no longer satisfies Articles 8(1) and 9(1). So any subsequent appeal must be to an assessment tribunal, not an entitlement one.

17. New conditions developing as a result of accepted conditions (consequential conditions) can be accepted under this scheme. It must be noted that in cases where the entitlement is the aggravation of a condition then any new condition can only be accepted as consequential if it is due to the accepted "aggravation".

18. **Allowances.** Articles 12 to 25b give authority for awarding allowances to civilian pensioners equivalent to those available to service pensions under SPO 1983 Articles 12 to 26A. The medical criteria for the awards are similar.

19. **Detention.** There is no mention of detention in the civilian scheme. Article 60(3) does however enable the Secretary of State to make discretionary awards to British subjects who sustained a war injury in territory occupied by the enemy. This empowers awards to spies and others on "war occupations". Awards are normally paid only while the pensioner remains a United Kingdom resident.

20. **Death.** Under Article 5 death must be "the direct result" of the qualifying injury. The phrase "hastened by" or "substantially hastened by" does not appear in this scheme. There is one circumstance in which the concept of hastening is however applicable although this action is not termed "hastening". When the qualifying injury is the aggravation of a disease (Article 1(18)) and when death is advanced by that aggravation then death at that moment and in these circumstances can be said to be the direct result of the qualifying injury. This really amounts to hastening.

21. To ensure this aspect is considered, death cases are submitted to Medical Officers for a two stage reply.

1. Was death a result of the qualifying injury?

2. If yes, was death so much the result of the qualifying injury that the Department could not establish beyond reasonable doubt that it was not the result of the qualifying injury?

Stage one establishes that there was an association between death and the qualifying injury ie the qualifying injury played a part in causing death. Stage 2 makes it possible for us to accept the claim both when death clearly resulted from the qualifying injury and, in the occasional case, when the aggravation of a pre existing injury or disease can be regarded as having "hastened death".

22. If a pensioner dies while in receipt of **Constant Attendance Allowance** there is no automatic right to a widows pension as there is in service cases under Article 27(3) SPO 1983. When CAA has been in payment, if a widows pension cannot be awarded under the rules of the civilian scheme (as at para 18) the lay officer can review the case under Treasury authority [such payments are not made under the War Pensions vote].

23. **Reviews and Appeals.** Article 76 contains rules for reviewing and revising decisions very similar to the rules in Article 67 SPO 1983. The PAT Act 1943 Sections 3 and 5 give rights of appeal to the Pensions Appeal Tribunal on entitlement and assessment matters comparable to those under SPO 1983.

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APPENDIX 3

REGISTRATION AND CONTROL OF WAR PENSIONS FILES

1. Service records including the medical notes are the property of the Defence Department but the bulk of the medical files, apart from the inter-war year files, is held by DSS. These records are requested by War Pensions Directorate whenever a claim is received.

2. The **Archives Registry** at Nelson, established in 1925 to house Ministry of Pensions files, holds all war pension files not in action, supplying requisitioned files and replacing them after the action is completed.

3. When a file is created it is given a serial number, often referred to as the awards reference number. This is allocated according to the type of case. The reference comprises of a prefix followed by up to 6 figures. A list explaining the meaning of these various prefixes is given.

4. **Control Index** is a unit within Archives which takes the intitial tracing action when correspondence is received. It is also responsible for issuing claim forms to all first claimants to War Pension.

5. **Archives Tracing Unit** was set up on 1 August 1991, taking on board some of the basic information gathering tasks from Norcross. As well as acting as a specialialised tracing section, it is also responsible for sending the initial enquiry for service documents to the appropriate MOD department.

6. The progress of a claim to War Disablement Pension is as follows:-

A. Letter received at Norcross - when a letter relating to War Pension is received in the Post Room at Norcross it is directed to War Pensions Registry where it is scrutinised. If it is identified as a claim it is acknowledged and passed by van to Control Index at Archives.
B. Letter received at Control Index - when the post is received a trace is undertaken to see if a previous claim has been made. If not, a claim form with the original correspondence attached, is sent to the claimant.
C. Claim form returned - on return a further trace is undertaken to ensure that there is no file in existence.
D. File in existence - where a file is located the claim form/letter is associated with it and passed to the appropriate casework section at Norcross.
E. No file in existence - if no file can be found the claim form is "green stamped", a Control Index slip completed and the post sent to Tracing Unit.

F. Claim form received by Tracing Unit -
a file is created and an awards reference number allocated
a computer record is created on the WP Database
an initial enquiry form is sent to the appropriate MOD department

an enquiry form is sent to the Medical Records Section at Archives for any relevant documents/copies of entries from admission & discharge books etc (file is not sent to Norcross until this action is complete)
an action sheet inserted for use by lay staff at Norcross
the file is passed to the relevant casework section at Norcross.

G. File received on casework section, Norcross - as soon as the file arrives the EO on section scrutinises the claim and the various action by the MO and EO to decide the claim are started.

7. **1914 War cases**. The majority of registration numbers of 1914 War files for disabled other ranks consist of the old Regional number, followed by letters showing the type of service ("M" for Military, "N" for Navy and "AF" for Air Force) and the initial letter of the surname, followed by a serial number, eg 3/MG/1234, Gunn. In some Army and Navy cases however the symbol "M" or "N" precedes the Regional number. A number consisting of the symbols "11/M" followed by a serial number may denote either an old London Region case or a case registered in the current disabled men's series (any Region). In the case of male officers the registration number consists of "OA", "ON" or "OAIR" (for Army, Navy and Air Force respectively) followed by a serial number. The files of nurses who all

ranked as officers are distinguished by the symbol "NURSES' followed by a serial number between 40,000 and 42,999.

8. **Service after 2 September 1939 (Forces and Mercantile Marine)**. In cases registered since 7 June 1943 the serial number is preceded by the letter "M" or "F" (according to the sex of the claimant) and a number which indicates out of which service the claim arises, ie 1 (Navy),, 2 (Army), 3 (Air Force), 4 (MM)>. Up to January 1950 claims in respect of service which terminated by release other than in Class B were distinguished by the number 5, 6 and 7 instead of 1, 2 and 3 respectively. In officer cases (except MM) registration numbers are prefixed by "O".

Examples

F3/2450 - Woman discharged from the WAAF (WRAF).

M6/6315 - Man released from the Army before January 1950.

O/M1/345 - Officer discharged from the Navy.

M4/5620 - An ex-member of the Mercantile Marine (officer or seaman).

In cases registered before 7 June 1943 the prefix "B" which distinguished 1939 War cases from 1914 War cases, and the Regional number, were included in the registered code reference, eg B10/M2/10765.

8. **Polish cases**. In the case of the Polish Resettlement Corps (officers and other ranks) identification is possible by the prefix "8", eg M8/..... disabled Polish ex-servicemen.

9. **1939 War - Civilians**. In these cases the symbols "C/M" for a man and "C/F for a woman, followed by the serial number, are used, eg C/M/650 or C/F/123. Before 7 June 1943 the letter "C" was followed by the appropriate Regional number, and the letters "M" or "F" were followed by another letter indicating the status of the claimant ("G" for a gainfully occupied person, "A" for a person not gainfully occupied and "V" for a Civil Defence Volunteer), eg C10/MV/435.

Type of Case	Prefix	Explanation
Service in the 1914 War	12/M 13/N 9/MP 11/NF 7/W 5/D	The numbers at the beginning indicate the region (can be from 1-13) /M = Army and/or Air Force /N = Navy /MP = Merchant Navy /W = Widow /D = Dependant
Some pre 1933 registrations	3/AFA	The numbers at the beginning indicate the region /AF = Air Force The final letter denotes the initial of the pensioners' surname (ie A = Andrews)
Service in the 1939 War or later	M1/ M2/ M3/ M4/ M5/ F6/* F7/* M8/ B14/M1 C/ W1/*	M = Male F = Female 1 = Navy 2 = Army 3 = Air Force 4 = Merchant Navy 5 = Navy 6 = Army 7 = Air Force 8 = Polish B14 = "B" distinguishes from 1914 War cases and the numbers indicate the region (can be from 1 to 14)

	D5/	C/ = Civilian W1/ = Widow Navy D5/ = Dependent Navy
Any	O/	The letter "O" before any of the above denotes an officer

Files with the suffix "/W" are widows cases
Files with the suffix "/X" are advice cases (usually from the ODA)

* Files are no longer registered under these symbols

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APPENDIX 2

DEFINITIONS OF TERMS AND PHRASES

This Appendix gives brief notes on some of the terms and phrases commonly used in war pensions cases.

ACCEPTED CONDITION

This means the actual wound, injury or disease accepted as attributable to or aggravated by service or under the provisions of the Civilians and Mercantile Marine Schemes.

ACCEPTED DISABLEMENT

This means physical or mental injury or damage or loss of physical or mental capacity which is accepted as due to service.

AGE ALLOWANCE

As from their 65th birthday, war disablement pensioners whose disablement is assessed at 40 per cent or more become eligible for an additional allowance at rates varying according to the degree of their assessment. Widows/widowers and unmarried dependants who lived as wives/husbands may be awarded an additional allowance when they attain the age of 65, the amount of the allowance is increased on reaching 70 and 80 years of age.

CENTRAL ADVISORY COMMITTEE

The Central Advisory Committee was set up by Section 3 of the War Pensions Act, 1921 to advise the then Minister on such matters as he may put before them. The Act defines the membership of the Committee as officers of the Ministry, ex-servicemen and representatives of War Pensions Committees. The Committee, after not meeting for some years, was reconstituted in 1939 and now meets twice a year. It has played an important part in the consideration of questions of policy and procedure in relation to pensions of both wars.

CIVIL DEFENCE VOLUNTEER

When used in relation to an injury, means a person certified by a responsible officer of a civil defence organisation to have been a member of that organisation at the time when the injury was sustained.

DETENTION - MARINER

When used in relation to a "Mariner", means detention which is consequent upon the capture of his person or of his ship affected by reason of the existence of a state of war.

DETENTION - MEMBER OF THE FORCES

When used in relation to a member of the Forces, means a form of punishment for offences that do not warrant discharge from the service; an injury sustained during detention may normally be accepted as due to service.

ENTITLEMENT

This is the recognition by the Department that disablement exists, or has existed, ascribable to the effects of service, a "war injury", a "war service injury", a "war risk injury" or "detention". (Note: the disablement concerned in the entitlement decision is that arising from "the accepted condition".)

HOMECRAFTS SERVICE

A practical means of helping the severely disabled pensioner is through the medium of the Homecrafts Service. This Service is stimulated and co-ordinated by the Department, and operated

with the aid of voluntary organisations' funds.

INDEPENDENT MEDICAL EXPERT

Where there is serious doubt or difficulty on a medical question the Secretary of State may obtain the advice of one or more of a panel of independent medical experts. These are nominated by the President of the Royal College of Physicians, the Royal College of Surgeons or the Royal College of Obstetricians and Gynaecologists, and the Chief Medical Advisor (Social Security) makes the arrangements.

INJURY: PHYSICAL INJURY

The term "physical injury" includes tuberculosis and any other organic disease, and the aggravation thereof (this does not apply to SPO 1983).

INJURY: QUALIFYING INJURY

The term "qualifying injury" means a "war injury", "war service injury" or "war risk injury".

INJURY: WAR INJURY

The term "war injury" means a physical injury - (a) caused by (i) the discharge of any missile (including liquids and gas), or (ii) the use of any weapon, explosive or other noxious thing, or (iii) the doing of any other injurious act; either by the enemy or in combating the enemy or in repelling an imagined attack by the enemy; or (b) caused by the impact on any person or property of any enemy aircraft, or any aircraft belonging to, or held by any person on behalf of or for the benefit of His Majesty or any allied power, or any part of, or anything dropped from, any such aircraft.

INJURY: WAR RISK INJURY

The term "war risk injury" when used in relation to a "mariner" is a physical injury sustained on or after 3 September 1939, at sea or in any other tidal water, or in the waters of any harbour, and attributable to one of the matters specified in sub paras 2(a), (b), (c) or (d) of the First Schedule to the War Pensions (Mercantile Marine) Scheme, 1964, if, and only if, the matters substantially increased the risk of the peril occurring which caused the injury.

INJURY: WAR SERVICE INJURY

When used in relation to a "civil defence volunteer" this term means any physical injury which the Secretary of State certifies to have been shown to his satisfaction to have arisen out of and in the course of the performance by the volunteer of his duties as a member of the civil defence organisation to which he belonged at the time when the injury was sustained, and (except in the case of war injury) not to have arisen out of and in the course of his employment in any other capacity.

INVALIDITY ALLOWANCE

This allowance is payable to war pensioners receiving unemployability supplement and whose unemployability began more than 5 years before retirement age (65 for men and 60 for women), provided that they had not reached that age at the time the provision for this allowance came into force (20 September 1971). Invalidity allowance continues to be paid with unemployability supplement even after age 65 for men and age 60 for women. A war pensioner who has been receiving treatment allowances for 28 weeks (and National Insurance Invalidity Benefit is not payable) may be granted invalidity allowance if he satisfies the age and date of onset of incapacity condition.

PENSIONS APPEAL TRIBUNALS

The Pensions Appeal Tribunals, which hear appeals arising out of the 1939 War,were established by the Pensions Appeal Tribunals Act, 1943. Tribunals also hear appeals from 1914 War widows and certain dependants. The members are appointed and the procedure is regulated by the Lord Chancellor in England and Wales, the Lord President of the Court of Session in Scotland, and the Lord Chief Justice in Northern Ireland.

PRESCRIPTIONS AND CERTAIN APPLIANCES: REFUND OF CHARGES

Charges are made in respect of the provision under the National Health Service of medicine, elastic hosiery, optical and dental treatment and certain appliances. A war pensioner may have these charges refunded if they were incurred in connection with his accepted condition.

REFUSAL OF TREATMENT OR MISCONDUCT

The Secretary of State has the power to reduce by an amount not exceeding one-half the pension of a member who unreasonably refuses necessary treatment, or is guilty of misconduct which necessitates discontinuance of treatment.

TEMPORARY ALLOWANCE FOR WIDOWS OF SEVERELY DISABLED PENSIONERS

A temporary allowance (TAW) payable for 13 weeks to the widows of severely disabled war pensioners was introduced in 1963, the period of payment was extended to 26 weeks in 1966. The purpose of the allowance is to help the widow over the first difficult weeks of widowhood when there would otherwise be an appreciable drop in income from war pension funds. The allowance is paid automatically if the husband was receiving constant attendance allowance or unemployability supplement at the time of his death, regardless of the cause of death. The temporary allowance is based on pension or treatment allowance and certain other allowances payable during the 7 days immediately preceding death.

VOLUNTARY WORKERS

Voluntary workers, some of whom are members of War Pensions Committees, make (at the request of the welfare service) personal contact with an applicant or a pensioner who may require advice or assistance, this is especially valuable where the pensioner lives in a remote area.

WAR PENSIONS COMMITTEES

War Pensions Committees were established by the War Pensions Act, 1921. Members of these Committees are appointed directly by the Secretary of State under Schemes made under Section 1 of the War Pensions Act 1921. Local authorities, employers, industrial workers and ex-service and voluntary organisations are represented. At the outbreak of the 1939 War, the Committees were asked to bring pensioners of that War within the scope of their activities.

The War Pensions Committee system associates local interest with pension administration and provides a link of a non-official character between the Department and those it services.

The statutory functions of War Pensions Committees include the making of recommendations to the Secretary of State on individual cases, the hearing of complaints by pensioners and claimants and the furnishing of reports on matters referred to them by the Directorate for advice. In addition, since 1949 arrangements have existed whereby unsuccessful applicants for war pension supplementary allowances are informed that they may, if they are dissatisfied with the Department's decision, discuss the matter with their local War Pensions Committee. In these discussions War Pensions Committees are able to take account particularly of local factors. Similar arrangements have been made whereby applicants may discuss with their War Pensions Committee rejections of OSY (Over Seven Years) or deterioration claims made in respect of 1914 War disablement. In most cases, Committees are able to satisfy the applicant as to the reason for the decision whilst in some instances recommendations to the Directorate lead to an alteration in the original decision.

A task which has been undertaken by War Pensions Committee members in recent years is assisting the Welfare Service by regular visiting of seriously disabled pensioners in their area.

WELFARE SERVICE FOR WAR PENSIONERS

In June 1948, a general welfare service for war pensioners was set up in recognition of the fact, emphasised by post-war experience, that the grant of pension was not necessarily a complete answer to the problems with which the disabled or bereaved might be faced. Welfare Officers are attached to all War Pensioners' Welfare Offices to advise and assist pensioners who have needs and difficulties they cannot resolve for themselves. The Welfare Officers' work is based on close co-operation with the various other organisations, statutory and voluntary, which administer social services or can provide help in any form for the war disabled or bereaved or any members of the ex-service community in general. The Welfare Service gives special attention to the needs and problems of disabled pensioners who are under medical treatment and away from work for long periods and to

the problems of ageing pensioners, particularly those with no one to look after them.

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APPENDIX 4

LEGAL DECISIONS ON ENTITLEMENT FROM HIGH COURT JUDGMENTS (ENGLAND AND WALES) COURT OF SESSION (SCOTLAND) AND THE SUPREME COURT (NORTHERN IRELAND)

Paragraph

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APPENDIX 6

SIGNIFICANT DATES IN WAR PENSION CONSIDERATIONS

22 April 1915 - Chlorine gas first used in WW1.

19 December 1915 - Phosgene gas first used in WW1.

July 1917 - Mustard Gas first used in WW1.

16 August 1943 - White Paper Review. All claims rejected before 16 August 1943 are now considered under Article 4 SPO 1983 on today's standards.

3 December 1943 - Bari Harbour - Mustard Gas incident.

1 August 1946 - "Special Review Tribunal". Decisions made prior to this date could be reviewed by the Minister under the legal principles clarified by the High Courts and could be referred to the Special Review Tribunal when necessary. (3 November 1949 was the last date on which appeals for Special Review Tribunal recommendation were accepted.) (see para 14, Appendix 16)

5 September 1946 - Article 5 promulgated in Statutory Instruments.

1 April 1947 - Hancock Committee. Review and revision of assessments of disablement.

31 July 1947 - Crown Proceedings Act 1947. Section 10 prevented proceedings in tort against the Crown (repealed on 15 May 1987).

1 July 1948 - Start of the Berlin Air Lift (ended 12 March 1949).

6 October 1948 - Pilbeam RSWPA Vol 4, page 129. Dent RSWPA Vol 4, page 121. Entitlement for sequelae of treatment clarified. Treatment is not a separate disablement.

22 November 1948 - Duff RSWPA Vol 2, page 753. Effect of service factors on the individual determines entitlement, not the effect on persons in general.

12 March 1949 - End of Berlin Air Lift.

25 June 1950 - Korean War hostilities began (no British Forces).

6 September 1950 - Korean War British Forces engaged.

1952-1967 - Radiation exposure test dates - see Appendix 16.

27 July 1953 - Korean War Armistice signed.

1954 - Rock Carling Review of Amputees. No material difference found in mortality rates in amputees and non-amputees.

1 October 1964 - Article 5 death claims. No longer a need for death to be caused by the disablement accepted during life. (see para 21, Appendix 16)

4 October 1965 - Judd RSWPA, Vol 5, page 679. Change of interpretation of Article 4(2). This is the effective date for payment when:

a. an appeal was disallowed before 4.10.65;

b. the High Court or the Tribunal President remits the case; and

c. the appeal is allowed;

[This 1965 change of interpretation did not apply in Scotland or Northern Ireland.]

March 1966 - McCorquodale Committee. Review and revision of assessments.

25 May 1966 - Coe RSWPA, Vol 5, page 725. Clarification of cases of unknown aetiology.

5 February 1968 - Evan Bedford Report on cardiovascular conditions in amputees (see para 135).

1 January 1970 - Hambresin Scale for visual acuities. (When Hambresin Scale indicates a lower assessment than assessment awarded before 1970, the pre-1970 assessment is continued.)

6 May 1971 - Sullivan RSWPA, Vol 5, page 789. Aggravation due to service factors can be accepted for pension purposes even though the aggravation first arises after the date of discharge.

2 October 1972 - Article 5 death claims. No longer any requirement for deceased to have held a disablement pension at any time.

4 October 1972 - Greater Disablement. Legal advice that the current war pensions statutory provisions embodies the Greater Disablement principle. [Before this date the cases were regarded as "Consequential Agg" cases and handled under the Dispensing Instruments.]

22 July 1974 - Metrication Day. All war pension measurements in metric rather than imperial measures.

13 November 1978 - SPO 1978 allowed death awards when CAA at any rate was payable. (Prior to this date CAA had to be payable at a rate not less than "the normal maximum rate" ie full-day rate)

15 February 1979 - Hrubec and Ryder report on "Relationship between the Amputation of an Extremity and the subsequent development of Cardiovascular Diseases". Payment of "Atherosclerosis Agg" in certain lower limb amputees from this date.

1 February 1980 - Schizophrenia accepted attrib (publication of DSM III).

5 April 1982 - Falklands conflict, first task force ships sailed from UK.

15 June 1982 - Falklands conflict surrender agreed.

30 August 1982 - In PAT set aside cases payment of arrears limited to 6 years prior to the date of the application which led to the successful joint application.

1 December 1983 - Hodgkins Disease and Non-Hodgkins lymphoma accepted attrib.

6 June 1984 - Bennett vs Secretary of State for Social Security. Multiple sclerosis arising 3 months after enlistment or within 3 months of release accepted as attributable to service.

26 November 1984 - SPO Amendment Order enabling entitlement to be revised under Paragraph 3 (aa) of Article 67 following a change in medical diagnosis.

