

LEAFLET 47**HEALTH AND SAFETY RESPONSIBILITIES AND DUTIES OF MOD EMPLOYEES****CONTENTS**

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LEAFLET FOR LINE MANAGERS**INTRODUCTION**

1 Health and safety legislation places responsibilities and duties on employers and employees. Failure to comply with the requirements can lead to criminal prosecution. This leaflet sets out to give all MOD employees, whether they are line managers or workers. The guidance applies to both civilian and Armed Forces personnel.

DEFINITIONS**Line Manager**

2 Line Manager means all MOD staff, both Service and Civilian, who have authority and responsibility for directing and supervising people working for them. The working staff maybe either permanent or temporary MOD employed staff or persons employed on MOD contracts.

Employee

3 Employee means any person who has a contract of employment with the MOD, be they Service or Civilian, of any rank or grade, on a full time, or part time basis.

Management System

4 Management System means the necessary arrangements and procedures to identify and control hazards and reduce harm.

Reasonable care

5 Reasonable care is care to a degree that which would be expected of a person based on their experience and knowledge, bearing in mind the level of knowledge and experience of the person to whom the care is owed. E.g. the level of care would be greater to a recruit, cadet or apprentice than to a trained serviceperson or craftsman.

RESPONSIBILITIES**Line Management**

6 Health and safety responsibilities are placed on employers and employees. In the Ministry of Defence the Employers responsibilities are exercised by the Secretary of State for Defence through the chain of command as indicated in the Secretary of States SHEF Policy.

7 Management of H&S is a line management function. Each line manager has a duty to the Secretary of State, and a personal responsibility under the law, to secure the health, safety and welfare of their staff at work. Line managers are also required to protect, so far as is reasonable practicable, all others against risks to their health or safety arising from the line managers work activities and those of their staff.

8 Line managers at all levels in an organisation therefore have a strong personal interest in taking the initiative in ensuring that their duties are discharged adequately. The responsibility to achieve the duty cannot be delegated. The tasks required to discharge them can be delegated; assistance and support can be obtained; but the responsibility remains with the line manager.

9 Of course, this does not mean that every line manager needs to establish a safety management system See Annex A for guidance. Most will be able to rely on the management system already established in their management chain. It is however the responsibility of line managers to ensure the system is operating effectively in their own area, and if their area is not covered by a management system, they will need to implement one. The complexity of the management system required would depend on the significance of the risks that arise from the activities of the area concerned.

DUTIES**Line Managers**

10 Line Managers shall while at work:

10.1 Either Identify hazards and assess the risks involved with the activities for which they have control, or ensure this duty is carried out.

10.2 Either eliminate or implement control measures to reduce the risk from the hazards identified and monitor that they are applied, or ensure this is carried out.

10.3 Ensure that all their staff have been supplied with the information, instruction and the necessary training to competently and safely perform their tasks.

10.4 Review the assessments to ensure that they and any control measures are valid, or ensure this is carried out.

10.5 Investigate and report any injury to a member of their staff or any person resulting from the activities under their control in accordance with MOD Policy, or ensure this is carried out.

Employees

11 All employees shall while at work:

11.1 Take reasonable care for their own safety while undertaking their roles.

11.2 Take reasonable care that their actions or failure to act does not endanger the safety of others.

11.3 Comply with any duties imposed on them by their Line manager or the MOD to enable legal requirements to be met.

11.4 Use machinery, equipment, dangerous substances, transport equipment means of production or safety devices provided to them in accordance with the training and instruction given for the item concerned.

11.5 Avoid reckless or intentional interference with, or misuse of, anything provided for H&S purposes

11.6 Undertake any training necessary to ensure they are competent in performing the tasks allocated to them.

11.7 Report to their line manager or person with a health and safety role any situation that they, with their knowledge and experience consider represent a serious and immediate danger to health and safety. Also to report any situation where they consider there is a shortcoming in health and safety arrangements.

TRAINING

12 All employees should be made aware, by their line managers, of the duties placed on them in respect to Health and Safety while at Work.

GUIDANCE

13 The Annex B to this leaflet supplies guidance for all MOD employees on their personal legal liability in relation to health and safety.

RELATED DOCUMENTS

14 Related Documents.

- JSP 375 Vol1 Chapter 2 Annex A - A Policy Statement by the Secretary of State for Defence
- JSP 375 Vol1 Chapter 8-1 - General Agreement between MOD and HSE
- JSP 375 Vol1 Chapter 8-2 - General Agreement between MOD and The Health and Safety Inspectorate of the Department of Economic Development Northern Ireland

LEAFLET 47 ANNEX A**HEALTH AND SAFETY RESPONSIBILITIES AND DUTIES OF MOD EMPLOYEES****CONTENTS**

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GUIDANCE FOR LINE MANAGERS

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GUIDANCE FOR LINE MANAGERS**INTRODUCTION**

1 This Annex is aimed at line managers. If you are a line manager you have a responsibility for the H&S of your staff and of others who might be affected by the work activities under your control and duties laid on you by the Secretary of State by delegation through the management chain of command. The object of the chapter is to guide line managers towards discharging their duties to the Secretary of State and their responsibilities under the Health and Safety at Work etc Act 1974 (HSWA).

REQUIREMENTS FOR EFFECTIVE HEALTH AND SAFETY MANAGEMENT

2 Effective resource management is an essential requirement for success in any operation. The management of H&S is a branch of resource management as are financial, facilities, quality and environmental management. H&S management is concerned with conserving resources by minimising losses arising from accidents and from injury and ill health to people, both employees and others. Consequently, unlike other branches of resource management, H&S management touches on moral issues.

3 A HSE publication on the subject ("Successful Health & Safety Management", HSE Series Booklet HS(G)65 - HMSO 1991 - ISBN 0 11 885988 9), intended as a guide for HSE inspectors for "judging the adequacy of health and safety management and compliance with statutory requirements", states:

"There are no short cuts to successful health and safety management. It cannot be sidelined. It must not be delegated out of sight. The clearest lesson from practical experience is that the starting point is the genuine and thoughtful commitment of top management."

4 The publication also emphasises that, in addition to the requirement of the law and the moral imperative of securing the H&S of people, the cost of failure to manage H&S successfully is high. Considerable cost benefits can be achieved by reducing the claims, which arise from work related injuries and health.

LINE MANAGEMENT RESPONSIBILITIES

5 Line managers at all levels in an organisation therefore have a strong personal interest in taking the initiative in ensuring that their duties are discharged adequately. These duties cannot be delegated. The tasks required to discharge them can be delegated; assistance and support can be obtained; but the legal responsibility remains with the line manager.

6 Of course, this does not mean that every line manager needs to establish a safety management system. As explained below, most will be able to rely on the organisation already established in their management chain. But it is the responsibility of every line manager to ensure the organisation is operating effectively in his own area.

SETTING UP A HEALTH AND SAFETY MANAGEMENT SYSTEM

7 As a line manager, your first step towards discharging your H&S duties is to identify the hazards and make an assessment of the risks involved in the activities you control. You may need to seek technical advice on this, and in the application of the H&S regulations. You should then establish whether or not the organisation and arrangements necessary to control the hazards already exists and, if not, you must arrange for them to be set up and maintained.

8 In doing so you should consider the organisation and arrangements operated by those above and below you in the management chain and, particularly in a multi-occupier building, by collocated or related organisations. For most line managers it will not be necessary to set up their own organisation and arrangements to discharge their H&S responsibilities, particularly where employees in the same line management chain are collocated. Indeed, so far as possible, they should avoid confusion and duplication of effort by adopting or adapting for their own use any suitable organisation and arrangements already set up by others.

9 However, unless you are quite satisfied that the organisation and arrangements in your area of interest enable you to discharge your particular responsibilities as a line manager, you are obliged to adopt appropriate alternatives. This might occur, for instance, on a site where types of hazards or levels of risk vary to an extent that different H&S arrangements are necessary.

10 In order to enable line managers to manage H&S, and at the same time to discharge their personal legal obligations, it is essential that there exists, in every part of their organisation:

10.1 A signed and dated statement of the H&S, organisation and arrangements in place to meet the Secretary of States Policy;

10.2 A suitably trained Safety Advisor nominated as the focal point for the area;

10.3 A formal procedure for consulting staff on H&S matters; and

10.4 A system for keeping H&S records, e.g. operating instructions and procedures for safe systems of work, risk assessments, staff training, competent persons, emergency procedures, accident reports and investigation, H&S monitoring reports.

11 Whether line managers set up their own arrangements for their areas of responsibility, or whether some or all of them are initiated and maintained by another line manager, is not important. It is however essential that these arrangements exist, operate efficiently and are cost effective. Also, where an H&S organisation is set up, the whole range of components given in paragraph 10 must be present, even if some are borrowed from or shared with other organisations.

12 The line manager must ensure that these systems are exercised, monitored and reviewed as necessary to remain effective. For example, emergency procedures must be practised, the results assessed and any necessary action taken.

HEALTH AND SAFETY STATEMENT

13 The Secretary of State's Policy Statement (See Volume 1 of this JSP) forms the corporate policy element of the H&S policy statement which every employer is required under HSWA Section 2(3) to prepare and maintain. The organisation and arrangements for managing H&S, which are the other elements, are provided at appropriate levels in the organisation so that employees, at all levels, have a readily accessible summary of:

13.1 The H&S policy in the organisation;

- 13.2 Who is responsible for various aspects of H&S management; and
 - 13.3 The systems in place to achieve effective implementation of the policy.
- 14 As a line manager you are required to consider whether you need to produce your own H&S statement or whether your organisation is adequately covered by the statement of one of your superiors. There are no firm rules in this matter, but relevant factors are:
- 14.1 The number of people reporting to the line manager;
 - 14.2 The nature of the hazards and level of risks to which they are exposed;
 - 14.3 Its relationship with the rest of the organisation; and
 - 14.4 The need for separate arrangements from the rest of the organisation.
- 15 Where it is considered appropriate to adopt the H&S statement of a line manager senior to you in the organisation, to discharge your own duties. You should obtain the agreement of that line manager and ensure that all your staff are aware that they are covered by this H&S statement.
- 16 It is important that the H&S statement should, as well as setting out the organisation and arrangements in place, convey to employees the commitment of the line manager to securing their H&S. It should therefore be written as a personal statement using the first person singular and be signed and dated.
- 17 The Secretary of State's policy statement should be referred to in the line manager's statement and a copy attached.

