



Home Office

REVIEW OF POLICE INJURY BENEFITS GOVERNMENT PROPOSALS

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Foreword

By Tony McNulty

The system of police injury benefits is an integral part of the overall package of pay and conditions for police officers. Injury benefits provide valuable reassurance for police officers who have to face demanding, and often dangerous, situations on a daily basis. Every officer is covered for injury benefits regardless of membership of either the Police Pension Scheme 1987 or the New Police Pension Scheme 2006.

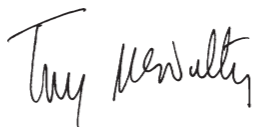
However, I believe that now is the right time to review the injury benefits system to ensure that the financial support currently given to police officers and their families for injury or death in the line of duty meets modern requirements, is properly targeted and is effectively administered.

That is why I am pleased to introduce this consultation paper, which sets out our proposals for modernising our current injury awards system. I believe that the proposals set out here are fair and just, recognising the unique role that police officers play in our society and our responsibility to provide for them and their families if they do get injured or killed in the line of duty. The proposals cover a range of scheme policy and design issues, such as the criteria for eligibility for an injury award and the structure of benefits for officers and their families.

The review also examines the changes which would help police authorities administer and monitor the injury benefits system more effectively.

This paper makes it clear that any changes to the injury benefits system which emerge from this consultation will not affect officers, and the families of officers, who have already ceased to serve at the time of implementation. Any changes will apply only to those officers still serving at the time of implementation.

I hope that this consultation prompts constructive and wide-ranging debate from a broad cross-section of individuals and organisations, both from within the policing world but also from outside it. Our aim is to have the key changes to the injury benefits system agreed by December 2008 so that they can be implemented in 2009. The contributions we receive will help to make this happen and my thanks go to all those who engage in this consultation exercise.



Tony McNulty
August 2008

Review of Police Injury Benefits: Public Consultation Document – Executive Summary

Introduction

1. Police injury benefits are an integral part of the overall financial package for police officers, and provide valuable reassurance for officers who have to face dangerous situations. Provision was originally set out in the same regulations that applied to pension scheme benefits, when membership of the latter was compulsory, but it is now contained in separate Police Injury Benefit Regulations in recognition of the fact that Injury Benefits are not pension scheme benefits and that they apply to *all* officers regardless whether or not they are pension scheme members.

2. This review is part of a wider programme of public service injury benefit reviews led by HM Treasury, in addition the consultation period, confirmed the need for better targeted benefits and focus on making the scheme as fair and clear as possible. The objective of the review is therefore also to create a system with criteria suitable for police injury benefits to be managed in an effective and transparent way. In addition, a research exercise carried out in May 2007, in which police authorities were asked to provide information on all injury awards and awards payable to survivors for death in the line of duty in a two year period, highlighted the need for better records to be kept.

Application of changes

3. Any changes made as a result of the review will apply to serving officers (including those who have already sustained an injury) and new entrants, but will not apply retrospectively, i.e. to officers who have already retired when the changes come into force.

Eligibility for Police Injury Awards

4. It is proposed that injury awards remain payable only where the recipient is permanently disabled for the ordinary duties of a member of the force. In order to encourage a diverse workforce, the review invites comments on a new “top-up” arrangement where disabled officers have the option of returning to work on a part-time basis. In addition to the lump sum, the award would serve to supplement any reduction in salary to keep in line with previous

earnings. Concern has at times been expressed in the past the incidence of work related stress as a reason for an injury award. The review concludes that mental injuries should be considered as injuries qualifying for an award, as long as they continue to meet medical criteria which have general clinical recognition.

5. It is proposed to restrict awards to cases where disablement is wholly or mainly caused by an injury, rather than the wider-reaching “substantially”, and to develop a tighter definition of a qualifying injury, which codifies the circumstances in which an injury would not be eligible for an award. Safeguards to protect officers injured whilst off duty, i.e. if the injury is based on a causal connection with the individual being an officer, or the police authority is of the opinion that this is the case, are being retained. In addition, a new protection has been proposed for officers injured whilst off duty when there is an act intended to cause harm or fear of harm aimed at the police, such as a terrorist attack, or where the police authority is of the opinion that this is the case. It is proposed to discontinue the provision under which an officer qualifies for an award for an injury sustained on the journey to/from the normal place of work, so that the police injury benefit scheme is in line with the other major public sector schemes.

Calculation of police injury awards

6. It is proposed injury awards should continue to consist of an initial gratuity plus a regular income in the form of periodical payments, and be related to loss of earning capability based on the officer’s pensionable police salary at the point he/she last served. Although the present bands of assessment (slight, minor, major and very severe) will remain, It is also proposed to create a new banding of 10% loss of earning capacity or less, which will consist of a gratuity of 12.5% average pensionable pay but no pension, to recognise that whilst the injury has caused permanent disablement for the duties of a police officer, there has been little or no loss of earning capacity. The disablement gratuity should be set at five times average pensionable pay in all cases, and the level of the lump sum will continue to be linked to the officer’s loss of earning capacity.

7. The term “injury pension” should be replaced by “injury income supplement” to distinguish the award from benefits under one of the police pension schemes, membership of which is not relevant for the purposes of the injury benefit scheme, and to avoid the suggestion that it is a fixed amount of benefit. The term “degree of disablement” should be replaced with “loss of earning capacity” to better reflect the purpose of the injury award.

Conditions applying to Police Injury Awards

8. It is proposed to lower the threshold at which the police authority may consider an officer ineligible for an injury award due to having received it through his or her own default, except in high-pressure or split-second decisions. The proposals include an endorsement of the use of apportionment, and suggest integrating the separate question of disablement due to default, which is for the medical practitioner to decide, into the apportionment process. The section also proposes that compensation or damages to the officer in respect of the injury should be taken into account when paying the award, and that the officer should be mandated to apply to DWP and confirm entitlement to State Incapacity Benefits before any injury award payment is made. However, ‘compensation’ should not include payments which themselves have already been reduced by the amount of injury gratuity payable, to avoid the risk of double reduction.

9. Time limits for new claims after retirement are also proposed, either of 5 years post retirement, or the age of 65 if earlier. However, it is also proposed that there should be a set of medical conditions which are progressive or have a long incubation period which exclude the officer from the 5 year post-retirement limit.

Conditions applying to continuing an Injury Award

10. It is proposed to retain the current obligation on police authorities to review injury awards with decisions as to the frequency and

necessity of these reviews left to their discretion. Since selected medical practitioners now assess loss of earning capacity in terms of percentage points it is no longer appropriate to restrict the revision of an injury pension to cases where the loss of earning capacity has “substantially” altered. Injury pensions should be revised as and when necessary. If the former officer’s loss of earning capacity is assessed as 10% or less on review, it is proposed that payments of the income supplement will be stopped. It is also recommended that review of an injury pension can revise the extent to which the loss of earning capacity is apportioned to reflect changed circumstances.

11. The current recommended practice should be maintained of reviewing an injury pension at the point the former officer would have left the police service on age grounds so that the loss of earning capacity can be assessed against the national average earnings rather than his or her former police salary.

12. Since an injury award is to compensate a person for loss of earning capacity it is arguable that there is no need to pay an injury pension beyond State Pension age. On the other hand, stopping an injury pension completely at that point could disproportionately affect officers badly injured early on in their career who had been unable to build up pension scheme benefits. The review therefore proposes to halve the minimum income guarantee to create a new minimum retirement income guarantee, so that those without a reasonable pension scheme pension would still receive an injury pension, and to cease any further reviews after that stage.

13. Although it is proposed to retain the use of national average earnings for reviews between 60 and 65 against which to consider loss of earning capacity, it is proposed to revert back to using the officer’s last police pay when the minimum retirement income guarantee is calculated.

A New Approach to considering Injury Awards

14. This chapter proposes that the determining of legal and factual aspects of the case should be handled by the police authority and not the selected medical practitioner (SMP). Where a factual decision depends in part on a medical opinion it should be for the police authority to take a preliminary view of the circumstances which should then be put to the SMP for advice. It is also proposed that a claimant who refuses a police authority or SMP’s request for relevant information can expect to have an adverse inference drawn from such refusal, and should be notified as such.

15. A revised procedure for reviews is also put forward whereby the police authority is encouraged to carry out full reviews only after a paper sift of cases for review in consultation with the Occupational Health Unit. The police authority is advised only to refer the case to the SMP if the officer explicitly requests an examination, where there is a lack of necessary information, or where there is an indication that the officer’s loss of earning capacity may have changed.

Survivor and Dependent Benefits

16. It is proposed that pensions for adult survivors of officers killed in the line of duty should be life-long, in line with the life-long pensions introduced under the 2006 New Police Pension Scheme (NPPS), and that these benefits be extended to nominated unmarried partners and unregistered same-sex partners. It is also proposed that the present system of lump-sum benefits and gratuities for death due to injury in the execution of duty should be simplified and replaced by a system of three types of death gratuity paid to the spouse or partner; a child; or an adult dependent relative in that order of precedence and at a rate of either five times, four times or three times the officer’s average pensionable pay. The death gratuity payment should not be extended beyond adult dependent relatives to include the officer’s estate, as the death gratuity is intended to recompense dependents for the abrupt

cessation of financial support previously given by the officer, and this principle would not be upheld if the gratuity were passed to the estate.

17. This chapter further proposes that survivor benefits should be based on the same criteria as injury awards for determining whether the injury was received without default in the execution of duty, and on the same qualifying circumstances for an award – for instance an award would no longer be payable for death as a result of an injury sustained on a journey to or from work. The same procedure for considering a death should be used as that for considering an injury award, with the same division of responsibilities between the police authority and the SMP.

Administration and Data Management

18. The research exercise carried out in 2007 demonstrated that many forces do not keep accessible records of their past injury awards, despite the fact that it is in a force’s own interests to do so as a result of the new pensions financing arrangements. It is therefore proposed that the returns that police authorities must submit to the Home Office each year with details of their pension scheme expenditure should be amended so that police authorities enter a limited amount of information onto the form about the number, and cost, of injury awards granted that year.

How to Respond to the Consultation

19. Responses are requested by 18th November 2008. Guidance is provided in Chapter 10 on how to send in responses, and the addresses to send them to, depending on which part of the UK they relate to. For ease of reference, the section also sets out a numbered list of the specific issues on which comments are invited.

1. INTRODUCTION

Reasons for review

1.1. This review of police injury benefits is part of a wider programme, led by the Treasury, of reviews of public service injury benefits. These current reviews follow a similar series of reviews of by the major public service pension schemes into their ill-health retirement arrangements, the framework for which was set by the Treasury's report in July 2000 "Going Well." That report included the recommendation:

The rules and procedures for the payment of injury benefits should be subject to separate review of schemes to ensure that they are administered with the same fairness and rigour as proposed for ill-health benefits.

1.2. The range of occupations and duties covered by public service compensation schemes for injury and death attributable to service or employment varies considerably, with the public servants involved facing different sorts of demands, both physical and mental.

1.3. In the case of the police, injury benefits provide valuable reassurance for officers who have to face dangerous situations. However, the current provisions (set out in the Police (Injury Benefit) Regulations 2006, the Police (Injury Benefit) (Scotland) Regulations 2006 and the Police Service of Northern Ireland and Police Service of Northern Ireland Reserve (Injury Benefit) Regulations 2006), which consolidated regulations dating back to at least 1987, have drawn criticism from the courts as being difficult to understand and having procedures and criteria ill-suited to modern-day conditions. Only a proportion of awards are paid out for injuries received while in the course of operational duty. Many are for the same hazards met by most other employees in office work or providing a service to customers. With increasing access to compensation through the courts for accidents in the workplace it is time to take stock of whether the criteria, procedures and levels of awards set out in the regulations are appropriate for today's circumstances.

1.4. In addition, a research exercise was carried out by the Home Office in May 2007, in which all police forces across England, Wales and Scotland were asked to provide information on all injury awards and awards payable to survivors for death in the line of duty granted between April 2005 and March 2007, as well as more general information on the number of injury award claims, the number of awards granted and the cost of injury and death benefits between 1998 and 2007. This research exercise was carried out so as to gain a better insight into the impact of the current system and the way in which it is implemented, and also so as to feed into the identification of areas in need of reform as part of the review. Key findings have been drawn upon throughout the consultation document. However, the exercise did underline the need to ensure that a system which made at least 221 injury or survivor awards in the last two years, and that accounts for between £70m and £90m per year, is working as efficiently and as effectively as possible.

Background

1.5. Injury benefits are part of the financial "package" received by some employees leaving on health grounds. They are usually of higher value than ill-health pensions alone. For those who remain in employment, injury benefit might also be used to make up for lost income due to the individual being re-employed in a lower grade or working reduced hours because of their injury. In some schemes full sick pay may be extended for a certain period beyond that which would normally be the case if the absence were caused by an injury incurred whilst not on duty. Although the common thread is that these benefits serve as compensation for loss of livelihood as a result of an injury attributable to employment, the Armed Forces Compensation Scheme 2005 provides a lump sum to individuals, based on a tariff of injury severity, as compensation for pain and suffering. Remaining key public sector injury benefit schemes do, however, emphasise the effects that the injury has on individuals' ability to work and their earning capacity rather than on pain and suffering.

1.6. Even where the recipient of an injury award is retired and receives an "injury pension" the costs of injury benefits are met by the employer, and not by the pension scheme. It is important to note that in the public services the provision of an injury award is not dependent on being a member of the relevant occupational pension scheme. Injury awards are not based on pension contributions and are separate from and additional to the benefits which a person can expect to receive as a result of his or her scheme membership.

Public Sector practice on injury benefits

1.7. Most public sector employers make provision for injury benefits. Benefits are usually designed to bring the individual's or former spouse's income from specified sources (including occupational pension) up to a guaranteed minimum level. The specified sources generally include any income paid wholly or partly from public funds including occupational pensions, statutory sick pay and certain State social security benefits. Arrangements for calculating awards vary across the public services, but generally there is provision for a lump sum injury payment of up to 6 months' pensionable pay on leaving service and, for other than very minor injuries, a guaranteed income payment which depends on length of service and percentage impairment and provides up to a maximum of 85% of pensionable pay.

1.8. The injury benefit payments to the former employee are tax-free. This makes them more valuable than ill-health benefits. They are also generally aimed at maintaining in-work income and do not appear to allow for the lifetime earnings pattern. Therefore they do not take account of periods when pension rather than earnings would have been paid.

1.9. The widow or widower's guaranteed level is generally 45% of pensionable pay if death is treated as attributable to service or employment. In the case of a police officer killed in particular circumstances,

for example whilst saving a person's life or making an arrest, the officer's survivor may be eligible for an augmented award of 50% of pensionable pay to reflect the particularly serious circumstances involved. Other levels also apply to children and other dependants.

Private Sector practice on injury benefits

1.10. Very few private-sector employers have specific provisions to cater for attributable injuries and death, largely because such events happen relatively rarely. Where the employee or his or her dependant believes that a claim for negligence can be sustained, this would normally be covered by the employer's liability insurance. There may be ill-health retirement or death-in-service benefits provided as of right to employees through an occupational pension scheme and, in some cases, pension scheme trustees might exercise their discretion in order to pay additional benefits (within Her Majesty's Revenue and Customs [HMRC] limits).

1.11. Therefore most employers will have arrangements in place to compensate employees and their families for work-related death or disablement and associated loss of income or earnings, often through the employer's liability insurance. These arrangements are generally designed to protect or indemnify the employer against the minimum statutory requirements and any higher damages awarded by the courts. The level of benefits applicable in such circumstances would usually be determined on a case-by-case basis, either to be settled by the courts or by negotiation between the employer's insurance company and the lawyers acting on behalf of the applicant. Employees and their dependants may also qualify for State injury or disability benefits.