1 December 1985 - Type I insulin dependent Diabetes Mellitus arising in service accepted as attributable to service.

15 May 1987 - Crown Proceedings (Armed Forces) Act 1987 repealed Section 10 of the Crown Proceedings Act 1947. Claims for period prior to 15 May 1987 are still subject to Section 10.

1 January 1988 - Publication of the National Radiological Protection Board Report on Mortality and Cancer Incidence in UK Participants in UK. Atmospheric Nuclear Weapon Tests. Multiple myeloma and leukaemia (other than chronic lymphatic leukaemia) and Polycythaemia Rubra Vera accepted in participants in atom bomb tests.

3 June 1988 - Meniere's Disease arising in service accepted as attributable to service.

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APPENDIX 5

SIGNPOST CASES

1. The system of signpost cases, which was discussed at length by Mr Justice Ormerod in the case of Houldsworth (Reports of Selected War Pensions Appeals, Vol 5, pages 62-64) was designed to ensure uniformity of decision in cases of the same condition where the material facts were indistinguishable and the decision turned on the medical evidence as to the causes of the condition or its aggravation.

2. The action towards setting up a signpost in relation to any particular condition was initiated by the High Court. When a disease was of frequent occurrence, one of the cases in respect of which an appeal had been lodged was selected as typical and remitted to a Tribunal for reconsideration with the benefit of full medical opinions on either side. The decision of the Tribunal was then reviewed by the Court, and the evidence in it became available for guidance in similar cases.

3. A signpost decision was applied only to cases in which the material facts were the same. Cases in which the symptoms differed, or the development of the condition was different, or the circumstances surrounding its development were different called for enquiry and careful consideration before a decision was made. Factors in a particular case which distinguished it from signpost case of the same condition were regarded as grounds for differing from the decision reached in the signpost case. To say, for example, "This is a case of bronchial carcinoma", and thereafter exclude further consideration of the matter was not accepted. It was important that the officer concerned in the particular case, satisfied himself that it came within the decision of the signpost case. If it did not, then he was entitled to decide according to the facts of the particular case.

NOTE: Wherever the term "wholly disallowed" is used, it means that the appeal was made on the grounds of "attributable, or if not attributable, aggravated", and that the appeal was disallowed on both counts.

4. The list of signpost cases is included for interest only. The system is no longer followed and each case is now decided on the evidence and within the law pertaining on that particular case.

Name and Department Ref	**Appealable Issue**	**Reports of War Pensions** Vol	**Selected Appeals** Page No
Mansfield K E W3/72494	Appendicitis (death due to, etc) - Disallowed	1 4	489 449
Joyce C F M3/382354	Asthma ("Attrib" in lieu of "Agg") - Allowed	1 4	1235 557
Jarvis J L M1/333376	Astigmatism - Wholly disallowed	3	2043
James H L M2/161311	Amyotrophic Lateral Sclerosis - Wholly disallowed	4	497
Bush W D W2/76684	Bronchial Carcinoma (death due to, etc) - Disallowed	4	363
Eldred E W W3/73553	Carcinoma of Bronchus (death due to, etc) - Disallowed	4	721
Hughes F A M2/290824	Cancer of Testis - Wholly disallowed	4	713
Ward K F O/W3/20340	Coronary Thrombosis (death due to, etc) - Disallowed	4	521
Harvie J H W2/63913	Diabetes Mellitus (death due to, etc) (with emphasis on family history) - Disallowed	1	763
Rosenberg S M2/290897	Diabetes Mellitus (with emphasis on obesity, race, etc) - Wholly disallowed	1	1131
Rice T J A	Diabetes Mellitus (with emphasis on	3	1253

M2/326897	stress and strain) - Wholly disallowed	4	433
Powell C B B8/M2/11342	Diabetes Mellitus (with emphasis on infection) - Wholly disallowed	3 4	1785 339
Carney A M6/23125	Enucleation of eye following cataracts and glaucoma - Wholly disallowed	4	1089
Hagger H M W2/80853	Glioma of brain (death due to, etc) - Disallowed	4	351
Cromie S I M7/17721	Hypertension - Wholly disallowed	4	1065
James C W2/84234	Hodgkin's Disease (Lymphadenoma) (death due to, etc) - Disallowed	1 4	629 1045
Atkinson L W1/83061	Hodgkin's Disease (Lymphadenoma) (death due to, etc) - Disallowed	1 4	981 411
Armstrong E M W3/78557	Lympho-Sacroma (death due to, etc) - Disallowed	3 4	1449 861
Curtis E H M1/99656	Macular Choroiditis - Wholly disallowed	4	593
Unsworth J M6/38699	Otosclerosis ("Attrib" in lieu of "Agg") - disallowed	4	100
Magilton J M2/387312	Paget's Disease - Wholly disallowed	4	325
Steele F M1/408433	Peroneal Muscular Atrophy, formerly diagnosed as Progressive Muscular Atrophy ("Attrib" in lieu of "Agg") - Disallowed	1 4	1105 587
Renton F B M6/16196	Pes Cavus ("Attrib" in lieu of "Agg") - Disallowed	4	379
Harmiston E W M6/48511	Pes Planus ("Attrib in lieu of "Agg") - Disallowed	4	1075
Carey C A D M3/388396	Pulmonary Fibrosis ("Attrib" in lieu of "Agg") - Allowed	4	547
Houldsworth H A M2/267325	Raynaud's Disease - Wholly disallowed	5	47
Barnard E O/M6/343	Rodent Ulcer - Wholly disallowed	3 4	1515 401
Muncaster W A M2/215970	Sarcoma, Left Femur - Wholly disallowed	4	469
Wills J M M6/26924	Varicose Veins - "Attrib" - Disallowed: "Aggravation" - Allowed	4	579
Wallbridge A M7/47	Varicose Veins - The appeal was on grounds of "Attrib" in lieu of "Agg" and was dismissed by the Court without remission to the Tribunal	4	815
O'Neill M M2/118317	Ulcer (Peptic) - "Attrib"disallowed: "Aggravation" allowed	1 4	839 825
Muir J M2/232074	Ulcer (Gastric) ("Attrib" in lieu of "Agg") - Disallowed	2 2	649 809

OTHER SIGNIFICANT CASES

Name and Department Ref	Appealable Issue	Reports of War Pensions	Selected Appeals
Bourne D M O/W216556	Cancer of Colon (death due to, etc) - Disallowed	1	126
Miller J	Cancer of Oesophagus (death due to, etc) - Disallowed	1	615
Wallis H R E	Hodgkin's Disease (Lymphadenoma) -		

O/M7/25461	Wholly disallowed. See also Signpost cases of James C and Atkinson L	4	743
Kinkaid J L D2/77158	Leukaemia (death due to, etc) - Disallowed	3	1423
Miller V L W3/90830	Leukaemia (death due to, etc) - Disallowed	4	671
Cotgrave H M2/377142	Mitral Stenosis ("Attrib" in lieu of "Agg") - Disallowed	1	1229
Wilkes R M2/388402	Mitral Stenosis ("Attrib" in lieu of "Agg") - Disallowed	1	467
Irving D M B1/M2/25700	Mitral Stenosis ("Attrib" in lieu of "Agg") - Disallowed	2	401
Wright J M2/170124	Schizophrenia ("Attrib" in lieu of "Agg") - Disallowed	2	827
Briggs G M M3/95613	Schizophrenia - Wholly Disallowed	1	211
McCrorie E D2/3727	Suicide - Disallowed	2	783
Fuller M O/W2/15407	Suicide - Disallowed	3	1617
Blanchflower V M O/W2/23112	Suicide - Disallowed	4	887
Mitchell R H B11/W2/835	Heart Failure - Disallowed	2	421

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APPENDIX 9

INDUSTRIAL ACCIDENTS TO WAR PENSIONERS

1. When industrial disablement benefit is being paid for a condition for which there is also entitlement for war pension, Awards Branch will adjust the War Pensions award, when appropriate, to prevent double compensation for the same disablement. Similarly, if there is greater disablement as a result of interaction between a condition accepted for war pension and another condition for which industrial disablement benefit is being paid, Awards Branch will adjust the War Pensions award, when appropriate, so that double compensation is not paid for the greater disablement addition.

2. When industrial disablement benefit is being paid for worsening of a condition accepted as attributable to service under the SPO and analogous instruments, subsequent War Pensions assessments should take into account all the disablement resulting from that condition and Awards Branch should adjust the award in respect of the overlap.

3. When a condition accepted for war pension on the basis of aggravation is worsened by an industrial injury, that worsening should not be taken into account in the War Pensions assessment unless following a claim by the war pensioner we have to accept the industrial injury as consequential, in which case Awards Branch should adjust the award in respect of the overlap.

4. When giving the War Pensions assessment for any condition for which industrial disablement benefit is being paid, the basis for that assessment should be clearly explained so that Awards Branch may adjust the award when appropriate.

5. Industrial Injuries claims are determined by the Adjudicating Authorities. The Adjudicating Authority for determining the assessment of the relevant loss of faculty is a Medical Board or a Medical Appeal Tribunal so when dealing with a War Pensions case, comments which are at variance with the decisions of the Industrial Injuries Medical Authorities should not be made.

6. Cases of doubt or difficulty should be discussed with the SMO who may wish to consult the PMO and occasionally the PMO may need to consult the PMO of Branch BAMS, Policy & Support to resolve difficulties.

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APPENDIX 25

GREATER DISABLEMENT - 1972 LETTER TO PAT PRESIDENT

19 September 1972

Sir Stafford Foster-Sutton KBE CMG QC
President
Pensions Appeal Tribunals

We have been considering for some time past the way in which we compensate for the greater disablement which is the result of the interaction between an accepted injury or disease and a non-accepted defect, injury or disease - in other words the extent to which an assessment should be increased to take account of a non-service injury, or disease which adversely affects the pensioned disablement or vice versa. We have in the past used one of 3 methods of compensation.

a. We have occasionally used the Dispensing Warrant to deal with post-service conditions which have been aggravated by an accepted disability.

b. The disability may have been dealt with under the "paired organs" rule, with which you are familiar, when this has been appropriate.

c. We have also sometimes applied the principle of "greater disablement", as is employed for industrial disablement assessments but not very explicitly.

We have come to the conclusion that this is not a satisfactory situation, and that in future we should always work on the basis of "greater disablement" wherever this would be to the pension's advantage. This is of course the basic principle underlying assessment practice for "paired organs" but is has been only very sparingly applied elsewhere. A good example of the kind of case affected is where the person with an accepted injury to a limb suffers an increase in his disablement because of a further injury to the same limb due to non-service causes. In this instance using the greater disablement method of assessment we *would assess the whole of the disablement present in the limb and from this offset only that part of the total disablement which is due to non service causes.* Again a man may have bronchitis accepted as due to service where the effort of coughing from the bronchitis exacerbates a non-accepted condition of angina. We would assess the total disablement and only subtract that part due to the non-accepted disability. What is left, and allowed for in the assessment, is the accepted disability plus the additional disablement caused by the interaction between the accepted and the non-accepted injuries (what has sometimes been called the "connecting factor").

We have confirmed from our lawyers that in their view Article 9 of the Royal Warrant permits the general application of this principle and therefore in appropriate cases in future our doctors will adopt this method of assessment -how much the "connecting factor"/"greater disablement factor" in any particular case will be is essentially a matter for clinical judgement. It is to be expected that the greater disablement increase will be particularly large in cases involving loss of sight where service has played a material part in causing blindness even where there is a non-accepted disease affecting vision, and in double upper limb amputations. Even so there will no doubt be cases where the present paired organ rules are to the advantage of the War Pensioner because the greater disablement factor works out at something slightly less. In that event the pensioner will get the benefit of the existing rule.

From the Assessment Appeal Tribunal's point of view I think there are 2 particular aspects which you may wish to put across. First, of course, in a few of the cases coming before the Tribunals from about the end of this year onwards there will be references to the term "greater disablement" or "connecting factor" and a specific assessment value will be put on this factor. The cases will be few because it is of course only where there is definate interaction between the accepted disability and the non-accepted disability that the assessment can be raised on these grounds. It will of course be for the Tribunal to decide whether they agree the assessment rating put on the factor or consider it should be different in any individual case.

Secondly, of course, Tribunals will want to be fully aware that in appropriate cases weight should be given in their judgement to this factor. One or two Tribunals, I understand, may already be thinking along these lines. It would, of course, be very helpful to us if Tribunals could indicate their agreement, or otherwise, to the value put on the "connecting factor" in their decisions.

D C Ward
Assistant Secretary
War Pensions Divison

Following Mr Ward's letter to the President of the Pensions Appeal Tribunals sent recently on the above subject, Mr Ward has received a reply from Sir Stafford Foster Sutton in terms as follows:-

"I think your proposals provide a sound and practical method of doing justice in the type of case you refer to and I will certainly invite Assessment Appeal Tribunals to give effect to the procedure suggested in your ultimate paragraph."

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APPENDIX 24

TREATMENT FOR WAR PENSIONERS IN MOD HOSPITALS

Priority treatment for war pensioners: admission into Ministry of Defence hospitals.

Over the past few years anxiety has occasionally been expressed by war pensioners and ex-service organisations about difficulties experienced in having honoured the priority treatment provisions for war pensioners. These concern admissions for a pensioned disablement to National Health Service hospitals (DHSS, 1972; 1974).

In an endeavour to ease the problem the Department has arrived at an agreement with the Ministry of Defence which enables ex-servicemen and women to have treatment in certain circumstances in Army, Navy and Royal Air Force Hospitals. This is not in itself anything new as arrangements previously existed whereby service hospitals might accept a limited number of National Health Service patients for treatment. Among these NHS patens, however, priority of admission is now given - so far as practicable and subject to the decision of the medical officer in charge of the hospital - to service - disability and war pensioners. Similar consideration is also given to long-service pensioners. The hospital may also be able to help other retired service personnel with advice and, if possible, treatment. Admission is subject to the case being of a type that the hospital is equipped and staffed to handle, to accommodation being available, and to prolonged treatment not being required.

The admission request should be referred to the pensioner's general practitioner by the BAMS Medical Advisor with the advice that he contact the Medical Officer in charge of the appropriate service hospital, recounting clinical details and history. When the treatment being sought is for a patient's war pensioned disablement that patient may be eligible for assistance with travelling and subsistence expenses and also probably for treatment allowance.

The Department's involvement in these arrangements is primarily to assist war pensioners seeking treatment for their pensioned disablement. Nevertheless it is also anxious that admission to service hospitals should be obtained, where possible and if required, in respect of other ex-service personnel. The same degree of priority is not, however, available to persons in the latter category; the arrangements for admission have to be undertaken by their own general practitioners; and the Department cannot accept any liability for cost on account of travelling etc.

Existing arrangements whereby ex-Far Eastern POWs are admitted to certain hospitals (including the Queen Elizabeth Military Hospital, Woolwich) for tropical disease investigations are not affected by the agreement with the Ministry of Defence.

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APPENDIX 1

ABBREVIATIONS AND ACRONYMS

AA	Attendance Allowance (Civilian Award)
AAC	Army Air Corps
ABH	Advanced Base Hospital
AC	Appliance Centre
AD	Accepted disablement
AERE	Atomic Energy Research Establishment
AF	Alexander Fleming House
AK	Above knee
ALAC	Artificial Limb and Appliance Centre (old name for Disability Benefit Centre)
ALSO	Allowance for lowered standard of occupation
AMH	Auxiliary Military Hospital
AMRU	Army Medical Rehabilitation Unit
ASST	Assessment
AT	Administrative Trainee
ATS	Auxiliary Territorial Sercice (Women's Royal Army Corps
AWRE	Automatic Weapons Research Establishment
BBGH	British Base General Hospital
BCCP	Brigade Casualty Clearing Post
BEF	British Expeditionary Force
BET For	British Element - Trieste Force
BGH	British General Hospital
BK	Below Knee
BLA	British Liberation Army
BMH	British Military Hospital
BNPS	Below Naval Physical Standards
BPC	Base Psychiatric Centre
BAMS	See chart of Medical Division
BSQ	Base Sick Quarters
BTNA	British Troops North Africa
CAA	Constant attendance allowance
CAC	Central Advisory Committee
CAP	Company Aid Post
CCS	Casualty Clearing Station. Now called a Field Hospital
CBMH	Combined British Military Hospital

CCD	Command Convalescent Depot
CDV	Civil Defence Volunteer
CGS	Combined Gunnery School
CMA	Chief Medical Advisor
CMF	Central Mediterranean Force
CMO	Chief Medical Officer
Code EC	Fit for Further Service
COI	Court of Inquiry
CPC	Canadian Pensions Committee
cps	Cycles per second
DBC	Disability Benefits Centre (previously ALAC)
DEMS	Defensively Equipped Merchant Ship
DHA	District Health Authority
DHSS	Department of Health and Social Security
DMA	Divisional Management Accounts
DMS	Director of Medical Services
DMU	Discharged Medically Unfit
DOB	Distribution of Business
DPU	Discharged Permanently/Medically Unfit
DSA	Disablement Services Authority
DSC	Disablement Services Centres
DVA	Department of Veterans Affairs
E	Enemy Action
EATS	Empire Air Training Scheme
EFA	Error in Final Award
EFI	Expeditionary Forces Institute (Overseas Unit of NAAFI)
EMO	Examining Medical Officer
ENT	Ear, nose and throat
ENT	Entitlement
ERS	Emergency Reception Station
ESDA	Exeptionally severe disablement allowance
ETT	Exercise Tolerance Test
FA	(Field Ambulance) (Flying Accident)
FANY	First Aid Nursing Yeomanry
FB&WPD	Fylde Benefits and War Pensions Directorate (previously NFCO)
Fd AMB	Field Ambulance
FDS	Field Dressing Station
FEPOW	Far East prisoner of war
FEV 1.0 sec	Forced expiratory volume (one second)
FFS	Fit for final settlement

FMI	Financial management initiative
FPC	Family Practitioners' Committee
FTC	Flying Training Command
FTU	Field Transfusion Unit
FVC	Forced Vital Capacity
GSW	Gunshot wound
GTN	Government Communications Network
HANH	Hannibal House
HAP	Health Services Personnel Division
HQ	Headquarters of the Department (in London)
HQST	Headquarters Staff Training
IAT	Infection of Areolar Tissue (cellulitis)
IB	Injury Benefit
ID	Indeterminate duration
II Acts	Industrial Injury Provisions of the Social Security Act 1975 et alia
II	Industrial Injury
IMCCS	Independent Mobile Casualty Clearing Station
IME	Independent Medical Expert
KIV	Keep in View
LDV	Local Defence Volunteer (old term for Home Guard)
LFA	Light Field Ambulance
LFC	Limb Fitting Centre
LMF	Local medical file
LOC	Lines of Communication
LTA	Long Term Assessment
MAC	Motor Ambulance Convoy
MBW	(Mortar bomb wound) (Multiple bullet wounds)
MCTC	Military Corrective Training Centre (Prison)
MDS	Medical Dressing Station
MELF	Middle East Land Forces
MNRP	Merchant Navy Reserve
MMR	Mass miniature radiography
MO	Medical Officer
Mob A	Mobility Allowance (Civilian award)
MPO	Management and Personnel Office
MRC	Medical Research Council
MU	Maintenance Unit (RAF) (Medical Unit)
NAAFI	Navy, Army and Air Force Institutes
NAD	Nothing Abnormal Detected
NAEF	North Atlantic Escort Force

NANA	Not attributable to, not aggravated by
NAP	Naval Auxiliary Personnel
NATO	North Atlantic Treaty Organisation
NCO/NC	Newcastle Central Office (old name for Newcastle Disability Benefit Centre)
NE	Non-enemy action
NFCO	North Fylde Central Office, Norcross (old name for Fylde Benefits and War Pensions Directorate)
NFS	National Fire Service
NFFS	Not fit for final settlement
NFTR-DUTY	Now fit to return/resume - duty
NHS	National Health Service
NIO	National Insurance Office
NIPTS	Noise Induced Permanent Threshold Shift
NITTS	Noise Induced Temporary Threshold Shift
NRPB	National Radiological Protection Board
NWE	North Western Europe
NX	Norcross
OA	RAF - other accident (i.e. non-flying)
OAE	On available evidence
OCS	Officer Cadet School
OCTU	Officer Cadet Training Unit
O/G	Organised games
OCT	Officer Training Corps
OGD	Other Government Department
OOT	Out of Time
OPA	Overseas Pensions Agent
OPCS	Office of Population Censuses and Surveys
OSD	Operational Strategy Directorate
OSY	Over Seven Years
OTU	Operational Training Unit (RAF)
PA	RAF - propellor accident
PAT	Pensions Appeal Tribunal
PCE	Permanent Certificate of Eligiblilty for Treatment
PEFR	Peak expiratory flow rate
PES	(Present Employment Standard) (PULHEEMS Employment Standard) Personal Secretary
PESC	Public Expenditure Survey Committee
PFR	Peak Flow Rate
PFTS	Pulmonary Function Tests
PI(C)S	Personal Injuries (Civilians) Scheme
PMO	Principal Medical Officer
PMRAFH	Princess Mary's RAF Hospital

POW	Prisoner of war
PRISM	Personal Record Information System for Managers
PS	Permanent Secretary/Personal Secretary
PUNS	(Permanently unfit for National Service) (Permanently unfit for Naval Service)
QARNNS	Queen Alexandra's Royal Naval Nursing Service
RAAF	(Royal Auxiliary Air Force) (Royal Australian Air Force)
RAP	Regimental Aid Post
RAWP	Resources Allocation Working Party
RD	Regional Directorate
RFA	Reasons for Appeal
RFA	Royal Fleet Arm/Royal Fleet Auxiliary
RFR	Royal Fleet Reserve
RHA	Regional Health Authority
RNAS	(Royal Naval/Auxiliary Station) (Royal Naval Air Station)
RNER	Royal Naval Emergency Reserve
RMF	Regional Medical File
RMO	Regional Medical Officer ("DHSS Health" appointment)
RO	Regional Office
ROC	Royal Observer Corps
RO SMO	Regional Office Senior Medical Officer
RSWPA	Reports of selected War Pensions Appeals
RTU	Return to Unit
RW	Royal Warrant
SB	Sickness Benefit
SCCS	Service Casualty Clearing Station
SDOA	Severe disablement occupational allowance
SEAAF	South East Asia Air Forces
SEAC	South East Asia Command
SHAEF	Supreme Headquarters Allied Expeditionary Forces
SHAPE	Supreme Headquarters Allied Powers in Europe
SI	Statutory Instruments
SIW	Self inflicted wound
SLS	Searchlight Section
SMI	Specified Minor Injuries
SMO	Senior Medical Officer
SPES	Senior Personal Secretary
SPO	Service Pension Order
SR & O	Statutory Rules and Orders
	Soldiers, Sailors and Airmens Families

SSAFA	Association
SSG	Summed Selection Group (adult IQ test - military)
SSI	Social Services Inspectorate
SSQ	Station Sick Quarters (RAF)
Supp Files	Supplementary allowance files
Sv	Sievert
SW	Shrapnel Wound
TA	Treatment allowance / Territorial Army
TANS	Territorial Army Nursing Service
TARO	Territorial Army Reserve of Officers
T&T	Through and through (wound)
TAW	Temporary Allowance for Widows
TLTY	Temporary less than a year
TMTY	Temporary more than a year
TOTO	Top of the Office
Un Supp	Unemployability Supplement
UFI	Until further instructions
UVF	Ulster Volunteer Force
VAD	Voluntary Aid Detachment
VEDE	Vehicle Excise Duty Exemption
WAAF	Women's Auxiliary Air Force
WACCS	West African Casualty Clearing Station
WD	Western Desert
WOAS	Whilst on active service
WPC	War Pension Committee
WPO	War Pensions Office
WPMS	War Pensions Mobility Supplement
WPWO	War Pensions Welfare Office
WRAAF	Womens' Royal Auxiliary Air Force
WRAC	Womens' Royal Army Corps
WRAF	Womens' Royal Air Force
WRNS	Womens; Royal Naval Service

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APPENDIX 7

WAR PENSIONS APPEAL TRIBUNALS

War Pensions Appeal Tribunals are totally independent of the Department and their composition, powers and procedures are governed by the Pensions Appeal Tribunals Acts and rules. These Acts apply to England and Wales, Scotland and Northern Ireland though there is a separate set of rules for each of the 3 divisions reflecting the different legal system in each. In England and Wales the administration is under the direction of the Lord Chancellor, in Scotland under the Lord President of the Court of Sessions and Northern Ireland under the Lord Chief Justice. Acting under these authorities there is a President of Tribunals in England, a similar President in Scotland and the Chairman of Tribunals in Northern Ireland. These 3 appoint the members of the Pensions Appeal Tribunals.