THE SAFETY ADVISER FUNCTION

- 18 Most line managers need some specialist H&S support to:
- 18.1 Provide advice on what they need to do to discharge their duties;
 - 18.2 Provide an assurance that the organisation to do so is in place;
 - 18.3 Set up systems for monitoring H&S performance in the organisation; and
 - 18.4 Provide them with general H&S support.
- 19 This is generally achieved by appointing a Safety Adviser, who should, as far as possible, be outside and independent of that part of the organisation concerned with the achievement of the line manager's primary objectives. The task of the Safety Adviser will vary according to the size and nature of the organisation. For a small office organisation, for instance, a single part-time Safety Adviser might be quite adequate.
- 20 It is essential that Safety Advisers receive appropriate training to enable them to carry out their functions competently. For example, an introductory course in H&S management backed up by a selection of relevant guidance material might be sufficient preparation for a part-time Safety Adviser in a small outstation office in a multi-user building. For a larger organisation with special hazards a qualified full-time H&S manager supported by a number of persons competent in the relevant hazards might be more appropriate. In both situations access to an outside centre of H&S expertise would normally be required from time to time. *Ultimately it is YOU, as the line manager who carries the responsibilities, who must decide how much H&S support you need. This will largely depend upon how confident you are that the systems in place are effective in enabling you to discharge your duties.*

21 Line managers assess the extent to which their organisations are complying with H&S requirements through audit procedures and by recording and analysing accident and other H&S data. Their senior line managers have the same general responsibilities and they too need to be satisfied that they are discharging their duties adequately. It follows that line managers at lower levels in the organisation will need to collect H&S data to be used not only for their own requirements but also to pass to higher management, in the same way as they do with financial and other management statistics.

22 In order to provide effective support to the line manager, the Safety Adviser must be the focal point for all H&S matters. It is particularly important, even in the smallest organisation, that the Safety Adviser is fully involved in all post-accident procedures in order to ensure that statutory and departmental recording, reporting and investigation requirements are discharged on behalf of the line manager. The identity of the branch Safety Adviser, and the arrangements which apply in his absence, must be known to every employee.

HEALTH AND SAFETY SUPPORT FOR THE SAFETY ADVISER

23 H&S cover such a wide range of technical fields that the Safety Adviser will rarely have sufficient in-house expertise to provide for all eventualities. For instance, in considering the adequacy of procedures for serious and imminent danger he will depend upon the advice of both MOD's Fire and Security Services. Similarly, Occupational Health is an aspect of H&S which is covered in depth by professional specialists in the Services and civilians areas.

24 Safety Advisers should be aware of these and other sources of specialist information and where necessary line management should make arrangements to provide additional support. For a small office organisation in a multi-user building the support of a collocated branch might be sufficient for most purposes, with more specialist support being obtained from elsewhere within MOD or from a private sector source. Responsibility again falls on the line manager to ensure that sufficient support is provided for his Safety Adviser to be effective.

COMMUNICATIONS WITH EMPLOYEES

25 In designing and operating any H&S management system it is important to maintain an effective 2-way channel of communication with each employee. For example, at the workplace employees need to receive information (instructions, advice, assistance etc) and should also report information (hazards, incidents, accidents etc). The considerable potential for reducing losses in the organisation will not be realised until effective 2-way communication is achieved at all levels by fully integrating H&S management systems into its culture.

26 It is essential for the successful operation of an H&S management system that each individual employee (whether direct MOD employee or contractor) is clear as to the H&S arrangements which apply to him. As soon as practicable after joining or being transferred into an organisation, new employees should receive a brief introductory course covering these matters. In addition, the H&S statement should state or refer to the key information which each employee needs to know.

27 Amongst other things, all staff should know:

- 27.1 Which H&S statement applies to them (and should have read and understood it);
- 27.2 Who is the Safety Adviser;
- 27.3 How to raise H&S concerns with management;
- 27.4 Emergency procedures and what action is required of them;
- 27.5 Action to be taken in the event of an accident; and
- 27.6 How to get First Aid.

28 This important test of the adequacy of the H&S organisation should be borne in mind when designing the organisation and applied periodically once it is in operation. It is not, however, the only criterion of adequacy. Employees also need to be confident that appropriate and timely action will be taken by line management after they have played their part by following H&S instructions and reporting procedures.

29 In practice, many line managers find that a Safety Committee provides an effective mechanism by which they can ensure that necessary H&S actions are discharged. At the same time the committee provides a forum for consultation with employees on H&S matters as required by the Secretary of State's Policy, and also The Health and Safety (Consultation with Employees) Regulations 1996. Where line managers operate Safety Committees, all staff in their management area should be represented and members of staff not on the committee must be clear about how to have their concerns raised at committee meetings (E.g. Through Trade Union Safety Representatives or an elected member of staff acting as a Safety Representative).

30 Although line managers usually take the initiative in setting up a Safety Committee, they are in any case required to do so when requested by trades union appointed Safety Representatives, by regulations made under the HSWA (The Safety Representatives and Safety Committees Regulations 1977). These regulations provide TU members with a means of ensuring that H&S in their areas are up to the required standards. To this end Safety Representatives may initiate and carry out inspections of the workplace. Arrangements under these regulations are to be encouraged where requested.

31 Line managers should however be clear that inspections of the workplace and other activities of TU-appointed Safety Representatives are carried out solely on behalf of their members. The regulations make it clear that none of the functions of Safety Representatives imposes any legal duty or responsibility on them. Line managers should not therefore rely on TU-appointed Safety Representatives to discharge their duties or monitor their performance. Nevertheless, all Safety Representatives can contribute significantly towards improving the standards of H&S by, for instance, drawing attention to potential or current problems which the line manager's systems have missed.

MONITORING HEALTH AND SAFETY MANAGEMENT SYSTEMS

32 In addition to establishing the Safety Adviser function, the mechanisms for promulgating H&S policy and information, identifying hazards, assessing risks, reporting accidents, etc, you will need to be assured that your H&S management organisation is operating effectively. You will, therefore, require your Safety Adviser to report to you on the performance achieved throughout your area of responsibility. You may also wish to demonstrate your commitment to high standards of H&S by taking an active part in a sample of the monitoring procedures in place.

33 In some situations you may consider that an audit of the H&S systems by an independent outside body, e.g. a private consultant, would provide a worthwhile additional assurance. This will depend upon the size of the organisation, the nature of the activities and their associated hazards, the levels of risk which obtain and the degree of confidence in the organisation and arrangements already in place.

34 Since the need to monitor performance applies to all line managers it follows that a workplace is liable to be inspected both by the immediate line manager and by one or more line managers at higher levels in the organisation. This can lead to over-inspection, particularly of high hazard - but not necessarily high risk - work areas. In seeking to avoid this, line managers must be conscious of the balance between failing to have sufficient assurance that their H&S responsibilities are being discharged and incurring unnecessary costs and disruption to their business by over-inspection.

35 Performance objectives in this field are particularly difficult to define and are almost invariably subjective. Nonetheless it is essential to establish some performance criteria, although these should be kept under review and need to be sensibly interpreted. The key performance measure is the cost of accidents, injuries and ill health, although inevitably this is historic information. It is, however, necessary in any case to operate a reporting system to produce the statistics required to provide the basis for estimating the cost of any losses. Cost effective targeting of resources to prevent accidents, injuries and ill health can then be arranged.

LEAFLET 47 ANNEX B**HEALTH AND SAFETY RESPONSIBILITIES AND DUTIES OF MOD EMPLOYEES****CONTENTS**

Para

PERSONAL LEGAL LIABILITY OF MOD EMPLOYEES

- 1 Introduction
- 2 Guidance
- 3 Civil claims
- 6 Criminal charges
- 10 Directors and senior managers
- 11 HSE approach

PERSONAL LEGAL LIABILITY OF MOD EMPLOYEES**INTRODUCTION**

1 Recent clarification of H&S responsibilities by Regulations made under the HSWA, together with the further removal of Crown immunity (from liability in tort) from members of the Armed Forces by the Crown Proceedings (Armed Forces) Act 1987, has become a source of growing concern to MOD managers and employees with regard to their own legal liability under H&S legislation. The following guidance is intended to clarify this liability and to allay any unnecessary fears. It should, however, in no sense be seen as seeking to minimise the crucial importance of those H&S duties which managers and employees have to discharge, both collectively and individually at all levels.

GUIDANCE

2 In addition to the long-standing common law responsibility on everyone to avoid causing injury to others through negligence etc (which could lead to civil proceedings), the HSWA places the common law duties of care and co-operation on a statutory footing so far as H&S at work is concerned. Any individual act or omission (failure to act) may have civil and criminal implications. An accident at work may result in both a prosecution for a criminal offence as well as a civil claim for compensation.

CIVIL CLAIMS

3 Any employee who is injured in the course of employment may seek some form of compensation from the person (if any) who was responsible for the injuries. If an employee is killed his dependants may seek some sort of financial recompense for their loss. Nowadays, practically all such cases are brought under the law of tort (civil wrongs giving rise to claims for damages), and in particular the tort of negligence. In this context, the liability of employers may be twofold. First, the employer will be responsible for his own acts of negligence and second, he may be liable vicariously for the wrongful acts of his employees which are committed in the scope of their employment. Hence the Crown, like any other employer, may be vicariously liable under common law for the wrongful or negligent actions of its employees acting in the course of their employment. However, unlike other employers, the MOD is not bound by the Employers Liability (Compulsory Insurance) Act 1969. This Act requires employers to take out insurance to guarantee monies are available to compensate persons injured by the employer's activities. This Act exempts government departments from its provisions and hence MOD carries the cost of compensation claims in its budget. The claims are managed by the MOD Claims Officers.

4 The courts interpret vicarious liability very widely. Moreover, it can never be a defence for an employer to claim that he has transferred the responsibility for implementing and maintaining H&S precautions to a Safety Officer, manager or other person. On this basis, and because MOD is clearly better placed to pay damages than are individual employees, claimants almost always bring actions against MOD rather than against individuals.

5 If a claimant were to attempt to bring a legal action for damages against a member of the Armed Services or a civil servant because their actions arising in the course of their employment were stated to have led to the claim, MOD, recognising its vicarious liability, would normally take over the case in the Crown interest and pay any associated damages or costs awarded to the plaintiff.

CRIMINAL CHARGES

6 MOD line managers or employees do not run the risk of prosecution under the HSWA in substitution for their Department. Individual MOD line managers or employees may however be the subject of a criminal prosecution for failing to discharge the general duties imposed by the HSWA and Regulations made under it, but only in circumstances where the HSE would normally prosecute non-Crown employees. This is detailed in the HSE/MOD General Agreement (See Volume 1 JSP 375)

7 Similarly, no Commanding Officer or line manager runs the risk of a prosecution as a result of a subordinate's actions, unless of course he himself has committed an offence in respect of his own duties under the HSWA.

8 Although the Crown, unlike a private employer, is exempt from prosecution, the HSWA does allow for the criminal prosecution of individuals in the public service of the Crown. Hence, any individual civil servant or member of the Armed Forces could in certain circumstances be prosecuted for breaches of H&S legislation, in particular the HSWA and Regulations made under it which set out the general duties of employees and managers at work. These duties include:

8.1 To take reasonable care for one's own H&S, and that of others; to co-operate with employers and others in carrying out the aims of the relevant statutory provisions. To avoid reckless or intentional interference with anything provided for H&S purposes; and to inform employers or others of H&S shortcomings or immediate threats.