Separate provision for injury awards

1.12. Provision for police injury awards was originally set out in the same regulations that applied to pension scheme benefits – i.e. in the main body of the Police Pensions Regulations. This reflected the fact that membership of the Police Pension Scheme (PPS) used to be compulsory. In those circumstances there was no need to differentiate between occupational pension scheme benefits on the one hand and what are in effect industrial injury compensation provisions on the other. Now that officers are able to opt out of the PPS (and also the New Police Pension Scheme (NPPS)) there is a need for officers to see very clearly which are contributory pension benefits and which are available to all members of the force. Moreover, there is now an absolute need for separation because since 6 April 2006, HMRC has required tax-approved pension schemes to exclude all non tax-approved provisions.

1.13. The Police (Injury Benefit) Regulations 2006 (and the Scottish and Northern Ireland equivalents, as set out in paragraph 1.3 above) now contain provision for all awards payable as a result of injury or death attributable to duty, and which are not dependent on membership of either the PPS or the NPPS. This is in effect an expansion of the Police (Injury Benefit) Regulations 1987 – which were the first set of regulations to introduce injury benefits (the disablement gratuity and the death gratuity) separately from pension scheme benefits. The Police Pensions Regulations 1987 and 2006 are therefore reserved for membership benefits only.

Who will be affected by the review?

1.14. All officers serving at the time of any changes made as a result of this review will be affected by it. Unlike members of the PPS the Police Pensions Act does not give serving officers continued rights to a particular scale of injury benefits. However, in line with normal practice, which is not to apply changes retrospectively to retired public servants, former police officers and the dependants of those former officers will remain subject to the

provisions applicable at the time they ceased to serve. **It is proposed that any changes introduced to the provision of injury awards and awards for death attributable to police duty should apply to serving officers (including those who have already sustained an injury but have not retired prior to the changes taking effect) as well as new entrants and to the dependants of such officers. However, it is proposed that these changes should not apply retrospectively, i.e. to former officers (or their dependants) who have retired or will retire before the changes are introduced. These officers should continue to be treated within the system as it stood at the time they retired.**

Note: Extracts from the Police (Injury Benefit) Regulations 2006 refer to those regulations for England and Wales. Appendix B provides a list of all such references, and their equivalents in the injury benefit regulations for Scotland, and for Northern Ireland, as it is recognised that paragraph references may differ. However, for policy purposes references to the Police (Injury Benefit) Regulations 2006 should be taken to include Scotland and Northern Ireland, as this consultation is UK-wide. In addition, references to the Police Pension Scheme or the New Police Pension Scheme (and the corresponding regulations) should be taken to include Scotland and Northern Ireland.

2. ELIGIBILITY FOR POLICE INJURY AWARDS

Eligibility for injury awards

2.1. Under Regulation 11(1) of the Police (Injury Benefit) Regulations 2006 an injury award is payable to a “person who ceases or has ceased to be a member of a police force and is permanently disabled as a result of an injury received without his own default in the execution of his duty”.

2.2. At present an injury award is payable only where the officer is permanently disabled for police duty. This is in line with ill-health benefits under the Police Pension Scheme which are paid only in the case of permanent disablement. If the harm done by an injury in the execution of duty is not permanent then the issue of ill-health retirement and, by extension an injury pension, cannot arise.

2.3. Consideration has been given to a scale of compensation payments for the temporary harm done by an attributable injury but the complexity involved in judging the length of time an officer would be affected or in assessing the amount of pain and suffering caused in any particular case makes such a course impracticable and potentially divisive. It is noted in any case that officers already have access to civil claims for compensation payments where they are appropriate. **It is proposed that injury awards remain payable only where the recipient is permanently disabled for the ordinary duties of a member of the force.**

Ceasing service

2.4. It arguably follows from the above that injury awards should be paid only where an officer has ceased to serve as such. However, consideration needs to be given to the case for paying an award to help narrow the gap between full-time and part-time earnings where a permanently disabled officer who was in full-time service is able to be retained in his force only on a part-time basis. There are some attractions in this, as it may encourage disabled officers to return to work, and enable them to continue their career development, although police authorities would need to be clear that retaining the officer would have to

have practical benefits for the force. On the other hand, supplementing an officer’s income in this way would mean that permanently disabled officers who were retained by the force on a part-time basis would receive a higher hourly rate of total remuneration (including their injury award) than those retained on a full-time basis, which raises questions of fairness. **Comments would be welcome as to whether the concept of a “top-up” arrangement to compensate officers who are able to be retained in their force only on a part-time basis for a reduction in hours worked as a result of a permanently disabling injury would be practicable.**

2.5. Separate consideration is given at 4.20 to 4.27 to the issue of whether there should be a cut-off in eligibility for an injury award after having ceased to serve.

Range of injuries attracting an award

2.6. Under the current regulations an injury can be both physical and mental. Even if injuries were to be restricted to those incurred in the course of operational policing there is a strong argument for awards to cover mental injuries, for example post-traumatic stress syndrome. The Government does not favour excluding mental injuries from the scope of injury awards. An injury award is payable only where an officer is permanently disabled. The criteria for permanent disablement for mental reasons have already been strengthened so that it can apply only to cases where the medical practitioner selected by the police authority – referred to henceforth as the selected medical practitioner (SMP) - can make a diagnosis which conforms to medical criteria which have general clinical recognition. The current internationally authoritative guides are ICD 10 (International Classification of Diseases) and DSM IV (Diagnostic and Statistical Manual).

2.7. Regulation 7(4) of the Police (Injury Benefit) Regulations 2006 states that disablement “means inability, occasioned by infirmity of mind or body, to perform the ordinary duties of a member of the force”.

The Police Negotiating Board Agreement of May 2002 included the introduction of a clear medical definition of infirmity as the basis of what type of condition could or could not lead to permanent disablement. As a result, Regulation 7(8) provides: *In this regulation “infirmity” means a disease, injury or medical condition, and includes a mental disorder, injury or condition.*

2.8. **It is therefore proposed that injuries qualifying for an award should continue to include mental injuries provided the safeguards of restricting permanent disablement to medical causes are retained.**

Disablement as a result of an injury

2.9. Regulation 8 of the Police (Injury Benefit) Regulations 2006 provides that “disablement [...] shall be deemed to be the result of an injury if the injury has caused or substantially contributed to the disablement or death or the condition for which treatment is being received”. The use of “substantially” causes problems, since practitioners do not know for sure what it means. Most would agree that it means 51% but there may be arguments about whether it also means, or should also mean, say, 26%. The courts have frequently referred to the need for a causal connection between the disablement and duty. It is not considered that “substantially contributed to” is helpful in enabling the SMP to establish a causal connection which is sufficiently clear to justify an injury award.

2.10. By the same token, it would be over-restrictive to limit injury awards to disablement wholly caused by an attributable injury. It would be perverse to refuse a seriously injured officer an award because his or her disablement had been made worse by the effects of an unrelated injury which occurred recently whilst off duty. For example, an officer may have sustained minor head injuries due to a fall at home, which then exacerbated the effects of a more serious head injury sustained soon afterwards on duty, and worsened the officer’s condition. A move

to “wholly or mainly” would also bring the police injury awards scheme in line with other public sector schemes, such as the Principal Civil Service Pension Scheme (PCSPS) for example.

2.11. It is important to recognise that such a change would not remove the need for apportionment (discussed further in paragraphs 4.9 to 4.12), but simply strengthens the preliminary assessment stage to ensure that only the most appropriate claims are considered further. **It is proposed that disablement should be deemed to be the result of an injury if it was wholly or mainly caused by the injury.**

Injury attributable to duty

2.12. The current regulations provide a simple test for a connection between injury and duty. The main provision in Regulation 6 is that an injury is to be regarded as received “in the execution of his duty as a constable” “if the member concerned received the injury while on duty”. This provides a temporal connection which gives clarity but its very simplicity is arguably at the expense of requiring a causal link between the injury and the office of constable. An officer who is injured as a result of spilling boiling water on himself while making tea while on duty would be as eligible for an award as an officer who has been attacked while making an arrest. It is true that the current regulations exclude injuries due to the default of the officer, but that still raises the question whether making tea should be treated as part of the duties of a constable in the first place.

2.13. In recent years the courts have set limits on the all-embracing nature of this definition. In *Stunt* the Court of Appeal held that the stresses and strains of disciplinary procedures could not be regarded as an injury in the execution of duty. In *MacDonald* the Scottish Court of Session concluded that the officer’s feelings and perceptions about his colleagues’ attitudes to his work could not be considered as an injury arising from the execution of his duties as a constable, even if the stress caused was experienced whilst at work. More recently

still, in *McCullough*, it was determined that an officer’s adverse reaction to a “legitimate exercise of... management function” could not be considered an injury on duty, despite the fact that there was a direct and causal link between the reaction and the exercise of duties as a constable, and that the anxiety suffered was again experienced whilst at work. Such decisions therefore call into question a simple and all embracing *temporal* connection as outlined above. Furthermore, in *Jennings*, the Administrative Court ruled that an accident which occurred whilst on duty, and which accelerated the symptoms of an existing naturally occurring condition, could not be considered as the basis for an injury award. The nature and severity of the condition would have been the same whether or not the accident had occurred – the accident had merely brought the symptoms, and the disability, forwards. This makes it appropriate to examine very carefully how injuries received while on duty should be treated in future.

2.14. In considering how best to set down criteria under which an injury may qualify for an award because it is attributable to duty, the Government has taken into account the need to balance the interests of the officer with the interests of the police authority. For officers it is important that they should have a reasonable level of reassurance that they will be looked after if they are injured because of their duties. For the police authority, and the service as a whole, it is no less important to be able to administer the system consistently and fairly and with due regard to the need to control public expenditure. Indeed, when police authorities assess cases to determine their eligibility under the criteria set out below, they may not always be able to make an exact decision depending on the available evidence and circumstances of the case. However, this should not prevent the case from progressing further if necessary, as police authorities should be basing their assessments on the balance of probabilities where it has not been possible to make a decision based on certainty.

Injury attributable to the duties of a constable only

2.15. In the thematic inspection report, Lost Time, HM Inspectorate of Constabulary stated: It is the view of HMIC that [...] *“injury on duty” should be restricted to injuries attributable to the office of constable in dealing with the public and injuries sustained in the course of training for such duties.*

A survey conducted in May 2007, in which all forces in England, Wales and Scotland were asked to provide information on all injury awards and awards payable to survivors for death in the line of duty between April 2005 and May 2007 resulted in the finding that only 19% of cases were classified as due to non-operational duty. However this raises the question whether it is right not to exclude the routine duties of, say, an officer in a desk job, if they form part of the proper duties of a constable. Arguably, any task which an officer is required to carry out in the execution of duty has some operational value.

2.16. A definition on the lines suggested by HMIC is also likely to lead to uncertainty over what is and is not covered. The preferable approach is to keep the presumption that all injuries received while on duty (including after placing oneself back on duty) are attributable to the duties of a constable, and therefore received in the execution of duty, unless they are specifically excluded.

Specific Exclusions

2.17. It is proposed that the definition of in the execution of duty should cover all instances while on duty except where specifically excluded in the regulations. It is proposed that injuries received in the following circumstances should be excluded:

- Injuries while taking part in sport*;
- Injuries before or after work or training;
- Injuries while taking a break from work or training;**
- Injuries as a result of any proceedings or investigation undertaken by the force in respect of the officer under police regulations, such as disciplinary or medical retirement proceedings;***
- Injuries as a result of any other proceedings or investigation in respect of the officer such under Health and Safety legislation or in the context of criminal, or possible criminal, proceedings;
- Injuries as a result of a dispute with, or grievance against, other officers or management;
- Injuries as a result of an injury to, or proceedings, investigation or dispute involving, a fellow officer in any of the above circumstances;
- Injuries as a result of incidents in which the officer was not directly involved through duty.

*NOTE: There is a case for making an exception for officers who are required to undertake sporting activities as part of the execution of their duties as fitness instructors etc.

**NOTE: “Break” in this context means a defined allowance of time off duty, for example a lunchbreak. However, simply making a cup of tea or going to the washroom and returning to work immediately afterwards would not constitute a defined allowance of time off.

***NOTE: The status of an injury as an effect of disciplinary procedures has been mentioned above, but this review provides the opportunity to also consider the status of an injury suffered at one remove. It is clear that the number of police officers involved in a traumatic incident may not be confined to those actually attending at it, since others may, for instance, be in direct communication with colleagues on the scene. There is a strong case for any officer involved in an incident through duty to be covered by the injury award scheme. However it is suggested that an injury should not be classed as received in the execution of duty if suffered by an officer who had no direct involvement in such an incident through duty – ie as a result of what he or she was required to do as part of his or her duties at the time.

2.18. It is also for consideration whether police authorities should have the power to decline to consider claims for injury awards arising from incidents, particularly if occurring away from the front line, which in their view should be tested by means of a compensation claim under the normal provisions for employer’s liability. The system of injury awards is not well suited to cases where there is a need to establish degrees of culpability on the part of the force and the degrees of contributory fault or negligence on the part of the officer. It may be argued that the combined effect of the other changes being proposed in this document makes a further change on these lines unnecessary, but it would be helpful if comments were received on this issue. If such a power were to be included in the Police (Injury Benefit) Regulations there would have to be a means of appeal against it. **Comments are invited on whether a police authority should have**

the discretion to decline a claim for an injury award where it considers that the claim would more appropriately be decided by the courts.

Cover while off duty

2.19. The current regulations provide safeguards for an officer who is injured while off duty. Regulation 6(2) provides for three types of case: at (a) “if – the member concerned received the injury while [...] on a journey necessary to enable him to report for duty or to return home after duty”. This is considered at paragraph 2.31 below; at (b) “if – he would not have received the injury had he not known to be a constable”. This is based on a causal connection with the member’s holding the office of constable; at (c) “if – the police authority are of the opinion that the preceding condition may be satisfied and that the injury should be treated as on received as aforesaid”. Again, this is based on a causal connection with the office of constable, albeit of a less specific nature.

2.20. The provisions at (b) and (c) above give valuable reassurance to officers – for instance, a police officer may be the subject of an unprovoked attack while off duty because he or she has been identified as such. It is also recognised that the reasons for an attack may not always be entirely clear but might have been because the officer was thought to be or suspected or being a member of the force. **It is proposed to retain the current provisions in Regulation 6(2) which provide safeguards for an officer who is injured whilst off duty.**

2.21. There is also a need to consider the case for a wider-ranging protection in view of the possibility of a terrorist attack on the police, perhaps in the form of an attack on a police station. In such an event injury could be caused to an officer whether or not he or she was on duty, playing sport or having a rest period at the time. **In addition to the protection afforded by the provisions for awards for injury outside the hours of duty, it is proposed that**

an injury should be regarded as received in the execution of duty where the police authority is of the opinion that the injury is the result of an act intended to cause harm or fear of harm and the act was aimed either at the police force in general, at members of the police force in general, or at specific officers.

2.22. The intention behind an attack on the police will usually be self-evident but it would be prudent to provide for the case where intention is less than clear. **As an additional safeguard it is proposed to provide, in the same way as (c) above, for the police authority to exercise discretion and treat an injury which is the result of an act which may have been intended to cause harm or fear of harm, and may have been aimed either at the police force in general, at members of the police force in general or at specific officers, where they consider that the relevant conditions may be satisfied.**

Awards for injuries received on journeys to and from work

2.23. In *Lost Time* HM Inspectorate recommended the discontinuation of automatic cover in such circumstances. The reason why journeys to report for duty and to return home from duty are covered in the current regulations stems from a time when officers were required to travel to and from work in uniform and were subject to strict limits as to how far away they could live from their place of work. Nowadays police officers will normally go to and from work in civilian dress and may often cover considerable distances. The recommendation of HM Inspectorate of Constabulary is supported since the ability to place oneself on duty and the provisions at (b) and (c) above provide sufficient protection.