The constitution, jurisdiction and procedure of Pensions Appeal Tribunals are defined in the Schedule to the Pensions Appeal Tribunals Act 1943.

Where the appeal is against a decision on entitlement the Pensions Appeal Tribunal comprises:-

i. a barrister or solicitor of not less than 7 years' standing who acts as Chairman; and
ii. a duly qualified medical practitioner of not less than 7 years' standing; and
iii. a third member who is of the same sex as the person in respect of whom the appeal is made and was of similar status in the service or in civil life.

Where the appeal is against a decision on assessment, the barrister Chairman is replaced by a second medical practitioner of not less than 7 years' standing. One of the medical practitioners acts as Chairman.

The President of Tribunals is one of the legal chairmen.

NOTE:

1914 War Widows Appeals. Though the PAT members are defined as a Chairman, a medical assessor and a disabled ex-serviceman in practice the composition of the Tribunal is the same as for appeals arising out of service since 3 September 1939.

Appeals for England and Wales and for those outside the United Kingdom are heard in London and in other large cities in the United Kingdom. Tribunals in Scotland hear appeals from those living in Scotland and the Tribunal sitting in Belfast hears appeals for those living in Northern Ireland.

For the Tribunal's powers see MPM57A paragraphs 143 et alia and 273 et alia.

Though a War Pension appeal is a legal action, the proceedings at the Tribunal are informal and Tribunals are not bound by the rules of evidence. They may accept oral evidence from the appellant or a witness. Witnesses, including medical witnesses, can be called by the appellant. The Department is represented by a lay officer. A medical officer normally only attends when the appellant is a doctor or he calls a medical witness. The Departmental doctor then acts only as an adviser to the lay Departmental Representative.

As soon as an appeal is received by the War Pension Directorate a copy of "Notes for the Guidance of Appellants" is sent to the appellant (see Library D2). The appellant may conduct his own appeal or any person willing to help may conduct it for him. The various associations may help and the Notes for Guidance give the details. The member may prefer to be represented by a barrister (advocate in Scotland) or solicitor but is not then entitled to fees for expenses. Legal advice and assistance from a solicitor is available under the "Green Forms Scheme" which enables those of moderate or small means to be helped. Should the member have any doubt about procedural matters the Secretary to the PATs will give full advice.

The conduct of the appeal in Article 4 cases differs from that in Article 5 cases. In Article 4 cases the appellant is not at first called. The Department's Representative addresses the Tribunal and puts the

Department's case. The Tribunal then decides whether or not there is a case to answer. The appellant is called only if the Tribunal decides there is a case to answer. Otherwise the PAT find in the appellant's favour after hearing the Department's case.

In Article 5 cases the appellant and Department's Representative are both called at the commencement of the hearing. They each have opportunity to address the Tribunal, to call witnesses and to question witnesses called by the other party. The Tribunal members may, if they wish, question either party.

Entitlement Tribunals usually, but not always, give written reasons for their decisions. The Department may request written reasons if these are not supplied. In Scotland written reasons are always provided. Assessment appeal decisions are given without reasons and only a composite assessment is given though any increase for greater disablement should be indicated.

ADJOURNMENTS

The case may be adjourned at the request of the Department, the appellant or the PAT.

This may be for:

- Reconsideration of the Article.
- Clarification of the label.
- Rule 14, Collection of further evidence.
- Rule 15 report.

The decision of the Tribunal must be unanimous and if members are unable to agree the appeal is then adjourned for hearing by a fresh Tribunal.

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APPENDIX 8

PAT ACTS AND RULES

PAT ACT 1943

Section 1-3

Deals with Entitlement Appeals by:

1. Naval Military and Air Force Members
2. Mercantile Mariners
3. Civilians

These sections require that, where a claim is rejected the Minister shall notify the claimant of his decision and thereupon an appeal shall lie to a Pensions Appeal Tribunal.

Section 4

Concerns appeals in which awards are withheld, reduced or cancelled in accordance with Article 6 of the SPO, on grounds of misconduct or negligence. Action under Article 6 is a lay decision which allows an appeal right in itself.

Section 4(2)

Deals with procedures in Entitlement Appeals where, in the event that the PAT find in the appellant's favour, the Secretary of State intends to reduce, cancel or withhold the award under Article 6. The section requires that before the hearing the Secretary of State must notify the appellant that he intends to reduce etc the award on the grounds specified. If the PAT allow the Entitlement appeal it shall determine the issue specified (ie whether or not misconduct or negligence contributed to the claimed disablement/death).

If, before the hearing, the Secretary of State did not notify the appellant of his intention to reduce etc the award, he cannot reduce the award afterwards.

Section 5

Concerns Assessment Appeals.

Section 6

Covers the constitution, jurisdiction and procedure of Pensions Appeal Tribunals.

Sub-section 6(2)

Provides for appeals to the High Court on points of law against decisions of Tribunals under Sections 1-4.

Sub-section 6(2A)

Provides that where an Entitlement Appeal has been decided by the PAT, an application may be made jointly by the appellant and the Secretary of State to the President of the PAT for the decision to be set aside:-

1. by reason of availability of additional evidence;

2. on a point of law (except where an appeal has already been made under Sub-section 2).

Advice on Appeals to the High Court and joint application is the responsibility of SMO Special

Section.

PAT RULES

These are Statutory Instruments instructing how the PAT Act should be applied. Authority for making the Rules is conferred by Section 6(2B) and paragraph 5 of the Schedule of the PAT Act 1(1943). Note that there are separate sets of rules for:

1. England and Wales

2. Scotland

3. Northern Ireland

RULE 3(1) defines who can bring the appeal ie the claimant;

RULE 3(2) relates to Posthumous Appeals.

RULE 5

Requires that on receipt of Notice of Appeal the Secretary of State shall prepare a 'Statement of Case' containing:

a. the relevant facts relating to the case as known to Secretary of State;

b. in Entitlement Appeal, the Secretary of State's reasons for rejection of the claim.

Note that the Statement of Case must contain "relevant facts relating to the case". The MO has responsibility to ensure that efforts are made to collect all relevant medical evidence and to advise the lay officer on which evidence should be sought. He may also advise on evidence which is not relevant and can therefore be excluded from the Statement of Case. Omissions may lead to an accusation that evidence has been concealed and it is therefore usual to include all the evidence that has been collected. Nevertheless, in some cases, it is not necessary to include large quantities of nursing notes or detailed daily clinical records provided there are comprehensive hospital summaries available.

RULE 6

Relates to disclosure of official documents and information.

Departmental minutes and names of government employees are specifically excluded.

RULE 9 Withdrawal of an Appeal

An appeal may be withdrawn:

1. at any time before the hearing if the appellant gives notice of wish.

2. if the Secretary of State decides the issue in favour of the appellant.

RULE 10 Failure to prosecute an Appeal

If the appellant fails to prosecute the appeal without sufficient reason the President may direct the case to be put on the deferred list.

RULE 15

A PAT may obtain a report from a medical specialist or other technical expert. A copy of the R15 report is sent to the Secretary of State who may, if he wishes, comment in writing.

RULE 20

The PAT may agree or refuse to hear an appeal in the absence of the appellant.

RULE 21

Where the appellant cannot attend through infirmity the President makes suitable arrangements. Commonly he arranges for the appellant to be visited by members of the Tribunal and to be medically examined.

Reports of such visits are passed to the Secretary of State who may comment in writing.

RULE 22

Provides for omission of undesirable evidence from the appellant's copy of the Statement of Case. This includes evidence which may be harmful or embarrassing to the appellant and confidential medical evidence. Application of R22 is a lay matter. However, MOs may advise on items which they consider should be omitted, or conversely, which should be included in all copies of the Statement of Case.

RULE 23

When the appellant resides abroad the appeal is usually heard in his absence. (He may give notice of his intention to attend.)

In an entitlement appeal the President may and in an Assessment Appeal he shall arrange for the appellant to be medically examined (unless the President certifies that this is impracticable).

There is no provision under the present English rules for the Secretary of State to comment in writing even though R23(3) requires that a copy of the report must be sent to both the appellant and the Secretary of State. It has therefore been agreed with the President that these reports are not referred to Medical Branch. The President in Scotland is willing to allow both parties to comment. However the Department wishes to treat all cases alike. Therefore R23(3) reports in Scottish cases are not passed to Medical Branch.

POSTHUMOUS APPEALS

In the event of the death of an appellant in the course of an appeal both Entitlement and Assessment Appeals may be carried on by a "designated" person.

Entitlement Appeals can also be lodged after the death of the original claimant but Assessment Appeals cannot. There is an absolute time limit of 3 years from the claimant's death.

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APPENDIX 10

DBC REFERENCE REPORTS

1. The Regional Reference Service of the Disablement Benefit Centre (DBC) supplies reports on the RM9 series of forms at the request of our Local Offices in connection with claims for Sickness Benefit, Invalidity Benefit and Injury Benefit. These reports, independent opinions regarding fitness for work, are based on clinical examinations carried out mainly by part-time Examining Medical Officers who are or have been in General Practice.

2. Occasionally we may be informed that a war pensioner has been examined for completion of Form RM9 and, very rarely, it may be thought necessary to obtain information from the Regional Reference Service. Such cases should be referred to the SMO of the War Pensions section for consideration and, when necessary, the SMO should write to the appropriate DBC SMO requesting the information and explaining why it is required. The DBC SMO will usually be able to give the information but only on the understanding that it is given on a confidential basis between Departmental doctors. Such information could not be quoted in evidence. If the War Pension SMO decides that a copy of the report on Form RM9 is required, the DBC SMO will supply it if we obtain the war pensioner's consent. If a copy of the report on Form RM9 is obtained it may be quoted in evidence.

Records of the reference service are kept for 2 years after issue so requests for copies of RM9s will be valid during that period only; however, as local officers appear to keep RM9s indefinitely, there should be no problem providing copies for War Pension purposes with the pensioner's consent.

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APPENDIX 11

MEDICAL ADMINISTRATION IN THE LAND FORCES

Changes in weaponry have markedly affected the use and organisation of troops on the battlefield. Bombing by aircraft and precision shelling by long range artillery are significant factors in decisions on the entry of infantry into the battle zone. There are, however, and probably always will be, essential roles for "foot soldiers" and an understanding of the medical arrangements for dealing with wounded soldiers is most useful. The casualty evacuation chain is outlined in detail.

This chapter also refers to some of the codes which have been developed by the Military Authorities at various times to enable the medical fitness of servicemen to be assessed and clearly and simply recorded.

CASUALTY EVACUATION CHAIN

The need for an efficient organisation to evacuate the wounded is dictated by two primary military requirements. First to relieve local commanders of the encumbrance of casualties which reduce flexibility and tie down essential vehicles and personnel. Second, to restore men's fitness so that they can return to the battle. A secondary consideration is that men perform better under stress if they have confidence in an efficient "back-up" medical service.

Factors which influence the organisation of the Medical Services in the Field are:

1. Local medical resources may at any time become overwhelmed.

2. Delays may be experienced because of difficult terrain, enemy interdiction, shortage of vehicles and generally the "Fog of War".

3. The problems of resupply.

4. Certain types of casualty do not travel well.

5. The overriding need to get the wounded to surgery within 6 hours (before wound infection becomes established).

The organisation shown below was developed in World War 2 (WW2) though modified subsequently to take into account medical advances, local requirements and changes in transportation systems.

"Buddy System" All soldiers are taught **First Aid**. This includes the care of airways, arrest of haemorrhage, splinting fractures and sealing sucking wounds of the chest among other things. Each soldier carries a "first field dressing", a morphine syrette and nowadays a syrette of atropine (the antidote to nerve gas). The first attention a wounded man gets is usually from a comrade. He is taken under cover and carried rearward to the CAP (company aid post) by stretcher bearer (SB) or unit "F" (fighting) vehicle.

CAP. The **Company Aid Post** is located a few hundred yards from the forward edge of the battle area (FEBA); once called the Front Line and now referred to as the forward defended localities (FDL). Here further necessary First Aid is given by regimental medical orderlies and he is transferred by an ambulance to the Regimental Aid Post (RAP) and evacuated rearward.

RAP. The **Regimental Aid Post** is located up to 5 miles further back and situated in the battalion headquarters so the Regimental Medical Officer (RMO) is kept informed on how the battle is going and what the casualty estimates are. The RAP is equipped to carry support treatment a stage further. Drugs exhibited include antibiotics, tetanus toxoid booster, IV fluids such as Ringer Lactate (Hartmann's) but not blood and Morphine. Minor surgical procedures can be undertaken such as chest drainage and haemostasis and Thomas Splints and POP can be applied.

Fd Amb. The **Field Ambulance** is located in the Brigade area. It is about 20 miles behind the FEBA and therefore within range of enemy artillery. It is commanded by a lieutenant colonel who is also the senior medical officer (SMO) of the Brigade.

The Field Ambulance is organised into a **Main Dressing Station** (MDS) and several sections which may be deployed forward to cover areas of delay in the evacuation chain such as a river crossing. They are then referred to as Casualty Collecting Points (CCP's). The MDS carries out the treatment of transportation which includes resuscitation, haemostasis, paracentesis of chests, fixation of fractures etc.

The Field Ambulance has a Dental Officer on strength. If there is likely to be delay in the rearward evacuation at this stage the Field Ambulance can be reinforced by a Field Surgical Team (FST). It is then called an **Advanced Surgical Centre** (ASC). Casualties need to get to surgery within 6 hours of wounding to prevent the establishment of wound infection. (Historical Note: This was not a problem in the Western Desert as the gas gangrene organism does not occur in desert sand as opposed to the cultivated fields of Flanders.)

Fd Hosp. The next stage of evacuation is to the **Field Hospital** - previously called a Casualty Clearing Station (CCS). The Americans call it a Mobile Army Surgical Hospital (MASH).

The Field Hospital is located in the Divisional area and will be about 50 miles behind the FEBA. It is still therefore in the combat zone.

It has 200 beds, 4 Field Surgical Teams, a Dental Specialist for maxillary-facial injuries, nurses from the Queen Alexander Royal Army Nursing Corps (QARANC), X-ray facilities, a laboratory and a Physician. This is the first place at which blood is available.

Base Hospital. Patients are evacuated from the Field Hospital to a Base hospital for Delayed Primary Suture (DPS) and convalescence.

Note 1. FDS. A **Field Dressing Station** (FDS) may be found anywhere rearward of the Divisional Rear Boundary. It is primarily for the treatment of medical cases and sometimes for holding psychiatric battle casualties although the latter are usually held as far forward as possible and used as stretcher bearers, which has been found to be therapeutic. They are then returned to their units when recovered (also therapeutic).

Note 2. This synopsis relates largely to WW1 and WW2. Considerable variations are necessary to cover nuclear warfare, chemical warfare and limited war operations. The increasing use of medically dedicated helicopters also affects the deployment of medical resources in the field.

ASSESSMENT AND DISPOSAL CODES

In the services the assessment and disposal of personnel is indicated by a number of conventional codes for administrative convenience. Some of these are outlined

1. PRE-PULHEEMS CLASSIFICATION

CLASSES OF RELEASE

1. Non-Medical (Administrative)

Class "A" - Normal release for age and service.

Class "B" - Release to industry - usually for essential war work.

Class "C" - Compassionate.

2. Medical Release

STANDARDS OF HEARING

Standard 1. - A man can hear a soft whisper with each ear separately.

Standard 2. - Hearing is less than in Standard 1, but the man standing with his back to the examiner and using both ears can hear a forced whisper from 10 feet away.

Standard 3. - Hearing is less than Standard 2, but the man can easily hear a speaking voice under the conditions specified in Standard 2.

Standard 4. - Hearing is less than Standard 3.

Grading. - Men with hearing Standard 1 and 2 were placed in Grade I, those with Standard 3 in Grade II and those in Standard 4 in Grade IV.

MEDICAL GRADING

At the outbreak of World War II recruits were examined and graded by civilian Medical Boards. There were 4 grades defined as follows:

Grade I - Men who, subject only to such minor disabilities as can be remedied or adequately compensated by artificial means, attain the full normal standard of health and strength, and are capable of enduring physical exertion suitable to their age.

Grade II - Those who while suffering from disabilities disqualifying them from Grade I, do not suffer from progressive organic disease, have fair hearing and vision, are of moderate muscular development, and are able to undergo a considerable amount of physical exertion not involving severe strain. Where such a man has been placed in this grade solely on account of either defects of visual acuity or deformities of the lower extremities, or both, in accordance with the instruction in the appropriate paragraphs of this Code, this will be signified by the letter (a) followed by the words vision or feet in brackets, eg Grade II (a) (vision) or Grade II (a) (feet).

Grade III - Those who present such marked physical disabilities or evidence of past disease that they are not fit for the amount of exertion required for Grade II.

Grade IV - Those who suffer from progressive organic disease or are for other reasons permanently incapable of the kind of degree of exertion required for Grade III. These men are unfit for any form of service.

It was not possible to adequately indicate the full range of abilities in this simple classification and in 1940 a more detailed one with categories A1-E was introduced by the Army. This was later amplified and the 1944 classification is copied at Table 1.

To assist in converting the Grades I-IV submitted by the Civilian Medical Boards into the Army categories the Grades were carefully defined and the equivalent categories clarified (see Table 2). It was then possible to specify the categories considered suitable for each arm of the service eg. Guards regiments were always A1.

TABLE 1 - MEDICAL CATEGORIES FOR OTHER RANKS, 1944

(1) Army category	(2) Army standard as regards physique and capabilities	(3) Locality in which men may normally be employed
A.1.....	See to shoot or drive Can undergo severe strain Without defects of locomotion With only minor (remediable) disabilities	Any area in a theatre of war
A.2.....	See to shoot or drive Can undergo severe strain With slight defects of locomotion With only minor (remediable) disabilities	Any area in a theatre of war
A.3.....	See to drive Can undergo severe strain With or without slight defects of locomotion With only minor (remediable) disabilities	Any area in a theatre of war
A.4.....	See for ordinary purposes, but not shooting or driving Can undergo severe strain Without defects of locomotion With only minor (remediable) disabilities	Any area in a theatre of war

A.5.....	See for ordinary purposes, but not for shooting or driving Can undergo severe strain With slight defects of locomotion With only minor (remediable) disabilities	Any area in a theatre of war
B.1.....	See to shoot or drive Can undergo considerable exertion not involving severe strain Without defects of locomotion With moderate degree of disabilities	L of C, base or garrison service or other limited employment at home or abroad
B.2.....	See to shoot or drive Can undergo considerable exertion not involving severe strain With slight defects of locomotion With moderate degree of disabilities	L of C, base or garrison service or other limited employment at home or abroad
B.2a.....	See to drive Can undergo considerable exertion not involving severe strain With or without slight defects of locomotion With moderate degree of disabilities	L of C, base or garrison service or other limited employment at home or abroad
B.5.....	See for ordinary purposes but not for shooting or driving Can undergo considerable exertion not involving severe strain With or without defects of locomotion With moderate degree of disabilities	L of C, base or garrison service or other limited employment at home or abroad
B.6.....	Physique and standard of vision are good enough for a higher category, but the man is placed in this category because of defective (Standard 3) hearing	L of C, base or garrison service or other limited employment at home or abroad
B.7.....	See to shoot or drive Good hearing With marked defects of locomotion Can undergo severe strain, or Can undergo considerable exertion not involving severe strain	L of C, base or garrison service or other limited employment at home or abroad
C.2.....	(a) The standards laid down for categories A.1 to B.7 cannot be attained; or (b) Suffering from psychiatric disability likely to be aggravated by service abroad, but fit for home service	Capable of useful service at home only
D.....	Temporarily unfit	
E.....	The standards laid down for categories A.1 to C.2 cannot be attained.	Permanently unfit for any form of military service.