8.2 To ensure that any act or default knowingly causes the Crown to commit what would have been an offence under H&S legislation, if the law could apply to the Crown.

9 None of the above has any bearing on possible internal disciplinary action against Service or civilian personnel. That would be a matter for the relevant Service or civilian authorities.

DIRECTORS AND SENIOR MANAGERS

10 Individual senior managers may however be required to represent the MOD at a Crown Censure hearing, the HSE arrangements for censuring Crown Bodies in lieu of their inability to prosecute the Crown (See JSP 375 Volume 1). The person is likely to be the senior line manager most appropriate, given their authority and role in the MOD, to indicate the actions taken, or being taken by the MOD in the particular case. In these circumstances the senior manager would not personally be criminally liable but would answer for the MOD.

HSE APPROACH

11 In general, however, the HSE have made it clear that they have no intention of prosecuting an individual Crown servant in substitution for his Department. There is moreover no question of the HSE prosecuting individuals because of defects in management organisation. Prosecutions of individual Crown servants would only be pursued in circumstances where the HSE would normally prosecute an individual employee or manager outside the Civil Service or Armed Services, e.g. if there were a wilful or reckless disregard of H&S requirements and a consequential contravention of the HSWA. As a rule, though, the HSE have tended to regard the criminal law as a weapon of last resort.

LEAFLET 47 ANNEX C**HEALTH AND SAFETY RESPONSIBILITIES AND DUTIES OF MOD EMPLOYEES****CONTENTS**

Para

CLAIMS

DC&L(F&S)claims roles and responsibilities

- 1 Organisation
- 3 Responsibilities
- 4 Liability
- 5 Compensation
- 6 Ex gratia payments
- Arrangements for handling claims
- 7 Dealing with the claim
- 8 Admission of liability
- 9 Reporting of an injury
- 11 Further investigation of a service incident
- 12 Enquiries to determine liability
- 13 Preparation and retention of documents/items
- 15 Limitation act
- 17 Topas scheme

Appendix

- 1 Duty of Care
- 2 Insurance arrangements for Open Days, Displays and other functions
- 3 Participation of Civil servants in joint activities
- 4 Civilian use of Service Sports Facilities
- 5 Effect on the Personal Insurance Policies of Civilian Staff of Deployment to Operational Areas and Travel in MOD Aircraft
- 6 Accident Claims and Liability Issues for Vehicles Operated by the MOD
- 7 Insurance for Adventurous Training Expeditions

CLAIMS**DC&L(F&S)CLAIMS ROLES AND RESPONSIBILITIES****Organisation**

1 Common Law compensation claims maybe made against the MoD as a result of negligent acts of or omissions committed by the department or its employees.

2 MOD Claims branch (DC&L(F&S)Claims) is primarily responsible for processing common-law, non-contractual compensation claims against and on behalf of the Ministry of Defence at home and abroad. It is not responsible for contractual, quasi-contractual, sales or estates matters.

Responsibilities

3 Claims branch has a number of other important responsibilities such as providing claims policy advice, handling claims against foreign forces based in the UK, providing advice on insurance and indemnities and undertaking a variety of secretariat tasks.

Liability

4 Compensation claims are considered on the basis of whether or not the Ministry of Defence has a legal liability to pay compensation. Where there is a proven legal liability, compensation is paid. The MoD repudiates approximately 50% of those claims made.

Compensation

5 Compensation is divided into 2 elements – General Damages and Special Damages:

5.1 General Damages are paid for an individual's pain and suffering and the degree of injury. Legal case precedent determines the level of compensation paid.

5.2 Special Damages are quantifiable losses such as, loss of earnings, property loss, past and future losses and care costs etc. Acceptance of these claims is subject to negotiation and the test of reasonableness.

Ex Gratia Payments

6 The Ministry of Defence does not normally make ex-gratia compensation payments in respect of occurrences within the UK. There are, however, a small number of exceptions: i.e. claims arising from military low flying aircraft; claims from volunteers who are injured during research work and for certain miscarriages of justice affecting Service personnel.

ARRANGEMENTS FOR HANDLING CLAIMS

Dealing with the claim

7 The MOD is bound by the strict timetable for the handling of common law claims laid down by the Lord Chancellor. We only have 3 months from the date the claim is acknowledged to decide our liability. For this reason it is imperative that all letters of claim received are referred immediately **without acknowledgement to:**

- **Royal & Sun Alliance Plc**
 Parkview House
 Victoria Road South
 Chelmsford
 Essex
 CM1 1NG

Tele: 01245 274211

- Service Personnel Employers Liability claims
 - MoD civilian employees Employers Liability claims from 30 April 2002.
- **AXA Corporate Solutions Services Ltd**
 PO Box 43
 Civic Drive
 Ipswich
 IP1 2LG

Tele: 01473 205124

- Third party motor claims.
 - Recoveries from third parties who damage MoD vehicles.
 - MoD civilian employees Employers Liability claims before 30 April 2002.
- **DC&L(F&S)Claims**
 Room 601
 St Giles Court
 1-13 St Giles High Street
 London
 WC2H 8LD
- **Employers Liability Group**

- Service personnel Employers Liability claims before 1 July 1996.
 - Maritime claims.

- Tele:0207 807 0052 - Military low flying claims.
- **Public Liability Group**
 - Personal injury claims.
 - Damage to property (non-contractual)
 - Recoveries from third parties who damage MoD property.

Tele: 0207 807 0066
 - **Clinical Negligence Group**
 - Claims for negligent treatment by medical staff.

Tele: 0207 807 8048

Admission of liability

8 Units or Establishments are not to accept any responsibility for processing a claim, or say anything whatsoever which might be construed as accepting, admitting or denying liability for the incident giving rise to the claim.

Reporting of an injury

9 In all circumstances where injury occurs, a MoD Form 2000 must be carefully completed together with details of witnesses, and retained as follows:

- 9.1 RN, RM and Army personnel – in the individual's main personal file.
- 9.2 RAF personnel – in the RAF Central Casualty Section.
- 9.3 Civilians – in the individual's main personal file.
- 9.4 A copy of the form should be sent to the following address:

The MoD CHASP Accident Reporting Database
C/o Pay & Personnel Agency
PO Box 42
Stockport
SK1 1ED

Please refer to JSP 442 for further information on reporting of an injury.

10 Incidents that result in death or serious injury, E.g. disablement, must be reported immediately to the Public Liability Group for incidents involving members of the public and Royal and Sun Alliance for incidents involving MoD Service personnel or civilian staff.

Further investigation of a service incident

11 For Service personnel, consideration must be given to holding a Board of Inquiry, Regimental/Unit Inquiry. If appropriate, there should be an investigation by Service police. These enquiries must not include recommendations on payment of compensations.

Enquiries to determine liability

12 Any request for information and assistance made by Royal & Sun Alliance, AXA Corporate Solutions (UK) Ltd, DC&L(F&S)Claims and solicitors representing MoD is made in the interests of the Department. Units and Establishments must deal with requests as quickly and as fully as possible in providing such information as may be necessary. Our contractors and solicitors representing the MoD have the appropriate security clearances to handle claims on behalf of the MoD, and their requests for information should be treated as if they came directly from DC&L(F&S)Claims.

Preparation and retention of documents/items

13 All documentation related to an event, which could be relevant to a future claim should be retained with MoD Form 2000 for a minimum of 10 years. Examples of documents, which may be required at a later date are:

- Unit standing orders
- Health and Safety Regulations
- Instructions for weapons handling
- Photographs
- Video recordings
- Drawings
- Nominal rolls
- Names and Service/Staff number of supervising NCOs/Unit Commanders/civilians
- Accident Book entry
- First Aider's report
- Risk assessments
- Witness statements
- Maintenance and repair records
- Complaint records
- Health surveillance records
- Instructions for use of personal protective equipment
- Training records and syllabuses
- FMT 3 forms
- Police reports

14 Property or equipment involved in an accident (e.g. a broken ladder) should also be wherever practical. If Units are in any doubt as to what documentation or equipment might be relevant they should contact DC&L(F&S)Claims.

Limitation act

15 A claimant has three years from the date of incident in which to bring a claim for personal injury. However, if the claimant could not have known earlier that they had a cause for making a claim (e.g. in the case of asbestos related illness, the symptoms only appear 20, 30 or 40 years after exposure) then the time limit does not commence until the date of their knowledge. A minor is allowed until the date of their majority (18) plus 3 years in which to make a claim. Property damage and assault claims are allowed six years.

16 Units and Establishments are to ensure that any documents relating to an accident are kept for a minimum period of 10 years or longer if the incident involves a minor

Topas scheme

17 In the event of an injury caused by a third party whilst on duty, be it a road traffic accident, assault or any other form of accident MoD civilian staff and Service personnel may pursue a claim against the third party using the TOPAS scheme arranged with a firm of solicitors.

18 The scheme is on a conditional fee basis (commonly known as 'no win, no fee') which means that should a claim be successful the legal costs plus a success fee will be sought from the third party without affecting the amount of compensation paid to the claimant. Should the claim not succeed then no costs nor fee will be sought from the claimant.

19 This scheme cannot be used for claims against the MoD.

LEAFLET 47 ANNEX C APPENDIX 1**HEALTH AND SAFETY RESPONSIBILITIES AND DUTIES OF MOD EMPLOYEES****DUTY OF CARE**

1 The term 'duty of care' is used correctly and accurately to describe a situation where the MoD has a legal duty to take care (whether by taking action or refraining from acting), in circumstances where a breach of that duty will form the basis for successful proceedings for damages. It is important to note in particular that the employer/employee relationship only owe a legal duty to take care in a limited number of circumstances. The most obvious example is health and safety at work, where an employer is under a legal duty to take reasonable care for the safety of his employees. In considering the question of duty of care the Courts apply a three stage incremental test: a. Reasonable foreseeability of injury. b. Proximity. c. Fair, just and reasonable to impose a duty. The burden of proof rests with the claimant on the balance of probabilities.

2 At the other end of the scale, it is increasingly common to see the term used in relation to situations where the MoD has, at the very highest, no more than a moral obligation or responsibility, where no possible legal liability could flow from a failure to discharge the asserted duty of care. MoD accepts, for example, that it has a moral responsibility, as the former employer of soldiers involved in Bloody Sunday, to fund their legal support in the current Inquiry, though there is no duty of care obliging MoD to do so. The problem (and danger) flows from the fact that it is often impossible to know whether the term is being used by the author to describe merely a non-binding moral responsibility, or an actionable legal duty.