2.24. An examination of other key public sector compensation schemes highlights that the police injury benefits system is currently alone in offering awards for injuries received on journeys to and from work. For example, the NHS Injury Benefit Scheme does not cover injuries sustained whilst on a normal journey travelling to or from work (except for community nurses who may be entitled). The Civil Service Injury Benefits Scheme does not consider as eligible injuries suffered in the course of a journey between the person’s ordinary place of residence and his place of employment, although there are certain allowances made to recognise periods of time spent on detached duty, or whilst attending meetings or training courses. Firefighters similarly are not eligible to receive an award if the injury is sustained whilst travelling to or from work. In the light of this, it becomes more difficult to argue for the retention of the provision in the police scheme, especially when NHS employees and fire fighters will also be involved in shift working.

2.25. A change which made injuries sustained while on a journey to or from work no longer classed as received in the execution of duty would not deprive any officer of cover if he or she had to

make an arrest while on such a journey or otherwise had to put himself or herself on duty. As stated above, it is proposed to retain and strengthen such protection. **It is proposed to discontinue the provision under which an officer qualifies for an award by virtue of being injured while travelling to and from work where there is no other causal connection between the injury and the status or duties of a constable.**

3. CALCULATION OF POLICE INJURY AWARDS

Format of injury awards

3.1. Under the Police (Injury Benefit) Regulations 2006 an injury award is payable in the form of a lump sum gratuity and a minimum income guarantee. The gratuity ranges from 12.5% to 50% of average pensionable pay depending on the degree to which the officer’s earning capacity in any occupation has been affected. The minimum income guarantee varies from 15% to 85% of average pensionable pay depending on length of service and loss of earning capacity. The injury pension is the payment due to the officer after three quarters of any other police pension and specific State benefits have been taken into account.

3.2. Although there are clear advantages, in the form of less administration, in paying an officer a lump sum on retirement to help him or her with the inevitable initial costs of a life outside the force, there are significant benefits for both officer and police authority in the award comprising a mixture of lump sum and periodical payments rather than a larger lump sum. For the officer periodical payments mean

that he or she does not have to rely on investment income from the lump sum, which may fluctuate and may not allow for year-on-year increases to keep in step with price rises. For the authority it means that there is a more even spread of expenditure, which can later be increased or reduced to suit altered circumstances.

3.3. It is noted that the Armed Forces have introduced a scheme involving lump sum payments for attributable injuries, but a tariff which differentiates between the loss of one eye and the loss of two lends itself more to battle-field injuries than civilian life, even on the front line. **It is proposed that a police injury award should continue to consist of an initial gratuity plus a regular income in the form of continuing periodical payments.**

Scale of awards

3.4. The current scale of injury awards is set out in Schedule 3 to the Police (Injury Benefit) Regulations 2006 and are as follows:

Loss of earning capacity	Gratuity as % of APP	Minimum income guarantee as % of average pensionable pay (APP)			
		Less than 5 yrs’ service	5 or more but less than 15 yrs’ service	15 or more but less than 25 yrs’ service	25 or more yrs’ service
25% or less (slight loss of earning capacity)	12.5%	15%	30%	45%	60%
More than 25% but not more than 50% (minor loss of earning capacity)	25%	40%	50%	60%	70%
More than 50% but not more than 75% (major loss of earning capacity)	37.5%	65%	70%	75%	80%
More than 75% (very severe loss of earning capacity)	50%	85%	85%	85%	85%

Basis for assessing scale of injury pensions

3.5 Without necessarily altering the basic scale of awards, consideration needs to be given to whether these should be graded to compensate for pain and suffering, loss of functionality or continue to be graded to compensate for loss of earning capacity.

3.6 At present where a person comes on the grid for determining the size of an injury pension depends on his or her “degree of disablement” and his or her length of service. The SMP is required under the regulations to advise the police authority on the former. Regulation 7(5) of the Police (Injury Benefit) Regulations 2006 provides: *where it is necessary to determine the degree of a person’s disablement it shall be determined by reference to the degree to which his earning capacity has been affected as a result of an injury received without his own default in the execution of his duty as a member of a police force*

3.7 If we are to retain an injury pension in order to supplement other benefits up to the level of a pre-set minimum income guarantee, then the ready answer is to keep it related to loss of earning capacity. However, a long-standing objection to using loss of earning capacity has been the difficulty involved making an accurate and robust assessment.

3.8 Basing an injury pension wholly on the loss of normal functioning would perhaps be too subjective, as it would depend substantially upon the definition of “normal”. Loss of earning capacity reflects more accurately the main purpose of the injury award, to compensate for a loss of livelihood caused by the injury, and may also be easier to determine. There is evidence of an ability of SMPs and Police Medical Appeal Boards to determine the loss of earning capacity with increasing confidence. There may be some SMPs who do not share this confidence, but a change of system is not the answer. Instead each SMP should have access to clear guidance and training to ensure he or she feels supported in making decisions.

3.9 **It is proposed that the injury pension should continue to be related to loss of earning capacity, a decision which should rest with the SMP, as outlined at 6.4.**

3.10 The scale of injury pensions is also based to a certain extent on an officer’s length of service, other than in the most severe cases. On the one hand, this is understandable – officers with more years’ service will be nearer to the State Pension age than those with fewer years’ service, and will thus have less opportunity to build up an alternative salary or pension. On the other hand, this could be seen as indirect discrimination against younger officers on the grounds of age. **It is proposed that the scale of injury pensions should remain based on an officer’s length of service, although comments would be welcome on the issue of whether this is discriminatory against younger officers with less service or whether this difference in treatment can be objectively justified.**

Method of assessing loss of earning capacity

3.11 The Police (Injury Benefit) Regulations do not set out a specified procedure for assessing the degree of a person’s disablement. The Administrative Court has, however, commented that the task in assessing earning capacity is to assess what the person is capable of doing and thus capable of earning. It is not a labour market assessment of whether somebody would actually pay that person to do what he or she is capable of doing, whether or not in competition.

3.12 Under the current guidance issued by the Home Office the loss of earning capacity in any case where the claimant is of an age at which he could still have expected to be a serving police officer is to be assessed by comparing the likely outside pensionable (or basic) salary he or she could now be expected to earn after his injury with the pensionable police salary earned when last serving. There is no absolute reason for using the claimant’s police salary as a benchmark for pre-injury earning capacity but it has been adopted by police authorities as a means of keeping the process as

fair and transparent as possible – being based on fact (ie what the claimant was earning) and not on speculation about what the claimant might have been able to earn.

3.13 The reason for using pensionable earnings for assessing both pre- and post-retirement earning capacity is to arrive at the fairest and most robust measure of loss of earning capacity for the purpose of a pension which may be payable for a considerable period of time. It avoids one officer, who was doing a lot of overtime at the point of injury, gaining an advantage over an officer who was not.

Example

3.14 If a person had earnings as a police officer of £32,000 a year and it is thought that he or she could now earn £24,000 a year, then the loss in earning capacity would be £8,000, which would be 25% and would place the person in the “slight disablement” category.

3.15 If there has been a gap between retirement and the injury award claim, the police salary benchmark will keep step with police pay movements since the claimant left the force - by reference to the current equivalent to the claimant’s pensionable pay point at retirement.

3.16 **It is proposed to retain the use of the claimant’s pensionable police salary at the point at which he or she last served as the benchmark for pre-injury earning capacity. It is not considered necessary to amend the regulations to this effect but to keep this as a matter of guidance.**

Officers with part-time service

3.17 Some claimants will have been police officers on part-time service at the point of leaving the force. A claimant who has had part-time service in the police will receive an injury award reduced by the same proportion as his or her actual reckonable service bears to the reckonable service he or she would have had if serving all the time as a full-time officer. It is therefore important not to apply pro-rating twice over for the same reason. In such cases

the claimant’s notional full-time pay should be used as the benchmark for pre-injury earning capacity unless there is a pre-existing medical reason for the officer having to work part-time.

3.18 Where the claimant is serving restricted hours due to a pre-existing disablement his or her actual pensionable pay should be used as the benchmark. This may result in a smaller injury award than the claimant would otherwise have received but the process will be based on an accurate assessment of loss of earning capacity and will not involve double counting provided care is taken not to take the same pre-existing disablement into account for a second time when considering apportionment – see 4.9.

3.19 **It is proposed to use the full-time pensionable police salary as the benchmark for pre-injury earning capacity unless the claimant was serving immediately before retirement as a part-time officer because of a pre-existing disability.**

Retaining broad bands of assessment

3.20 The method proposed above for determining the loss of earning capacity is able to produce very precise percentages. It is therefore feasible to argue in favour of a greater number of bands than the four which are currently used. One advantage of more bands is that retired officers would have benefits which were more closely matched to their individual needs. A disadvantage is that there would be greater scope for disputes arising from former officers being assessed as just below the starting point for a higher band. Although the current system of measuring loss of earning capacity, which we propose to retain, can produce very precise percentages, these figures are still ultimately a matter of opinion which can be argued either way. For that reason this review does not favour a significant change to the current four wide bands of degrees of reduction in earning capacity. What is needed is a reasonably robust system which can allow for some variations in percentages within bands without affecting an award.

It is proposed to retain the present bands of assessment – slight, minor, major and very severe.

Introduction of a 10% threshold

3.21 There may be an argument for awarding a lump sum gratuity, in recognition of the fact that the officer sustained an injury which has caused permanent disablement, but there can be little justification for an injury pension to compensate for loss of earning capacity, where there has been no such loss or virtually no lasting change. Injury benefits for the NHS and the Civil Service are payable only where the reduction in earning capacity is more than 10%. The research exercise carried out in May 2007 showed that of the 221 injury or survivor awards granted in April 2005 – 2007, approximately 8% had a degree of disablement of 10% or less, a not insignificant number. Creation of a new band may therefore help to reduce the cost of the scheme and target resources to where they are most needed. In addition, the exercise identified that over half the officers who appealed against their original injury award were in the 0-25% degree of disablement bracket, whereas only 17% of awards fell into that banding. More defined lower bandings could, perhaps, reduce the number of officers with nothing to lose by making an appeal, which would in turn free up resources for other cases. **It is proposed that an injury pension should be paid only for a reduction in earning capacity of more than 10%.**

Injury gratuities

3.22 Although it has been proposed above to limit injury pensions to cases where the loss of earning capacity is over 10%, there is a case for treating an injury gratuity differently. Retention of the current system, whereby officers with a degree of disablement of 25% or less would all receive a gratuity, even below the 10% threshold, would enable forces to recognise that whilst the loss of earning capacity may have been minimal or nil, it is still important to acknowledge the fact that an injury has occurred. **It is proposed to make gratuities payable to acknowledge the fact that an injury has occurred, but within the present system of bandings.**

3.23 At present the gratuity paid for an injury in the execution of duty ranges from 12.5% of average pensionable pay to 50% based on loss of earning capacity. In the case of an officer assessed to have his or her earning capacity totally and permanently reduced, the gratuity of 50% average pensionable pay is currently increased to the level of the disablement gratuity. This is an award payable under Regulation 12 of the Police (Injury Benefit) Regulations 2006. It is set at either five times the value of the officer’s pensionable pay on his or her last day of service, or four times his or her total remuneration during the 12 months ending with his or her last day of service and the amount of the officer’s aggregate pension contributions during that period, whichever is the lesser.

3.24 It is considered that the scale of the death gratuity is unnecessarily complex. It also leads to unnecessary distinctions, say between two officers on the same basic pay where one had completed a year with a large amount of overtime and the other had not. It would be easier to explain and administer, and be more in line with the lump-sum death grant, if the disablement gratuity were simply related to the officer’s pensionable pay at the time of death expressed at as annual rate. **It is proposed to make the disablement gratuity five times average pensionable pay in all cases.**

3.25 It is important to note that all the proposed provisions are based on the officer’s average pensionable pay, rather than pensionable pay on his or her last day of service. This would bring to an end the distinction between the death gratuity and the other lump sum death benefits. For officers with part-time service, average pensionable pay should be pro-rated for the purposes of this calculation, to ensure an appropriate calculation.

3.26 It has been considered whether the gratuity should be payable in respect of pain and suffering rather than loss of earning capacity, but this is a very subjective measurement (if at all) and is likely

to result in police authorities assessing levels of pain and suffering in very different ways, and with an increased chance of officers challenging decisions they do not agree with. To retain as much objectivity as possible, the lump sum should instead be viewed as a way of providing immediate compensation for an abrupt reduction of earnings to cover living costs and any other necessary adjustments caused by the injury. **It is proposed to continue linking the level of the lump sum to the officer’s loss of earning capacity as an indicator of the severity of the injury and the immediate financial needs of the individual officer.**

3.27 The proposed new scale of injury awards would be as follows:

Terms used for benefits under injury awards

Degree of disablement

3.28 The term “degree of disablement” arguably has nothing to do with loss of earning capacity to the uninitiated. There seems no reason to retain the term, when all the required assessments and

calculations of the injury award are carried out so as to arrive at the loss of earning capacity that the officer has suffered. **It is therefore proposed to change “degree of disablement” to “loss of earning capacity”.**

Injury pension

3.29 Another term worth re-examining is “injury pension”. Use of the word “pension” suggests that this is a fixed amount and also a benefit within the Police Pension Scheme. It is neither: the injury pension is no more than the amount which remains to be paid after all relevant income has been deducted from the minimum income guarantee; and, as discussed at the beginning of this chapter, injury awards are not pension scheme benefits.

3.30 **For the sake of clarity it is proposed that an injury pension should in future be called an “injury earnings supplement” to reflect the distinction from pension scheme benefits.**

Loss of earning capacity	Gratuity as % of APP	Minimum income guarantee as % of average pensionable pay (APP)			
		Less than 5 yrs' service	5 or more but less than 15 yrs' service	15 or more but less than 25 yrs' service	25 or more yrs' service
10% or less (very slight loss of earning capacity)	12.5%				
More than 10% but not more than 25% (slight loss of earning capacity)	12.5%	15%	30%	45%	60%
More than 25% but not more than 50% (minor loss of earning capacity)	25%	40%	50%	60%	70%
More than 50% but not more than 75% (major loss of earning capacity)	37.5%	65%	70%	75%	80%
More than 75% (very severe loss of earning capacity)	50%	85%	85%	85%	85%
Permanent total loss of earning capacity	Disablem't gratuity	85%	85%	85%	85%

4. CONDITIONS APPLYING TO INJURY AWARDS

Injury received without default

4.1 The current regulations provide for the payment of an injury award to a person who ceases or has ceased to be a member of a police force and is permanently disabled as a result of an injury received without his own default in the execution of his duty.

4.2 Regulation 6(4) provides:

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

4.3 The question of default is for the police authority to consider. The inclusion of “serious and culpable” as the test provides protection for officers who may have contributed to their injury through a momentary lapse of concentration, but it may also allow an officer to receive an award even though his or her actions were on the verge of total irresponsibility. If negligence means lack of proper reasonable care then serious negligence arguably sets a very high threshold for default, and to a certain degree removes the obligation on the officer to take responsibility for his or her actions. Indeed, only 70% of the forces that responded to the research exercise stated that they consider the question of default before referring a claim to an SMP. The need to apply such a high threshold may be a contributing factor in this reluctance to consider default. It would arguably be raising the threshold for default too high to admit a claim for an injury as a result of, say, an officer driving through traffic lights set at red.

4.4 One possibility is that the definition of default should be amended to read “wholly or mainly due to his own negligence or misconduct”. Any claim for an injury involving either on the part of the officer could instead be considered in the context of a specific claim for compensation where the degree of contributory negligence or misconduct could be decided on a case-by-case basis.

4.5 An alternative would be to apply a more precise qualification to the way in which an officer is required to act in order to qualify for an injury award. For instance an officer would qualify for an award only if it was sustained as a result of something which he or she was required to do in order to perform the duties of a constable. This would arguably introduce a sensible minimum requirement of competence and care on the part of the officer, but it could also leave officers unsure about their being protected in operational situations requiring split-second decisions – such as high-speed chases – as to what was the “right” thing to do.