TABLE 2 CMB GRADES AND ARMY CATEGORY EQUIVALENTS

Grading by Civilian medical board (1)	**Remarks by Chairman to be entered on Medical Examination Record (NS(MC)14) (2)**	**Equivalent army category (3)**
Grade I	VS 1, 2 or 3 - HS 1 or 2.... VS 4 - HS 1 or 2....	A1 A3
Grade II(a)(vision)	VS 5 or 6 - HS 1 or 2....	B3
Grade II(a)(vision and feet)	VS 5 or 6 - HS 1 or 2....	B4
Grade II(a)(feet)	VS 1, 2 or 3 - HS 1 or 2.... VS 4 - HS 1 or 2....	A2 A3
Grade II	VS 1, 2 or 3 - HS 1 or 2.... VS 1, 2 or 3 - HS 1 or 2, plus foot defects VS 4 - HS 1 or 2	B1 B2 B2a

	VS 5 or 6 - HS 1 or 2 VS 1 to 6 - HS 3	B5 B6
Grade III	VS 1 to 6 - HS 1 to 3	C
Grade IV	VS 1 to 7 - HS 1 to 4	E

2. PULHEEMS CLASSIFICATION

GENERAL

The PULHEEMS system of medical classification was introduced into the three services in the late 1940's.
IT is a codified method of assessment based primarily on function, that is, the capacity to perform the work involved in a given type of duty.
Examination of the individual is carried out with particular reference to certain sub-divisions of bodily and mental function, the code letters of which go to make up the word "PULHEEMS" as follows:

P	PHYSICAL CAPACITY
U	UPPER LIMBS
L	LOCOMOTION
H	HEARING ACUITY
EE	VISUAL ACUITY
M	MENTAL CAPACITY
S	STABILITY (emotional)

The combined assessment under each of the above qualities forms the PULHEEMS code number or profile.

QUALITIES

The factors considered under each of the qualities above are as follows:

P - This should be a guide to a man's general physical development, to his potential capacity to acquire physical stamina with training, and to his capacity for work, ie employability and posting.

U - This indicates the functional use of the hands, arms,shoulder girdle and upper spine, and in general the individual's manual dexterity. Pathological conditions of the upper limbs having a constitutional basis will affect the assessment under P in addition to the assessment under U.

L - This refers to the functional efficiency of the man's locomotor system and not to any anatomical defect. Thus the fact that a man's feet happen to have flattened arches or are disfigured by bunions need not affect the degree of L providing such deformities are "symptomless" and do not affect locomotor efficiency. The functional efficiency of the lumbar vertebrae and coccyx, pelvis, hip joints, thighs, knees and legs all enter into the assessment of L. Pathological conditions are entered under P as above.

H - Hearing acuity. Diseases of the ear are assessed under the P quality.

EE - Visual acuity. Diseases of the eye assessed under P.

M - This is assessed on his selection test results, school record and general impression.

S - Somatic symptoms of psychogenic origin are taken into account.

Climatic Restrictions

To avoid sending men to climates where they will break down because of disabilities which remain quiescent only in a temperate climate the degrees 4,5 and 6 are used.

Functional interpretation of degrees of each quality

These are to be found at annexures A-D of this Appendix.

PULHEEMS EMPLOYMENT STANDARD

It is uneconomical in manpower to require the same minimum PULHEEMS assessment for combatant, lines of communication and base duties personnel in all corps. In order to simplify the application of the PULHEEMS system assessments acceptable to each corps for each area of operation have been grouped and are expressed in a two-letter code known as a PULHEEMS employment standard (PES). Each arm determines it's own requirements and the medical services allot an appropriate PES by reference to the PULHEEMS Administrative Pamphlet (PAP). The following codes are used:

FE (Forward everywhere).....
Employable at full combatant duties in any area, in any part of the world.

FT (Forward Temperate).....
Ditto, but in temperate climates only.

LE (L. of C. everywhere).....
Normally employed in communications zone or base in any part of the world, but may be employed in a combat zone in any role which is not primarily a fighting one.

LT (L.of C. Temperate).....
Ditto, but in temperate climates only.

BE (Base everywhere).....
Employable in the base area only, but in any part of the world.

BT (Base Temperate).....
Ditto, but in temperate climates only.

HO (Home Only).....
Employable, in special circumstances, in BAOR.

HO (United Kingdom).....
Employable in UK only.

3. MISCELLANEOUS

Medical Disposal

To indicate the Examining Medical Officer's advice regarding the need for follow up of a serviceman who has reported sick the following abbreviations are used.

M&D-Medicine and Duty.
There is no need for further attendance and no restrictions on what the man can do.

A3-Attend in 3 days but no restrictions of duties.

B5-Attend in 5 days and on restricted duties.
Specific restrictions are usually specified eg. excused boots.

C7-Off all duty for seven days.

DUTY (usually written in red). This means the man is malingering.

IQ Test

Summed Selection Group (a form of adult intelligence test). Selection Group (SG) 3 is normal. SG 4 is a dullard. SG 5 is normally below entry standard but in times of national emergency can be employed as a labourer but may not handle weapons.

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APPENDIX 12

GAS POISONING AND TRAINING IN THE USE OF GAS

1. Though gas was not used by any of the combatants in the 1939 War there were a small number of casualties in manufacturing plants and shell filling depots. During the bombing of Bari Harbour in Italy in the early hours of 3 December 1943 an American ship carrying mustard gas was blown up and the fumes affected a number of British Servicemen and Mercantile Mariners.

2. During the 1914 War a number of chemicals were used:

Group	Compound	Synonym	Principal Effects
Lung Irritants	Chlorine Phosgene	Cloud Gas.	Primarily affecting the pulmonary alveoli
	Diphosgene Chloropicrin	Green Cross.	
Lachrymators	Xylyl Bromide Brom-acetone	T Shell	Causes profuse lachrymation and smarting of the eyes
Nasal Irritants	Diphenyl-chlorasine Dyphenyl-cyanarsine	Blue Cross.	Mainly affecting the upper respiratory passages, and causing severe trigeminal neuralgia, with deep mental depression.
Vesicant	Dichlor-ethyl-sulphide	Yellow Cross or Mustard Gas	Producing its chief effect on the skin, eyes and bronchi and, to a lesser extent than the suffocating gases, on the alveoli.

3. The following irritant gases were first used by the Germans on these dates:-

Chlorine - 22 April 1915
Phosgene - 19 December 1915
Mustard - July 1917

4. The **lachrymators** and nasal **irritants**, though they can be completely incapacitating at the time, leave no permanent disablement.

5. The **lung irritants** produce an acute pulmonary oedema. Severe or prolonged exposure may result in rapid death due to suffocation. Moderate exposure may predispose the tissues to infection and later lead to pneumonia. These gases do not directly cause permanent damage to the alveolar wall and if pneumonia does not develop, provided the pulmonary tree was previously healthy, complete recovery is likely. Pre-existing chronic bronchitis can be seriously aggravated. In addition, phosgene has a direct toxic action on the heart similar to the effect of carbon monoxide, recovery is slow and sometimes exertional dyspnoea permanent.

6. **Mustard Gas** whether as liquid or gas has most unusual powers of penetration, even leather footwear is no protection. It persists on the ground and in clothing for weeks or even months in cold weather. It causes serious skin burns and permanent damage to lungs and eyes but has no direct effect on the heart or digestive organs.

7. The gas penetrates the epidermis readily and after a latent period of 2-48 hours erythema develops, vesicles appear and coalesce to form large blisters. Healing is slow and scarring may be permanent especially if sepsis occurs.

8. The lungs are seriously affected. After very heavy exposure the damage is usually immediately obvious and sloughing of the trachea, bronchiectasis and even gangrene of the lung tissue can occur. After lighter exposures there may be no immediate respiratory symptoms. The early signs and

symptoms are those of acute bronchitis, even though the lung parenchyma is also affected. Often the bronchitis clears for a period, even up to 2 years, but during this period, though there are no symptoms of bronchitis, examination and investigation may show that emphysema is developing. Signs and symptoms of chronic bronchitis then reappear and the pulmonary function becomes seriously impaired.

9. When considering a claim for a chest condition due to mustard gas the following criteria should be satisfied:

1. acceptable evidence that the gassing produced respiratory symptoms within a week of exposure even if those symptoms did not persist for more than a few days;

2. acceptable evidence of respiratory signs and symptoms indicating bronchitis and emphysema within, at most, five or six years of the gassing, thereafter a continuing history of these signs and symptoms up to the time the claim was made.

These criteria should be sought in all 1939 War cases but, as many of the 1914 War files have been destroyed and as pre-NHS documents are often sketchy, these criteria should be used in 1914 War cases only as a guide and a very generous view taken of any early evidence.

10. The exposed areas of the eyes are attacked, areas under the lids escaping serious effects. Though the eye is extremely sensitive to the vapour (1 part in 10 million can cause lesions) and the initial inflammation violent most of the cases in the 1914 War were mild and remarkably few eyes were lost. Seventy-five per cent of mild cases in the British Army returned to duty in 2 weeks.

11. The ophthalmologists divide the clinical course into 5 stages.

1. Latent period.
2. Primary oedematous reaction in the cornea.
3. Clinical improvement after one week with decreasing oedema.
4. Progressive vascularisation of the cornea with secondary oedema and return of symptoms.
5. Delayed mustard keratitis after 10-25 year latent period with recurrent and persistent ulceration in the cornea.

12. After mild and moderate exposures there is a latent period of some 6 hours before considerable irritation and lacrimation with palpebral oedema and conjunctival hyperaemia develop. After some weeks in mild cases and up to 3 months in the moderate cases these signs and symptoms pass off without any corneal sequelae.

13. Severe gas exposures or droplet contamination causes immediate transient opacity of the epithelium. After a 6-8 hour latent period pain develops with oedema of the lids, conjunctivae, corneal epithelium and stroma. There is a very stormy 2-3 week period, then the primary oedema subsides and symptoms ameliorate. In some cases there are no further developments, the condition improves but leaves the characteristic sequelae including ampulliform varicosities of the blood vessels in the conjunctivae with impaired corneal sensitivity. More often, irritation recurs intermittently and secondary oedema of the cornea with corneal vascularisation and haemorrhages into the stroma develop. There can be intermissions of up to a year between attacks and the residual corneal opacity may be considerable. The condition then may remain quiescent for an indefinite period but about 15-20 years after the initial injury the degenerated cornea breaks down with formation of recurrent ulcers (delayed mustard gas keratitis).

14. Occasionally, claims are made with respect to more modern chemical agents (nerve gases such as GB (Sarin), CS gas, MACE etc). In such cases it is usually necessary to write to MOD for information.

GAS TRAINING

This training includes limited exposure in a gas chamber to tear or nose gases. This limited exposure occurs whenever individual respirators are checked for correct fit and this has to take place at least once a year. The gas chamber is filled with a tear gas usually consisting of "CAP" (chloraceto-phenone). Once the correct fit and efficiency of the respirator is established all personnel re-enter the chamber briefly without their respirators to demonstrate the protection the respirator affords.

Once during training personnel are also required to experience a "nose" gas such as "D.M" (diphenylamine-chlor-arsine), again in a gas chamber and again without the protection of a respirator

for a maximum of 3 minutes.

On occasion personnel are expected to be shown the distinctive smell of "blister" agents such as Mustard Gas by passing quickly down-wind of a very low concentration of the gas. A similar procedure may also be used for phosgene gas.

In field training ie where troops are not under direct individual supervision, the only gases to be used are the tear gases and nose gases. They were not to be used in confined spaces or buildings.

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APPENDIX 15

FAR EAST PRISONERS OF WAR (FEPOWs)

1. The term "FEPOW" is used for those who were Far East Prisoners of War and should more accurately be "ex-FEPOW". They are those who were taken prisoner by the Japanese Imperial Forces following the capitulation in Hong Kong, Singapore and the various Islands in the Pacific Ocean.

2. This group consisted of members of all the armed services, mercantile mariners and civilians and included women and children as well as men. Indeed, some children were born in captivity. Approximately 50,000 British individuals were taken into captivity in late 1941 and early 1942 and approximately 37,500 were released in 1945, a mortality rate in captivity of 25% as compared with a mortality rate amongst those taken prisoner by the Germans of 4%. During their period of captivity, they were subjected to atrocious conditions, with the bare minimum (and often less than the bare minimum) of food, shelter, clothing and medical care and many were used as forced labour on railway and road construction, airfield construction, coal and copper mining and other strenuous activities.

3. Few, if any, records were able to be kept of their experiences and, in view of this, as well as the general conditions of their captivity as a group, they have always received special consideration by the Department. Particularly, any statement by an ex-FEPOW as to what happened to her/him during imprisonment is, unless grossly unreasonable, accepted as fact.

4. In 1972 the then Prime Minister informed Parliament that a special unit - to be known as the FEPOW unit - was to be set up at North Fylde Central Office. This unit would include a medical section and war pension claims and appeals by ex-FEPOWs would be dealt with exclusively by this unit. That statement has been reiterated by successive governments since. At the present time, the FEPOW unit is part of Special Section and the associated medical section (BAMS 4B3) deals with all FEPOW files. All war pension files appertaining to ex-FEPOWs are clearly indicated on the front.

5. The vast majority of ex-FEPOWs suffered from a great variety of tropical diseases during captivity, with little or no medical treatment. Following their return to the United Kingdom, arrangements were made for all ex-FEPOWs, on request, to be admitted to a hospital with special experience of tropical diseases for investigation into the possibility of remaining tropical disease. Over the years, the likelihood of residual tropical disease has reduced and, whilst these admissions for investigation - usually referred to as Tropical Disease Investigations or TDIs - are still arranged, the only residual disease which is still being found is Strongyloides Stercoralis, a worm infestation which, because of auto-reinfestation, is still prevalent in this group of individuals. Whilst not producing any real morbidity itself, this worm can, if immunity is reduced (as when under treatment by steroids or immuno-suppressive drugs), produce a massive hyper-infestation which can prove fatal. As there is an effective treatment for this worm, it is necessary that any ex-FEPOW who has not been investigated and cleared should be so.

6. Many ex-FEPOWs were found, on their return to this country, to suffer from psychiatric sequelae to their imprisonment. When entitlement in respect of such conditions was conceded, it was agreed with their representative body, The National Federation of Far East Prisoner of War Clubs and Associations (NFFCA) that psychiatric terminology would not be used because of the connotations of such terminology in the 1940s and 1950s. A blanket term to cover such disablement was introduced and remains in use to this day. That term is "Malnutrition and Privation with Associated Nervous Features". Apart from the early manifestations of psychiatric disablement, it has been found that this group of individuals is prone to develop psychiatric problems linked with their experiences in captivity many years later, a syndrome which became known as the "late-onset FEPOW syndrome". Many FEPOWs are now diagnosed as suffering from post traumatic stress disorder, which may or may not be the same condition. This syndrome is, however, still accepted under the "Malnutrition and Privation .... etc." label for pension purposes. This allows the assessment to include nervous features which are not included within the precise definition of post traumatic stress disorder.

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APPENDIX 16

RADIATION

1. The spectrum of electromagnetic waves extends from electric waves with a wave length 1,OOO,OOO,OOOm through radar waves, microwaves, infra-red, visible light, and ultra-violet waves to those with the capacity to cause ionisation and excitation of biological matter such as X-rays and gamma rays with wave lengths O.OOO,OOO,OOO,1m (one nanometre). Except for the narrow band of visible light radiations are not perceived by any of the senses. Both ionising and non-ionising radiations are of considerable medical importance and claims may be received from service members that their present condition has resulted from exposure to some radiation during service.

2. There have been numerous studies and reports on the effects of the various radiations. Most of the experimental work has been done on animals and it is not clear how far the results apply to man. Experimental exposures are often prolonged and intense and not comparable to everyday situations in the home or at work.

3. Table of approximate frequencies and wave lengths of some electromagnetic radiation:

		Approximate Frequency in Hertz (ie cycles per second)	**Approximate Wave length in metres**
IONISING RADIATION		Greater than 3000THz	Less than 100nm
NON-IONISING RADIATION	ULTRA-VIOLET	3000 to THz	100 to 400 nm
	VISIBLE LIGHT	750 to 385 THz	400 to 780 nm
	INFRA-RED	385 to 0.3 THz	.78 to 1000 um
	[LASER	1500 to 15 THz	.2 to 20 um]
	MICROWAVE	300 to 0.3 GHz	1 to 1000 mm
	[RADAR	56 to 0.23 GHz	5.4 to 1300 mm
	RADIO FREQUENCIES	300 to 0.1 MHz	1 to 3000m

Doses' are measured in Sieverts (Sv), a unit designed to enable the biological effects of the doses of different kinds of radiation to be compared.

Sources

4. There are 2 main sources of both ionising and non-ionising radiation, natural (background) and man-made (medical and other scientific fields, industrial, military, commercial and domestic).

5. Man, as well as ingesting radiation in food, is constantly bathed in naturally occurring ionising and non-ionising radiations from the sky, the air and the soil.

6. Medically the most important of the natural non-ionising radiations is sunlight. The ultra-violet light component is a significant carcinogen, skin cancer is 4 times as common in the sunny southern states of the USA as in the northern states.

7. Cosmic radiations, gamma radiation from the earth and radiations from the decay products of radioactive substances such as radon, uranium, and thorium etc ensure we live in an atmosphere of naturally occurring ionising radiation.

8. The dose of ionising radiation varies markedly from place to place even in the United Kingdom. The average annual UK dose is 1,870uSv but it rises to over 8,000uSv in some areas and even 100,000uSv in individual homes. We cannot control the origin of these radiations but we can avoid

them to some extent eg by our choice of building materials.

9. Technology has created a vast new source of "man-made" radiation both ionising and non-ionising. Non-ionising radiations of various wave-lengths emanate from sunbeds, infra-red lamps, welders arc lamps, other ultra-violet or infra-red tools as well as laser beams, microwave appliances and ultrasonic diagnostic devices such as those in maternity units. Exposure from man-made sources of non-ionising radiation now greatly exceeds exposure from natural sources.

10. Man-made ionising radiations are equally common and are not confined to X-rays. Medical procedures alone probably add significantly to the annual dose and to these must be added radioactive isotopes used in industry, radiations emitted from television sets as well as from waste product disposal in nuclear plants. The fall out from the testing of nuclear bombs can add significantly to the total.

11. The total annual dose of ionising radiations from man-made sources is on average about 280uSv in the United Kingdom ie significantly lower than the dose from natural sources. It varies from place to place and from occupation to occupation.

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RADIATION AND ITS EFFECTS

13. The higher the frequency the greater is the energy in each photon of radiation.

14. Low frequency, long wave radiations, the non-ionising radiations, are intrinsically less energetic and interact with human tissue primarily by generating heat. The higher frequency, short wave length ionising radiations can impart enough localised energy to an absorbing material to ionise it ie to remove electrons from or add electrons to atoms and molecules in its path. Their effect is therefore considerably greater.

15. The penetrating power and sites of absorptions of radiations depend on their particular wavelength.

Non-Ionising Radiations

16. The non-ionising radiations, imperceptible to the senses, interact with human tissue by producing heat. At these wave lengths their penetrating power is limited and their effects will be confined to the skin, the eyes and possibly the testes, for temperature is an important aspect of spermatogenesis. Only at frequencies approaching those of the ionising radiations ie in the higher frequencies of the ultra-violet light band do photochemical changes occur and the possibility of malignant changes arises. Genetic changes will not be initiated (in animal experiments with ultrasound, even when a degree of heat sterilisation was produced, no genetic effects resulted).

17. The skin's ability to absorb, scatter or reflect radiation depends upon several factors including the type of radiation (short wave length radiations are scattered more than those of longer wave lengths), the skin structure (including its thickness and the presence of pigments in the dermis) and the presence of pigments in the blood. The skin's reflectivity curve for various wave lengths closely resembles the curve of the sun's spectrum of radiation - a significant factor in the skin's role in protection [and additionally in controlling body temperature]. Its maximum reflectivity is at wave length 0.7 to 1.2u m. However, despite all this the skin can be seriously damaged by heat production by non-ionising radiation.

18. In the natural environment the eye is protected by the blink and pupil reflexes, an incomplete protection as much of the radiation is imperceptible to the senses. Different structures of the eye can be damaged by the heat from radiation (see Infra-red, paragraph 24).

19. **Spermatogenesis** is affected by heat and temporary sub-fertility is possible, but the genetic material is not affected. The possibility of a cumulative effect from repeated minimal or sub-threshold exposures to heat has been postulated but no cumulative rise in temperature can occur if the interval between exposures is such that the tissue can return to its normal temperature. The development of heat in an organ is in itself a protective mechanism as the over-exposure becomes obvious before it becomes dangerous.