3 It is therefore preferable to avoid any confusion at all, and to reserve application of the term 'duty of care' exclusively to those situations where a legal duty of care is believed to exist. If in doubt, the Legal Adviser's team can advise. If what is being described is some non-binding obligation, reference to 'responsibility' or 'moral responsibility' will invariably fit the bill better.

4 The duty of care of an employer to its employees include a duty: a. To secure as far as reasonably practicable a safe place of work, and that employees are provided with appropriate plant and equipment which is properly maintained, b. To secure a safe place of work - for example, to ensure that adequate warnings are given of risks to health and safety at work. An employer might also be held to owe a duty of care to its employee in respect of any advice it provides - for example, advice on estimated terminal benefits on early retirement - where the employer might reasonably expect to rely on the advice given.

5 Here are a few recent examples of misleading uses of the 'duty of care' tag: a. A discussion about which of two interested departments should lead on a particular issue, which concludes that it should be the department with the 'greater duty of care'. This could only have been a reference to the department with the greater policy interest; b. An argument that the MoD has a duty of care to provide advice to personnel abroad about their ability to claim an entitlement to free shares on a building society conversion, because their MoD employment happens to have taken them out of the UK.

6 As an employer, the Department does have a responsibility to treat people fairly. Individuals should be able to expect support and caring management from their line and personnel managers. Although this is not a 'duty of care' in the legal sense, it is a reasonable expectation of staff. This means striking the right balance between the business needs of the Department and needs of individuals and their families. In practice, this involves, where appropriate, personnel policies being applied in a flexible way, while maintaining the underlying principles. It may also mean managers taking responsibility for ensuring that people are not working unnecessarily long hours in the office or taking work home. Another example of a manager's responsibility in this regard is to discourage excessive travelling, on duty particularly by car.

LEAFLET 47 ANNEX C APPENDIX 2**HEALTH AND SAFETY RESPONSIBILITIES AND DUTIES OF MOD EMPLOYEES****CONTENTS**

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INSURANCE ARRANGEMENTS FOR OPEN DAYS, DISPLAYS AND OTHER FUNCTIONS

- 1 Introduction
- 2 The need to purchase insurance
- 4 Events for which charges are raised
- 6 Events for which charges are not raised
- 8 MOD's commitment to its employees
- 12 Further information

INSURANCE ARRANGEMENTS FOR OPEN DAYS, DISPLAYS AND OTHER FUNCTIONS**INTRODUCTION**

1 The purpose of this leaflet is to provide instructions on the insurance arrangements required for Service Open Days, recruitment displays and other such functions, including charity events, in order to protect the MOD against claims for compensation from third parties.

THE NEED TO PURCHASE INSURANCE

2 Treasury guidelines generally discourage public bodies from insuring risks unless it can be shown that the potential cost of claims paid, together with the cost of handling such claims, will exceed the cost of purchasing insurance. As the cost of premiums compared to the amounts paid in compensation would normally favour insurance companies, the Ministry of Defence self-insures its core activities.

3 The MOD is only authorised to spend money (including making compensation payments) on those activities, which have been approved by Parliament and so form part of the MOD's core business. No public money is to be spent on activities that have not been approved by Parliament. Consequently, any events for which charges are raised fall outside the scope of MOD's normal liability arrangements, and the risks associated with them must be covered by insurance.

EVENTS FOR WHICH CHARGES ARE RAISED

4 Public Liability insurance is to be purchased for events for which charges are raised, in order to protect the Department against the risk of claims for compensation for negligence from third parties. The cost of the premium should be met from the charges raised. The level of insurance cover should be decided, in consultation with the insurance broker, as appropriate to the degree of risk posed by the event, but should not be less than £2 million per incident.

5 Public Liability insurance may be purchased either through a local insurance broker, or through the MOD's insurance broker: Willis Ltd, Ten Trinity Square, London EC3P 3AX. Tel: 0207 4888832/8111.

EVENTS FOR WHICH CHARGES ARE NOT RAISED

6 Where no charges are raised it is not normally necessary to purchase insurance, as MOD will deal with any claims for compensation, which arise from third parties on the basis of its legal liability to do so.

7 However, there may be occasions where members of the public are invited to participate in activities which are, or could be regarded as, inherently dangerous (e.g. abseiling). Before any such activities are undertaken at public events, Commanding Officers should consider whether the increased risk of claims arising from these activities might outweigh the publicity/recruitment value of the activity. If this appears to be true case, then the Commanding Officer should ensure either that, the activity is not undertaken, or that Public Liability insurance (regardless of whether or not charges are raised during the event) is purchased from non-public funds to cover the risks.

MOD'S COMMITMENT TO ITS EMPLOYEES

8 The MOD will stand behind its personnel present at any of the events who are acting in the normal course of their official duties if any claim for negligence is made against them.

9 Off-duty personnel attending such events in a private capacity are not, however, covered by MOD's liability and are legally responsible for the consequences of their own actions.

10 All MOD personnel, whether on or off duty, are strongly advised to take out Personal Accident Insurance to cover injuries to themselves caused by an "Act of God" or pure accident.

11 MOD accepts its legal liability to pay compensation to its employees or third parties for any injury, loss or damage that may be caused by the Department or by other employees acting negligently in the normal course of their official duties. Claims for compensation should be submitted to the address shown below.

FURTHER INFORMATION

12 Any queries relating to insurance matters in general, should be addressed to:

DC&L(F&S)Claims Policy & Finance Group,
Room 611,
St. Giles Court,
1-13 St. Giles High Street,
London
WC2H 8LD.

Tel: (GTN) 9621 70042 (BT) 020 7807 0042.
Fax: (GTN) 9621 70051 (BT) 020 7807 0051.

LEAFLET 47 ANNEX C APPENDIX 3**HEALTH AND SAFETY RESPONSIBILITIES AND DUTIES OF MOD EMPLOYEES****PARTICIPATION OF CIVIL SERVANTS IN JOINT ACTIVITIES: TRANSPORT AND INSURANCE**

1 The purpose of this leaflet is to define the conditions under which, exceptionally, civil servants may be allowed to use transport provided by MOD when taking part in a joint service-civilian activity such as a formal religious or sporting event. It also addresses the separate but related issue of insurance, in respect of liabilities arising either from travel to and from events or from injury sustained at a joint sporting event.

2 Service personnel are deemed to be on duty for activities of this kind and consequently travel at MOD expense. However, since the activity cannot be regarded as an inherent part of a civil servant's job, individuals must be regarded as off-duty even where the event in question (such as a departmental sports day) has been officially approved. Special paid leave can be granted to civil servants for the purpose, under existing rules, at management's discretion.

3 It has been decided that, for a limited number of joint events, off-duty civil servants may be granted access to Service-provided transport as long as no disproportionate extra costs are incurred. This can be justified on the grounds that the activity in question typically a major joint sporting event - is in the Departmental interest as it helps cement Service-civilian relationships and promote a spirit of common endeavor. The measure may on occasion have the effect of incurring some additional costs: for example, an extra coach might need to be hired to accommodate civil servants as well as service personnel. A decision on whether a joint activity of a corporate nature warrants the incurring of extra costs in this way, and whether the level of such a cost is acceptable, should be taken at Command Secretary level.

4 The Department accepts that the position of civil servants in the event of an accident would be the same as for the Service personnel traveling with them. Thus the Departmental liability would be acknowledged if negligence by a MOD employee were established, regardless of the status of the victim (i.e. service, MOD civilian or other). If the liability were a non-Departmental one, all categories of victim would have the same strength of claim against the party concerned.

5 There is no intention to extend the MOD transport facility to the more general run of individual or collective off-duty activities, whether or not these attract special paid leave. There are well-established arrangements for hiring transport to sporting events where only civil servants are involved, such as the MOD Sports Day, from non-public funds.

6 In the event of injury on the sports field, the Department could be liable for any claim against on-duty (i.e. Service) personnel, whether it were made by another serviceman, by a MOD civilian or by a third party. A civilian player - always off duty when taking part in a sporting event - would however need to be covered by a private insurance policy in respect of an injury caused to anyone else or an injury sustained unless that could be attributed to the negligence of on-duty personnel. Civilian participants are therefore strongly recommended to effect their own personal insurance cover.

7 Queries on this leaflet are in the first instance, to be referred to Finance Policy(Repayment) 1. Please note that an annual DCI is published by Fin Pol (Rep)1 and this should be read in conjunction with this leaflet.

LEAFLET 47 ANNEX C APPENDIX 4**HEALTH AND SAFETY RESPONSIBILITIES AND DUTIES OF MOD EMPLOYEES****CONTENTS**

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	CIVILIAN USE OF SERVICE SPORTS FACILITIES
1	Introduction
4	Background Policy
7	MOD civil servants and overseas lecs
8	MOD civilian dependants
9	Service dependants
10	Contractor staff

CIVILIAN USE OF SERVICE SPORTS FACILITIES**INTRODUCTION**

1 This Policy Statement follows consultation with single-Service Commands and Director Finance Policy and aims to:

1.1 Provide a consistent, fair and equitable approach in light of the on-going development of a more integrated civilian/military regime.

1.2 Contribute to the better health and well being of all staff by making sports facilities equally available to Service personnel and Civil Servants, with priority use to Service personnel where the facility is needed for specific duty purposes.

2 This Statement is applicable to MOD Civil Servants and their dependants, Overseas Locally Employed Civilian (LECs), Service Dependants, and Contractors' employees and concerns the recreational use of:

2.1 Publicly funded, Service (i.e. Ministry of Defence (MOD)) owned¹, sports and leisure facilities - hereafter referred to as 'official facilities'.

2.2 Non-publicly funded Armed Forces sports and leisure facilities.

3 This Statement sets out the categories of people who may use official sports facilities and is intended to provide guidelines for the use of existing capacity based on current scales. It must be understood, however, that such use remains in all cases at the discretion of the Head of Establishment. While permission should not be unreasonably refused, it should be appreciated that it may not be possible to make such facilities available on demand, particularly where, for example, they are required for their primary purpose in support of fitness to meet operational requirements, or where they might not otherwise be open and opening them for civilian use would incur additional expenditure or require duty staff to attend. Heads of Establishment will pay appropriate regard to the capacity of the facility or facilities concerned, and to health and safety considerations.

¹ Excludes any facilities owned by the Defence Sport and Recreation Association (DSRA) for which regulations issued by DSRA apply.

BACKGROUND

4 Whereas some sports activity within the Armed Forces attracts a degree of public funding – primarily on the grounds that it is a key means of promoting physical fitness, team spirit, maintaining high levels of morale, with consequent knock-on effect to operational effectiveness - there is no direct public funding of sport for MOD civilians (other than discretionary time-off for the MOD sports day and the funding of salaries for DSRA staff). Moreover, Civilian staff have not, hitherto, had an entitlement to use Service sports facilities as a right. Nevertheless, civilians do, in many instances, use such facilities, many paying a fee to do so.