4.6 A third possibility is to use the definition suggested at paragraph 4.4 but add in a safeguard specifically for high-pressure situations or split-second decisions. It could be argued that the issue of negligence is inappropriate where an officer is acting in good faith in a confrontational situation or when trying to save life and does not have the time to reflect on what he or she is about to do. In such cases default should be considered applicable only where there was misconduct or clear irresponsibility. **It is proposed to amend the definition of default to mean misconduct or negligence for all circumstances. However, it is also proposed that, to recognise the added complications of high-pressure situations or split-second decisions, and to ensure officers do not hesitate due to uncertainty about the extent to which they are covered, officers are eligible for an award when:**

- **trying to save life or protect oneself or another from physical attack;**
- **responding to an emergency;**
- **trying to make an arrest or otherwise apprehend a person resisting or evading arrest or being apprehended;**

except if there was evidence of serious and culpable negligence or misconduct.

Disablement as a result of the officer’s default

4.7 Regulation 38 provides:

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

4.8 This is a medical decision, since it is a question of default in the causation of disablement, not the injury. In the context of an injury award this may at first sight seem to split hairs, but it has a role to play in that it allows the police authority to adjust the award where default is a factor in the loss of earning capacity. In this context default can arguably include self-neglect as well as in other forms of negligence and misconduct. The origin of this provision is in regulations which provided for the reduction of ill-health pensions as well as injury awards on the grounds of default. In the procedure for considering applications for injury awards there is already a means of screening out claims where the **injury** was received with default. No such test applies for ill-health pensions. There can be a difference between the default leading to the injury (e.g. walking in an area cordoned off as dangerous) and the default contributing to the disablement (e.g. falling more heavily than to be expected because of being seriously over-weight for no medical reason). However, the key factor in a claim for an injury award is the degree of loss of earning capacity attributable to the injury. Requesting the SMP specifically to advise on default in the examination of causation of disablement in an injury award case does not directly answer that point. It is therefore for consideration whether it would not be simpler and more effective to ask the SMP to advise on the extent to which factors such as smoking or self-neglect contributed to the loss of earning capacity – as part of the procedure for apportioning this loss.

Subject to default being a factor which can be taken into account in apportionment – see below – it is proposed that there should no longer be a provision for the SMP to advise specifically on default.

Apportionment

4.9 Recently the courts have developed case law setting out a three-stage procedure for leading up to determining the extent to which loss of earning capacity is the result of the qualifying injury:

1. **determine whether disablement is the result of an injury received in the execution of duty;**
2. **determine the loss of earning capacity as a result of permanent disablement; and**
3. **determine the degree to which that loss is the result of the qualifying injury.**

4.10 We recognise that such case law has also highlighted the importance of making the policy of apportionment as clear as possible. A fuller account of apportionment is given at Appendix C, but the key is that at the third stage the SMP needs to identify each factor which has caused loss of earning capacity and assess the amount by which each factor has made a distinctive contribution to that loss. In 2.11 above, the proposal to assess the degree of disablement based on whether it was wholly or mainly caused by the injury has been introduced. This does not remove the need for apportionment, as the latter is still necessary to reach a conclusion regarding the relevant loss of earning capacity. A seemingly simple case of disablement caused by an injury in the execution of duty may, upon further examination involve an officer whose loss of earning capacity has a number of causes. Apportionment is a means of examining and assessing these different factors, to determine which are related and which are not to police duty.

4.11 Apportionment may also be used to determine the effect of an officer's default on the loss of earning capacity, and therefore whether the injury award should be reduced. The effect of considering default in the context of apportionment, instead of under Regulation 38, should help to assure it is given no more and no less weight than appropriate. However, there is the concern that default may not always be clearly identifiable as a distinctive factor, as its effect may be in some cases only to aggravate, rather than cause, loss of earning capacity. If Regulation 38 were to be repealed safeguards would need to be built in to ensure that default could be used in apportionment in its own right – if necessary by amending the regulations.

4.12 **It is proposed that the system of apportionment developed by the courts should be maintained, and that the SMP should have the final decision in determining the loss of earning capacity on the basis of the apportionment. Comments would, however, be welcome as to whether to make the issue of default as a reason for reducing the size of the award no longer a separate question for the SMP, but part of the process of apportionment.**

Abatement of injury awards to take account of other compensation

4.13 Injury awards are paid on a no-fault basis, but this does not preclude an officer from seeking separate redress through the courts if he or she has a cause of action. No account of payments for damages and compensation is taken under the current regulations except for certain State benefits, although they are taken into account in the more recent provisions for the disablement gratuity payable under the Police (Injury Benefit) Regulations 2006. The incidence of litigation to seek compensation has increased significantly in recent years and it needs to be considered whether all injury awards should now take such payments into account, including criminal injuries compensation payments.

4.14 One reason for taking other payments into account is that it will often be a matter of chance whether one officer is able to claim additional damages for an injury from an identifiable third party or from the police authority. It is true that such a policy might act as a disincentive for seeking damages against a party clearly at fault, but the greater priority as a matter of public policy is that an injury award should bring a former officer up to a certain level of compensation for a certain level of injury.

4.15 Under such an approach, the injury pension (injury income supplement) could take damages or compensation for loss of earnings into account. Similarly this regulation could be formed so that the injury pension could also take damages or compensation for pain and suffering into account as well. Other sources of compensation would include payments by the Criminal Injuries Compensation Authority which have not taken the injury award into account. This would bring injury awards in line with the disablement gratuity and the death gratuity. **It is proposed that any compensation or damages payable to the officer in respect of the injury should be taken into account when paying the award. However, as with the disablement gratuity and the death gratuity, "compensation" should not be deemed to include compensation awards which have themselves already been reduced by the amount of any injury gratuity paid or payable, so as to avoid the risk of a possible double reduction.**

Abatement for other benefits

4.16 The interaction between injury benefits and DWP-administered State Benefits needs to be considered. First, under the current Incapacity Benefit regime police injury and ill-health benefits are offset against Incapacity Benefit. The effect of this is that the level of injury pension will increase as the level of incapacity benefit decreases. Secondly, Industrial Injuries Disablement Benefit provides non-contributory no-fault benefits for

disablement because of accident at work or one of over 70 prescribed and listed industrial diseases known to be a risk of occupation. Payments range between £27.36 and £136.80 per week. The DWP are reviewing their system of benefit payments and plan to replace Incapacity Benefit with the Employment and Support Allowance from October 2008 but it is understood that the new Employment and Support Allowance will continue to take account of other pension payments in the same way as Incapacity Benefit.

4.17 The police injury awards system is not alone in taking other such benefits into consideration. For example, the Local Government Scheme requires that any of an employee's rights to benefits, compensation, damages etc. must be taken into account. Similarly, under the firefighters' scheme, the firefighter must declare what benefits he or she is receiving so that the authority can reduce the injury pension payable by the appropriate amount.

4.18 In order to encourage consistency and fairness across forces, and in comparison with other public sector injury benefit schemes, it is considered important to retain the police injury benefit system's commitment to taking other benefits into account. **It is proposed to retain the current requirement, as provided in Schedule 3 to the Police (Injury Benefit) Regulations 2006, that other benefits must be taken into account when the level of injury award is being set.**

4.19 This is a potentially complex issue, and there is a need to ensure consistency and fairness of practice across forces. Central guidance should be enough without the need for regulations. After looking at best practice across forces, it seems that the most effective way would be to make payment of an injury award dependent on the officer applying to DWP and confirming his or her entitlements, so that they can be determined from the outset. Police authorities should also contact DWP on a yearly basis to ensure that any information

held regarding an officer's entitlement to benefits is fully up to date, and the injury award adjusted accordingly. **It is proposed to require officers to apply to DWP and confirm entitlement to State Incapacity Benefits (or the Employment and Support Allowance from April 2008) before any payment of an injury award is made. It is also proposed that this is an issue to be covered by detailed guidance to police authorities, rather than by amendments to the regulations, although comments are also invited on this issue.**

Time limits for new claims

4.20 There are currently no time limits on making claims for an injury award. A disadvantage of having any set time limit is that it may encourage claims to be made sooner than necessary in order to safeguard one's position. On the other hand, having no time limit can in some cases make it very difficult for a police authority to collect sufficient relevant evidence on which to base an informed decision on the merits of a claim.

4.21 Placing a time limit on a claim for an injury award would also have specific implications for *servicing officers*. The current policy is that an injury award claim should be considered only once an officer has ceased to serve. It is therefore imperative for an officer to have no time limit on such a claim whilst still in service so that it can be held over until the point of retirement and considered in the light of up-to-date information, taking account as necessary of any impact had on the disablement by any further qualifying injury. This view is strengthened by the fact that the research exercise undertaken in May 2007 revealed a huge variation in the time period between the point at which an officer was injured and the point at which an officer ceased to serve as a result of this injury. Although the average time period between the two dates was two to five years, the longest time 26 years. Needless to say, an officer's situation can change considerably over such a period – an injury and its effects may improve, or may get worse, which may in turn affect the extent

to which the officer is permanently disabled for the duties of a constable upon retirement, and the degree of loss of earning capacity.

4.22 Different considerations apply to officers who make claims after they have left the service. The longer a claimant is away from the police service the harder it will be to determine whether his or her loss of earning capacity is attributable to police duty, and not due to other factors such as non-police employment or the ageing process.

4.23 It is noted that the Limitation Act restricts legal action for personal injury to three years from the date on which the cause of action accrued or, if later, the date of the claimant's becoming aware of the problem. Given that this is an occupational scheme there is a case for allowing longer than three years, in order to allow a margin for later applications. The normal limit on a retired officer for applying to revise a lower-tier ill-health pension upwards is five years and it seems reasonable to apply the same time limit here.

4.24 It has been agreed by the PNB that there should be some flexibility in applying a five-year limit to claims for an upward review of a police ill-health pension, since too rigid a time limit would prevent a claim in respect of, say, a progressive disease which causes disablement after a longer period than five years. There is a good case for applying the same flexibility to injury award claims, since otherwise a retired officer would be obliged to take the police authority to court for a claim which it would otherwise have had no reason to refuse. It is at this stage important, however, to distinguish between pre-existing progressive conditions which have been accelerated by an injury and which do not qualify for an injury award (as discussed in 2.15 above), and conditions which are caused by the injury and are themselves of a progressive nature. **It is proposed that no claim for an injury award can normally be made more than five years after the officer has ceased to serve as such, but**

that an exception should be made for a medical condition which;

- **is of a progressive nature; or**
- **has a long incubation period.**

4.25 It would be feasible simply to stipulate in the regulations that the condition must be one which is generally clinically recognised to be progressive or to have a long incubation period. However, this could give rise to disputes over whether or not a condition qualified as such. In order to keep the injury award scheme relatively simple and transparent, it is therefore proposed that exceptions may be made for conditions which are included in a list in the regulations. The list could be regularly reviewed and extended if necessary. **It is proposed that the regulations list the below set of conditions as excluded from the five year post-retirement limit on new claims:**

- **AIDS;**
- **Other blood-borne viruses, e.g. Hepatitis C;**
- **Cancer;**
- **Post Traumatic Stress Disorder; and**
- **Brain injuries.**

Age limit for new claims

4.26 There is a strong case for limiting claims for injury awards to those who would still have a reasonable expectation of full-time employment but for the injury. The purpose of awards is, after all, to provide compensation for loss of earning capacity. Council Directive 2000/78/EC allows for age limits on entitlement to invalidity benefits. In addition, 65 is the age at which male officers become able to receive their State Pension (at present, it is 60 for women, but this is due to rise to 65 by 2020), and so arguably it is the point at which loss of earning capacity becomes less relevant, as in normal circumstances the officer would no longer be

earning anyway. What lies at the heart of this is therefore the principle that injury awards are not to compensate for loss of earning capacity for the entirety of an officer's life, but for the length of his or her active, earning service. **Therefore it is proposed to have an overall age limit of 65 on all claims for injury awards, after which age officers are not able to submit a new claim. The age would be reviewed in line with the State Pension Age once there is a common age for both men and women.**

***NOTE:** For the purposes of this review, the State Pension age is referred to as being aged 65, even though this may not be the case as yet for women. Once the State Pension age reaches 65 across the board, and in the future goes above this age, then this, and not 65, will be the point of reference.

4.27 If implemented, this would mean that an officer who retired at the age of 64 would only be able to apply for an injury award up to the age of 65. In other words, the age limit of 65 takes precedence over the five year period, which would not apply in full.

5. CONDITIONS APPLYING TO CONTINUING AN INJURY AWARD

5.1. Under Regulation 37 of the Police (Injury Benefit) Regulations 2006 a police authority is obliged to review a retired officer's injury pension as follows:

The police authority shall, at such intervals as may be suitable, consider whether the degree of the pensioner's disablement has altered

5.2. At present it is for the police authority to decide how frequently to review an injury award. This allows for flexibility and avoids the need to review, say, a case where a former officer is severely injured with little prospect of change for the better. More discussion is given to the way reviews are to be carried out in the next section, but in general terms reviews should normally be conducted at intervals of at least two years but not more than five. In each case an authority should indicate to the officer or former officer, when making the initial award or completing a review, when a review or further review is likely to take place.

5.3. The proposed interval should not prevent an authority from bringing the review forward where it has reason to do so. Neither should it prevent an authority from deferring the review where that seems to be appropriate, but in such a case the authority should notify the former officer of the decision to defer the review, explain why and indicate when the review will take place. In all cases, the police authority must exercise discretion in assessing whether it is necessary to review a case.

5.4. **It is proposed to maintain the current obligation on police authorities to review injury awards but to leave decisions as to the frequency, and necessity, of such reviews to their discretion.**

Cessation of injury income supplement on review

5.5. At present an injury pension can be stopped only in restricted circumstances even when the former officer is no longer suffering a loss of earning capacity. **It is proposed that payments of an injury**

income supplement will be stopped where on review the former officer's loss of earning capacity is assessed as 10% or less.

Reassessment of reduction in earning capacity

5.6. Regulation 37 continues as follows: *...and if after such consideration the police authority finds that the degree of the pensioner's disablement has substantially altered, the pension shall be revised accordingly.*

5.7. At present the regulations could be taken to imply that if the SMP reports only a small change in the percentage of loss of earning capacity then the police authority will **not** alter the award. This needs to be reviewed since assessments of loss of earning capacity are now made in terms of precise percentages and arguably removes the need for any change to be "substantial" before the injury award is revised. Moreover, fairness demands that any changes in loss of earning capacity which move the officer into a different banding should be reflected in a change of banding. The key is that reviews must be carried out by SMPs in as objective a manner as possible, within readily comprehensible parameters, so that individual officers can understand the rationale behind any changes to their loss of earning capacity assessment.

5.8. **It is proposed that any changes in loss of earning capacity should be reflected in an officer's injury award banding, not solely those that are "substantial", although the police authority must first consider the necessity of the review itself. In addition SMPs must be reminded of the need for objectivity and clarity at all times.**

5.9. This assessment of any alteration of loss of earning capacity should include a re-assessment, where necessary, of the original apportionment. For example, this may arise when a condition which was wholly independent of the injury and was having no effect on the loss of earning capacity at the time

of the first assessment, but at the time of the review had changed in some way and was now making an impact on the officer's loss of earning capacity. In this situation, the SMP would be entitled to consider revising the original apportionment, and therefore if necessary the loss of earning capacity, even though the condition did not feature in the apportionment at the time of the original claim. **It is therefore proposed that the original apportionment may be amended as a result of the review if there has been an alteration in the loss of earning capacity.**

Age limit for reviews

5.10. At present there is no fixed age limit for reviews, but two key stages:

- **the point at which the former officer would no longer have expected to earn a police salary (the compulsory retirement age which applied to the officer's rank while last in service); and**
- **the point at which the former officer would qualify for State pension and normally have retired from all employment.**

5.11. The first key stage at present entails the SMP no longer assessing loss of earning capacity from the starting point of the police salary the former officer would have received had he or she still been serving. Once a former officer reaches what would have been his or her compulsory retirement age (CRA) under the Police Pensions Regulations there is no specific reason to use a police pay scale as the basis for his or her pre-injury earning capacity. The normal expectation is that the former officer would be earning a living outside the police service. Recommended current practice is for the SMP to use an average earnings figure in the absence of a compelling reason otherwise as the benchmark for the person's pre-injury earning capacity. Home Office guidance is that the average earnings figure used should be the national mean earnings (from

the Annual Survey of Hours and Earnings - ASHE) currently set at £29,331. It is noted that the ASHE figure contains an overtime element, and is therefore higher than the figure for national average earnings which has no overtime (currently £27,067). On the one hand, there seems no reason why the lower figure should be more appropriate for measuring an "uninjured" retired officer's earning capacity, given that the higher figure is well within the pay-range for a constable.