20. The various types of non-ionising radiation become increasingly important medically as their wave lengths decrease.

21. **Ultrasound.** After years of use in Naval and medical fields of this long wavelength radiation there are no reports of suspicions of any ill effects in human beings. Its inability to pass an air-water interface adds to its safety.

22. **Microwaves.** Considerable interest has been shown in this field. Cataracts can be produced experimentally in rats after prolonged exposure but there is no reliable evidence of any untoward effects in man. The
leader in the British Medical Journal of July 1980 (BMJ 281.98) referred to the danger as a `paper tiger'.

23. **Radar.** The frequency and wavelength are almost entirely within the microwave band and again there has been considerable research into possible ill effects. Repeated and detailed mortality and morbidity studies have revealed no health changes. No association between radar and cataracts has been found. Spermatogenesis can be temporarily affected after a heat build up.

24. **Infra-red.** The "near infra-red" region (wv less than 2u,m) is potentially the most dangerous as it can penetrate down to the dermal area of skin. Burning, vaso-dilatation of arterioles and gradual increase in pigmentation can occur. The eyes are most at risk. The possibility of glass blowers and furnace workers developing "glass blowers cataracts" has long been known and has been proved to be due to infra-red radiation. The damage is, however, not confined to the lens. The skin of the eyelid is thin and can itself be burnt; the cornea, though acutely sensitive to pain due to heat, can also be burnt and if the damage is deep a corneal opacity can result. The aqueous humour absorbs infra-red and will heat up and this too plays a part in the damage to the lens. As the rays pass through the eye the focusing mechanism concentrates the energy out to the retina and this results in permanent damage. The retina absorbs the shortest infra-red wave lengths.

NOTE:

The chorio-retinal burns of `sunblindness' or `eclipse blindness' are not related to any particular wave length but depend on the total energy concentrated on to the retina when looking directly into the sun.

25. **Lasers.** (Light amplification by stimulated emission of radiation). Until recently only the sun was bright enough to cause retinal damage and then only when directly viewed. Compact arc sources and lasers can now cause similar damage. The range of wave lengths in the laser beam, 0.2 u,m to 20 u,m, includes visible light, infra-red and ultraviolet ranges including the potentially harmful 280 to 315 nm. The damage is therefore not confined to thermal damage but thermoacoustic and photochemical damage can occur too, the actual physiological reactions are similar. The depth of penetration is again important. For the common laser sources with wv 0.1 to 1.0um, ninety-nine per cent of the radiation is absorbed by the first three and a half mm of biological tissue.

26. The thermal danger due to the rapid localised absorption of heat may be sufficient to boil tissue water, resulting in dangerous increases in pressure in organs eg the eye. The thermoacoustic damage results from the thermal expansion producing waves (acoustic transients) sufficiently large to rip or tear tissue. The photochemical effects are the result of the low wave length activating molecules capturing a quantum of energy and so starting a chemical reaction.

27. The skin and the eye are again the most vulnerable areas. Cataracts can develop after a single exposure. Experimental work has not shown genetic effects though malignant changes have been found. No such effects have been seen in man.

28.

29. **Ultraviolet.** The effects are not limited to thermal ones. The lowest wave length, 100 nm, corresponds approximately to the upper limit of ionising radiation though the effects are limited because of the limited penetration through the skin. Again the skin and the eyes are the organs at most risk.

30. Sunburn, suntanning with changes in the epidermal growth, urticarial or eczematous reactions due to photochemical changes occur. The dermis can degenerate with `ageing of the skin' and actinic keratosis and even skin cancer - basal cell, squamous cell, malignant melanoma - are possible. The most harmful rays are those 280 to 315nm (known as ultraviolet B).

31. Experimentally, irradiation is effective only when the doses are spread over an extended period.

The carcinogenetic effect would depend on the number of doses and the duration of the radiation. In man it has not been possible to establish a quantitative dose-effect relationship. Pigmentation of the skin decreases the incidence of cancer. The latent period is not clear, possibly 10 to 15 years for malignancies to manifest themselves.

32. In the eye conjunctivitis and photokeratitis develop within 2 to 24 hours and the effect is dose related. Single high radiation exposures (eg those from laser burns) or repeated low radiation exposures can cause cataracts but so far there is no direct reliable evidence in man that tumours in the anterior chambers of the eye especially melanomas can be produced by ultraviolet radiation.

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IONISING RADIATION

34. Some ionising radiation is electromagnetic (including X-rays and gamma rays) and some consist of sub-atomic particles of various masses and charges (including electrons, protons, neutrons and alpha particles). For a given dose the particulate radiations cause more injury than X-rays or gamma rays, but they all have the same action on biological tissue though the various ionising radiations have quite different powers of penetration. The alpha particles can scarcely penetrate the epidermis and so are harmless unless taken internally. The beta particles can penetrate about one cm whereas X-rays and gamma rays and neutrons can pass through the body. The effect of these rays will therefore not be confined to the skin or eyes. Any organ, though not all to the same extent, can be affected and the action of these high frequency radiations is not due to heat.

35. As the ionising rays pass through matter, including human tissue, they lose their energy in a series of collisions and interactions with atoms and molecules in their path. Ejected electrons may in turn collide with, and ionise, other molecules or atoms.

36. One of the critical effects of these collisions is on the DNA molecule because of the genetic information encoded on it. A potentially lethal dose of X-rays affecting the whole body (3 to 5 Sv) causes hundreds of breaks in DNA molecules in every cell of the body. Lower doses may result in lesser damage eg single strand breaks in the 2 strand double helix. These can be repaired by enzymes in the cells and the final result depends on the effectiveness of the repair as well as the severity of the original damage. The effects of unrepaired or mis-repaired lesions can be amplified many times as the DNA is transcribed and translated. Ultimately it could be transmitted to countless numbers of daughter cells.

37. On the basis of the current risk estimates and assuming no threshold for the dose of irradiation only a small fraction of all cancers, possibly 1 to 3 per cent, in the general population is attributed to natural background radiation. Most, but not all, types of cancer are increased in frequency by ionising radiation though the fundamental process by which cancer is induced is not fully understood. Radiation induced cancers have no distinguishing features. They do not appear until years or decades after the irradiation and a causal relationship between a cancer and some previous irradiation can only be inferred on the basis of the appropriate epidemiological evidence. All leukaemias, except chronic lymphatic leukaemia, increase with irradiation as do breast cancers in females and thyroid cancers.

38. If the whole body is exposed to a very high dose of radiation `radiation sickness' may develop - depression and severe nausea - within a few hours. This can be transient or lead on to `radiation cachexia', a slowly progressive apathetic state with death occurring within a matter of weeks. The molecular damage can be incompatible with life. The reaction depends upon the dose absorbed, the region of the body irradiated and the quality of radiation. Any young or growing tissue is more sensitive than mature tissue so that the growth of teeth or bones can be seriously retarded even though adult bone is reasonably resistant to radiation.

39. Muscles, including the myocardium, the central nervous system and the endocrine system are less sensitive than other tissues of the body, the large bowel less sensitive than the rest of the alimentary tract.

40. As occurs in non-ionising radiation the skin and eyes are seriously affected. Severe conjunctivitis, cataract formation, retinal haemorrhages, exudates, neovascularisation and necrosis can all occur.

41. The skin effects range from erythema through pigmentation to total necrosis of the skin. There is great variation in the final results of skin healing.

42. The urogenital system (radiation nephropathy with hypertension leading to death), the gastrO intestinal system (ulceration, perforation, atrophy, malabsorption and cachexia), the gonads (atrophy, sterilisation), the vascular system (leucopenia, thrombocytopenia) and the respiratory system (pneumonitis, fibrosis) are all seriously affected.

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UK NUCLEAR TESTS

44. From 1952 to 1958 the UK carried out 21 atmospheric nuclear tests (see para 233). Of the 6 detonations at Christmas Island the 4 megaton range nuclear explosive devices were high-air bursts falling freely and detonated at heights of about 2,700 m over the sea off the south east corner of Christmas Island. The 2 kiloton range nuclear explosives were balloon-system borne, high-air bursts detonated at heights of about 500 m over the same corner. None of these high-air bursts led to the deposition of radioactive materials (fall out) in any area of the island occupied by service or civilian participants in the test programme though deposition could have occurred if the weather conditions had not been carefully chosen.

45. In the Pacific Ocean at that time there were a number of observation stations monitoring the level of radioactivity by air samples. Christmas Island was chosen as it is a very isolated coral island with an exceedingly low radiation level.

	UK Average µSv	**UK Higher Levels in some Granitic Regions µSv**	**Christmas Island Area, Average µSv**
Cosmic Rays	300	280	270
External (Terrestial)	400	600	
Internal (Food and drink, Tissue)	370	370	370
Radon/Thoron (Atmosphere)	800	7000	10
World-wide Fall-out from Christmas Island	80	100	30
Totals	**1950**	**8350**	**680**

1 micro sievert (µSv) = 1/1,000,000 sievert (Sv)

Clearly if the personnel who served at Christmas Island at that time had been stationed in the UK in an average location their dose of naturally occurring ionising radiation would have been three times greater than it was at Christmas Island and if they had served in a granitic region in the United Kingdom, probably 12 times greater. On average they received about 35 per cent of that which they would have received in the UK.

46. Those personnel likely to be exposed to ionising radiation from the fall out were issued with personal film badge dosimeters and all the personnel whose dosimeters indicated a value higher than the threshold level are known and listed. The highest possible level of threshold dose in any one 12 month period would have resulted in a total maximum radiation effective dose equivalent totalling 850 u,Sv and on average about 250 u,Sv.
The ionising radiations from the world wide fall out from Christmas Island would not have added more than about 80 u,Sv to the UK average natural background 1,870 u,Sv.

47. British Atmospheric Nuclear Tests

3 October 1952 Monte Bello, Western Australia
15 October 1953 Emu Field, South Australia
27 October 1953 Emu Field, South Australia
16 May 1956 Monte Bello, Western Australia
19 May 1956 Monte Bello, Western Australia
27 September 1956 Maralinga, South Australia
4 October 1956 Maralinga, South Australia
11 October 1956 Maralinga, South Australia

22 October 1956 Maralinga, South Australia
15 May 1957 Malden Islands, South Pacific
31 May 1957 Malden Islands, South Pacific
19 June 1957 Malden Islands, South Pacific
14 September 1957 Maralinga, South Australia
22 September 1957 Maralinga, South Australia
9 October 1957 Maralinga, South Australia
8 November 1957 Christmas Islands, South Pacific
28 April 1958 Christmas Islands, South Pacific
22 August 1958 Christmas Islands, South Pacific
2 September 1958 Christmas Islands, South Pacific
11 September 1958 Christmas Islands, South Pacific
23 September 1958 Christmas Islands, South Pacific

Additionally from 1956 to 1964 a number of open air experiments with radioactive materials but not producing nuclear yields were conducted at Maralinga, South Australia.

48. In 1983 the Ministry of Defence commissioned the National Radiological Protection Board (NRPB) to undertake a study of the health of the participants, investigating whether it showed any correlation with radiation exposure. The study was limited to an examination of the evidence of cancer and of mortality from different causes but no evidence was sought about non-fatal diseases such as cataract.

49. The report "Mortality and Cancer Incidence in UK Participants in UK Atmospheric Nuclear Weapon Tests and Experimental Programmes" was published in January 1988. The findings were not conclusive but the results led to three hypotheses:-

i. Participation in the UK nuclear weapons test and experimental programmes caused small hazards of multiple myeloma and leukaemia (other than chronic lymphatic leukaemia),

ii. participation in the programmes did not cause a detectable hazard of any other cancer or of any other disease that has an appreciable fatality rate,

and

iii. participants in the programme have smoked less than other similar men in HM Forces or employed by the Atomic Weapons Research Establishment.

50. On the basis of these findings it was decided that from the 1 January 1988 claims from "test participants" for multiple myeloma or leukaemia, other than chronic lymphatic leukaemia, would be accepted as fulfilling the terms of SPO 1983. In October 1990 it was accepted that Polycythaemia Rubra Vera is a pre-leukaemic condition and can be accepted as attributable to service in the same way.

51. The term "Test Participant" refers to all United Kingdom servicemen (and to lay employees of the Atomic Research Establishments) who were known to have visited any of the five locations during the 15 year period the testing programme was held. The periods are specified in table 3.2 of the report:

Monte Bello W Australia - April 1952-June 1956
Emu Field S Australia - August 1953-August 1957
Maralinga S Australia - April 1955-August 1967
Christmas Island S Pacific - June 1956-June 1964
Malden Island S Pacific - October 1956-June 1964

- also included were 2 other sites

RAAF Pearce W Australia - May 1956-August 1956
RAAF Edinburgh S Australia - August 1956-November 1960

There is no requirement for these claimants to have been present at any of the atomic explosions, merely that they visited a location during the periods specified in the table in this paragraph.

METRIC TABLE

prefix	abbrev	factor	prefix	abbrev	factor
exa-	E	million million million	*deci-	d	tenth
peta-	P	thousand million million	*centi-	c	hundredth
tera-	T	million million	milli-	m	thousandth
giga-	G	thousand million	micro-	µ	millionth
mega-	M	million	nano-	n	thousand millionth
kilo-	K	thousand	pico-	p	million millionth
*hecto-	H	hundred	atto-	a	thousand million millionth
*deca-	D	ten	femto-	f	million million millionth
*deka-	D	ten			

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APPENDIX 18

THE WAR PENSIONS (MERCANTILE MARINE) SCHEME 1964

THE WAR PENSIONS (NAVAL AUXILIARY PERSONNEL) SCHEME 1964

1. These are two similar Schemes and they share many similarities with the Civilian Scheme.

2. The Mercantile Marine Scheme covers members of the Merchant Navy, pilots, sea fishers (Mariners in a British ship ordinarily employed in the sea fishing service) and salvage workers etc (salvage refers to the recovery of vessells, cargo or other property). To qualify they must have suffered disablement or death due to enemy action or activities to combat the enemy or abnormal conditions at sea arising out of war or detention by the enemy.

3. The Naval Auxiliary Scheme covers those engaged under a special agreement in ships of the Royal Navy and subject to naval discipline. The complement of certain Naval Auxiliary vessels consisted of Naval Officers and ratings together with a number of Merchant Navy Officers and Seamen. They were engaged to undertake the assigned duties as Naval Officers and ratings but they received Merchant Navy rates of pay they signed one of three agreements:

T124 - an undertaking to serve for one voyage in a particular vessel

T124X - an undertaking to serve until the end of the war in any vessel and on any voyage

T124T - an agreement restricting service to rescue tugs.

As an example, the civilians who used their small boats to rescue allied soldiers from the beaches of Dunkirk in 1940 signed such an agreement to serve as Naval auxiliaries to go across the Channel and pick up the trapped soldiers.

4. In both Schemes the basis of entitlement, as in the Civilian Scheme, is the qualifying injury, but in both these Schemes entitlement can also be given for "detention".

5. The entitlement Articles are identical (Mercantile Marine Article 3(4) and Naval Auxiliary Article 3(3); Mercantile Marine Article 3(5) and Naval Auxiliary Article 3(4)) -

Mercantile Marine 3(4) or Naval Auxiliary 3(3). Where a claim under this Scheme other than one specified in the following paragraph of this Article is made, there shall be no onus on the claimant to prove that disablement or death is directly attributable to the relevant qualifying injury or detention and the benefit of any reasonable doubt on those questions shall be given to the claimant.

Mercantile Marine 3(5) or Naval Auxiliary 3(4). Where a claim under this Scheme -

a. in respect of disablement is made more than 7 years after the date of the relevant qualifying injury or end of detention;

or

b. is made in respect of the death of a person, such death having occurred more than 7 years after the date of the relevant qualifying injury or end of detention;

and, upon reliable evidence, a reasonable doubt exists whether the disablement is, or the death was, directly attributable to the relevant qualifying injury or detention, the benefit of that reasonable doubt shall be given to the claimant.

6. The qualifying injuries are war injuries or war risk injuries. They are fully defined in Schedule 1 of each Scheme. A war injury has the same meaning as in the Civilian Scheme ie a physical injury sustained in a particular incident of war. A war risk injury, a physical injury resulting from risks in a mariner's life which are specifically determined by war. Excluded are those injuries which could result

from the normal risks of a seafaring life, present in peace as well as in war. Once again physical injury is defined as including "tuberculosis and any organic disease or the aggravation thereof". (Mercantile Marine, Schedule 1, 4b, Naval Auxiliary, Schedule 4c.) In addition to the usual war injuries caused by enemy machine gunning, mines, torpedos etc mariners were often cast adrift in open boats and on rafts and suffered considerably from exposure. Generally speaking such after effects as frostbite may be accepted under the general heading "Effects of Exposure".

7. Apart from the detention aspects the Articles are similar to those in the Civilian Scheme and neither in the under 7 year or over 7 year claims is the claimant relieved of the onus of proving that a qualifying injury has been sustained or detention suffered. Again there is no compelling presumption in the claimant's favour in under 7 year claims but there is no onus on the claimant to prove that disablement or death was due to the qualifying injury or detention, and the benefit of reasonable doubt "shall be given to the claimant". Again, as in civilian cases, in over 7 year claims the claimant has a second onus, to produce reliable evidence to raise a reasonable doubt. Once again the claimant "shall be given the benefit of reasonable doubt".

8. The claims are decided on the basis of reasonable doubt and Article 26 of the Mercantile Marine Scheme and Article 13 of the Naval Auxiliary Scheme indicate that the same rules for **medical certification** apply as in SPO 1983.

9. There are no High Court decisions dealing with claims for disablement or death due to detention. The lay officer decides the exact period of detention and what injuries and other factors of service can be accepted as qualifying injuries. The claimed disablement or death must be "directly attributable" to the detention.

10. **Assessment.** Neither scheme has any article equivalent to either Article 8(1) or 9(1) of the Civilian Scheme. Article 17 of the Mercantile Marine Scheme, and Article 6 of the Naval Auxiliary Scheme, indicate the provisions of the "Naval Order" (ie of the SPO 1983) apply to members who qualify for awards under either of these two schemes. The assessment of disablement is therefore determined in exactly the same manner as in SPO cases. As there is no Article disallowing awards "unless the disablement is serious and prolonged" or "of a degree of not less than 20 per cent" in both the Mercantile Marine or Naval Auxiliary Schemes an award of nil assessment can be made (though not when the aggravation of the condition is the qualifying injury).

11. **Aggravation.** Disablement or death must be directly attributable to the qualifying injury. As in the Civilian Scheme there is no mention of aggravation in the entitlement Articles and exactly the same principles apply as in the Civilian Scheme (see para 16 of Appendix 17 - Civilian Scheme). Detention cases should be handled similarly ie if an accepted condition or occurrence causes aggravation of a condition which predated the detention (or of a condition which arose during detention from a non accepted factor) then that aggravation can be accepted as the qualifying injury and the same rulings apply as in para 16 of the Civilian Scheme. It is the aggravation which is the "physical injury" and disablement or death can be accepted if it is directly attributable to the qualifying injury ie to the aggravation of the condition.

12. There cannot be any review or appeal to alter the aggravation entitlement to one of attributability and there follows too that the award will terminate if the condition improves and disablement is no longer serious and prolonged. Aggravation is not "passed away" in these circumstances, rather the assessment does not satisfy the Articles. Any appeal must be to an assessment Tribunal not an entitlement one.

13. During the war it was agreed with Medical Division that where a man's health broke down after a prolonged period of service involving stress and strain and giving rise to **exhaustion and fatigue**, the breakdown should be regarded as a physical injury without relation to any specific war incident. This condition was usually diagnosed as a psychoneurosis. Claims of this nature should not now be accepted unless the circumstances were exceptional.

14. **Allowances.** Both Schemes contain Articles (Mercantile Marine Scheme Articles 16 and 17, Naval Auxiliary Scheme Article 6) stating that those covered by the Schemes and their dependants should have benefits similar to the benefits provided for members of the Royal Navy. Exclusions are specified in Schedule 6 of the Mercantile Marine Scheme and Schedule 3 of the Naval Auxiliary Scheme but these exclusions do not include the allowances specified in Articles 12 to 26A of the SPO 1983. All these allowances can be awarded under the 2 schemes and the same criteria apply as in SPO 1983.

15. **Death.** Again the same principles as in civilian cases are applicable (see Appendix 17, para 20).

16. **Reviews and Appeals.** These are handled in the same way as in the Civilian Scheme. The Pensions Appeal Act 1943 Sections 2 and 5 give the rights of appeal. Though neither of these two schemes deals in detail with reviews, Article 17 of the Mercantile Marine Scheme and Article 6 of the Naval Auxiliary Scheme give authority for the provisions of the "Naval Order" (ie the SPO 1983) to apply to the handling of these cases. In practice the cases are treated in the same way as in the Civilian Scheme.

NOTES:

1. In addition to the agreements outlined in paragraph 3 there were special agreements for certain categories eg S55 agreement for NAFFI canteen staff who during the period August 1942 to May 1946 engaged to serve on Royal Navy ships. They joined the Royal Navy as Naval ratings "until the end of the emergency".

2. Up to the 30 January 1944 men called up for National Service and who chose the Royal Navy but could not obtain a vacancy, could volunteer for service in the Merchant Navy. Those who did so entered the Royal Navy as ordinary seamen for "hostilities only" and were drafted to HMS Gordon for three months training. They were known as **"Gordon ratings".**

At the end of this three month period they were transferred to the Merchant Navy Reserve Pool for employment in the Merchant Navy. During training and up to the day before they reported to the pool they received Naval pay and were Naval ratings for the purpose of invaliding. Any claim in respect of disablement or death ascribed to this period of training (but not after the 31 January 1944) should be considered under the SPO 1983.