5 It must be recognised, however, that in many cases, the two categories indicated at para 2 will be indistinguishable since, for example, the *facility* might be publicly financed but *equipment* contained therein might be non-publicly (often charitably) funded. This policy attempts, therefore, to recognise the implications and practicalities arising.

6 Policy regarding the use of facilities (public and non-public) by personnel other than those stated in para 2 is contained at JSP 362 Chap 15.

POLICY

MOD Civil Servants and Overseas LECs

7 The following will apply:

7.1 MOD civil servants and overseas LECs² will be entitled to use official facilities free of charge - subject to Service personnel having priority use where the facility is needed for specific duty purposes;

7.2 MOD civil servants and overseas LECs may use Service non-public facilities, subject to any specific charitable limitations;

7.3 MOD civil servants and overseas LECs will be deemed to be 'off-duty' when using both official and non-public facilities;

7.4 A charge may be levied for the use of non-publicly financed facilities or equipment as determined by the 'owner', according to local circumstances;

7.5 Individuals using the facilities must have their own 3rd party liability and personal accident insurance.

MOD Civilian Dependants

8 The following will apply:

8.1 Dependants of MOD civilian personnel may use official facilities at the employee's place of duty free of charge, subject to Service personnel having priority use where the facility is needed for specific duty purposes;

8.2 Dependants of MOD civilian personnel may use non-publicly owned facilities at the employee's place of duty, subject to any specific charitable limitations;

8.3 A charge may be levied for the use of non-publicly financed facilities or equipment as determined by the 'owner', according to local circumstances;

8.4 Individuals using the facilities must have their own 3rd party liability and personal accident insurance.

² Dependants of LECs are excluded except where they fall into one of the other categories covered in this policy document.

Service Dependants

9 The following will apply:

9.1 Dependants of Service personnel may use official facilities at the Serving person's place of duty free of charge, subject to Service personnel having priority use where the facility is needed for specific duty purposes;

9.2 Dependants of Service personnel may use non-publicly owned facilities at the Serving person's place of duty free of charge;

9.3 Individuals using the facilities must have their own 3rd party liability and personal accident insurance.

Contractor Staff

10 The following will apply:

10.1 Contractor staff may use official facilities where capacity allows;

10.2 Contractor staff may use non-public facilities subject to any specific charitable limitations;

10.3 Contractor staff are to pay (either corporately or individually) the full cost charge³ for using official facilities and a commercial charge as determined by the owner for non-publicly financed facilities or equipment. Where charitably funded facilities are used the charge is to be at an economic rate in accordance with para 7d above;

10.4 Individuals using the facilities must have their own three party liability and personal accident insurance.

Queries on leaflet

11 Queries on this leaflet are in the first instance, to be referred to SP Pol Welfare.

³ See JSP 368

LEAFLET 47 ANNEX C APPENDIX 5**HEALTH AND SAFETY RESPONSIBILITIES AND DUTIES OF MOD EMPLOYEES****CONTENTS**

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EFFECT ON THE PERSONAL INSURANCE POLICIES OF CIVILIAN STAFF OF DEPLOYMENT TO OPERATIONAL AREAS AND TRAVEL IN MOD AIRCRAFT

- 1 Introduction
- 2 Effect on personal insurance policies
- 6 Mod indemnity
- 7 Publication
- 8 Points of contact

EFFECT ON THE PERSONAL INSURANCE POLICIES OF CIVILIAN STAFF OF DEPLOYMENT TO OPERATIONAL AREAS AND TRAVEL IN MOD AIRCRAFT**INTRODUCTION**

1 Civilian members of staff may be required as part of their official duties to deploy to operational areas or to travel on MOD aircraft. In doing so there is a possibility that they may invalidate the terms of their personal accident and life insurance policies and, in the event of an accident, they might not therefore be eligible to receive the benefits under the policies for which they have paid premiums.

EFFECT ON PERSONAL INSURANCE POLICIES

2 MOD's insurance brokers, Willis Ltd, have investigated the exclusions which insurance companies apply to personal accident and life insurance policies and the extent to which deployment to operational areas and travel in MOD aircraft might affect them. They have concluded that there are different implications for life assurance policies and for personal accident policies.

3 Life assurance policies are long-term contracts and depend upon the information supplied by the policyholder at the time the policy was taken out. Deployment on official duty will not, therefore, normally affect the validity of such policies. However, where critical illness cover has been purchased as part of the policy then that is subject to a War Risks Exclusion and any claim resulting from an act of war would be invalid, although a claim arising from a "normal" accident would be valid even if it had occurred in a "War Zone".

4 Personal accident policies are annual policies and are subject to a continuous requirement to notify the insurance company of any change in the risk to by the policyholder. They are also subject to a War Risks Exclusion as above.

5 The extent to which deployment to operational areas or travel on MOD aircraft might affect the personal insurance policies of civilian staff is, therefore, quite limited. *Nevertheless, it is very important, that staff should keep their insurance companies informed if they undertake such duties.*

MOD INDEMNITY

6 In the unlikely event that an insurance company were to reject a claim made by a civilian member of staff under a personal insurance policy for reasons solely due to their deployment to operational areas or to travel on MOD aircraft in the performance of their duties for MOD, then MOD will indemnify them to the extent of the benefit that would otherwise have been payable under the policy. In respect of personal accident insurance, this indemnity is subject to an upper limit of £50,000.

PUBLICATION

- 7 This indemnity will be incorporated into the MOD Personnel Manual as soon as possible.

POINTS OF CONTACT

- 8 Information about MOD's policy on insurance and compensation payments may be obtained from:

D C&L(F&S) Claims,
Policy and Finance Group,
Room 611,
St. Giles Court,
1-13 St Giles, High Street,
London, WC2H 8LD

Tel: 020 7807 0041 (GTN: 9621 70041)
Fax: 020 7807 0051 (GTN: 9621 70051)

- 9 Information about civilian staff conditions of service in operational areas overseas may be obtained from:

CP/ Overseas Allowances 3,
Room 365, St. Giles Court,
1-13 St Giles High Street,
London, WC2H 8LD

Tel: 020 7218 4791 (GTN: 9621 4791)
Fax: 020 7218 0649 (GTN: 9621 0649)

LEAFLET 47 ANNEX C APPENDIX 6**HEALTH AND SAFETY RESPONSIBILITIES AND DUTIES OF MOD EMPLOYEES****CONTENTS**

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ACCIDENT CLAIMS AND LIABILITY ISSUES FOR VEHICLES OPERATED BY THE MOD

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4	Section 2 - insurance
	Section 3 - claims for compensation
7	Claims by mod employees against mod
10	Claims by mod employees against third parties
13	Claims from third parties
17	Drivers injured by their own negligence
19	Accidents in which no fault is attributable
20	Claims for thefts from vehicles
21	Section 4 - authorisation for travel
23	Emergency journeys
24	Semi-official journeys
25	Authorised drivers
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	Section 5 - contractors and other non-mod personnel
27	Contractors employed to provide driving and vehicle services
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46	UK based vehicles deployed overseas
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	Definitions
	Form of Indemnity
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ACCIDENT CLAIMS AND LIABILITY ISSUES FOR VEHICLES OPERATED BY THE MOD**INTRODUCTION**

1 This leaflet provides guidance to Service personnel and civilian staff on the claims and liability aspects of operating MOD vehicles in the UK and overseas. It should be read in conjunction with JSP 341 - Defence Road Transport Regulations, especially Chapter 12 Annex A. Personnel based in Germany should also familiarize themselves with the contents of Standing Orders 6108 and 6109 for the British Army in Germany.

SECTION 1 - MOD POLICY

2 In common with other Government departments, MOD does not purchase insurance policies, but pays claims for compensation directly from current expenditure. This means that MOD does not have to comply with the terms of insurance policies, but is governed by Treasury financial policy and common law.

3 When compensation claims are submitted, they are considered on the basis of whether or not the Ministry of Defence has a legal liability to pay compensation. Where there is a legal liability to pay compensation we do so. This means that where an employee has acted negligently in the course of their duty and caused property damage or injury to others, the MOD will handle any resulting claim made by a third party (including another MOD employee) and pay appropriate compensation.

SECTION 2 - INSURANCE

4 The MOD's third party motor liability position is not intended to mirror the insurance policies which an individual may purchase for their private vehicles. It covers only the MOD's legal liability to pay compensation to third parties. Many other benefits included in motor insurance policies are provided by MOD through conditions of service. Employees who may be injured whilst driving vehicles on duty are in the same position as those injured in the course any other duty activity.

5 MOD employees should be aware that they are not provided with Personal Accident Insurance (PAI) cover under MOD arrangements. Those employees who use their own private vehicles for duty journeys and have fully comprehensive insurance cover may have the provision for personal injury benefits to be paid out on a non-fault basis. However, PAI varies with different policies and may only cover certain types of injury. Furthermore, the amounts paid out are often minimal.

6 In the UK, insurance is to not be purchased by Units or establishments to cover MOD vehicles or authorised drivers and passengers on authorised journeys using Public Funds. See Section 8 concerning insurance arrangements overseas.

SECTION 3 - CLAIMS FOR COMPENSATION

Claims by MOD employees against MOD

7 MOD employees who suffer bodily injury or death (including that sustained in road traffic accidents) may make a claim for compensation against the Department if the injury was a result of their employment and due to the negligence on the part of MOD or its employees or their dependents.

8 Although it is not necessary to consult a solicitor when claiming compensation from the MOD, employees may prefer to seek legal advice before embarking on such action. Units or establishments asked to offer advice on how to make a claim should refrain from doing so and suggest that preliminary legal advice be obtained from a solicitor. Such advice will be at the employee's own expense although many solicitors will work on a conditional fee arrangement ("no-win, no-fee") basis. Legal costs would be recoverable in a successful case against the Department. Employees may also seek advice from Citizens Advice Bureau.

9 As detailed at Leaflet 47 Annex C, claims made by Service personnel, ex-Service personnel, current and former Reservists, and Cadets, current civilian and former UK based civilian staff are handled by Royal and Sun Alliance Plc. Locally Employed Civilian staff overseas should submit claims for compensation in accordance with local regulations. Claims made by the dependents of Service personnel/civilian staff and/or members of the public are handled by DC&L (F&S) Claims, Public Liability Group or whilst overseas in accordance with local handling regulations. (see Contact Details).

Claims by MOD employees against third parties

10 In Great Britain, it is the individual's own responsibility to pursue a claim for compensation if they suffer injury, death or damage to property whilst on duty as a result of acts of negligence by third parties (i.e. any person or organisation outside MOD). In such cases there is no assistance or involvement by MOD, but legal advice and assistance can be obtained from Betesh Fox Solicitors under the ToPaS scheme (see Contact Details).

11 The ToPaS scheme does not extend to overseas locations or Northern Ireland because of differences in the legal systems, but nevertheless Betesh Fox may be able to provide legal advice on the best way to proceed with a claim.