5.12. Once a former officer reaches the age of 65 he or she will have reached State Pension age irrespective of gender. At the second stage therefore, in the absence of a cogent reason otherwise, the SMP may place the former officer in the lowest band of loss of earnings capacity. At such a point the former officer would normally no longer be expected to be in employment.

5.13. However, new rank-based compulsory retirement ages (CRAs) have been introduced. They are as follows:

- **60 for officers of the rank constable to chief inspector; and**
- **65 for superintendents, chief superintendents and chief officer ranks.**

5.14. When the figure for national average earnings was first used in review cases, the period of time for which this figure remained as the pre-injury benchmark would have been 10 years for the great majority of cases (i.e. 55 to 65). Due to the new CRAs, this will no longer be the case - it will now be a maximum of 5 years, for officers of a federated rank (constables to chief inspectors) and will not apply at all for those who held the rank of superintendent and above. It is therefore best to consider first options for what should happen when an officer reaches 65, and then examine what should be done for the interim period of time between an officer reaching compulsory retirement age, and 65.

Status of injury income supplement after state pension age

5.15. A key issue for the review has been whether injury pensions should continue to be paid beyond the point at which all officers are entitled to State Pension benefits, i.e. 65. In view of the basis for injury awards being compensation for loss of earning capacity, there is a clear argument for discontinuing the payment of an injury income supplement after the State Pension age. Furthermore, an injury award could be used by an officer to purchase an additional retirement pension before he or she reaches the state pension age, in the same way as if the officer were still earning. This would then come into payment at the State Pension age, to enhance the State Pension. However, officers injured early on in their career could point out with some justification that their injury has not only impaired their earning capacity but also their chances of building up police pension benefits.

5.16. An alternative approach would be to retain half of the minimum income guarantee under the award in the form of a “minimum retirement income guarantee” (MRIG). Any payments needed to top up the police pension to bring it up to the level of the guarantee could be termed “injury retirement income supplement”. This is shown in the diagram below. This would mean that those officers with a more serious disablement would not see a total removal of their injury award, to reflect the severity of their situation. Shaded areas are where the MRIG is or may be lower than the PPS ill-health pension payable to the former officer after commutation. In such a case the former officer will receive no injury pension.

Degree of disablement	Gratuity as % of app	Minimum retirement income guarantee as % of average pensionable pay			
		Less than 5 years' service	Less than 5 years' service	15 or more but less than 25 yrs' service	25 or more years' service
10% or less (very slight disablement)	12.5%	0%	0%	0%	0%
More than 10% but not more than 25% (slight disablement)	12.5%	7.5%	15%	22.5%	30%
More than 25% but not more than 50% (minor disablement)	25%	20%	25%	30%	35%
More than 50% but not more than 75% (major disablement)	37.5%	32.5%	35%	37.5%	40%
More than 75% (very severe disablement)	50%	42.5%	42.5%	42.5%	42.5%

Proportion of cases where no injury pension is payable in addition to PPS ill-health pension	
All	
Some	
None	

Max PPS ill-health pension after commutation		6.25% after 5 years	27.5% after 15 years	46.25% after 25 years	50% after 30 years
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5.17. **It is proposed that from age 65 there should be no further reviews and that instead the minimum income guarantee should be replaced by a minimum retirement income guarantee of half its current value and that any payments to top-up the pension, after abatement, should be termed an “injury retirement income supplement”.**

Status of injury income supplement after compulsory retirement age

5.18. In terms of the period between an officer reaching the CRA and reaching the State Pension age, one option therefore would be, for federated ranks, to move to using ASHE at the new CRA (i.e. 60) as previous practice, and then continue to use ASHE as the basis when officers reach the age of 65 and halve the minimum income guarantee. However, this would arguably benefit superintending ranks and above – these officers have a CRA of 65, and therefore the procedure of halving their MIG would be based not on ASHE, but using their police salary as the starting point. Their reduction to a lower band may not, therefore, be as severe as that for federated officers.

5.19. A second option is to use ASHE figures in the case of former officers in the federated ranks between the ages of 60 and 65, but at the point of replacing the MIG with the new M at the age of 65, recalculate the MIG using the former officer's police salary as the pre-injury benchmark. This would ensure that the federated ranks were given similar treatment after the age of 65 to those who had been in higher ranks, but would entail extra administrative work.

5.20. A third option would be to retain the former police salary in all cases until the age of 65. This would recognise the fact that officers in the federated ranks are now able to seek extensions of service beyond the age of 60. However, this would also result in extra costs for forces, which would arguably be unjustified in view of the fact that the normal expectation that a member of the federated ranks will have left the force by the age of 60.

5.21. **On balance it is therefore proposed to use ASHE figures for former officers in the federated ranks between the ages of 60 and 65, but at the point of replacing the MIG with the new MRIG at age 65, recalculate the MIG using the former officer's police salary as the pre-injury benchmark so that the new MRIG is calculated in the same way for former officers of all ranks.**

6. A NEW APPROACH TO CONSIDERING INJURY AWARDS

6.1. The review has examined whether the current system of considering injury awards places too great a burden on doctors and whether it would be helpful to all concerned if there were a clearer division of responsibilities between the police authority and its selected medical practitioner (SMP) in their respective roles when considering whether to grant an injury award.

6.2. Regulation 30 of the current Police (Injury Benefit) Regulations 2006 requires a police authority which is considering a claim for an injury award to refer the matter to the SMP. With the exception of the issue of whether the injury was received with or without default, there is no scope for the authority to consider questions of fact or law relating to the claim before referring it to the SMP for a medical opinion. Thus, because of the way in which the Regulations have been drafted, the SMP has to determine not only the medical issues relating to the claim, but also the relevant matters of fact and law.

6.3. It is considered that there is a strong case for relieving the SMP of having to determine legal and factual matters which require no medical input. Where a factual decision depends in part on a medical opinion it should be for the police authority to take a preliminary view of the circumstances which should then be put to the SMP for advice. This should not preclude the SMP from being able to access help and support from the police authority as necessary.

6.4. **It is proposed to introduce the following procedure for considering a claim for an injury award:**

The police authority should initiate action as follows:

- it should form a view, to the extent possible, of whether the injury was received in the execution of duty;
 - it should consider whether the injury was received with the officer's default;
 - it should decide whether or not to refer the claim to the SMP (if the injury is a disease or mental condition the case must be referred);
 - if there is a referral, it should put specific questions to an SMP who is suitably qualified to consider the medical issues involved.
- The SMP should report to the police authority on:
- whether the physical or mental condition of the officer supports the claim of an injury and is compatible with the circumstances of that injury as claimed; and, if so,
 - whether the officer's permanent disablement is wholly or mainly caused by the injury; and if applicable
 - the degree of loss of earning capacity as a result of the permanent disablement; and where there are other causes of the permanent disablement
 - the degree of loss of earning capacity as a result of the injury after apportionment; and if applicable
 - whether the officer brought about or substantially contributed to his or her disablement by his or her own default (If retained separate from the consideration of apportionment).
- The SMP is therefore responsible for taking the final decision on the level of injury award.
- it should consider the factual issues of whether and when the injury took place;

Supply of information

6.5. Under Regulation 33 of the Police (Injury Benefit) Regulations 2006 there is some provision for requiring the officer making an application for an injury award to co-operate with a police authority in its consideration of it:

If a question is referred to a medical authority under Regulation 30, 31 or 32 and the person concerned wilfully or negligently fails to submit himself to such medical examination or to attend such interviews as the medical authority may consider necessary in order to enable him to make his decision, then –

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

6.6. Although this requirement ensures that the applicant must provide the police authority with an opportunity to have him or her examined and interviewed as necessary, it does not provide the authority with any express power to require the disclosure of relevant documents and medical records. Although it is not suggested that a police authority should be given such a power, it is clear that refusal to comply with such a request will oblige the police authority or the SMP, as the case may be, to consider the case on the available facts, and it is also reasonable for them to conclude in such circumstances that the claimant has something to hide which would damage his or her case.

6.7. **It is proposed that a claimant who refuses a police authority or SMP's request for relevant information should be given formal notice that he or she can expect to have an adverse inference drawn from such refusal, and may have his or her claim rejected altogether.**

Appeals

6.8. This proposed new procedure has implications for the system of appeals. At present virtually all appeals against refusal of an injury award or about a dispute over an injury award are considered by the Police Medical Appeal Board (PMAB) under Regulation 31 of the Police (Injury Benefit) Regulations 2006, but appeals to the Crown Court do arise against decisions taken by the police authority not to refer a claim for an injury award to the SMP in the first place.

6.9. There are no plans for a change in the system of appeals against the decision of an SMP in his or her report to the police authority, except that under the proposed new procedure the scope for such appeals will be reduced, in line with the scope for SMPs' decisions, to omit as much legal and factual matter as possible. This will result in there being more scope for appeals against the police authority's decision on matters of fact and interpretation. Such appeals would be heard by the Crown Court except where the Secretary of State is the police authority, in which case such an appeal would be to a tribunal appointed by the Secretary of State.

Revised procedure for reviews

6.10. In all cases the review will be initiated either by the police authority or the former officer. A request by a former officer for a review must be made in writing to the Chief Executive of the police authority and must be supported by his or her doctor. Otherwise the police authority is entitled to refuse to consider the application. Although injury pensions are subject to a requirement to have them reviewed, the police authority should carry out full reviews only in cases where they may result in a change of status. A paper sift of cases for review by the police authority in consultation with the OH unit will help to avoid unnecessary examinations of retired officers with severe disabilities and enable a force's resources to be used in a focused way.

6.11. It should be for the police authority to decide, on advice from the force personnel department and the OH unit, whether the review needs to proceed beyond the paper sift stage. Where it does, the next stage should be a written enquiry for information, unless the details required have already been supplied. The force personnel department should send the former officer a short questionnaire to complete with details of his or her:

- **state of health,**
- **current and recent employment,**
- **GP, and**
- **authorisation for the GP to provide further relevant information as requested by the OH unit.**

6.12. It should be for the OH unit to decide in the light of the replies whether to ask the GP for more information about the former officer's state of health. It should not be necessary for the SMP to examine the former officer in each case. In many cases, a review which concludes that there is no change can be carried out by the SMP on the basis of written evidence. The SMP should examine a former officer only where:

- **the force personnel department or the former officer specifically requests an examination;**
- **the former officer denies access to the GP; or**
- **the SMP is of the opinion that the former officer's loss of earning capacity may have substantially changed.**

6.13. **It is proposed that all cases should be sifted but that reviews involving a medical examination should be targeted at cases where there is a request for this, lack of information or where the available information indicates that the officer's loss of earning capacity may have changed. It is proposed to incorporate this into any new guidance that arises from this review.**

7. SURVIVOR AND DEPENDANTS' BENEFITS

Range of benefits

7.1 Under the Police (Injury Benefit) Regulations 2006 the following special benefits are payable to surviving spouses and children in the event of an officer's death as a result of an injury:

surviving spouse's special award

surviving spouse's augmented award

child's special allowance

child's special gratuity

adult dependent relative's special pension

dependent relative's gratuity.

7.2 There is also the death gratuity which is paid under the Police (Injury Benefit) Regulations 2006.

7.3 It was decided in consultation with the PNB that the dependent relative's gratuity should be confirmed as a Police Pension Scheme benefit since it consists in the payment of one or more lump sums limited to the total of the officer's pension contributions. **It is proposed to review their decision to retain this pension scheme provision as a benefit payable in the event of an injury in the light of what is proposed here.**

7.4 It is proposed that the awards for death attributable to injury in the execution of duty could benefit from revision in four respects:

- **whether the scope of adult dependant pension should be revised in line with the New Police Pension Scheme (NPPS);**
- **whether the scope for payments to child dependants should be revised in line with the NPPS;**
- **whether the scale of benefits could be simplified;**
- **whether the circumstances in which they are paid need to be clarified.**

Eligibility for adult and child dependent survivor benefits

7.5 There is a case for bringing eligibility for adult and child dependant benefits for death attributable to injury in the execution of duty in line with the provisions which apply under the NPPS. It could be argued that the option to transfer to the NPPS provides sufficient coverage but the level of risk of injury in the police, because of the confrontational nature of some of their duties, is a powerful counter-argument.

7.6 The new pension scheme provides survivor benefits payable for life and widens eligibility for an adult survivor pension to include unmarried partners (of either sex) in addition to spouses and civil partners, so that partners who are not in a formal legal relationship may nevertheless qualify for a pension under certain conditions. For a pension to be paid to an unmarried and unregistered partner, the partner must be "nominated" by the submission of a declaration form, signed by both partners, to confirm that:

- **there has been cohabitation for a period (normally of at least two years) during which the partner has been financially dependent on the police officer, or both partners have been financially interdependent**
- **the relationship is a committed relationship which it is intended to continue indefinitely**
- **the partners each have mutual responsibility for the other's welfare**
- **both partners are free to marry (if of opposite sexes) and that neither partner is married or a registered civil partner, or is nominated as the partner of anyone else.**

It is the police officer's responsibility to ensure that this information is kept up-to-date. To receive a pension, the partner must also complete a claim form.

7.7 The new pension scheme also widens eligibility for children's pensions to include any child who at the time of the death of the officer was substantially dependent on him (either financially or by reason of disablement). It is no longer necessary for the child to be related to the police officer so, for example, a partner's child from a previous relationship may become eligible for a pension.

7.8 **It is proposed that the survivor benefits currently available to spouses and civil partners should also be payable to nominated unmarried and to unregistered same-sex partners under the new police injury benefits scheme, that these benefits should be payable for life, and that the survivor benefits available to children should also be payable to any child who was dependent on the police officer.**

Simplification of survivor benefits

Retaining pensions as they are

7.9 It is not proposed to change the basic scales of the pensions which will be payable under these proposals to spouses and partners (as detailed above), dependent children, and adult dependent relatives:

- **the special pension for spouses and partners should remain set at up to 45% of the officer's average pensionable pay for a week;**
- **the special allowance for each child should remain set at 10% of the officer's pensionable pay for a week, subject to a maximum of 40% divided equally between the children, where one of the child's parents is alive; or set at 20% of the officer's pensionable pay for a week, subject to a maximum of 80% divided equally between the children, if the officer was the child's only surviving parent; and**
- **a special pension for an adult surviving relative should remain set at up to 45% the officer's average pensionable pay for**

a week subject to the total outgoings in respect of special pensions and allowances not exceeding the officer's average pensionable pay for a week.

7.10 These are valuable benefits which provide due recognition of the dangers faced by officers in carrying out their duty.

7.11 It is also proposed to retain the augmented pension of up to 50% of the officer's average pensionable pay for a week where one of the following conditions is satisfied:

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

Interrelation with DWP benefits

7.12 It should be noted, however, that special and augmented pensions for spouses or civil partners are currently subject to abatement due to the Social Security Contributions and Benefits Act 1992 if the amount of that pension exceeds that of a spouse's pension under that Act at the time of the officer's death. Other public sector injury arrangements include this arrangement. **It is proposed to retain the practice of reduction, whereby if, in any week, a special or augmented pension is payable to the spouse or civil partner under the Social Security Contributions and Benefits Act 1992 in consequence of the officer's death and the amount of that pension exceeds that of a spouse's pension under that Act at the time of the officer's death, then the amount of her special pension in respect of that week is to be reduced by that excess, in order to encourage consistency across the public sector.**

Gratuities

7.13 The main scope for simplifying survivor benefits is in the area of the gratuities that accompany the pension awards listed above.