On the day of transfer to the pool however they ceased to be entitled to Naval pay and for the purposes of compensation were members of the Mercantile Marines. While posted to the Merchant Navy these ratings were nominally retained in the Royal Navy and on becoming unfit resumed their official numbers and Naval pay and were invalided under Royal Navy procedure.

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APPENDIX 19

THE PENSIONS (POLISH FORCES) SCHEME 1964

1. In 1943 a Protocol was signed by the British Government and the Polish Government in London under which members of the Polish Armed Forces and their dependants were to have war pensions and benefits similar to those available to British Forces under the War Pensions Instruments administered by the then Ministry of Pensions. The finance for the scheme was provided as an interim measure by the British Government but it was intended that when it was possible for the Polish Government to return to Warsaw it would assume responsibility for these pensions. In the event, when the provisional Polish Government in Warsaw was established in 1945 and recognition withdrawn from the Polish Government in London, the Warsaw Government repudiated the agreement and would not accept liability for beneficiaries residing outside Poland. The British Government felt it had a moral obligation towards the Polish Forces serving under British command and to the Polish Resettlement Corps set up to resettle Polish ex-servicemen who wish to stay in this country. The 1947 Polish Resettlement Act enabled the Minister to make the Pensions (Polish Forces) Scheme to provide pensions in respect of Polish nationals who are not resident in Poland.

2. Awards under the Scheme can be made to members of the Polish forces who served under British command after 2 September 1939 and who are not resident in Poland.

3. Article 6 indicates that the provisions of the Royal Warrant (now SPO 1983) apply, but modified as indicated by Schedule 2 ie Articles 4 and 5 of SPO 1983 do not apply and reference to an Independent Medical Expert is not available.

4. Article 5 (1), (2) and (3) covers entitlement criteria -

"1. Subject to the provisions of this Article, the disablement or death of a member of the Polish forces shall be accepted as due to service provided it is certified that -

a. the disablement is due to an injury which -

i. is attributable to service; or

ii. existed before or arose during service and has been and remains aggravated thereby;

b. The death was due to or substantially hastened by -

i. an injury which was attributable to service or

ii. the aggravation by service of an injury which existed before or arose during service;

2. A disablement or death shall be certified in accordance with paragraph (1) of this Article if it is shown by reliable corroborative evidence that the conditions set out therein and applicable thereto are fulfilled.

3. The condition set out in paragraph (1)(a)(ii) of this Article, namely, that the injury on which the claim is based remains aggravated by service, shall not be deemed to be fulfilled unless the injury remains so aggravated at the time when the claim is made ....."

5. This Scheme, though similar to SPO 1983, has very important differences -

1. The favourable provisions of SPO 1983 Article 4 do not apply.

2. Reasonable doubt is not mentioned so the decisions are made on the basis of the balance of probabilities.

3. Claims must have the support of reliable, corroborative evidence. There is no benefit of doubt, and doubt is not resolved in the claimant's favour as required by Article 5(4) SPO 1983.

6. Article 3(2) establishes the need for medical certification -

7. Article 2 defines disablement and injury in terms similar to that employed in the Civilian Scheme.

8. Article 6(1) enables the payment of allowances equivalent to those available to service personnel under SPO 1983 and the only exclusion in Schedule 2 is the Education Allowance. Interestingly although the Education Allowance is excluded under the Polish Scheme the Department of Education and Science makes provision for a similar allowance to children of Polish pensioners.

9. In death cases, until 1972, a special provision applied when death occurred more than 7 years after service ended. Before an award could be made the member must have been in receipt of a disablement pension. This no longer applies and widows claims are now dealt with in the same way as civilian cases.

10. There is no right of appeal in Polish cases and reviews are not mentioned in the Statutory Instruments. In practice all reviews are sent to BAMS Special Group and the principles in SPO 1983 are followed.

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APPENDIX 20

HOME GUARD

21 May 1940 to 31 December 1944

1. The Local Defence Volunteer Force was set up under The Defence (Local Defence Volunteer) Regulations 1940, with "Home Guard" as an alternative label. From 31 July 1940 it was known as the Home Guard. The 1940 Regulations enabled provisions to be made for the conditions of service and for pensions and other grants.

2. The Royal Warrants for the military forces did not include provision for the Home Guard so Royal Warrants for the Home Guard for the period 21 May 1940 to 31 December 1944 were issued in April 1944 and August 1946, confined to "under 7 year" claims, and in May 1949 and December 1964 for both "under 7 year" and "over 7 year" claims. They were brief documents but by including an article "Application of the Army Pensions Warrant" they enabled a member of the Home Guard to be considered for disablement and death benefits "in like manner as if he were a soldier of Our Army having the substantive rank of private". Though there were some modifications Home Guard members enjoyed benefits similiar to those enjoyed by the military forces even though the conditions under which they served were so dissimiliar.

3. The Articles defined "injury" and "disablement" in exactly the same words as used in the military Royal Warrants and service meant "serving in the Home Guard at any time during the period 21 May 1940 to 31 December 1944". Termination of service could be by "resignation, retirement, discharge or in any other manner".

4. The early Royal Warrants did not have to be concerned with "over seven year" considerations. There was only one Article governing entitlement, there was no onus on the claimant to prove the claim, the benefit of reasonable doubt was given to the claimant and other reliable corroborative evidence could be used when there was no note in the contemporary official records of a material fact. There was one important difference, there was no Article equivalent to Article 4(3) of the military forces Royal Warrant so there was no "compelling presumption" in the Home Guard claimant's favour. There was of course a "provisional presumption" (see Chapter 2, paragraphs 100-103 of this Handbook).

5. From 1949 onwards the date of claim became important as "over 7 year"claims now had to be considered. The criteria for the "under 7 year" claims were unchanged. The "over 7 year" claims were considered in exactly the same way as claims from military personnel under the military forces Royal Warrant including the restriction that death claims could only succeed if the deceased had or had previously held a disablement award for a condition which was a cause of death. (See Appendix 13, paragraph 19).

6. The current provisions for entitlement are contained in the 1964 Royal Warrant concerning pensions and other grants in respect of disablement or death due to service in the Home Guard. This Royal Warrant is restricted to service in the Home Guard for the period 21 May 1940 to the 31 December 1944. (See paragraph 12 of this Appendix). It consolidates the provisions of the 1949 Royal Warrant and subsequent legislation.

7. The 1964 Royal Warrant, like its predecessors, includes an article "application of the Army Pensions Warrant" which enables the provisions of the military forces Royal Warrant (and now of SPO 1983) to be applied to the Home Guard and enabled a member to continue to enjoy the benefits of legislation "in like manner as if he were a soldier of Our Army holding the substantive rank of private". The onus of proof is not on the claimant in "under 7 year" claims, the benefit of any reasonable doubt must be given to the claimant and other reliable corroborative evidence may be accepted where there is no note in contemporary official records of a material fact. But there are modifications and these include the omission in "under 7 year" claims of the compelling presumption in favour of the claimant which is bestowed by Article 4(3) of the military forces Royal Warrant.

8. In the "over 7 year" claims the wording of the 1964 Royal Warrant is exactly the same as that

used in the military forces Royal Warrant including the change in the restriction in death claims (see paragraph 21, Appendix 13). This restriction was removed entirely on 2 October 1972.

9-10 Spare

28 April 1952 to 31 July 1957

11. The Home Guard Act 1951 established the Home Guard in peace time, the status of its members and their duties and responsibilites. It enabled orders to be made for conditions of service and for pensions and other grants. There were no statutory instruments concerning disablement pensions until 1964.

12. Neither the 1964 Royal Warrant in respect of disablement or death due to service in the military forces, nor the 1964 Royal Warrant in respect of disablement of death due to service in the Home Guard referred to the peace-time Home Guard. The 1964 Order by Her Majesty concerning pensions and other grants in respect of disablement or death due to service in the Home Guard after the 27 April 1952 governs these awards.

13. Article 1 of the Order defines disablement and injury in the same terms as used in the Royal Warrant. Service is service as a member of the Home Guard after 27 April 1952 and termination means "termination by reason of resignation, retirement, discharge or in any other manner".

14. Article 3 states "when the disablement or death of a member of the Home Guard is due to service the Army Pensions Warrant shall, subject to modifications, apply to that member .... in like manner as if he or she were a soldier of the Army holding the substantive rank of private". This enables Home Guard members to enjoy the benefits of the Royal Warrant even though their terms of service did not match those of the military forces.

15. The modifications referred to in paragraph 14 included changes in Articles 4 and 5 of the Royal Warrant though Article 4(1) is the same as Article 4(1) of the 1964 Royal Warrant. The benefit of reasonable doubt must be given to the claimant and if there is no note in the official records of a material fact other corroborative evidence can be accepted. There are however no Articles comparable to Article 4(2) or Article 4(3) of the Royal Warrant so the onus of proof is on the claimant and there is no compelling presumption in the claimant's favour.

16. Article 5 is identical to Article 5 of the 1964 Royal Warrant. The benefit of reasonable doubt based on reliable evidence must be given to the applicant and when there is no note in the contemporary records of a material fact other corroborative evidence can be used. Aggravation must remain at the date of claim for a disablement claim to succeed and death has to be substantially hastened, not merely hastened. The same restriction on the need for a claimant to hold, or have held, a disablement award before a death claim could succeed applies in both the Order and the Warrant. This restriction was removed on the 2 October 1972, the date the restriction was removed from all the Orders and Warrants, see Appendix 13.

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APPENDIX 21

ULSTER DEFENCE REGIMENT (UDR) - 1971 ORDER

1. The "Order by Her Majesty concerning pensions and other grants in respect of disablement or death due to service in the Ulster Defence Regiment", dated 4 January 1971, was deemed to have come into operation the day the Regiment was formed, 1 April 1970.

2. The 1964 Royal Warrant was in force at the time this Order was made. Article 4(4) of the Royal Warrant governed claims from "the Reserve or Auxiliary Forces", which included part-time members of the UDR, and this Article effectively removed the benefits of Articles 4(2) and 4(3) from these claimants. The crucial proviso of the 1971 Order was to restore the benefits of Articles 4(2) and 4(3) to UDR part-time members when "called out" (under Section 2 of the Ulster Defence Regiment Act 1969). When not called out part-time members could well contract diseases attributable to their civilian life, not to their service life, and it would be inequitable to apply Articles 4(2) and 4(3) to these claims. The 1971 Order confines the loss of benefit of Articles 4(2) and 4(3) to part-time members when they are not on call out.

3. Article 1 defines service as service in the UDR after 31 March 1970. The definitions of the terms "injury" and "disablement" are the same as those used in the Royal Warrant.

4. Article 2 is concerned with certification. Article 2(3) "Any matter required by this Order to be certified shall be determined in like manner as any matter required by the 1964 Warrant to be certified".

5. Article 3 concerns the application of the 1964 Royal Warrant. Subject to certain modifications the 1964 Warrant applies "in like manner as if the expression 'member of the military forces' ....included a member" of the UDR. This enables all the benefits of the Royal Warrant to apply to UDR members but excluding the benefit of Articles 4 and 5 and several non-medical Articles.

6. Articles 4(1), 4(2) and 4(3) of the 1971 Order are identical to Articles 4(1), 4(2) and 4(3) of the Royal Warrant and Article 4(6) (use of reliable corroborative evidence) is identical to Article 4(5) of the Royal Warrant. Only Articles 4(4) and 4(5) of the 1971 Order differ from those in the Royal Warrant. These two Articles limit the application of Articles 4(2) and 4(3) to permanent members of the UDR and to part-time members while on call out, so claims from these members are considered in exactly the same way as claims under Article 4 of the Royal Warrant. Part-time members not on call out do not receive the benefits of Articles 4(2) and 4(3). The benefit of reasonable doubt, based on reliable evidence, is given to these claimants but the onus of proving the claim is on the claimant, not on the Department, and there is no compelling presumption in the claimant's favour.

7. Article 5 is similiar in every respect to Article 5 in the 1964 Royal Warrant. All the same criteria apply including the provision which still operated in the 1964 Warrant that death could only be accepted as due to service if the deceased "was at the time of death or at any time previously thereto had been in receipt of the pension ...". This restriction was removed by an Order of Her Majesty on the same day as the similiar restriction was removed from the 1964 Royal Warrant etc ie on 2 October 1972 (see Appendix 13).

NOTE:

For convenience the 1971 Order has been discussed in relation to the 1964 Royal Warrant but the same principles apply to SPO 1983.

In 1973 the Order was extended to include women members.

A permanent blanket call out of all part-time members of the UDR has operated since 1977. This means that part-time members are at present treated in exactly the same way as full-time members. Claims under Article 4 for the period 1 April 1970 to 1977 from part-time members are considered under the terms of the 1971 Order when it is clear, and records show, that the member was not on call out at the time of the claimed injury.

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APPENDIX 22

THE HISTORY OF THE ROYAL WARRANT

For many, many years War Pensioners and those concerned with War Pension matters have been familiar with the "Royal Warrant" and have regarded it as their Bible. In fact, the Royal Warrant applies only to disabled and deceased members of the Army. For members of the Royal Navy or Royal Air Force, the corresponding Prerogative Instruments are an Order in Council and an Order by Her Majesty respectively; all three Instruments are in their effect identical.

Every time there is an uprating of pensions or any change in the entitlement conditions a fresh amending Royal Warrant has to be issued. Since the basic Royal Warrant of 1964 was issued, there have been 16 amending Instruments for the Navy and Air Force.

In connection with War Pensions and Allowances, Legislation is now before Parliament to enable the powers of Her Majesty the Queen to be exercisable by a single Instrument instead of by three separate Instruments for each Service of the Armed Forces.

This obviously will save much administrative duplication and effort. The single Instrument will be an Order in Council - as for the Navy at present - so that the Royal Warrant will disappear. It seems that the Order in Council will then be embodied in a Parliamentary Statutory Instrument, no doubt so that war pensions for the civilian war disabled, at present authorised by a separate Statutory Instrument, can also be covered. Thus we will get one Instrument covering all categories of War Pensions.

There is little doubt that all this administrative tidying up will make for speedier, simpler and therefore more economical effort at each uprating and change in War Pension provisions, but there will be many who will be sad at the disappearance of the Royal Warrant.

Each Royal Warrant is signed by the Queen and then subscribed "by Her Majesty's Command" by the Secretary of State for Social Services. However, it may be of interest that what is probably the last Royal Warrant, that of 26th July 1976 which authorised the November uprating of pensions, was signed by Queen Elizabeth, the Queen Mother, and Prince Charles acting as Counsellors of State, the Queen still being out of the country following her presence at the Olympic Games.

An Order in Council does not require the Queen's signature; at a meeting of the Privy Council Her Majesty is pleased, by and with the advice of the Privy Council, to order the provisions of the Order in Council to take effect. The Order in Council is then just signed by the Clerk to the Council and the Order becomes effective from the nominated date.

So, in future, to establish their entitlement, War Pensioners will consult an Order in Council not a Royal Warrant.

Extract from Claymore January 1977. The first Statutory Instrument was number 1630 of 11th October 1977.

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APPENDIX 23

PRIORITY TREATMENT - HOSPITAL LETTER

DEPARTMENT OF HEALTH AND SOCIAL SECURITY
ALEXANDER FLEMING HOUSE, LONDON SE1 6BY

NHS

WELSH OFFICE
CATHAYS PARK, CARDIFF CF1 3NQ

November 1972

HOSPITAL TREATMENT FOR WAR PENSIONERS

Summary

This memorandum reminds hospital authorities of the priority to be given to war pensioners for hospital treatment both as in-patients and out-patients.

Government

1. In 1953 the Government of the day gave a clear under-taking for priority to be given to war pensioners needing examination or treatment for their accepted disablement at all hospitals in the National Health Service. It is apparent from representations made to the Department that some of the staff of hospitals may not now be aware of the arrangements made at the time, which were promulgated in RHB(53)94;HMC(53)88; and BG(53)89. Hospital authorities are asked, therefore, to bring these arrangements which are described in the following paragraphs to the notice of all staff concerned.

Priority to be Given

2. Priority is to be given at all hospitals in the National Health Service to war pensioners (including civilian and mercantile marine pensioners) needing examination or treatment as out-patients or admission as in-patients in respect of their accepted disablement, subject only to the needs of emergency and other urgent cases which must clearly take precedence. This priority is to apply whether the pensioner is referred to the hospital by a general medical practitioner or a Medical Officer of the Department of Health and Social Security.

3. Priority should be given to war pensioners only if the need is related to the pensioners' accepted disablement, and not to other conditions, and general practitioners are being reminded to make it clear in referring pensioners to hospital when the condition requiring attention is connected with the accepted disablement.

Accepted Disablement

4. The term "accepted disablement" refers to the condition for which the war pensioner has been granted a pension.

Blackpool Central Office and Regional War Pensions Offices

5. The Department's function in relation to the award of pensions and allowances is carried out by Central Office, Blackpool. Medical boarding facilities are provided by the social security regional

organisation, of which the War Pensions Office is a part. Boards and Committees should communicate with the War Pensions Offices on matters concerning the treatment of war pensioners.

Admissions and Discharges

6. Arrangements to refer a war pensioner for admission to hospital or acceptance for examination or treatment as an out-patient will be made between a Medical Officer of the Department's regional office and the Board or Committee concerned. The hospital will be notified of the arrangements for admission by form MPM 90 (MPM 45 in out-patient cases) which will be accompanied by form MPM 264 giving medical information for the guidance of the hospital in treating the case. MPM 90 (Tear Off 1) or MPM 45 (Tear Off 2) should be completed and returned as soon as the admittance or attendance can be confirmed. If the Medical Officer is in any doubt as to the appropriate hospital to which to send the patient he will consult the Area Medical Officer of the area.

7. The admission of a pensioner or his acceptance for examination or treatment as an out-patient on the request of a general practitioner in relation to an accepted disablement should be reported to the appropriate War Pensions Office.

8. Blackpool Central Office should be notified of a patient's impending discharge on form MPM 90 (Tear- Off 2) showing the actual date fixed for discharge. A treatment report should be sent on discharge or completion of out-patient treatment on the reverse of form MPM 264 to Blackpool Central Office or the War Pensions Office as appropriate. This should be done whether the patient is admitted at the request of a Medical Officer of the Department or of a general practitioner.

Ex-Officer Patients

9. Ex-officers requiring in-patient treatment in NHS hospitals for their accepted disablement should normally be accommodated in single rooms or small wards, where available, subject to the over-riding need of cases urgently requiring such accommodation on medical grounds. The Medical Officer of the Department will indicate to the hospital when such accommodation is appropriate. In such cases no charge under Section 4 of the NHS Act 1946 (as amended by Section 4 of the Health Services and Public Health Act 1968) should be made.

Cancellations

RHB(53)94; HMC(53)88; BG(53)89 are cancelled.
(HM(72)74 was not circulated to Hospital Authorities outside the London Metropolitan Area.)

To: Regional Hospital Boards, Welsh Hospital Board, F/W6/3B
Board of Governors, Hospital Management Committees H3B

NOTE: Headings in **bold** are not part of the text of the memorandum.

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INTRODUCTION

1. The Pensions Appeal Tribunals Act 1943 and 1949 allowed for appeals to be made to the High Court in England and Wales (Court of Session in Scotland and Supreme Court in Northern Ireland) against decisions of the Pensions Appeal Tribunals on points of law. The right was restricted to entitlement appeals and could be made by the appellant or the Secretary of State. Permission to appeal may be obtained from the President of the Pensions Appeal Tribunal or from the nominated Judge. Judgments in all cases have been reproduced and issued as neostyled copies. The more important judgments have been and are printed and issued as Reports of Selected War Pensions Appeals. There are 5 volumes each containing its own dual index giving the names of appellants and the disablement, Volume 2 being reserved for Scottish and Northern Ireland cases. Although not intended to form a comprehensive digest of war pension law, the Reports provide a working basis for those engaged in the consideration of claims to war pension.

COMMENTS ON IMPORTANT JUDGMENTS

AGGRAVATION

Jones, Vol 1, p79	Hobbs, Vol 3, p1309	Bevins, Vol 4, p189
Hubbard, Vol 3, p1677	Lee, Vol 3, p1901	Sullivan, Vol 5, p799

2. It should be borne in mind that under Article 4(1)(a)(ii) and Article 5(1)(a)(ii), pension title may be limited to aggravation, notwithstanding that there is no evidence of the existence of the injury, wound or disease prior to service. The Articles run "existed before or arose during service and has been and remains aggravated thereby." In the Sullivan judgment the Nominated Judge ruled that on a true construction of Article 4(1)(a)(ii) it is open to a Tribunal to consider whether a pre-existing injury has been aggravated by service within the meaning of the Article even if the aggravation has not arisen until after the date of discharge.

3. The issue of entitlement (aggravation) on the grounds of delay in diagnosis/treatment for disablement or death due to conditions causally dissociated from service has been the subject of the judgements cited above. As will be seen from these judgments the tests are:-

1. would similar delay have occurred in civil medical practice;

2. did any delay, due to service, cause an aggravation, and (in the case of death) did that aggravation hasten death to the extent referred to by the Judge in the case of Cook (see para 20 of this Appendix); and

3. reasonableness.