12 Civilian employees may, at the discretion of their TLB, have the legal costs of a claim against a third party underwritten by MOD.

Motor claims from third parties

13 Units or Establishments which receive claims for compensation from third parties, or their insurance companies, who have suffered injury, death or damage to property as a result of acts of negligence by MOD or its employees should pass them directly to the claims handlers mentioned below.

NOTE

It is very important for legal reasons that Units or Establishments do not respond to, nor even acknowledge, such letters of claims.

14 AXA Corporate Solution Services Ltd handle claims for compensation from third parties on behalf of MOD in respect of MOD vehicles in the UK (and some European countries not covered by the Area Claims Officer (North West Europe), see Contact Details). AXA are contracted by MOD purely as claims handlers for third party motor claims there is no insurance element to cover MOD owned vehicles. AXA are not contracted to deal with any claim for theft of or from MOD owned vehicles.

15 To assist in the handling of third party claims AXA operate a New Claims Notification telephone line for MOD drivers to report road traffic accidents within 48 hours. Such notification will enable AXA to be pro-active in contacting the third parties involved and ensuring that third party vehicles are placed with AXA approved repairers, also that a courtesy rather than a hire vehicle is provided to the third parties whilst repairs are being undertaken.

The New Claims Notification telephone number is: **0870 6000469**.

NOTE

Please note that this telephone line is in addition to and not a replacement for road traffic accident reporting form FMT 3/1.

16 Claims for compensation from third parties in respect of MOD vehicles in other countries overseas are handled either by the relevant Area Claims Officer, Defence Attache or by DC&L (F&S) Claims, Public Liability Group (see Contact Details).

Drivers injured by their own negligence

17 MOD drivers injured by their own negligence are not entitled to compensation from MOD but would be entitled to the normal death-in-service or ill health retirement benefits under the appropriate occupational pension scheme. MOD claims officers have no involvement in claims other than those for common law negligence and are unable to give advice on injury benefits. For advice relating to injury benefits employees should contact their appropriate personnel branch.

18 Non-MOD authorised drivers injured by their own negligence would not be entitled to compensation from the MOD, nor is the MOD responsible for the ill-health retirement benefits of contractors injured by their own negligence.

Accidents in which no fault is attributable

19 Compensation is only payable where injury, death or damage to property has been caused by the fault of another party. Where the injury results from purely accidental circumstances and no-one can be found to be at fault, injury benefits may be payable under the appropriate occupational pension scheme.

Claims for thefts from vehicles

20 The MOD will not deal with claims for personal effects stolen from vehicles, as the MOD is not legally liable for the theft. If MOD property carried for duty purposes is stolen from a vehicle, write off action should be taken by the Unit or Establishment.

SECTION 4 - AUTHORISATION FOR TRAVEL

21 MOD is only permitted by Parliament to pay claims for compensation arising out of authorised travel. An authorised journey is one which is undertaken in accordance with JSP 341 Chapter 2. It is incumbent upon line management and drivers to ensure that MOD vehicles are only driven on authorised journeys. It is especially important that journeys are properly authorised and that appropriate documentation is issued and carried at all times.

22 If an employee drives a vehicle for purposes which are deemed to be outside the course of their official duty or deviates from an official journey for private purposes and MOD is required to pay resulting claims for compensation, the full costs of the claims including damage to the MOD vehicle and legal expenses may be recovered from the employee who could also face serious disciplinary action. The cost of meeting claims can be very expensive so it is essential that drivers ensure that the use of the vehicle has been properly authorised.

Emergency journeys

23 If a vehicle is used for private purposes because of an emergency e.g. to return home because of sudden illness of a dependant, prior authority to use the vehicle should be obtained if possible. However, if it is not practical to seek prior approval employees may anticipate approval, but must be prepared to justify their actions if required.

Semi-official journeys

24 MOD civilian staff may use vehicles for semi-official journeys in accordance with the guidelines laid down by CP PA in the MOD Civilian Travel Manual, which covers the UK.

Authorised drivers

25 Line management must ensure that drivers have a full DVLA licence valid for the category of vehicle to be driven. MOD does not impose any restrictions on authorised drivers, such as age or disability, nor will endorsements on driving licences necessarily debar an individual from driving.

Passengers

26 Passengers are an additional financial risk in the event of an accident. Therefore, passengers should only be carried in accordance with the provisions of JSP 341. Employees are forbidden to carry unauthorised passengers in MOD vehicles. If an employee carries an unauthorised passenger (e.g. a friend, relative, hitch hiker) and the passenger is killed or injured, or suffers damage to property, in an accident for which the driver is to blame, the driver will be held personally liable for meeting the costs of the resulting claim(s). These costs could be substantial.

SECTION 5 - CONTRACTORS AND OTHER NON-MOD PERSONNEL**Contractors employed to provide driving and vehicle services**

27 MOD cannot accept liability for claims for compensation which arise from accidents involving contractor's drivers who are employed purely for the purpose of driving for the MOD. Contractors are to provide their own insurance to cover claims which may arise in the event of an accident.

Other contractors

28 MOD will meet claims for compensation arising where the authorised driver is not an MOD employee providing the vehicle is being used for MOD business. This provision allows for contractors and others working for MOD to use a vehicle (with prior authority) if necessary. Authority must only be given to those non-MOD employees essential to MOD business. This provision is aimed at providing cover for those non-MOD employees who are based within MOD units such as consultants and industrial engineers working on MOD programmes and is not intended to provide subsidised insurance cover for contracted out transport operations.

Contracted-out operation of MOD vehicles

29 When contractors initially take over MOD transport operations, e.g. under Private Finance Initiative or Public Private Partnership projects, and at subsequent re-letting of contracts, the relevant MOD Commercial Branch must ensure that where a contractor driver operates an MOD owned vehicle that a clause is included in the contract to ensure that the contractor provides adequate insurance cover to meet his legal liabilities, i.e. to cover damage or injury to third parties, including passengers. However, where no provision for insurance cover was specified in the original contract terms, existing contractors will continue to be covered by MOD's liability until the contract expiry date.

SECTION 6 - DOCUMENTATION

30 In the UK, MOD vehicles are not required to carry any insurance documentation. However, if an MOD driver is requested by a Civilian Police Force to produce proof of insurance, a Certificate of Security is to be provided by the MT manager or employee responsible for overseeing the vehicle fleet. Only original certificates are to be produced to the Police Force and at least one should be held by each unit. Photocopies are not acceptable.

31 Certificates may be obtained from AXA (see Contact Details).

32 Although insurance documentation is not required, all drivers are to carry the following documents in the UK, (see Section 8 for overseas requirements):

32.1 Authority for the journey e.g. a Drivers Tasking Sheet (e.g. F/MT 1001A) or a hire agreement showing the unit / establishment name and the booking reference which provides the budgetary authority for the journey.

32.2 Recovery instructions.

32.3 Traffic Accident Report forms (F/MT 3-2 and F/MT 3-3). These are to be reproduced by Units and Establishments using the forms contained at JSP 341, Chapter 12, ANNEX B.

32.4 A copy of Standing Orders for Drivers (JSP 341, Chapter 10, Contact Details).

32.5 A copy of the vehicle handbook.

32.6 An EU pattern licence with the category appropriate to the type of vehicle being driven.

33 Units or Establishments are to ensure that they are familiar with MOD road traffic accident reporting procedures (JSP341, Chapter 12). They must ensure that forms F/MT 3, when used, are dispatched within 24 hours. In all cases the F/MT3-1 is to be dispatched to MOD's claims handlers within five days. All requests for information from MOD's claims handlers and solicitors acting on their behalf are to be responded to promptly and fully. Failure to do so may result in MOD being held in contempt of court.

SECTION 7 - VEHICLES

All vehicles

34 If an MOD vehicle (whether owned, hired, leased or loaned) is damaged (including being damaged beyond economic repair) or stolen, the Budget Holder for the vehicle is responsible for meeting any repair or replacement costs of that vehicle and (where applicable) any costs for loss of-use to the hire company while it is undergoing repair, regardless as to who was to blame for the accident. If the damage was the fault of a third party, MOD's uninsured loss recoverers AXA, will recover the cost of the repair or replacement from the third party.

35 In order to make the recovery, the company rely upon the information given in traffic accident report form F/MT 3-1. Consequently, it is important that Units and Establishments ensure that these forms are always completed in the event of an accident in addition to any accident report forms that may be required by a hire company. Monies recovered from third parties are not disaggregated to Budget Holders.

36 MOD's liability to pay compensation to third parties (including employees) who have suffered injury, death or damage to property as a result of acts of negligence by MOD's employees arises out of MOD's overall liability for the actions of its employees. Consequently, the compensation arrangements described in Section 3 above apply whenever a vehicle is used for an authorised journey on official duty, whether the vehicle is owned by MOD, or has been hired, leased or loaned.

37 The following additional factors apply to hired or leased vehicles.

Hired vehicles

38 The following instructions apply to vehicles which have been provided under an MOD contract for the provision of a vehicle for short-term hire.

39 Any vehicle hired under an MOD contract holds full MOD Owned status for third party claims purposes during the agreed duration of the hire. All users of hire vehicles are to note that vehicles may be delivered to users prior to the commencement time of the hire and collected after the time of expiry of the hire. It should be noted that MOD may be responsible for the vehicle outside the duration of the hire and it is essential that users consult the relevant car hire contract for the details. A termination number should be obtained from the hire company on completion of the authorised journey. All employees are to note that they are forbidden to operate the vehicle outside the agreed times of the hire.

40 Hire companies will charge for any damage to the vehicle, however minor, so it is very important that the vehicle is fully inspected for damage both on delivery and return, to ensure that units/establishments are not charged for any damage caused by third parties. Care is to be taken with the return of one-way hire cars; particularly when vehicles are left at airports. Drivers should endeavour to obtain a counter signature either from the hire company's representative, or an independent witness, to confirm that the vehicle is free from damage both at the time of delivery and return.

41 Collision Damage Insurance (CDI), or Collision Damage Waiver, will often be offered as part of the hire agreement by car hire companies but should not be taken up in the UK as it is not cost effective to do so on a Departmental wide basis and is contrary to HM Treasury guidelines. See Section 8 concerning overseas requirements.

42 If a hire company requests evidence of MOD's liability cover, Units or Establishments should present the form (see Form of Indemnity) which may be reproduced locally.

Leased vehicles

43 The following instructions apply to vehicles which have been provided under an MOD contract for the provision of a vehicle to fill an established task which would otherwise have been filled by an MOD owned vehicle. This does not include short-term hire or spot hire vehicles. This system can be operated either as Contractor Owned Government Operated (COGO) or Contractor Owned Contractor Operated (COCO). Under COCO, two different Contractors are often used.