Death gratuity

7.14 The Police (Injury Benefit) Regulations currently provide for a death gratuity, which is paid where there has been no disablement gratuity paid and where death occurs within one year of the qualifying injury. It is set at either five times the value of the officer's pensionable pay on his or her last day of service, or four times his or her total remuneration during the 12 months ending with his or her last day of service and the amount of the officer's aggregate pension contributions during that period, whichever is the lesser.

7.15 Where a death gratuity is paid, the spouse or other dependant relative of the officer will not normally receive more than the amount detailed above except where the officer's death attracted an

augmented award. In that case the spouse or civil partner may have the total amount increased to the extent that the a lump sum of up to 175% of the officer's average pensionable pay would be exceeded by a lump sum of twice the average pensionable pay of a Metropolitan police constable at the top of the pay scale.

7.16 Under the present system a variety of smaller gratuities are payable in the case of a death which does not attract a death gratuity. These lump sums are made up of a number of components. It may best illustrate the complexity of the system to summarise it below.

Alternative lump sum benefits for death in service

7.17 For death in service (attracting no death gratuity) the lump-sum death grant of twice the annual pensionable pay of the officer, which is payable to his or her surviving spouse, civil partner or the officer's estate as part of the 1987 Police Pension Scheme, may be increased by the following gratuities:

A) for an adult survivor either:

- **in the case of death attracting a special pension a lump sum of up to 175% of the officer's average pensionable pay; or**
- **in the case of death attracting an augmented pension a lump sum of twice the average pensionable pay of a Metropolitan police constable at the top of the pay scale, if that is more favourable than the gratuity for the special award.**

B) for a child, where the officer's death would have attracted an augmented pension, a lump sum of twice the average pensionable pay of a Metropolitan police constable at the top of the pay scale.

C) for an adult dependent relative of an officer who had police pension scheme entitlements a gratuity of up to the total of the officer's pension contributions.

The above also applies to members of the New Police Pension Scheme 2006, under which the lump-sum death grant is three times the annual pensionable pay of the officer.

Alternative lump sum benefits for death in retirement

7.18 For a death in retirement (attracting no death gratuity) any pension lump sum on retirement already paid to the officer may be increased as follows:

A) for an adult survivor either:

- **in the case of death attracting a special pension a lump sum of up to 25% of the officer's average pensionable pay; or**
- **in the case of death attracting an augmented pension a lump sum of twice the average pensionable pay of a Metropolitan police constable at the top of the pay scale, if that is more favourable than the gratuity for the special award.**

B) for a child, where the officer's death would have attracted an augmented pension, a lump sum of twice the average pensionable pay of a Metropolitan police constable at the top of the pay scale.

C) for an adult dependent relative of an officer who had police pension scheme entitlements a gratuity of up to the total of the officer's pension contributions.

7.19 It is considered that these awards have, as the regulations have evolved over the years, become unnecessarily complex and difficult to understand. There is also scope for more consistency in provisions for offsetting previous injury and

disablement gratuities against death gratuities, which means that the death of an officer who dies in service almost immediately after receiving a fatal wound may attract a lower total of gratuities than the death of an officer who receives a similar wound but dies after retirement.

A new set of death gratuities

7.20 A way of simplifying the current system of gratuities would be to replace it as follows by:

- **a "type A" death gratuity where death is within one year of the injury in the execution of duty - paid, as proposed for the disablement gratuity above, at five times the officer's average pensionable pay at the time of death;**
- **a "type B" death gratuity where death as a result of an injury in the execution of duty is in service and no type A gratuity is payable - paid at four times the officer's average pensionable pay at the time of death;**
- **a "type C" gratuity where death as a result of an injury in the execution of duty is in retirement and no type A gratuity is payable - paid at three times the officer's average pensionable pay .**

7.21 In all cases the gratuity would be payable to the spouse or partner, or to a child or children if there is no spouse or partner, or to an adult dependent relative to whom a special pension may be paid if there is no spouse or partner, or child.

7.22 In all cases the gratuity would be in the form of a guaranteed minimum lump sum and would take into account any pension lump sum, lump-sum death grant, injury gratuity, disablement gratuity and any damages or compensation which are recovered by any person in respect of that death. Therefore, if the other payments matched or exceeded the amounts set out in the above proposed

new set of death gratuities, then the relevant death gratuity cease to be payable. One remaining issue is whether to retain the current safeguard for the dependants of a constable on a salary less than the maximum for one in the Metropolitan police who dies in circumstances qualifying for an augmented award. At the risk of introducing complexity again, one could in such circumstances make all three types of death gratuity subject to a minimum sum of the combined value of:

- **twice the average pensionable pay of the Metropolitan police constable who was at the top of the pay scale and who was serving the same hours as the officer;**
- **plus three, two or one times the officer's average pensionable pay, depending on the type of gratuity.**

7.23 **It is proposed that the present system of lump-sum benefits and gratuities for death due to injury in the execution of duty should be replaced by a system of three types of death gratuity paid to the adult survivor; a child; or an adult dependent relative in that order of precedence and at a rate of either five times, four times or three times the officer's average pensionable pay, subject to a minimum level for more junior officers (as detailed in 7.22 above). The proposed changes are summarised in Appendix D.**

7.24 A further remaining issue is whether to extend the death gratuity payment beyond adult dependents to include payment to the officer's estate. However, it is acknowledged that the death gratuity is intended to recompense those who previously relied upon the officer's salary or pension for the abrupt cessation of such support, and extending the pool of possible beneficiaries may detract from this intent. **It is therefore proposed that the death gratuity payment will not be extended beyond adult dependent relatives to include the officer's estate.**

The circumstances in which survivor benefits are paid

Criteria for death caused by injury in execution of duty

7.25 Where an officer dies in service as a result of an injury it is possible that this will happen before the police authority has been able to consider an injury award. It will therefore be necessary to consider whether the injury qualifies as being received without default in the execution of duty as well as whether death is the result of the injury. Where an injury award has already been approved the only issue for consideration will be whether death is the result of the injury for which the award was approved.

7.26 Consequential changes will therefore be necessary to the criteria for determining death as a result of an injury in the execution of duty, in order to keep the qualifying circumstances for survivor benefits in line with those for injury awards. This will include applying those exclusions outlined at 2.17 (for injuries that are not attributable to duty) as well to the exclusion of journeys to and from work (2.25) in assessing whether the death has occurred in the execution of duty.

7.27 **It is proposed that survivor benefits should be based on the same criteria as injury awards for determining whether the injury was received without default in the execution of duty.**

Death as the result of an injury

7.28 Regulation 8 of the Police (Injury Benefit) Regulations 2006 provides:
death [...] shall be deemed to be the result of an injury if the injury has caused or substantially contributed to the [...] death.

It is considered that the causal link required deeming death to be the result of an injury should be made clearer and should depend on it being wholly or mainly due to the injury.

7.29 **It is proposed that death should be deemed by the police authority to be the result of an injury received in the execution of duty if the person's death was wholly or mainly caused by that injury.**

7.30 In line with the proposals in Section 6 above, it seems appropriate for the police authority to consider first the legal and factual issues surrounding each death. If the decision depends in part on a medical opinion, the police authority should refer the case to the SMP for advice.

7.31 **Therefore it is proposed to confirm the following procedure for considering a death:**

The police authority should initiate action as follows:

- **it should form a view as to whether the officer's death was wholly or mainly due to an injury sustained in the execution of duty; and**
- **it should consider whether death occurred due to the officer's default.**

The SMP should:

- **Decide whether the officer's death was wholly or mainly due to the injury sustained; and**
- **Advise whether the officer brought about or substantially contributed to his or her death by his or her own default.**

8. ADMINISTRATION AND DATA MANAGEMENT

8.1. The need for accurate record keeping is also reinforced by the recent reform of pensions financing. Although the new system of pension accounts means that the cost of scheme pensions in payment is ring-fenced, injury benefits remain part of a force's operating costs. It is therefore directly in a force's own interests to have accurate and up-to-date management information on the number and cost of injury awards they grant and review, to ensure that they are operating the system effectively and fairly. It is also important to monitor this information in conjunction with the force's existing diversity data to ensure any resulting equality issues are identified and addressed.

8.2. **It is therefore proposed that forces are required to keep all relevant information regarding the injury benefits granted, including details of the injury type, the loss of earning capacity and records of the police authority and SMP's final decision, as well as information about any appeals or review processes undertaken, and that this should be monitored alongside existing diversity data to ensure any equality issues arising from their operation of the injury benefits system are brought to light and addressed.**

8.3. It is acknowledged that a significant amount of the information regarding injury awards is now held by external pension providers, and provided often only at a cost to forces.

8.4. One proposal would be for individual forces to enter into agreements with external pension providers to ensure a regular supply of all necessary information.

8.5. It is also important for the Home Office to be able to access this information quickly and easily. A relatively simple way for the Home Office to obtain a regular supply of information about injury awards would be for forces to add a limited amount of data about the number of awards made and the cost to the annual top-up return that police

authorities must submit to the Home Office each year with details of their audited and unaudited pensions account figures. Police authorities already state how many ill-health retirements they have had in their annual returns.

8.6. **In order to create a framework for good practice in which forces regularly collect data on injury awards which they can pass on to the Home Office, it is also proposed that forces are required to enter a limited amount of information about injury awards onto the top-up return used for the police pensions financing arrangements. In order to ensure that no undue burdens are being placed on pensions administrators this requirement will be reviewed after three years.**

9. INJURY AWARDS: KEY FACTS

9.1. In May 2007 the Home Office conducted a research exercise to collect information on the current injury awards system, so as to obtain a better picture of the current situation. As discussed in 1.4 above, all police forces in England, Wales and Scotland were asked to provide data on all injury awards and awards payable to survivors for death in the line of duty which were granted between April 2005 and March 2007. Forces were also asked to provide general information on the number of injury award claims, the number of injury awards granted, and the cost of injury and death benefits between 1998 and 2007.

9.2. Northern Ireland was not included in this exercise, as it was felt that its unique history in relation to injury benefits could potentially distort the results of the exercise.

9.3. Of the 51 forces approached however, 33 provided the Home Office with statistical data, of which 27 provided data for the period 2005 – 2007. Information received regarding the broader time period has not been considered suitable for external publication, due to the poor quality and consistency of the data.

Basic statistics

Note: Not all of the information below was provided for all cases stated; therefore the total outlined in 9.4 below may not be reached in all paragraphs.

9.4. Over the last two years, 221 injury awards were granted. 210 were personal awards for injury, whilst 11 were survivor awards for death as a result of an injury. The number of cases for each force which provided information is shown in the table below:

Table 1: Number of injury award cases per force from April 2005 to March 2007

Force	No. of cases	Percentage of all cases %
Merseyside	30	14%
*MPS	20	9%
Cheshire	18	8%
Derbyshire	16	7%
Cambridgeshire	13	6%
North Yorkshire	13	6%
Thames Valley	12	5%
Essex	11	5%
Greater Manchester	11	5%
West Yorkshire	10	5%
Sussex	9	4%
Gwent	7	3%
North Wales	7	3%
City of London	6	3%
Fife	6	3%
Norfolk	6	3%
Dorset	5	2%
Humberside	4	2%
Avon	3	1%
Durham	3	1%
West Midlands	3	1%
Northumbria	2	1%
Leicester	2	1%
Cumbria	1	0.5%
Dumfries	1	0.5%
South Yorkshire	1	0.5%
Northamptonshire	1	0.5%
Total	221	100%

* Note: MPS provided a sample of 20 cases

9.5. 173 (78%) of the officers involved were constables, whilst 28 (13%) were sergeants. The remaining were of the rank of inspector and above.

9.6. Of those cases where the age of the officer was stated, the average age was 44 years old, with a range of ages between 26 and 55 years.

9.7. 167 cases (76%) involved male officers, and 52 (24%) involved female officers. This figure reflects the gender composition of the police service as a whole as at 31 March 2006 (Home Office, 2006, Statistical Bulletin: Police Service Strength, England and Wales, 31 March 2006. Issue 13/06, available from <http://www.homeoffice.gov.uk/rds/pdfs06/hosb1306.pdf>).

9.8. 161 (73%) of the officers were of white ethnicity, whilst 4 officers (2%) were black, 2 (1%)

were Asian and 1 officer (0.5%) was mixed race. Again, this figure reflects the ethnic composition of the police service as a whole as at 31 March 2006 (Home Office, 2006).

Types of injury and their causes

9.9. 199 officers (90%) were injured whilst on police duty, with a further 9 (4%) injured whilst travelling to/from work. In addition, 4 officers (2%) were injured off duty but in circumstances related to their employment as police officers.

9.10. 167 cases (76%) occurred whilst the officer was involved in operational duty, whilst 42 (19%) occurred during non-operational duty.

9.11. This can be broken down in further detail, as in the table below:

Table 2: Injury causes

How injury occurred	Frequency	Percent %
Other psychological causes	38	17%
Road traffic collisions involving police vehicles ¹	23	10%
Assault	23	10%
Other physical causes	22	10%
Chasing / Pursuing an offender	21	10%
RTA ²	16	7%
Witnessed event directly (present)	8	4 %
Public order	6	3%
Training – Other	5	2%
Witnessed event indirectly (not present)	4	2%
Firearms	4	2%
Training – Dogs	3	1%
Training – Public order	3	1%
Training – Recruit	3	1%
Riding	2	1%
Noise Exposure – firearms	1	0.5%

¹ When a police car has an accident on duty, or where the accident is of an operational nature.

² Other than incidents included in footnote 1 above.

9.12. The table demonstrates that “other psychological causes” were the most common cause of injuries sustained. Examples of such psychological causes include:

- Allegation of racial discrimination;
- Alleged bullying and harassment by senior officer;
- Engagement in undercover drugs operations leading to depression;
- Depression due to work related stress;
- Involvement in child abuse investigation; and

- Post-traumatic stress symptoms due to involvement in a range of incidents (for example being threatened with firearms, or involvement in an RTA).

9.13. In total, 250 injuries were recorded across the 221 cases. 162 (65%) were physical injuries, whilst 88 (35%) were psychological or mental health related injuries.

9.14. The table below shows the frequency of the injury types recorded. The most common type of injury was musculoskeletal, which represented 118 (47%) of cases.

Table 3: Injury types

Injury	Frequency	Percent %
Musculoskeletal	118	47%
Mental health	88	35%
Other	29	12%
Neurological	6	2%
Cardiovascular	3	1%
Eyes/Nose/Throat/Dental	3	1%
Gastrointestinal	2	1%
Ophthalmic	1	0.4%
Total	250	100%

Note: The total percentage based on the rounded figures is 99.4%. However, 100% would be the total when calculated with exact percentages.

Degrees of disablement

9.15. Of those cases for which information about the degree of disablement was given, the most

common band was 26-50%, with 74 officers (35%) assessed as having such a degree of disablement. The table below provides further information:

Table 4: Degree of disablement bandings

Degree of Disablement (%)	Frequency	Percent %
0-25	36	17%
26-50	74	35%
51-75	56	27%
76-100	41	19%

9.16. Of the 0-25% band, 16 officers (8% of the total) were stated as having a degree of disablement of 10% or less, and 3 (1%) had a degree of disablement of 0%.

9.17. The table below provides information on the relationship between officers’ age and the degree of disablement.

Table 5: Relationship between disablement bandings and different age groups

Age	Degree of Disablement (%)					Total
	0-25	26-50	51-75	76-100	Not stated	
20-30 years	1 (50%)	0 (0%)	0 (0%)	1 (50%)	0 (0%)	2 (100%)
31-40 years	8 (24%)	12 (35%)	6 (18%)	5 (15%)	3 (9%)	34 (100%)
41-50 years	18 (16%)	36 (32%)	37 (32%)	23 (20%)	0 (0%)	114(100%)
51 years +	9 (15%)	25 (42%)	13 (22%)	12 (20%)	0 (0%)	59 (100%)
Not stated					1(100%)	1 (100%)

9.18. The following table outlines the relationship between the causation of injury and the resulting degree of disablement.