AGGRAVATION - TERMINATION OF AWARD

Whitt, Vol 1, p 343	Collicott, Vol 3, p 1715
Tall, Vol 1, p 451	Shipp, Vol 1, p 91
Knight, Vol 1, p 1143	Ansell, Vol 3, p 2237
Carnie, Vol 1, p 1163	Backhouse, Vol 4, p 201
Jones, Vol 4, p 509	Campbell, Vol 2, p 555

4. The term "aggravation passed away" does not appear in the Instruments or the Statutes. These words are used to communicate a decision that the requirement" ..... remains aggravated ....." in Article 4(1)(a)(ii) or
Article 5(1)(a)(ii) is unfulfilled.

5. In order to demonstrate that aggravation by service has passed away, evidence must show that the ex-member was no worse than he was before service, or that he had got back to a state which was normal for him, or - in the case of a disease which by its nature progresses apart from extraneous factors - that any deterioration can be ascribed wholly to that progression. Where the disease is characteristically subject to exacerbations and remissions at the date of termination of the

award and is no worse than it was before service, or, if it is worse, that the worsening can reasonably be referred to natural progress.

6. It is emphasised that an award must not be terminated without evidence of the cessation of service damage. It was held at one time that such evidence must include a medical board report contemporaneous with the stoppage of pension, but the current law is that the whole circumstances of the case may justify the termination of pension whether or not the pensioner had been boarded recently. In the case of Jones (Vol 4, p 509) it was held that it was open to a Tribunal to find on the evidence before them that aggravation had passed away on a particular date, and that the date need not necessarily be related to a definite incident, eg a medical examination, X-ray report, the claimant's return to work, or the date of the hearing of the appeal. The Judge went on to indicate that the Tribunal should give their best consideration to the material before them and, although they might have to fix an apparently arbitrary date, if they were satisfied that aggravation had in fact passed away, it would be wrong of them to say, merely because no particular incident such as a Medical Board could be singled out as identifying the precise date upon which aggravation passed away, that the pension should continue up to the date of the hearing of the appeal.

7. In some cases it is easy on the evidence (eg a medical board report) to fix the date when aggravation has passed away; in others some happening in the past can reasonably be held by the Department to mark the termination of aggravation. For example, there may be evidence that the man has continued at work for a long time without seeking any form of treatment for his disability.

AGGRAVATION - THE "ANSELL" JUDGMENT

8. On the question of aggravation, the Department may either totally reject or, where an award has been made, decide that aggravation has passed away. In the case of Ansell (Vol 3, page 2237) it was ruled that "it is right and proper that the Tribunal should consider not only the question of whether aggravation remained at the date of discharge, but also the question whether it remained at the date of hearing; and if it had passed away, at what date it had passed away. There is no legal objection to that course so long as both parties have notice of the case they have to meet."

9. The court of Session decision in Campbell (Vol 2, page 555) does not prevent the Ansell principle being followed in Scottish cases except that the date of hearing is replaced by the date of the Department's decision on review to maintain rejection of entitlement.

ATTRIBUTABILITY

Horsfall, Vol 1, p 7	Blenkinship, Vol 4, p 851
Davies, Vol 5, p 375	Morrison, Vol 5, p 459

11. The term "Attributable to Service" does not cover everything that occurs in the course of service. The words in the Warrant are "attributable to" and have a different meaning from "in the course of". Because a condition originates or comes to notice during service it does not necessarily follow that it is attributable to service. It should be noted that in the opening paragraph of the judgment in Horsfall the Nominated Judge referred to the entitlement of aggravation as well as that of attributability. Accordingly the fact that a non-attributable condition comes to light in the course of service does not necessarily connote damage by service in the form of aggravation.

12 Spare

CONFLICT OF MEDICAL OPINION

Donovan, Vol 1, p 609	Webster, Vol 1, p 823
Viner, Vol 1, p 997	Tindall, Vol 3, p 685
Tigg, Vol 5, p 141	Howard, Vol 5, p 515

13. The settled law is that the resolution of conflict of medical opinion is essentially a matter for the Tribunal, irrespective of the qualifications and eminence of the authors of the conflicting opinions, and the act of that body of electing to accept the expert evidence led by one side in preference to that led by the other does not amount to misdirection.

14-15 Spare

CORONERS' INQUESTS

Wilkinson, Vol 5, p 113

16. The report of a Coroner's Inquest represents evidence, but neither the Department nor the Tribunal is bound to accept that evidence or the coroner's findings.

17 Spare

DEATH CERTIFICATES

Clark, Vol 5, p 29

18. Death certificates (which do not always accurately record the causes of death) are not binding on the Department or the Tribunal. The latter body has been described by the High Court as "a fact-finding Tribunal".

19 Spare

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DEATH HASTENED BY SERVICE

Cook, Vol 4, p 625

20. Invited by counsel for the British Legion to define the words "hastened by" in Article 4(1)(b) of the Warrant, which deals with death occurring within 7 years of termination of service, the Nominated Judge said, "I certainly do not propose to draw the line and certainly would not propose to go further than to say that if a life had been perceptibly shortened, then it may be that the widow would be entitled to a pension, certainly not otherwise".

21. It should be kept in mind that in Article 5(1)(b) of the Warrant, which deals with death occurring more than 7 years after termination of service, "hastened by" is measured by the word "substantially."

22-23 Spare

DIAGNOSIS

Hayden, Vol 1, p 775	McGrath, Vol 3, p 1539	Yates, Vol 5, p 765

24. If there is reason to suppose that a diagnosis has been wrongly made the matter should be enquired into and, where requisite, independent advice sought. Pension is awarded for disablement due to service, not for a label. Where the diagnosis is questioned for the first time by a Tribunal it is the duty of that body to adjourn and then proceed as above, and not to find against the appellant solely because it is held there is no disablement from the condition put before them as the subject of the appeal.

25. In the Yates judgment the Nominated Judge found it impossible to say that what is merely a symptom of a disease can itself be a separate injury attributable to or aggravated by service.

DISABLEMENT

Royston, Vol 3, p 1593

26. There is an initial onus upon a claimant to show a disablement. Until that onus has been discharged the presumptions in favour of the claimant in Article 4 of the Warrant, etc, do not come into operation.

27. In the application of this ruling care should be taken to discriminate between "nil disablement" and "no disability". See also para 29 of this Appendix.

28 Spare

DISABLEMENT NIL

Harris, Vol 1, p 1055

29. "Disablement" means a physical injury or damage due to service (in the attributable sense), even though not causing any loss of capacity at the moment; in such a case there should be an award of attributability though the assessment of the disablement is nil and the claimant is not entitled to any monetary award.

30 Spare

DISEASES OF UNKNOWN AETIOLOGY

Starr, Nuttall and Bourne, Vol1, p 109	Miller, J, Vol 1, p 615
Donovan, Vol 1, p 609	Steele, Vol 1, p 105
Smith, A S, Vol 1, p 495	Coe, Vol 5, p 725

31. While the precise cause of a disease may remain obscure there may be adequate material of a scientific or statistical nature as known to the medical profession to enable doctors to exclude external factors as having any influence upon the disease in a case of this nature. Attributability is not negatived unless the medical men show that they know sufficient about the origin of the disease to exclude all the ordinary conditions of service and deal in detail with the possible causes, and for this purpose they ought to give their reasons.

32. Rules for the guidance of Tribunals in considering appeals relating to diseases of unknown aetiology were enunciated in Coe (Vol 5, p 725).

Rule 1. If the medical evidence before the Tribunal is simply to the effect that nothing is known about the cause of the disease, the presumption of entitlement in the appellant's favour created by Articles 4(2) and/or 4(3) of the Royal Warrant are not rebutted and an application for a pension on the ground of attributability must succeed.

Rule 2. But if there is evidence before the Tribunal to the effect that, although its aetiology is unknown, the disease is one which arises and progresses independently of service factors and the Tribunal is convinced thereby and accordingly refuses a pension, this Court will not interfere.

Rule 3. On the other hand, it will not suffice to rebut the presumption in the appellant's favour to adduce evidence merely to the effect that" ... in the light of modern knowledge, it cannot be accepted that service factors are associated in any way with the onset of the disease or that any circumstances of service hastened its course". For evidence of that nature does not establish that service factors played no part, but merely declines to accept the positive assertion that service factors played a part in causing the disease. In such circumstances there would have to be an award on the basis of attributability.

33. Under the above rulings it is likewise insufficient for an Independent Medical Expert to limit his opinion to the statement that the condition is not due to service; he must give his reasons for so saying.

34-35 Spare

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EVIDENCE

MEDICAL EVIDENCE

On enlistment or enrolment

Ballantyne, Vol 4, p 653

36. Although records of medical boards on enlistment must be accepted generally they cannot be binding in all circumstances. If there is a manifest error that error should be corrected and the case considered upon the facts as they actually are.

Opinion of Medical Department

Moxon, Vol 1, p 63	Gillan, Vol 5, p 293

37. Article 4 puts upon the Department the onus proving that disablement (or death) is dissociated from service in the sense of the notification of decision sent to the claimant. The Nominated Judge ruled that this onus can only be discharged by evidence which, in law, must be either oral or written: where it is written and deals with "medicine" only the evidence of an expert is of value. Accordingly the opinion of the Medical Department embodied in Statements of Case under the PAT Act must be signed and the qualifications of the author stated. (See also para 31 of this Appendix.)

38. Medical Services should confine their comments on the facts to medical matters only and not express an opinion as to whether or not the evidence - in this case, with regard to a fall (from the body of an aircraft on to a concrete runway) - should be accepted as a question of fact. Whilst it is essential for them to come to a conclusion about the facts on which they base their opinion, it is not their function to express a view of the facts as facts except when they relate to matters of medical opinion which will enable them to express a medical view.

Unchallenged evidence

Starr, Nuttall and Bourne, Vol 1, p 109	Howie, Vol 2, P 511

39. When the claimant, by leaving the views of doctors (Medical Department) unchallenged, expressly or implicitly admits that the opinions are correct, that admission is itself evidence.

40-45 Spare

NON-MEDICAL AND MEDICAL EVIDENCE

Non-production

Childs, Vol 1, p 679	Hunt, Vol 1, p 1093

46. A claimant who is asked in the ordinary way for evidence from his employer or medical attendant should produce it so that the records of his health and absences from work should be known. If there is no good reason for not producing the evidence it is a matter that can be taken into account. It has always been part of the law of evidence that if a person does not produce documents peculiarly within his own possession or give information peculiarly within his own knowledge that is a matter which can be taken against him.

47. It should be noted that this ruling was given in a case in which the secondary presumption in Article 4(2) applied. Where the higher and "compelling" presumption under Article 4(3) applies the position is somewhat different since the 4(3) presumption takes the place of evidence. Even so the failure of a 4(3) claimant to produce health and employment evidence may reasonably be taken into account appropriately under the terms of this judgment. In practice this failure would not be put quite so highly against the claimant as it would be in a case governed by Article 4(2).

48. Rule No 20(2) of the SR & O governing the procedure of the Tribunals empowers the Court to

insist upon the attendance of an appellant notwithstanding that he has given authority for the hearing of his appeal in his absence. This Rule is consistent with the High Court judgments in the cases of Childs and Hunt.

Proceedings of Courts of Inquiry

Kenny, Vol 1, p 721	"XY", Vol 1, p 279

49. The Department is entitled to have regard to and should pay great attention to the evidence given before and the findings reached by a Military Court of Inquiry even though such evidence and findings would not be admissible in a court of law (other than Pensions Appeal Tribunals). This judgment is consistent with Rule No 12(5) of the SR & O which runs "The Tribunal shall not refuse evidence tendered to them on the ground only that such evidence would be inadmissible in a court of law".

Evidence elicited under influence of drugs

Dunn, Vol 5, p 423

50. Before a Tribunal accepts as evidence a statement given under the influence of a drug they would require evidence of the nature of the drug and what its effects were supposed to be. Having done that, there is no reason why they should not accept the evidence, with such reservation as they think proper, with knowledge of the drug and its effects.

Relevance of evidence

Morrison, Vol 5, p 495

51. Whenever entitlement is under consideration it is important to ensure that the question to be resolved is properly framed, and that the evidence to be accepted (or cited in the Department's Statement of Case and Medical Department's Opinion) is evidence which bears upon that question. In the case of Morrison, Medical Department advised that the man was suffering from an obsessional neurosis and that service only made manifest a disease which actually existed at that time. A psychiatrist took a different view: that what was described as an obsessional personality was not a disease so much as a possible predisposition which under sufficient stress could develop into a pathological condition. The judge pointed out that the question the Tribunal had to put to themselves was not "Had this man an obsessional personality?" but "Was he a man who had a predisposition which became a pathological condition by reason of the stress of service; or was he a man who already had this condition, which became manifest because of the stress of service?" He ruled that there was not sufficient evidence to justify the Tribunal in coming to the conclusion which they did, and the appeal was allowed.

52-69 Spare

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INJURIOUS PROCESS

Marshall, Vol 1, p 785	The Fourteen Appeals, Vol 2, p 461	Holland, Vol 2, p 901

70. The Nominated Judge defined "disease" as the "injurious process" and explained that the search for the origin of the disease should be directed to that process.

71. "A disease is an injurious process (including an injurious condition or deformity) which will, in its natural progress (unless resisted or cured) operate to cause illness or incapacity even though no other cause may operate." In the course of the judgment His Lordship emphasised that a predisposition to a disease contains only the potentiality of an injurious process and may never become injurious unless some other cause operates. The Court of Session was in agreement in The Fourteen Appeals and held that "A predisposition to a disease is not a disease".

72. The references to "predisposition" mean that the Department cannot discharge the onus of proving dissociation of a condition from service on the sole ground of "predisposition" or "susceptibility".

73. In the case of Holland (Vol 2, p 901) the Court of Session held that "A congenital and inherited weakness which is part of a man's make-up and which will sooner or later cause the emergence of symptoms of a disease the cause of which is already present is something quite different from a predisposition which merely provides a suitable medium in which the cause of a disease not already present may operate. In the former the disease is pre-destined. It is an ever present injurious process or morbid condition whose active emergence may be delayed but cannot be avoided. In the latter one cannot affirm that the disease will occur but only that if it does it will find congenial surroundings; predisposition is not in itself an injurious process or a morbid condition".

74. Experience has shown that the "injurious process" reasoning is convenient of application.

75-79 Spare

Loose phraseology

Hathway, Vol 1, p 175	Barker, Vol 1, p 339	Mepham, Vol 1, p 515

80. Such indefinite terms as "may be", "might", "long standing", "it is considered that", are inappropriate when the Department purports to be discharging the onus of proof, and should be avoided as far as possible. Their use is apt to raise a doubt where reasonable doubt does not really exist. A phrase often employed in OMDs "it is considered that" suggests a reasonable doubt (Mepham).

81 Spare

Lowered resistance

Bridge, Vol 1, p 139

82. A disease causally dissociated from service may be aggravated by factors which precede the onset of the disease; for example, acquisition of an infection at a time of lowered resistance due to service factors. Entitlement depends upon the advice of the Medical Department as to whether the infection might have been resisted but for the antecedent lowering of resistance.

83-84 Spare

New diseases arising from a pensioned disablement

Pilbeam, Vol 4, p 129	Dent, Vol 4, p 121	Congress, Vol 4, p 241

85. These judgments make the distinction between treatment (including surgery) given for a disease and the disease itself. The treatment or surgery is not a separate disablement and unless it brings about a disabling condition distinct from the pensioned condition, there can be no question of further entitlement. For example if, as in the case of Dent, a nephrectomy is performed to cure hydronephrosis (the latter being a pensioned disablement), the operation is part of the original disease; it is not a separate disablement and it does not attract a separate entitlement.

86. Where, however, the treatment of an attributable pensioned disablement produces as sequela of that treatment a separate condition, that condition is attributable to service because, but for the original disablement, the treatment would not have been necessary and the sequela would not have occurred. For example if an operation for an attributable duodenal ulcer were followed by incisional hernia and phlebitis, these are conditions separate from and independent of duodenal ulcer, they are due to the untoward effects of treatment of the duodenal ulcer and they are attributable to service.

87. Where entitlement for the pensioned disablement is aggravated, different considerations apply. The test is whether the need for the treatment or surgery is brought about by the aggravation of the original condition.
Therefore -

1. if, apart from service (and therefore without the aggravation) the pensioner might have gone through life without the treatment or surgery, the cause of that treatment or surgery is the aggravation by service and any new conditions arising from that treatment or surgery are attributable to service;

2. if the pensioned disablement of itself would have necessitated treatment or surgery sooner or later but the need for that treatment or surgery is accelerated by the service aggravation, the proper entitlement for the separate conditions arising is aggravated;

3. if the pensioned disablement of itself would have necessitated the treatment or surgery and the service aggravation did not accelerate the need for that treatment or surgery, ie, it would have been necessary at the time it was given with or without service, there is no entitlement for the new conditions.

NB. In both Pilbeam and Dent **the operation took place in service** and, therefore, the condition, ie, the operation in terms of the War Pensions Instruments, existed before or arose during service.

88-89 Spare

ONUS OF PROOF

UPON CLAIMANT

EXISTENCE OF DISABLEMENT

90. See entry under para 26 (Royston Vol 3 p1593).

CLAIMS MADE OVER 7 YEARS AFTER END OF SERVICE (ARTICLE 5)

Dickinson, Vol 5, p 211

91. The omission of any reference in Article 5 to the onus of proof brings into effect the common law principle that the onus is upon the claimant/appellant.

92. In the case of Dickinson the Nominated Judge held that it is axiomatic in the administration of our law that if a person thinks that he has a claim against another man, the duty is upon him to establish that claim. The Judge stated that there is no ambiguity in the wording of Article 5 of this Warrant. The Article in itself leaves it quite clear that after seven years a claimant may still be entitled, under the proper conditions, to a pension provided that it is shown by him that the conditions of entitlement have been fulfilled.

UPON THE DEPARTMENT

Irving, Vol 2, p 401

93. Article 4 of the Warrant (claims made within 7 years) relieves the claimant of the onus of proving his case.

94. In the case of Irving the Court of Session held (and the Nominated Judge has not disagreed) that when two parties go to law the onus of proof is inevitably upon one or other, and, as Article 4 lifts the onus from the claimant, it falls squarely upon the Department. In practice the Department is required, before rejecting a claim, to be satisfied that the evidence disproves the fulfilment of the Warrant conditions governing entitlement. On appeal the position is the same.

95-99 Spare

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"Personal sphere"

Wedderspoon, Vol 1, p 347 - 350	Wheatley, Vol5, p 563	Richards, Vol 5, p 631

100. The term "personal sphere" was introduced by Mr Justice Denning in his judgment on Wedderspoon, when he said "... cases show that when the cause of the death or disablement lies in the man's own personal or domestic sphere, and the war service does no more than provide the circumstances in which the cause operated, it is not attributable to service."

101. A man's personal sphere is not a geographical location or a point in time: it is a state of being and doing. The primary considerations, therefore, should always be "what was the man doing when he was injured" (not "was he in or out of barracks" or "was he on or off duty"); and whether his action or involvement had a link with service. Examples are given in the following paragraphs.

102. Wheatley was injured while riding a private motor cycle on a voluntary journey to collect non-official mail. He was off duty but had permission to make the journey. Army Post Office had no arrangements for conveying mail to the unit on a Sunday, and it was customary to allow a volunteer to fetch it, although no official transport was available. It was held that the authorised act of collecting the mail was within the man's conditions of service and his use of a motor cycle was in no way unreasonable. As the judge observed "It is not regarded as a particularly dangerous proceeding to ride a motor cycle on a road, and I see no reason why a competent motor cyclist should be prohibited from going on a necessary errand on a motor cycle instead of on his feet".

103. Richards attended a dance in his capacity of Regimental Policeman and had an altercation with a private. Later, when both were off duty, Richards went round to the private's billet and started a fight, after which he left the hut in a temper and on the way out put his fist through a window, sustaining the injury on which the claim was based. The Tribunal upheld the rejection, giving the following reasons:-

"The applicant's contention is that notwithstanding the fact that his presence in the hut had no relation to any service factor .... service factors again became operative the moment he emerged ... It is said, therefore, that his alleged stumble was due to a factor of service and that the resultant injury is attributable to service. Even assuming that there was a stumble ... the Tribunal do not accept this argument or take the view that the several factors comprising the incident are susceptible to such nice definition. In their view they have to regard the circumstances of the incident as a whole. The applicant was in the hut for purposes of his own ... The injuries occurred as he was leaving the hut and in the view of the Tribunal he must still be regarded at that stage as being on a purpose of his own."

In disallowing the appeal the Judge remarked:-

"I accept the conclusion to which the Tribunal came: this (the accident) was so much a part of the incident and the aggressive behaviour of Richards who was, no doubt, in a violent temper and going to this hut in order to deal effectively with Private "A", that it is quite impossible to dissociate it, in any way, from that incident; and, clearly, for the Appellant to go into the hut, as he did, where he had no authority to be at all, for no other reason than to attack Private "A" in the way that he did, was a purely personal matter and something which in no way could it be said was due to any compulsion of service."

104-109 Spare

Reasonable doubt - Standard of proof

Mitchell, Vol 2, p 421	Miller, J, Vol 1, p 615	Edwards, Vol 1, p 331
Webster, Vol 1, p 823	Oliver, Vol 1, p 153	Starr and others, Vol 1, p109
Judd, Vol 5, p 679	Cadney, Vol 5, p 687	Coe, Vol 5, p 725

ARTICLE 4

110. The Nominated Judge in a review of Article 4 in the case of Judd (Vol 5, p 679) pointed out that the distinction between Article 4(2) and Article 4(3) is that in order to defeat a claimant, in cases under Article 4(2) the evidence against him must overthrow any evidence in his favour, whereas in cases under Article 4(3) it must also overthrow the presumption in his favour. This presumption was a "compelling" presumption which took the place of evidence and drew its strength from the law.