44 MOD Commercial Branches, which are responsible for the placement of lease contracts, are to note that the vehicles will be operated as MOD vehicles and therefore do not require any additional insurance cover. The costs quoted by the contractors for the lease should not have an element built in for insurance. Commercial Branches should note that MOD only covers third party claims and does not insure vehicles against being stolen.

45 Claims for compensation from or against third parties and the costs of repair of damage are to be actioned in accordance with the contract.

SECTION 8 - VEHICLES OPERATED OVERSEAS

UK based vehicles deployed overseas

46 MOD vehicles based in the UK (whether owned, leased or hired), may travel outside the UK when authorised to do so. The requirements for insurance and documentation vary according to the country in, or through, which the vehicle is traveling.

47 In European countries (i.e. European Union (see Countries of the European Union), Andorra, Czech Republic, Hungary, Iceland, Norway, Liechtenstein, San Marino, Slovakia and Switzerland) vehicles are covered by MOD under arrangements handled either by the Area Claims Officer (North West Europe) (where appropriate), DC&L(F&S) Claims, Public Liability Group or by AXA. Vehicles traveling in these countries must each carry the following documentation:

47.1 An original serial numbered Certificate of Insurance (registration number of the vehicle not required).

47.2 A European Accident Statement form

47.3 An FMT 3 pack

47.4 An EU pattern licence with the category appropriate to the type of vehicle being driven.

(47.1 and 47.2 can be obtained from AXA (see Contact Details).

48 Green Cards are only required for travel within Portugal or Spain as elsewhere, the original serial numbered Certificate of Insurance may be used. Green Cards may be obtained from Willis Ltd until 31 Oct 02 or from AXA after that date (see Contact Details). Units or establishments requesting Green Cards should provide the registration number of the proposed vehicle, even if it is hired or loaned, blank cards will not be issued. At least 72 hours notice should be given before the date of travel.

49 In other NATO countries and countries covered by Inter Governmental Agreements vehicles are covered by the arrangements detailed in the Agreement. Details of these agreements can be obtained from DC&L(F&S) Claims Policy & Finance Group (see Contact Details).

50 For travel in countries where no Agreement exists Units or establishments should contact the relevant Defence Attache for advice about insurance arrangements. Contacts are available on CHOTS or from DC&L(F&S) Claims Policy & Finance Group (see Contact Details).

51 For exercise deployments overseas, there is generally no requirement for Units to purchase insurance for Green Fleet vehicles. Claims arising from exercises are to be dealt with by DC&L(F&S) Claims Public Liability Group, or the appropriate Area Claims Officer (see Contact Details) Units exercising in North West Europe should check insurance requirements with the Area Claims Officer (North West Europe) before deployment. Units deploying either to NATO countries not covered by an Area Claims Officer or to non-NATO countries must check with the Defence Attache in that country with regard to any additional legal actions required if a vehicle is involved in a road traffic accident.

52 The normal MOD repair procedures apply for MOD vehicles damaged overseas. Drivers should contact the Area Claims Officer or Defence Attache to obtain details of any local legal requirements relating to the repair of accident damaged vehicles.

Vehicles hired by UK based employees for collection and use overseas

53 Units or establishments should purchase the minimum legal requirement for insurance applicable in the countries in which they are traveling. Before hiring vehicles for collection and use overseas, Units or establishments should check the insurance requirements (including the requirement for Collision Damage Insurance) with the appropriate Area Claims Officer or Defence Attaché (See Contact Details).

54 In some countries there is no legal requirement for insurance (e.g. Russia, Saudi Arabia, etc.) and, therefore, no insurance should be purchased. If an accident were to occur in a country where no insurance had been purchased the appropriate Area Claims Office or DC&L(F&S) Claims, Public Liability Group (See Contact Details) would deal with any third party claims for compensation.

55 The cost of repair or replacement of a hired vehicle damaged overseas is the responsibility of the Unit or Establishment which hired the vehicle.

MOD vehicles based overseas

56 Different requirements apply to MOD vehicles based overseas. The Area Claims Officer or the Defence Attache determines the policy of insurance. Local orders may detail minor differences to JSP 341 concerning insurance. As long as these changes either reflect the national laws of the country or have been amended with the agreement of the Area Claims Officer or DC&L(F&S) Claims, Public liability Group they are duly authorised.

CONTACT DETAILS

Name and Role

Contact details

DC&L(F&S)Claims, Policy & Finance Group

Room 611
St Giles Court
1 -13 St Giles High Street
London WC2H 8LD

Provision of policy and advice on:

- i. compensation claims issues arising from use of MOD vehicles;
- ii. compensation claims issues arising from MOD's Employer's Liability;
- iii. insurance, indemnities and Inter Governmental Agreements

Tel 020 7807 0042/3/4/5
(GTN 9621 70042131415)
Fax 020 7807 0051 (GTN 9621 70051)

DC&L(F&S)Claims Public Liability Group

Room 609
St Giles Court
1-13 St Giles High Street
London WC2H 8LD

Responsible for handling public liability claims against the MOD in the UK and public liability and motor accident claims in countries not covered by an Area Claims Officer.

Tel 020 780 70076, 70077 or 78046
(GTN 9621 70076, 70077 or 78046)
Fax 020 7807 0051 (GTN 9621 70051)

Area Claims Officers (ACOs)
MOD claims officers who deal with compensation

claims and recoveries that fall within their geographical area of responsibility:

ACO North West Europe
 HQ UKSC(G) covers: Austria, Belgium, Czech Republic, Denmark, France, Germany, Holland, Hungary, Luxemburg, Norway, Poland and Switzerland.

Civil Secretariat
 Rheindalen,
 BFPO 140
 Tel: 0049 2161472 ext 3015 or 3016
 (GTN 94872 3015 or 3016)
 Fax: 0049 2161472 ext 3063
 (GTN 94872 3063)
 CHOtS:
 UKSC(G) CIVSEC CNWE_ACO

ACO Cyprus

Command Secretariat
 HQ British Forces Cyprus
 BFPO 53
 Tel: 00357 2596 3406
 (GTN 98435 3406)
 Fax: 00357 2596 2408
 (GTN 98435 2408)
 CHOtS: BFC-HQ-COMDSEC-ACO

Claims Officer Falkland Islands

Command Secretariat
 HQ British Forces Falkland Islands
 BFPO 655
 Tel: 00 500 76797
 Fax: 00 500 32177

ACO Northern Ireland
 (Third party motor claims arising out of road traffic accidents in Northern Ireland are dealt with by AXA, see para 15)

HQ Northern Ireland
 BFPO 825
 Tel: 01846 665111 ext61057
 (GTN 9491 61057)
 Fax: 01846 665111 ext 61534
 (GTN 9491 61534)
 CHOtS: HQNI-CLAIMS-ACO(N)

ACO Balkans:
 Claims Officer Bosnia,
 covers Bosnia and Croatia

Civil Secretariat
 HQ MND(SW)
 Banja Luka Metal Factory
 BFPO 553
 Tel: 0038751 330 809
 (GTN 94151 4037)
 Fax: 0038751 330 810
 CHOtS: BANJA LUKA-BRITFOR
 HEO CLAIMS

ACO Kosovo,
 covers Kosovo, Macedonia, Albania and
 OP AGRICOLA related incidents in Greece

Engineer Close Support Regiment
 Gundolph Lines
 OP AGRICOLA
 BFPO 559
 Tel: 00389 702 54812
 (GTN 94161 2146)
 CHOtS: Pristina MNB(C)-Civ Sec
 Claims Officer

USA

Defence Administration Department
 British Defence Staff (Washington)
 Room 508 British Embassy
 3100 Massachusetts Avenue
 NW Washington DC USA

	Tel: 001202 588 6848 Fax: 001202 588 7888
D CP PA	CP Pensions Room 364A St Giles Court 1-13 St Giles High Street London WC2H 8LD Tel 020 7218 6234 (GTN 9621 86234) Fax 020 7218 1226 (GTN 9621 81226)
Responsible for PCSPS administration within MOD	
Responsible for civilian travel and subsistence policy and regulations	CP Allowances Room 367 St Giles Court 1-13 St Giles High Street London WC2H 8LD Tel 020 7218 4735 (GTN 9621 84735) Fax 020 7218 0649 (GTN 9621 80649)
AXA Corporate Solution Services Ltd	PO Box 43 Civic Drive Ipswich IP1 2LG
Responsible for handling third party claims arising from the operation of UK based vehicles on authorised duty journeys occurring in the UK and countries of the European Union (EU) (see ANNEX D), the Czech Republic, Slovakia, Hungary, Norway, Switzerland, Iceland, Liechtenstein, Gibraltar, Andorra and San Marino. However, it is important to note that any claims which occur within the EU that fall within the ACO's geographical area of responsibility must be forwarded to ACO (North West Europe). AXA also handle the recovery of MOD's uninsured losses arising from motor traffic accidents in the UK and the issue of Green Cards	Tel: 01473-212422 Fax: 0870 9040 New Claims Notification line: 0870 60049
Betesh Fox & Co	16/17 Ralli Courts West Riverside Manchester M3 5FT
Solicitors who can provide legal advice and assistance to MOD employees injured by third parties - the ToPaS scheme.	Fax 0161 832 8172
Defence Storage and Distribution Centre	Llangennech Llanelli Carmarthenshire SA14 8YP Tel: 01554-822533/822536/822400
Suppliers of Forms and Publications	
IMPACT Data Cell Defence	Surface Policy Branch IDL 2 DLO Andover Monxton Road Andover SP11 8HT Tel: 01264-382196 (GTN 94391 2196) Fax: 01264-382965 (GTN 94391 2965)
Responsible for collation of road traffic accident statistics involving MOD vehicles	
Royal & Sun Alliance Plc	Parkview House

Responsible for handling claims from MOD Service and civilian personnel who suffer injury through MOD negligence while they are acting in the course of their duties

Victoria Road South
Chelmsford CM1 1NG

Tel 01245-274000
Fax 01245-274444

DEFINITIONS

DC&L(F&S)Claims - The Directorate of Claims and Legal (Finance and Secretariat)Claims (Formerly known as PL(LS)Claims), the MOD headquarters directorate responsible for settling claims against MOD for compensation for acts of negligence.

Employee - An MOD civil servant, a Locally Employed Civilian or a member of HM Armed Forces.

IMPACT - The Information Management system for the Provision of Accident costs and Trends.

Loss of Use - A hire company's loss of revenue incurred while their vehicle is off the road being repaired.

MOD Vehicle - Any vehicle owned, loaned, hired or leased by the MOD, regardless of whether payment is being made for its use, that is used for an official MOD duty journey.

Public Liability - Breach of a general duty of care where no other specific duty arises.

Third Party - This term is primarily used to designate the other party involved in a road traffic accident.