Table 6: How the injury occurred and the corresponding degree of disablement

How injury occurred	Degree of disablement (%)					Total
	0-25	26-50	51-75	76-100	Not stated	
Assault	2 (9%)	6 (26%)	9 (39%)	6 (26%)	0	23 (100%)
Road traffic collisions involving police vehicles	3 (13%)	11 (46%)	5 (21%)	4 (17%)	1 (4%)	24 (100%)
RTA	2 (13%)	5 (31%)	1 (6%)	3 (19%)	5 (31%)	16 (100%)
Chasing an offender	4 (19%)	8 (38%)	4 (19%)	5 (24%)	0	21 (100%)
Psychological Causes	4 (10%)	15 (38%)	14 (36%)	5 (13%)	1 (3%)	39 (100%)
Other Physical Causes	10 (45%)	6 (27%)	4 (18%)	2 (9%)	0	22 (100%)

Time periods involved

9.19. In 130 cases, information was given regarding both the date that the officer was injured and the date they ceased to serve the police force as a result. The average time period between the two dates was 5 years, with an overall range of between 0 years and 26 years.

9.20. In 216 cases, the length of police service at the point of ceasing to serve was given. The average length of time was 20 years, with length of service ranging from 1 to 34 years.

9.21. In 111 cases, information regarding the length of time between the injury and the subsequent claim for an injury award was provided. Of these cases, the average length of time was again 5 years as in 9.18 above, with the same overall range.

9.22. In 120 cases, information regarding the length of time between the injury and the subsequent award being granted was provided. Of these cases, the average length of time was 6 years, with the same overall range as in 9.18 above.

9.23. The table below expands upon these statistics:

Table 7: Length of time between injury and claim, and injury and award

Years	Injury to claim	Injury to award
0-8	91 (43%)	95 (45%)
9-16	17 (8%)	22 (10%)
17-26	3 (1%)	3 (1%)

Death benefits

9.24. As outlined in 9.4 above, 11 (5%) cases related to officers who received fatal injuries. All died on the day that their injuries occurred.

9.25. 2 of the fatalities occurred during non-operational service, whilst 6 occurred during

operational service. The remaining 3 occurred whilst the officer was travelling to and from work.

9.26. The table below shows in further detail the causes of each fatality:

Table 8: Information regarding deaths resulting from injury

On/off duty	How died/injury type information	Length of service
Off duty – other	Cardiovascular	30
Off duty – other	Cardiovascular	16
On duty	Road traffic collision involving police vehicles	6
On duty	Road traffic collision involving police vehicles	21
Travelling to/from work	RTA	1
Travelling to/from work	RTA	25
On duty	RTA	26
On duty	Firearms	1
On duty	Road traffic collision involving police vehicles	2
Travelling to/ from work	RTA	2
On duty	Road traffic collision involving police vehicles	4

9.27. Death awards were granted on the same day in 9 of the above cases. In the two remaining cases, one death award was granted 13 weeks later, and the other had not yet been fully claimed at the time the information was supplied.

Injury award appeals and civil claims

9.28. 23 officers (11%) appealed against the original injury award, with 22 making a single appeal and 1 officer making two appeals.

9.29. Over half of the officers who made appeals were in the 0-25% degree of disablement band. The table below shows the placement of appeals in more detail:

Table 11: Relationship between number of appeals made and degree of disablement

Number of Appeals	Degree of disablement (%)					Total
	0-25	26-50	51-75	76-100	Not stated	
1	13 (59%)	6 (27%)	1 (5%)	2 (9%)	0	22 (100%)
2	0	0	0	1 (100%)	0	1 (100%)

9.30. 17 officers (8%) made civil claims against their police force in addition to an injury award claim, in comparison with 104 officers (50%) who did not pursue such a claim. In 90 cases (42%), this information was not given.

9.31. The tables below show the relationship between the gratuities and pensions awarded to officers in comparison with their decision to make a civil claim:

Table 12: Gratuity figure awarded and civil claim

Gratuity Awarded	Was a civil claim made against police force?			Total
	Not stated	No	Yes	
Under £5000	14 (40%)	17 (49%)	4 (11%)	35 (100%)
£5000 - £9999	26 (41%)	31 (49%)	6 (10%)	63 (100%)
£10000 - £14999	22 (42%)	28 (53%)	3 (6%)	53 (100%)
£15000 - £19999	12 (48%)	12 (48%)	1 (4%)	25 (100%)
£20000 and above	3 (50%)	3 (50%)	0	6 (100%)
Not stated	12 (43%)	13 (46%)	3 (11%)	28 (100%)

Table 13: Pension figure awarded and civil claim

Pension Awarded	Was a civil claim made against police force?			Total
	Not stated	No	Yes	
Under £5000	13 (36%)	20 (56%)	3 (8%)	36 (100%)
£5000 - £9999	29 (46%)	29 (46%)	5 (8%)	63 (100%)
£10000 - £14999	19 (40%)	26 (54%)	3 (6%)	48 (100%)
£15000 - £19999	10 (50%)	9 (45%)	1 (5%)	20 (100%)
£20000 and above	6 (86%)	1 (14%)	0	7 (100%)
Not stated	12 (33%)	19 (53%)	5 (14%)	36 (100%)

10. COSTS AND BENEFITS OF KEY PROPOSALS

10.1. The research exercise discussed in Chapter 9 indicated an annual expenditure of approximately £60m - £70m on injury and death awards in England, Wales and Scotland.

10.2. Estimates for the following proposals are based on a small sample of returns of new awards made in 2005/06 and 2006/07, and aggregated to estimate the average annual value of awards for England and Wales. They have been taken directly from the Impact Assessment accompanying this document unless otherwise stated.

10.3. They are set out in net present value (NPV) terms, i.e. the costs or savings incurred for each change for one year's worth of awards, over the lifetime of those awards. Paragraphs 10.4 – 10.6 consider injury awards up to the age of 65, so as to avoid double counting with 10.7 below.

10.4. Excluding injuries sustained whilst travelling to/from work.

- **Annual reduction in the value of new gratuities: £0.080m**
- **Annual reduction in the value of new pension awards: £0.080m**
- **Net present value (fiscal saving) of new awards made in one year: £1.180m**

10.5. A new banding of 10% loss of earning capacity or less, in which an officer receives a gratuity but no pension.

- **Annual reduction in the value of new gratuities: £0**
- **Annual reduction in the value of new pension awards: £0.090m**
- **Net present value (fiscal saving) of new awards made in one year: £1.210m**

10.6. A five year time limit for post-retirement claims and an absolute cut off for claims at age 65.

- **Annual reduction in the value of new gratuities: £0.010m**
- **Annual reduction in the value of new pension awards: £0.010m**
- **Net present value (fiscal saving) of new awards made in one year: £0.120m.**

10.7. The Home Office Police Pensions and Retirement Policy Team have also made an estimate for the effect of halving the Minimum Income Guarantee.

- **For awards paid between the age of 65 and 80 (taken as the average life expectancy), the Impact Assessment has estimated a net present cost (NPC) of £14.82m – this assumes that none of the cases are reviewed or reduced to Band 1 during this time.**
- **Net Present Value of reduction to the MRIG instead of Band 1: £3m. This is not set out in the Impact Assessment as it has been developed independently from that analysis.**

10.8. The Government Actuary's Department have made the following estimates, again in NPV/ NPC terms. These are best estimates given the available data but should be seen as an illustration of the potential cost rather than an accurate forecast. These estimates are outlined in the Impact Assessment.

10.9. Extending survivor benefits to unmarried and unregistered same-sex partners.

- **Annual increase in the value of new gratuities: £0.100m**
- **Annual increase in the value of new pension awards: £0.015m**

- **Net present cost (fiscal cost) relating to new awards made in one year: £0.500m**

10.10. Making survivor benefits life-long, regardless of re-marriage, formation of a new partnership etc.

- **Net present cost (fiscal cost) relating to new awards made in one year: £1.000m**

10.11. Excluding deaths occurring whilst travelling to/from work.

- **Annual reduction in the value of new gratuities: £0.200m**
- **Annual reduction in the value of new pension awards: £0.020m**
- **Net present value (fiscal saving) of new awards made in one year: £0.500m**

10.12. The above analysis points to a saving, in NPV terms, of approximately £4.5m for each year's batch of new awards over the lifetime of those awards.

11. HOW TO RESPOND TO THE CONSULTATION

11.1. The consultation period for these proposals runs until 18th November 2008. Responses and comments on the issues raised in the consultation document must be received by that date. This is a 12 week period, in line with the Cabinet Office Code of Practice on Consultation.

11.2. We welcome involvement in the consultation from all interested parties, including police authorities, police forces, staff associations and any other bodies or organisations that feel affected by the proposals outlined above.

11.3. There are a variety of ways in which you can provide us with your comments.

England and Wales

11.4 You can email us at:

policeinjury.awardsconsultation@homeoffice.gsi.gov.uk.

You can write to us at:

Government Proposals for Revised Injury Awards
Police Pensions and Retirement Policy Section
Police Finance and Pensions Unit
Home Office
6th Floor Fry, SE corner
2 Marsham Street
London SW1P 4DF

Scotland

You can email us at:

PoliceInjuryAwards@scotland.gsi.gov.uk

You can write to us at:

Government Proposals for Revised Injury Awards
Scottish Public Pensions Agency
7 Tweedside Park,
Tweedbank,
Galashiels TD1 3TE

Northern Ireland

You can email us at: ~

gbinjuryreview@nio.x.gsi.gov.uk

You can write to us at:

Police Medical Appeals Section
Policing Policy and Strategy Division
Northern Ireland Office
Room A4.16
Block A Castle Buildings
Stormont Estate
BELFAST
BT4 3SG

11.4. You should also contact the Police Pensions and Retirement Policy Section should you require a copy of this consultation paper in any other format, e.g. Braille, Large Font, or Audio. Please use the contact details for England and Wales above.

Responses: Confidentiality & Disclaimer

11.5. Comments may be made on any issue raised in the document but comments are invited in particular on the issues set out in Chapter 12, which have been numbered for ease of reference:

11.6. The information you send us may be passed to colleagues within the Home Office, the Government or related agencies.

11.7. Furthermore, information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

11.8. **If you want the information that you provide to be treated as confidential**, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

11.9. Please ensure that your response is marked clearly if you wish your response and name to be kept confidential.

11.10. Confidential responses will be included in any statistical summary of numbers of comments received and views expressed.

11.11. The Department will process your personal data in accordance with the DPA – in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

What happens next?

11.12. A summary of the responses received will be published within 3 months of the closing date for this consultation, and will be made available on the Home Office Police Pensions and Retirement Policy Section website.

12. Summary of proposals or invitations to comment

Section 1. INTRODUCTION

Issue 1. It is proposed that any changes introduced to the provision of injury awards and awards for death attributable to police duty should apply to serving officers (including those who have already sustained an injury but have not retired prior to the changes taking effect) as well as new entrants and to the dependants of such officers. However, it is proposed that these changes should not apply retrospectively, i.e. to former officers (or their dependants) who have retired or will retire before the changes are introduced. These officers should continue to be treated within the system as it stood at the time they retired. (Paragraph 1.14)

Section 2. Eligibility for Police Injury Award

Issue 2. It is proposed that injury awards remain payable only where the recipient is permanently disabled for the ordinary duties of a member of the force. (Paragraph 2.3)

Issue 3. Comments would be welcome as to whether the concept of a “top-up” arrangement to compensate officers who are able to be retained in their force only on a part time basis for a reduction in hours worked as a result of a permanently disabling injury would be practicable. (paragraph 2.4)

Issue 4. It is proposed that injuries qualifying for an award should continue to include mental injuries provided the safeguards of restricting permanent disablement to medical causes are retained. (paragraph 2.8)

Issue 5. It is proposed that disablement should be deemed to be the result of an injury if it was wholly or mainly caused by the injury. (Paragraph 2.11)

Issue 6. It is proposed that the definition of in the execution of duty should cover all instances while on duty except where specifically excluded in the regulations. It is proposed that injuries received in the following circumstances should be excluded:

- **Injuries while taking part in sport;**
- **Injuries before or after work or training;**
- **Injuries while taking a break from work or training;**
- **Injuries as a result of any proceedings or investigation undertaken by the force in respect of the officer under police regulations, such as disciplinary or medical retirement proceedings;**
- **Injuries as a result of any other proceedings or investigation in respect of the officer such under Health and Safety legislation or in the context of criminal, or possible criminal, proceedings;**
- **Injuries as a result of a dispute with, or grievance against, other officers or management;**
- **Injuries as a result of an injury to, or proceedings, investigation or dispute involving, a fellow officer in any of the above circumstances;**
- **Injuries as a result of incidents in which the officer was not directly involved through duty. (Paragraph 2.17)**

Issue 7. Comments are invited on whether the police authority should have the discretion to decline a claim for an injury award where it considers that the claim would more appropriately be decided by the courts. (Paragraph 2.18)

Issue 8. It is proposed to retain the current provision in Regulation 6 (2) which provide safeguards for an officer whilst off duty. (Paragraph 2.20)

Issue 9. It is proposed that an injury should be regarded as received in the execution of duty where the police authority is of the opinion that the injury is the result of an act intended to cause harm or fear of harm and the act was aimed either at the police force in general, at members of the police force in general, or at specific officers. (Paragraph 2.21)

Issue 10. As an additional safeguard it is proposed the police authority exercise discretion and treat an injury which is the result of an act which may have been intended to cause harm or fear of harm, and may have been aimed either at the police force in general, at members of the police force in general or specific officers where they consider that the relevant conditions may be satisfied. (Paragraph 2.22)

Issue 11. It is proposed to discontinue the provision under which an officer qualifies for an award by virtue of being injured while travelling to and from work where there is no other causal connection between the injury and the status or duties of a constable. (Paragraph 2.25)

SECTION 3. CALCULATION OF POLICE INJURY AWARDS

Issue 12. It is proposed that a police injury award should continue to consist of an initial gratuity plus a regular income in the form of continuing periodical payments. (Paragraph 3.3)

Issue 13. It is proposed that the injury pension should continue to be related to loss of earning capacity, a decision which should rest with the Selected Medical Practitioner. (SMP) (Paragraph 3.9)

Issue 14. It is proposed that the scale of injury pensions should remain based on an officer’s length of service, although comments would be welcome on the issue of whether this is discriminatory against younger officers with less service or whether this difference in treatment can be objectively justified. (3.10)

Issue 15. It is proposed to retain the use of the claimant’s pensionable police salary at the point at which he or she last served as the benchmark for pre-injury earning capacity. It is not considered necessary to amend the regulations to this effect but to keep this as a matter of guidance. (Paragraph 3.16)

Issue 16. It is proposed to use the full-time pensionable police salary as the benchmark for pre-injury earning capacity unless the claimant was serving immediately before retirement as a part-time officer because of a pre-existing disability. (Paragraph 3.19)

Issue 17. It is proposed to retain the present bands of assessment - slight, minor, major and very severe. (Paragraph 3.20)

Issue 18. It is proposed that an injury pension should be paid only for a reduction in earning capacity of more than 10%. (Paragraph 3.21)

Issue 19. It is proposed to make gratuities payable to acknowledge the fact that an injury has occurred, but within the present system of bandings. (Paragraph 3.22)

Issue 20. It is proposed to make the disablement gratuity five times average pensionable pay in all cases. (Paragraph 3.24)

Issue 21. It is proposed to continue linking the level of the lump sum to the officer’s loss of earning capacity as an indicator of the severity of the injury and the immediate financial needs of the individual officer. (Paragraph 3.26)