111. On the question of the presumption of entitlement in the Appellant's favour created by Articles 4(2) and/or 4(3), the Nominated Judge in the case of Coe (Vol 5, p 725) enunciated three rules for the guidance of Tribunals in considering appeals related to diseases of unknown aetiology. (See para 32.)

ARTICLE 5

112. In the case of Cadney (Vol 5, p 687), the Nominated Judge made it clear that in a case coming under Article 5 the claimant has to produce evidence in support of his claim; that the Department may leave it unchallenged or may cross-examine upon it but whichever course is followed they are entitled to say at the end of the claimant's case that there is no reliable evidence creating a reasonable doubt. If, however, the evidence adduced by the claimant is reliable and creates a reasonable doubt as to whether the relevant conditions for an award are satisfied, then the benefit of that doubt must be given to the claimant.

REASONABLE DOUBT

113. "The proof beyond reasonable doubt" required of the Department does not mean proof beyond the shadow of a doubt, nor should strained, fanciful or remote possibilities be regarded as creating "reasonable doubt". Before, however, it can be said that there is no reasonable doubt the Nominated Judge in the case of Judd considered the evidence against the claimant must reach the same degree of probability and cogency as required in a criminal case before an accused is found guilty. Such evidence need not reach certainty but it must be sufficiently strong against a claimant to leave only a remote possibility in his favour which can be dismissed with the words "of course it is possible but not in the least probable".

MEDICAL DISCHARGES

114. Article 4(3) enacts that where an injury (including wound or disease) which has led to a member's discharge or death during service was not noted on a medical report made on that member at the commencement of his service, an appropriate certificate entitlement shall be given unless the evidence shows non-fulfilment of the entitlement conditions in Article 4(1). As in Article 4(2), the claimant is entitled to the benefit of any reasonable doubt.

NO MEDICAL EXAMINATION ON JOINING

115. Thus the first question is whether the condition causing invaliding was noted on joining. In the Fourteen Appeals the Court of Session ruled that where the man was embodied or otherwise taken into active service without a medical examination, there was no question of allowing him the benefit of the Article 4(3) presumption. The English Nominated Judge disagreed and in the case of Edwards held that where for some reason no medical examination took place on the commencement of service the claimant was entitled to the benefit of Article 4(3) provided the criterion of invaliding for the condition forming the subject of claim was satisfied.

116. Faced with these contradictory rulings the Department decided, as a matter of administration, that the more favourable of the rulings so far as the claimants were concerned should be followed. It was realised that the application of the Scottish ruling could have brought about the position of Munich (1938) Territorial Volunteer, embodied at the outbreak of war without a medical examination and later invalided, being denied the benefit of the Article 4(3) presumption, whereas all conscripts later enlisted would be entitled to the benefit of the Article (provided they were invalided), seeing that all such were medically examined at the commencement of service. The Court of Session is fully aware that the Department follows the English law on this subject.

IMPRECISE CERTIFICATION OF CAUSE OF DEATH

117. It may be difficult to rebut the "compelling" presumption implicit in Article 4(3) where the cause of death shown on the death certificate is imprecise (eg, heart failure) and death is insufficiently explained because of the lack of a post mortem examination or other medical details either before or after death. Thus if a man dies in service there must be sufficient medical information to enable the

Department to demonstrate beyond reasonable doubt that the conditions of Article 4(1)(b) are not satisfied before any claim is refused.

118-119 Spare

Records (Official)

Greatwood, Vol 1, p 165

120. It is the duty of the Service Departments to transmit all evidence to this Department.

121-124 Spare

Serious negligence

Robertson, Vol 5, p 266	Griscti, Vol 5, p 465

125. Robertson was injured when his motor cycle collided with a service lorry. His award was reduced under Article 6, and when he appealed to the Tribunal the Tribunal found that his disablement was contributed to by his
serious negligence. An appeal to the High Court was, however, allowed by Mr Justice Ormerod who argued that:-

"Possibly there was negligence, but 'serious negligence' must, I think, be negligence of a quality which would certainly call for some criminal action if it were done in civil life." When he subsequently heard the appeal by the Department in the case of Griscti, Mr Justice Ormerod made reference to his remarks in the Robertson case, and added:-

"That, of course, was not part of my judgment in the matter; it was something which I said in the argument in the case which referred particularly to the facts of that case, that is, to the fact that the negligence which was alleged was negligence in the driving of a motor car. In this (Griscti) case, of course, the circumstances were entirely different: the man was disobeying an instruction in that he was interfering with enemy ammunition... In interpreting those words in Article 6 the Tribunal, of course, must take the plain meaning of the words as expressed in the regulation - 'serious negligence or misconduct' - and not qualify them by adding the words 'such as would render a man liable to criminal proceedings in civil life". I certainly never intended that the words I used in the argument in the Robertson case should have a wide meaning of that kind. I did not intend that they should be applied to anything other than the facts of that particular case where I thought that if there was to be 'serious negligence' it must have been negligence of a kind that would render a man liable to some form of criminal proceedings."

These remarks have been quoted at length in order to make it clear that the Judge's argument in the Robertson case should not be generally applied and can only be regarded as having any force in a road accident case in which the features correspond with those in the case of Robertson.

126-129 Spare

Service in the Reserve

Bird, Vol 1, p 21

130. Transfer to the Reserve is the equivalent of termination of service. "Service" does not include any period spent on the Reserve. This ruling relates to all classes of the Reserve. However, this does not apply to part- time members of the Ulster Defence Regiment.

131-134 Spare

Symptoms of a disease

Padgett, Vol 3, p 2127	Yates, Vol 5, p 765

135. Where the Department or the Tribunal find that a "disease" forming the subject

of a claim or appeal consists merely of symptoms of a disablement in respect of which pension title has already been allowed, there is no case for additional title.

136. The ruling from the case of Yates is that "a symptom of disease cannot itself be a separate injury attributable to or aggravated by service".

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APPENDIX 11 - ANNEX A

FUNCTIONAL INTERPRETATION OF DEGREES OF EACH QUALITY (MALE) ROYAL NAVY

Degree	P	U	L	H	EE	M	S
Factors to be considered	Age,build,strength and stamina - guts	Strength,range of movement and general efficiency of upper arm, shoulder girdle and back	Strength,range of movement and efficiency of feet,legs,pelvic girdle and lower back	Auditory acuity (For interpretation of audiometric values, see para 0209)	Visual Acuity	Mental capacity	Emotional stability. Personality
1	Fit after tarining for full sea and field service in any part of the world. Able to withstand extremes of weather and climate and to remain efficient under conditions of strain and fatigue for long periods *Proved fit for commando or similar service anwhere. Capable of withstanding exposure for long periods, both to heat and cold.	Muscle power above average. Must be able to handle arms and do very heavy manual work with rapidity and efficiency. *Capable of climbing 30 feet up a rope with full equipment.	Capable of very severe locomotor strain for 5 or 6 days. Can run, climb, jump, crawl and perform all kinds of manual labour quickly. *Capable of marching 30 miles across rough country (in one day) and capable of doubling over rough ground, and be fit the next day.	Ability to hear sufficiently well to serve in any capacity, other than special non-substantive ratings.	Visual acuity 6/6 or better.		No fear of heights or enclosed spaces.
2	Fit for full sea and field service in any part of the world. Able to withstand exposure and fatigue for normal periods. *Fit fore general service compatible with age. Capable od standing moderate degrees of exposure.	Muscle power average. Able to do all a U1 man can do but at a slower pace. *Capable of lifting his own weight off the ground. Full use of both hands and able to fire a rifle (rapid).	Same as L1 but pace may be slower. Capable of getting about in a ship with average ability and safety under war conditions. *Capable of marching under normal conditions and of doubling along roads (and able to fight afterwards).	Able to hear sufficiently well to perform adequately any duty which does not require perfect hearing.	Visual acuity 6/9.	Ability under naval conditions to learn to perform successfully all his duties. Includes capability to train as tradesman or specialist.	Emotionally fit to perform naval duties adequately under service conditions in any part of the world.
3	Fit for restricted service in any part of the world. Restrictions on service to be stated in Pulheems medical box, e.g."service in a ship carrying a medical officer". *Restricted service. Not able to stand exposure.	Must be capable of less severe forms of manual work than U2. *Capable of using a pick and shovel for moderate periods. Could fire a rifle.	Capable of walking 5 miles or further in an emergency. Able to stand for periods of at least 2 hours. Fit for restricted naval service. *Capable of marching 5 miles along roads in an emergency. Able to stand for 2 hours.	Able to hear sufficiently well to perform any duty where moderate impairment of hearing does not disqualify.	Visual acuity 6/12.	Ability under naval conditions to learn to perform simple duties without supervision.	Although having a history of emotional instability is at present well adjusted and fit to serve in any part of the world, ashore and afloat.
4	As for P1 but limited to temperate climates.				Visual acuity 6/18.		
5	As for P2 but limited to temperate climates.				Visual acuity 6/24.		
6	As for P3 but limited to temperate climates.				Visual acuity 6/36.		Although having a history of emotional insatbility is sufficiently well adjusted to serve ashore and afloat at home.
7	Fit to serve in a restricted capacity in home shore and harbour duties.	Capable of sedentary and routine work of a lighter type. (Includes personnel fit for limited shore service.)	Able to walk 2 miles a day at own pace. Can stand for moderate but not prolonged periods. Unfit for sea service.	Able to hear sufficiently well to perform any duty where marked impairment of hearing does not disqualify.	Visual acuity 6/60.	Mental capacity renders him capable only of performing simple duties under supervision, including a minimum of responsibility. Service in UK only.	Emotionally fit to perform naval duties adequately under living conditions favourable to the individual ashore in the UK.

8	PERMANENTLY UNFIT FOR NAVAL SERVICE

Notes - (1) Physical training:
Personnel aged 35 and under, graded P1, 2, 4 and 5, U1 and 2, L1 and 2 or S1 are fit to do full PT
Personnel aged 35 and under, graded P3, 6 or 7,L3 and 7 or S3, 6 and 7 are fit to do modified PT
Personnel over 35 years of age, of any grading, may do PT on a voluntary basis

(2) S3 grading is not at present used by the Royal Navy.
* Royal Marines only

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APPENDIX 11 - ANNEX B

FUNCTIONAL INTERPRETATION OF DEGREES OF EACH QUALITY (MALE) ARMY

Degree	P	U	L	H	EE	M	S
Factors to be considered	Age,build,strength and stamina - guts	Strength,range of movement and general efficiency of upper arm, shoulder girdle and back	Strength,range of movement and efficiency of feet,legs,pelvic girdle and lower back	Auditory acuity (For interpretation of audiometric values, see para 0209)	Visual Acuity	Mental capacity	Emotional stability. Personality
1	Fit after training, full strain and fatigue on combatant duty. Fit to withstand exposure to all kinds of weather. A front-line fighter in any part of the world.	Muscle power above average. Must be able to handle a rifle and do heavy manual work including digging, pushing, dragging, heaving, lifting and climbing. All tasks carried out with rapidity and efficiency.	Capable of very severe locomotor strain for 6 or 6 days. Can undertake forced marches and light at the end of such marches. Can run, climb, jump, crawl, dig and perform all kinds of labour quickly.	Very good hearing. Ability to hear sufficiently well to perform any duty.	Visual acuity 6/6 or better.		No fear of heights or enclosed spaces.
2	Fit for normal work or strain but unable to endure extreme degrees for long periods. A front-line fighter in any part of the world.	Muscle power average. Able to do all a U1 can do but at a slower pace	Same as L1 but pace may be slower.	Good hearing. Able to hear sufficiently well to perform any duty.	Visual acuity 6/9.	Ability under army conditions to learn to perform successfully full combatant duties. Includes capability to train as tradesman or specialist.	Emotionally fit to perform Army duties adequately under full combatant conditions in any part of the world.
3	Fit for ordinary work. Has not the stamina even after training to endure the strain and fatigue of full combatant duty. Fit for restricted service in any part of the world.	Must be able to use a weapon for defensive purposes and be capable of less severe forms of manual work than U2.	Capable of marching 5 miles or further in an emergency. Able to stand for periods of at least 2 hours. Fit for guard duties.	Able to hear sufficiently well to perform any duty where moderate impairment of hearing does not disqualify.	Visual acuity 6/12.	Ability under Army conditions to learn to perform simple duties without supervision. Fit to bear arms but is restricted to simple labouring duties in any part of the world.	Although having a history of emotional instability is at present well adjusted and fit to serve in any part of the world in a role which is not primarily a fighting one.
4	Fit after full training for full strain and fatigue of full combatant duty provided he serves in temperate climates only.				Visual acuity 6/18.		
5	Fit for normal work or strain butr unable to endure extreme degrees for long periods. Fit for service in temperate climates only.				Visual acuity 6/24.		
6	Fit for ordinary work. Has not the stamina even after training to endure the strain and fatigue of full combatant duties. Fit for restricted service in temperate climates.				Visual acuity 6/36.		Although having a history of emotional instability is sufficiently well adjusted to serve in temperate climates in a role which is not primarily a fighting one.
7	Fit to serve in a restricted capacity in home shore and harbour duties.	Capable of sedentary and routine work of a lighter type. (Includes personnel unable to bear arms on account of physical disability eg ankylosis of elbow etc.) Service in UK but may serve overseas in the base area.	Able to walk 2 miles a day at own pace. Can stand for moderate but not prolonged periods. Service in UK but may serve overseas in the base area.	Able to hear sufficiently well to perform any duty where marked impairment of hearing does not disqualify. Service in UK but may serve overseas in the base area.	Visual acuity 6/60.	Because of low mental capacity is unable to bear arms but is capable of simple labouring duties under supervision, including a minimum of responsibilities. Service in UK only.	Emotionally fit to perform Army duties adequately under living conditions favourable to the individual in the UK.

8	PERMANENTLY UNFIT FOR ANY FORM OF SERVICE

Notes - (1) Physical training:
Personnel aged 35 and under, graded P1, 2, 4 and 5, U1 and 2, L1 and 2 or S1 are fit to do full PT
Personnel aged 35 and under, graded P3, 6 or 7,L3 and 7 or S3, 6 and 7 are fit to do modified PT
Personnel over 35 years of age, of any grading, may do PT on a voluntary basis

(2) S3 grading is not at present used by the Royal Navy.

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APPENDIX 11 - ANNEX C

FUNCTIONAL INTERPRETATION OF DEGREES OF EACH QUALITY (MALE) ROYAL AIR FORCE

Degree	P	U	L	H	EE	M	S
Factors to be considered	Age,build,strength and stamina - guts	Strength,range of movement and general efficiency of upper arm, shoulder girdle and back	Strength,range of movement and efficiency of feet,legs,pelvic girdle and lower back	Auditory acuity (For interpretation of audiometric values, see para 0209)	Visual Acuity	Mental capacity	Emotional stability. Personality
1	Fit for heavy manual work including lifting, climbing under extreme degrees of severe and prolonged strain in all weathers and including period of extreme physical activity with irregular rations and rest.	Muscle power above average. Must be able to handle arms and do very heavy manual work with rapidity and efficiency.	Capable of very severe locomotor strain for 5 or 6 days. Can run, jump, climb, crawl and perform all kinds of manual work quickly.	Very good hearing. Ability to hear sufficiently well to serve in any capacity. (Forced whisper heard with each ear separately at 20 feet.)	Visual acuity 6/6 or better.		No fear of heights or enclosed spaces.
2	Fit for heavy manual work including lifting, climbing, etc but unable to endure degrees of prolonged strain. Fit for full Air Force duty in any part of the world.	Muscle power average. Able to handle arms and do heavy manual work, but at a slower pace than U1. Any disability must be so slight that it does not interfere with ability to handle tools or do heavy manual work.	Can do all that L1 person can do but at a slower pace. Capable of running, climbing, jumping, crawling and performing all kinds of manual labour under war conditions.	Good hearing. Able to hear sufficiently well to perform any duty not requiring perfect hearing. (Forced whisper heard with each ear separately at 10 feet.)	Visual acuity 6/9.	Mental capacity normal. Able to learn to perform successfully all duties. Can be trained as tradesman or specialist.	Emotionally fit to perform Air Force duties adequately under service conditions in any part of the world.
3	Fit for heavy manual work including lifting, climbing, etc but unable to endure degrees of severe or prolonged strain. Fit for full Air Force duty in any part of the world.	Able to use weapons for defensive purposes. Capable of less severe forms of manual work than U2. May have more severe disability than U2 but must be able to handle tools reasonably well.	Moderate defect of locomotion may exist, but must be capable of marching 5 miles or more in an emergency.	Moderate defect of hearing. Able to hear sufficiently well to perform any duty where moderate defect of hearing does not disqualify. (Conversational voice heard with each ear at 10 feet.)	Visual acuity 6/12.		
4	As for P1. Fit for full service in temperate climates.				Visual acuity 6/18.		
5	As for P2. Fit for full Air Force duty in temperate climates.				Visual acuity 6/24.		
6	As for P3. Fit for Air Force duty in temperate climates.				Visual acuity 6/36.		
7	Capable of performing useful RAF duties within limits of his disabilities. Not likely to break down if suitably employed with opportunities for regular meals and rest. Service in UK only.	Capable of sedentary and ruotine work of a lighter type. (Includes personnel unable to bear arms on account of physical disability eg ankylosis of elbow, etc.)	Able to walk 2 miles per day at own pace. Can stand for moderate but not prolonged periods.	Able to hear sufficiently well to perform any duty where marked impairment of hearing does not disqualify.	Visual acuity 6/60.	Because of low mental capacity is unfit to bear arms but is capable of simple labouring duties under supervision, including a minimum of responsibilities. Service in UK only.	Emotionally fit to perform RAF duties adequately under living conditions favourable to the individual in the UK.

Colour Perception (CP) Standards
Standard 1 - Normal colour vision as tested by colour lantern
Standard 2 - Normal colour vision as tested by Ishihara Charts
Standard 3 - Defective safe colour vision
Standard 4 - Defective unsafe colour vision

Examples of Visual Acuity as recorded in Pulheems Profiles
7/2 - 6/60 vision correctable to 6/9 with glasses
3/1 - 6/12 vision correctable to 6/6 with glasses
2/1 - 6/9 vision correctable to 6/6 with glasses
4/1 - 6/18 vision correctable to 6/6 with glasses

Note - (1) S3 grading is not at present used by the Royal Navy

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APPENDIX 11 - ANNEX D

FUNCTIONAL INTERPRETATION OF DEGREES OF EACH QUALITY (FEMALE)

Degree	P	U	L	H	EE	M	S
Factors to be considered	Age,build,strength and stamina - guts	Strength,range of movement and general efficiency of upper arm, shoulder girdle and back	Strength,range of movement and efficiency of feet,legs,pelvic girdle and lower back	Auditory acuity (For interpretation of audiometric values, see para 0209)	Visual Acuity	Mental capacity	Emotional stability. Personality
1	Fit for heavy duties involving considerable stamina and prolonged exposure to unfavourable weather or working conditions in any part of the world.	Fit for duties involving considerable physical strength, such as frequent lifting of weights during course of a day's work, or constantly driving heavy lorries under unfavourable conditions.	Capable of very severe locomotor strain for 5 or 6 days. Can run, jump, climb, crawl and perform all kinds of manual work quickly.	Must be capable of work involving standing all day long as well as any reasonable requirements of marching and drill.	See corresponding column under EE in Annexes A, B and C for Service concerned.		
2	Fit for duties involving average degree of physical stamina, including domestic and cooking duties, and other work involving lifting and prolonged standing or walking in any part of the world.	Fit for duties involving lifting of fairly heavy weights, such as cooking pots and pails of water, and able to perform duties involving a range of movement of the upper extremity.	Must be capable of work involving being on the feet most of the day. Only normal amount of marching and drill required.	Must be capable of work involving standing all day long as well as any reasonable requirements of marching and drill.		Ability under service conditions to learn to perform successfully all service duties. Includes capability to be trained as tradeswoman or specialist.	Emotionally fit to perform duties adequately under any conditions in any part of the world.
3	Fit for duties of a light nature with reasonable barrack conditions in any part of the world.	Fit for light duties or those not involoving full strength or range of movement of upper extremities.	Only the normal amount of marching and drill.	Moderate defect of hearing. Able to hear sufficiently well to perform any duty where moderate defect of hearing does not disqualify. (Conversational voice heard with each ear seperately at 10 feet.)		Ability under service conditions to learn to perform simple unskilled duties.	Although having a history of emotional instability is at present well adjusted and fit to serve in any part of the world in a role which is not primarily a fighting one.
4	Fit enough for heavy duties involving considerable stamina and prolonged exposure to unfavourable weather or working conditions in temperate climates only.						
5	Fit for duties involving an average degree of physical stamina, including domestic and cooking duties and other work involving heavy lifting and prolonged standing and walking in temperate climates only.						
6	Fit for duties of a light nature with reasonable barrack conditions in temperate climates only.						Although having a history of emotional instability is sufficiently well adjusted to serve in temperate climates in a role which is not primarily a fighting one.
7	Capable of performing useful duties within the limits of her disabilities. Not likely to break down if suitably employed and allowed reasonable living and working conditions, time for regular meals and rest. Service in UK only.	Must be able to walk at least a mile a day in her own time and be capable of suitable and useful sedentary employment without fear of breakdown. Unable to march or do drill. Service in the UK but may serve overseas in the base area.				Because of low mental capacity is unable to bear arms but is capable of simple labouring duties under supervision, including a minimum of responsibilities. Service in UK only.	Emotionally fit to perform service duties adequately under living conditions favourable to the individual in the UK only.

8	PERMANENTLY UNFIT FOR ANY FORM OF SERVICE

Notes - (1) S3 grading is not at present used by the Royal Navy.

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