FORM OF INDEMNITY

To be used in the UK

"The Ministry of Defence's third party motor claims handlers, AXA Corporate Solution Services Ltd, will deal with any third party claims which may arise involving a vehicle which has been hired, leased or loaned to MOD. The MOD will meet the cost of any repairs to the vehicle howsoever arising during the period of the hire/loan. If the vehicle(s) are damaged Beyond Economic Repair, the MOD will pay the pre-accident value (less salvage) and any reasonable loss of use claim arising there from. This indemnity will only apply if damage to the vehicle(s) does not arise as a result of negligence on the part of ".....", its servants or agents." * Name of vehicle owner/hire car company.

COUNTRIES OF THE EUROPEAN UNION

- Austria
- Belgium
- Denmark
- Finland
- France
- Germany
- Greece
- Ireland
- Italy
- Luxembourg
- Netherlands
- Portugal
- Spain
- Sweden
- United Kingdom

LEAFLET 47 ANNEX C APPENDIX 7

Para

INSURANCE FOR ADVENTUROUS TRAINING EXPEDITIONS

- 1 Introduction
 - Service personnel
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- 6 Training with commercial organizations
- 7 Claims for compensation
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- 11 Transport
- 12 Points of contact

INSURANCE FOR ADVENTUROUS TRAINING EXPEDITIONS**INTRODUCTION**

1 This leaflet describes the circumstances in which the Ministry of Defence (MOD) will pay compensation in respect of Adventurous Training expeditions, and those it will not. Activities not covered by the MOD must be covered by commercial insurance purchased using non-public funds by the expedition organizer or members of the expedition. Definitions of the specialist terms (shown in italics) used in the text are given below:

1.1 *Liability*. The legal obligation to pay compensation to a person (or their dependants) for causing them death, injury or loss of, or damage to, property.

1.2 *Duty Status*. A joint Queen's Regulation (QR), contained in each of the single Service QRs, provides the definition for 'Duty Status'. For the purposes of this leaflet, personnel will be classed as 'On-Duty' whenever they are participating in an activity explicitly or implicitly recognized under single-Service Adventurous Training Schemes. Other activities that are not germane to the expedition such as social events, rest/recuperation or leave will be classed as 'On-Duty'. It is not possible to legislate for every eventuality, therefore, any incident arising from participation on an expedition would be judged on a case-by-case basis. It is therefore, strongly recommended that all expedition members take out individual personal insurance. This insurance should cover such areas: personal liability, injury or loss of, or damage to property.

1.3 *Vicarious liability*. Vicarious liability is the legal responsibility imposed on an employer, although he is himself free from blame, for a tort committed by his employee in the course of his or her employment.

2 In general terms, the MOD accepts liability under the doctrine of vicarious liability for the acts or omissions of Service personnel and civilian staff committed in the course of his or her employment, including when they undertake properly authorized Adventurous Training expeditions conducted in accordance with current regulations.

SERVICE PERSONNEL**Activities and property covered by MOD**

3 When compensation claims are submitted, they are considered on the basis of whether or not the MOD has a legal liability to pay compensation. Where there is a legal liability to pay compensation we do so. MOD's liability to pay compensation applies to, but is not restricted, to:

3.1 Members of the public and other organizations who may suffer injury, death or loss of, or damage to, property caused by the negligence of MOD Service personnel when they are on duty.

3.2 MOD personnel who may suffer injury, death or loss of, or damage to, property caused by other MOD personnel who are on-duty.

4 MOD will bear the cost of:

4.1 Emergency medical treatment and worldwide CASEVAC for Service personnel on authorized Adventurous Training.

NOTES

(1) 'Emergency Treatment' is defined as such treatment as might be required to save life, prevent further injury and stabilize the patient until such time, as they can be either discharged from hospital or removed to the nearest British Military Hospital or UK Medical Services. The authority for deciding whether a particular incident is an 'emergency' rests with the medical experts i.e. the local doctor or hospital. In the absence of a medical expert, the Expedition Leader is the authority and all costs (up to the point where a medical expert rules otherwise) may be charged to public funds. Expedition leaders are advised to seek advice from Service Medical Branches on CASEVAC/Emergency medical procedures before the commencement of overseas expeditions. (It is important to note, however, that although the costs of CASEVAC and emergency medical treatment are a legitimate charge to public funds, they are to be recovered/paid from the sponsoring unit, or in the case of multi/Joint Service expedition, the individual's unit budget. However, the cost of repatriation and medical treatment overseas can be significant and units may wish to mitigate against a charge by taking out appropriate insurance.

(2) If a Unit does not decide to take out medical Insurance, then the local British Military Representative (Brit MilRep) should ensure that 'emergency' bills are charged to the appropriate budgetary area via the Unit Identity Number (UIN)/Internal Accounting Code (IAC) which detailed at Para 13 in the Joint Services Adventurous Training Form Alpha (JSATFA). It is recommended that the Budget Manager of the unit of Budget Manager of the budgetary area the unit comes under, pays the bills through Vote 1L4 1000 (Civilian Medical Treatment) or Vote 1L4 1020 (Non-hospital Treatment) as appropriate. It is recommended that the contact telephone number of the unit's budget manager or area budget manager be left with the Brit MilRep of the country(s) that the expedition is visiting.

4.2 MOD property (including vehicles) lost or damaged as a result of authorized adventurous training. The cost of repair or replacement is the responsibility of the Budget Holder who is responsible for the property.

4.3 Monies paid in advance if an AT expedition is cancelled owing to service reasons or if a Defence Attaché rescinds the authority to train in a particular area.

NOTE

Guidance on MOD policy in respect of claims and the liability aspects of using MOD and hired vehicles in the UK and overseas is contained in DCI Gen 217/02 and JSP 341.

5 Activities and property for which commercial insurance are strongly advised to purchase additional insurance:

5.1 Injury, death or loss of, or damage to, property caused by MOD Service personnel or civilian staff when they are *off-duty* to members of the public and other organizations or to other MOD Service personnel.

5.2 Extra Medical Expenses for hotel accommodation or travel expenses for relatives.

NOTE

Reciprocal arrangements exist between UK and EU countries through Form E111. Further details can be obtained from the DSS Information Division, Leaflets Unit, Block 4, Government Buildings, Honeypot Lane, Stanmore, Middlesex, HA7 1AY. Failure to be in possession of Form E111 in an EU country will result in the costs of any treatments having to be met by the individual. No re-imburement is available from public funds.

5.3 Non-MOD property including privately owned property of members of the expedition.

5.4 Eventualities for which MOD would not be legally liable e.g. acts committed by participants while *off duty*, activities outside the scope of the expedition remit, "Pure Accident", "Acts of God", injuries caused by members of the public.

5.5 Compensation for pain and suffering (unless it could be proved that the MOD or its servants had been negligent).

Training with Commercial Organizations

6 Refer to DCI JS Adventurous Training with Civilian Companies and Organizations and single-service regulations for employing civilian companies for further guidance.

Claims for compensation

7 Service personnel who consider that they have a valid claim for compensation against MOD arising from alleged negligence should refer to:

7.1 *RN*: QR Chapter 59

7.2 *Army*: QR Chapter 7 Part 4

7.3 *RAF*: QR Chapter 23

CIVILIAN PARTICIPATION**Civilian staff**

8 Where AT activities are organized under single-Service rules, the participation of civilian staff (including MOD Civil Servants and MOD employed Retired Officers (Ros)) must be authorized by DNPTS (SO AT), ATG (A) (SO2 AT) or HQ PTC (TPEd2) as appropriate. Moreover, written confirmation of the individual's Line Manager's approval must be secured.

9 Civilian staff taking part in AT activities are on Special Paid Leave and therefore *off-duty*. Commercial insurance must be obtained to cover them for injury, liability to third parties etc.

Hired instructors, guides and facilities

10 Organizers are to make every effort to ensure that when expedition leaders hire adventurous training activity instructors, guides or facilities, the hired personnel involved, and agencies concerned, hold liability insurance cover for a minimum of £3,000,000. Expedition leaders are to make every effort to ensure that they obtain written proof of insurance cover and attach this information to the JSATFA when it is submitted for authorizations through the chain of command, i.e. the relevant Div/Dist HQ.

Transport

11 All authorized civilians, including hired instructors and guides, are permitted to travel in expedition military vehicles and hired transport. Passage on RAF passenger carrying aircraft or charter flights on Concessionary Non Fare Paying (CNFP) or Concessionary Fare Paying (CFP) aircraft is permissible but it not an entitlement. However, civilians are not permitted to travel in RAF Hercules aircraft under any circumstance.

POINTS OF CONTACT

12 Any queries relating to Adventurous Training should be directed to the single-Service Directorate responsible for Adventurous Training as follows:

- 12.1 *Royal Navy*: DNPTS, (SOAT) HMS Temeraire, Burnaby Road, Portsmouth, Hants, PO1 2HB (Tel: 22590PY)
- 12.2 *Army*: SO3 PAT, DI Trg Pol(A), Trenchard Lines, Upavon, Wilts, SN9 6BE (Tel: 5161UP)
- 12.3 *RAF*: HQ PTC (TPEd 2), Room S68, RAF Innsworth, Gloucester, GL3 IEZ (Tel: 5433GE)

13 Enquiries relating to insurance and MOD's liability to pay compensation for acts of negligence should be directed to DC&L(F&S)Claims, Room 611, St Giles Court, 1-13 St Giles High Street, London WC2H 8LD Tel: 0207 807 0042 or GTN 9621 70042. Fax: 0207 807 0051 or GTN 9621 70051.

14 Analysis of insurance cover required:

Activity	Reference	Insurance cover required
Extra medical expenses	Para 4.1 Note1 (See a. below)	Strongly recommended
Personal accident insurance	Para 5.4 (See b. below)	Recommended: as MOD will not pay compensation for personal injury caused by third parties, "Pure Accidents" nor "Acts of God".
Personal liability (3 rd Party risks)	Para 5.1 (See c. below)	On Duty: Not required Off Duty: Recommended as MOD will not accept liability for incidents which occur whilst <i>off-duty</i> .
Non-MOD property	Para 5.3 (See d. below)	Strongly recommended: as MOD will not accept liability for loss of, nor damage to, personal property.
MOD vehicles	Para 4.3 Note	Not required: Organizers should obtain MOD overseas insurance certificate (and Green Card, where appropriate) from DC&L(F&S) Claims.
Civilians	Para 9 (See e. below)	Required: to cover injury, liability to 3 rd parties etc.

a. Expedition organizers may wish to obtain extra cover for relatives visiting injured personnel overseas. The cost of this element can only be made against non-public funds.

b. This would normally be a charge of non-public funds but a check of the medical expenses policy is recommended in case personal accident insurance is included.

c. Whilst this would normally fall to non-public funds, the medical expenses cover as in para 4.1 Note 1, will often provide 24hr third-party liability at no extra cost.

d. This must be charged to non-public funds or individual expedition members.

e. The cost of this must fall to non-public funds or the individual civilians.