Issue 22. It is proposed to change the term “degree of disablement” to “loss of earning capacity.” (Paragraph 3.28)

Issue 23. For the sake of clarity it is proposed that an injury pension should in future be called an “injury earnings supplement” to reflect the distinction from pension scheme benefits. (Paragraph 3.30)

4. CONDITIONS APPLYING TO INJURY AWARDS

Issue 24. It is proposed to amend the definition of default to mean misconduct or negligence for all circumstances. However, it is also proposed that, to recognise the added complications of high-pressure situations or split-second decisions, and to ensure officers do not hesitate due to uncertainty about the extent to which they are covered, officers are eligible for an award when:

- **trying to save life or protect oneself or another from physical attack;**
- **responding to an emergency;**
- **trying to make an arrest or otherwise apprehend a person resisting or evading arrest or being apprehended;**

except if there was evidence of serious and culpable negligence or misconduct. Comments are invited on this issue. (Paragraph 4.6)

Issue 25. Subject to default being a factor which can be taken into account on apportionment it is proposed that there should no longer be a provision for the SMP to advise specifically on default. (Paragraph 4.8)

Issue 26. It is proposed that the system of apportionment developed by the courts should be maintained, and that the SMP should have the final decision in determining the loss of earning capacity on the basis of the apportionment. Comments would, however, be welcome as to whether to make the issue of default as a reason for reducing the size of the award no longer a separate question for the SMP, but part of the process of apportionment. (Paragraph 4.12)

Issue 27. It is proposed that any compensation or damages payable to the officer in respect of the injury should be taken into account when paying the award. However, as with the disablement gratuity and the death gratuity, “compensation” should not be

deemed to include compensation awards which have themselves already been reduced by the amount of any injury gratuity paid or payable, so as to avoid the risk of a possible double reduction. (Paragraph 4.15)

Issue 28. It is proposed to retain the current requirement, as provided in the Police (Injury Benefit) Regulations 2006, Schedule 3 that other benefits need to be taken into account when the level of injury award is being set. (Paragraph 4.18)

Issue 29. It is proposed to require officers to apply to DWP and confirm entitlement to State Incapacity Benefits (or the Employment and Support Allowance from October 2008) before any payment of an injury award is made. It is also proposed that this is an issue to be covered by detailed guidance to police authorities, rather than by amendments to the regulations, although comments are also invited on this issue. (Paragraph 4.19)

Issue 30. It is proposed that no claim for an injury award can normally be made more than five years after the officer has ceased to serve as such, but that an exception should be made for a medical condition which;

- **is of a progressive nature; or**
- **has a long incubation period.**

(Paragraph 4.24)

Issue 31. It is proposed that the regulations list the below set of conditions as excluded from the five year post retirement limit on new claims.

- **AIDS**
- **Other blood-borne viruses e.g. Hepatitis C**
- **Cancer**
- **Post Traumatic Stress Disorder, and**
- **Brain Injuries**

(Paragraph 4.25)

Issue 32. It is proposed to have an overall age limit of 65 on all claims for injury awards, after which age officers are not able to submit a new claim. The age would be renewed in line with the State Pension Age there is a common age for both men and women. (Paragraph 4.26)

5. CONDITIONS APPLYING TO CONTINUING AN INJURY AWARD

Issue 33. It is proposed to maintain the current obligation on police authorities to review injury awards but to leave decisions as to the frequency, and necessity, of such reviews to their discretion. (Paragraph 5.4)

Issue 34. It is proposed that payments of an injury income supplement will be stopped where on review the former officer’s loss of earning capacity is assessed as 10% or less. (Paragraph 5.5)

Issue 35. It is proposed that any changes in loss of earning capacity should be reflected in an officer’s injury award banding, not solely those that are “substantial”, although the police authority must first consider the necessity of the review itself. In addition SMPs must be reminded of the need for objectivity and clarity at all times. (Paragraph 5.8)

Issue 36. It is proposed that the original apportionment may be amended as a result of a review if there has been an alteration in the loss of earning capacity. (Paragraph 5.9)

Issue 37. It is proposed that from age 65 there should be no further reviews and that instead the minimum income guarantee should be replaced by a minimum retirement income guarantee of half its current value and that any payments to top-up the pension, after abatement, should be termed an “injury pension supplement.” Comments are invited on this proposal. (Paragraph 5.17)

Issue 38. It is proposed to use ASHE – Annual Survey of Hours and Earnings figures for former officers in the federated ranks between the ages of 60 and 65, but at the point of replacing the MIG with the new MRIG at age 65, recalculate the MIG using the former officer’s police salary as the pre-injury benchmark so that the new minimum pension guarantee is calculated in the same way for former officers of all ranks. (Paragraph 5.21)

6. A NEW APPROACH TO CONSIDERING INJURY AWARDS

Issue 39. It is proposed to introduce the following procedure for considering a claim for an injury award:

The police authority should initiate action as follows:

- **it should consider the factual issues of whether and when the injury took place;**
- **it should form a view, to the extent possible, of whether the injury was received in the execution of duty;**
- **it should consider whether the injury was received with the officer’s default;**
- **it should decide whether or not to refer the claim to the SMP (if the injury is a disease or mental condition the case must be referred);**
- **if there is a referral, it should put specific questions to an SMP who is suitably qualified to consider the medical issues involved.**

The SMP should report to the police authority on:

- **whether the physical or mental condition of the officer supports the claim of an injury and is compatible with the circumstances of that injury as claimed; and, if so,**

- **whether the officer's permanent disablement is wholly or mainly caused by the injury; and if applicable**
- **the degree of loss of earning capacity as a result of the permanent disablement (after consulting reference tables); and where there are other causes of the permanent disablement**
- **the degree of loss of earning capacity as a result of the injury after apportionment; and if applicable**
- **advise on whether the officer brought about or substantially contributed to his or her disablement by his or her own default.**

The SMP is therefore responsible for taking the final decision on the level of injury award after any reduction. (Paragraph 6.4)

Issue 40. It is proposed that a claimant who refuses a police authority or SMP's request for relevant information should be given formal notice that he or she can expect to have an adverse inference drawn from such refusal, and may have his or her claim rejected altogether. (Paragraph 6.7)

Issue 41. It is proposed that all cases should be sifted but that reviews involving a medical examination should be targeted at cases where there is a request for this, lack of information or where the available information indicates that the officer's loss of earning capacity may have changed. It is proposed to incorporate this into any new guidance that arises from this review. (Paragraph 6.13)

7. SURVIVOR AND DEPENDANTS' BENEFITS

Issue 42. It is proposed to renew the decision to retain the pension scheme provision of the dependent relative's gratuity as a benefit payable in the event of an injury in the light of other proposals. (Paragraph 7.3)

Issue 43. It is proposed that the survivor benefits currently available to spouses and civil partners should also be payable to nominated unmarried and to unregistered same-sex partners under the new police injury benefits scheme, that these benefits should be payable for life, and that the survivor benefits available to children should also be payable to any child who was dependent on the police officer. (Paragraph 7.8)

Issue 44. It is proposed to retain the practice of reduction, whereby if, in any week, a special or augmented pension is payable to the spouse or civil partner under the Social Security Contributions and Benefits Act 1992 in consequence of the officer's death and the amount of that pension exceeds that of a spouse's pension under that Act at the time of the officer's death, then the amount of her special pension in respect of that week is to be reduced by that excess, in order to encourage consistency across the public sector. (Paragraph 7.12)

Issue 45. It is proposed that the present system of lump-sum benefits and gratuities for death due to injury in the execution of duty should be replaced by a system of three types of death gratuity paid to the adult survivor; a child; or an adult dependent relative in that order of precedence and at a rate of either five times, four times or three times the officer's average pensionable pay, subject to a minimum level for more junior officers. (Paragraph 7.23)

Issue 46. It is proposed that the death gratuity payment will not be extended beyond adult dependent relatives to include the officer's estate. (Paragraph 7.24)

Issue 47. It is proposed that survivor benefits should be based on the same criteria as injury awards for determining whether the injury was received without default in the execution of duty. (Paragraph 7.27)

Issue 48. It is proposed that death should be deemed by the police authority to be the result of an injury received in the execution of duty if the person's death was wholly or mainly caused by that injury. (Paragraph 7.29)

Issue 49. It is proposed to confirm the following procedure for considering a death:

The police authority should initiate action as follows:

- **it should form a view as to whether the officer's death was wholly or mainly due to an injury sustained in the execution of duty; and**
- **it should consider whether death occurred due to the officer's default.**

The SMP should:

- **Decide whether the officer's death was wholly or mainly due to the injury sustained; and**
- **Advise whether the officer brought about or substantially contributed to his or her death by his or her own default.**

(Paragraph 7.31)

8. ADMINISTRATION AND DATA MANAGEMENT

Issue 52. It is proposed that forces are mandated to keep all relevant information regarding the injury benefits distributed, including details of the injury type, the loss of earning capacity and records of the police authority and SMP's final decision, as well as information about any appeals or review processes undertaken, alongside existing diversity data to ensure any equality issues arising from their operation of the injury benefits system are brought to light and addressed. (Paragraph 8.2)

Issue 53. In order to create a framework for good practice in which forces regularly collect data on injury awards which they can pass onto the Home Office. It is also proposed that forces are required to enter a limited amount of information about injury awards onto the top-up return used for the police pensions financing arrangements. In order to ensure that no undue burdens are being placed on pensions administrators this requirement will be reviewed after three years. (Paragraph 8.6)

Appendix A

This consultation follows the Cabinet Office Code of Practice on Consultation – the criteria for which are set below.

The Six Consultation Criteria

1. **Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.**
2. **Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.**
3. **Ensure that your consultation is clear, concise and widely accessible.**
4. **Give feedback regarding the responses received and how the consultation process influenced the policy.**
5. **Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.**
6. **Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.**

The full code of practice is available at:
<http://bre.berr.gov.uk/regulation/consultation/code/index.asp>

Consultation Co-ordinator

If you have a complaint or comment about the Home Office's approach to consultation you should contact the Home Office Consultation Co-ordinator, Nigel Lawrence. **Please DO NOT send your response to this consultation to Nigel Lawrence.** The Co-ordinator works to promote best practice standards set by the Cabinet Office, advises policy teams on how to conduct consultations and investigates complaints made against the Home Office. He does not process your response to this consultation.

The Co-ordinator can be emailed at:
Nigel.lawrence@homeoffice.gsi.gov.uk,
 or written to at:

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 Home Office
 Performance and Delivery Unit
 3rd Floor Seacole, SE Quarter
 2 Marsham Street
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Appendix B

Police (Injury Benefit) Regulations: Cross References

Consultation Document	Police (Injury Benefit) Regulations 2006	Police (Injury Benefit) (Scotland) Regulations 2006	Police Service of Northern Ireland and Police Service of Northern Ireland Reserve (Injury Benefit) Regulations 2006
2.1	11(1)	11(1)	10(1)
2.7	7(4)	7(4)	6(4)
2.9	8	8	7
2.12	6	6	5
2.19	6(2)	6(2)	5(2)
3.4	Schedule 3	Schedule 3	Schedule 3
3.6	7(5)	7(5)	6(5)
3.23	12	12	11
4.2	6(4)	6(4)	5(4)
4.7	38	38	36
4.18	Schedule 3	Schedule 3	Schedule 3
5.1	37	37	35
5.6	37	37	35
6.5	33	33	32
6.8	31	31	30
7.28	8	8	7

Appendix C

The Process of Apportionment

The current procedure to accurately and appropriately determine an officer’s loss of earning capacity has been determined by case law and by good practice. It is set out below.

Stage 1. Determine whether the disablement is the result of an injury received in the execution of duty.

Stage 2. Determine the loss of earning capacity as a result of permanent disablement.

Stage 3. Determine the degree to which that loss is the result of the qualifying injury, and adjust the loss of earning capacity accordingly.

Stage 3 involves an assessment of any non-qualifying injuries and any other causes whether classified as an injury or not. For example, this could include an injury sustained whilst off duty, an injury which is specifically excluded from the proposed list in paragraph 2.25 above, or some other cause. The focus should not be restricted to contrasting duty and non-duty injuries.

In considering apportionment, the SMP will therefore need to consider the issue of *causation*. This is a separate exercise from testing for entitlement for an injury award by reason of the injury wholly or mainly contributing to the disablement, and directs the SMP to look at the circumstances behind the injury or the loss of earning capacity. The SMP must consider apportionment on the basis of the evidence and by applying his or her medical judgement.

Before apportionment can arise each factor must separately have caused some degree of loss of earning capacity on its own. However, if proposals at 4.8 are approved, the question of default, and whether it has contributed to the loss of earning capacity, should also be considered as part of apportionment

More than one medical condition causing loss of earning capacity

The simplest case of apportionment is where there are two separate causes of loss of earning capacity, each making a contribution to the loss. Where, for instance, a person is disabled partly on account of a medical condition occasioned by a qualifying injury and partly by another medical condition, the loss of earning capacity must be assessed on the basis of an apportionment of the loss of earning capacity to take account only of the condition occasioned by the relevant injury.

More than one injury within same condition causing loss of earning capacity

Apportionment may also be appropriate where there is no other medical condition, but where it is found that there has been more than one injury involved which causes loss of earning capacity and where not all the injuries were received in the execution of duty. In such a case the percentage of loss of earning capacity should be apportioned, applying the same proportion that the injury or injuries in the execution of duty have contributed to the loss of earning capacity as a result of the disablement.

Case law (*(R (South Wales Police Authority) v The Medical Referee (Dr David Anton) and Philip Crocker (2003))*) also deals with the situation where loss of earning capacity is attributable to a qualifying injury exacerbating a pre-existing condition. Apportionment is appropriate here only where the underlying condition, on its own, had also caused a loss of earning capacity. The suggested test is the question: Would there have been a loss of earning capacity but for the injury? In addition, just because the qualifying injury may not have happened without the underlying condition, this does not signify that the latter caused a loss of earning capacity in its own right.

Appendix D

Note APP means average pensionable pay.

Gratuities on death due to qualifying injury

Circumstances of death	Current system	Proposed replacement
Death occurs within one year of the qualifying injury.	Special pension: death gratuity of 5 times pensionable pay on last day of service or four times total remuneration during 12 months ending with last day of service plus aggregate pensions contributions – whichever is the lesser. This includes any other pension-scheme and injury-benefit lump sums or payments received in respect of the death or total disablement. Augmented pension: increase of death gratuity to extent that a lump sum of 175% of the officer’s APP would be exceeded by a lump sum of twice the APP of a Metropolitan police constable at the top of the pay scale.	“Type A” gratuity – A guaranteed minimum lump sum of 5 times’ APP at time of death, or twice the APP of a Metropolitan police constable at the top of the pay scale, plus 3 times the deceased officer’s APP, whichever is the greater. The lump sum paid will take into account any other pension-scheme or injury-benefit lump sums or compensation payments received in respect of disablement or death.
Death in service (no death gratuity payable)	Special pension gratuity of: up to 175% of APP. Augmented pension gratuity of: twice the APP of a Met police constable at top of pay scale, if greater than gratuity for special award.	“Type B” gratuity – A guaranteed minimum lump sum of 4 times APP at time of death, or twice the APP of a Met police constable at the top of the pay scale, plus twice the deceased officer’s APP, whichever is the greater. The lump sum paid will take into account any other pension-scheme or injury-benefit lump sums or compensation payments received in respect of disablement or death.
Death in retirement (no death gratuity payable)	Special pension gratuity of: up to 25% of APP. Augmented pension gratuity of: twice the APP of a Met police constable at top of pay scale, if greater than gratuity for special award.	“Type C” gratuity – A guaranteed minimum lump sum of 3 times APP at time of death, or twice the APP of a Met police constable at the top of the pay scale, plus 1 times the deceased officer’s APP, whichever is the greater. The lump sum paid will take into account any other pension-scheme or injury-benefit lump sums or compensation payments received on retirement or in respect of disablement or death.

