The Evaluation
of
Permanent Incapacity for Work
in Social Insurance

Conclusions adopted by the Meeting of Experts on Social Insurance
(Geneva, 16-20 November 1936)

Reprinted from Studies and Reports, Series M (Social Insurance) No. 14

GENEVA
1937
INTRODUCTION

The problems arising out of the assessment of what is known as “permanent” incapacity in connection with the allocation of insurance benefits or workmen’s compensation for industrial accidents, as well as with invalidity insurance, are both numerous and difficult. In recent years the International Labour Office has received a great many requests for information on this subject from national insurance administrations or institutions. These questions related more particularly to the definition of incapacity, the methods of assessment, scales of incapacity, and the function of doctors and that of insured persons and employers in the bodies responsible for assessing incapacity.

The large number of requests for information or advice which were received showed that it was necessary to organise an exchange of national experience. The Office therefore decided to undertake, with the collaboration of certain members of its Committee of Experts on Social Insurance, a study of the principal problems relating to the assessment of what is known as “permanent” incapacity in social insurance.

In the first place, the Office undertook a consultation of experts by correspondence on the basis of a preliminary report and a questionnaire which were sent to the experts consulted in July 1934.

The preliminary report, which was prepared solely with a view to defining the meaning of the questions asked, confined itself to drawing attention to the principal problems which arise in the assessment of permanent incapacity and the solutions provided by national legislation.

The questionnaire, which was prepared in accordance with the same scheme as the preliminary report, contained the various questions to which the International Labour Office desired to obtain a reply.

Between October 1934 and August 1935 the Office received a large number of full and interesting replies from the experts whom it had consulted. It accordingly decided, with the approval of the Governing Body, to continue the study of the question and to call a meeting of experts at Geneva.

The meeting took place on 16, 17, 18, 19 and 20 November 1936.
In order to facilitate the work of the experts, the Office had prepared a scheme for discussion based partly on the solutions laid down in national legislation and partly on the opinions expressed by the experts in the consultation by correspondence. In the case of certain problems, the Office was able to deduce from existing legislation and the opinions of the experts certain conclusions on which the Meeting of Experts was asked to state its opinion. In the case of other problems, the Office found it necessary, in view of the divergency of national legislation and of the opinions expressed, to confine itself to studying the various possible solutions and indicating their advantages and disadvantages.

The Meeting of Experts was asked to examine the scheme of discussion and, if possible, to formulate conclusions.

The scheme was not intended to deal with all the problems arising out of the assessment of incapacity, but merely the most important of those problems. Thus, it did not deal with the evaluation of incapacity in the case of persons suffering from more than one injury or the influence of the state of the labour market on the conception of loss of earning capacity. These are extremely important and complex problems, each of which would require special study. Similarly, no account was taken of the special questions arising out of the assessment of incapacity resulting from occupational diseases. As regards invalidity insurance, the scheme dealt solely with the assessment of incapacity of compulsorily insured persons, and not with that of voluntarily insured persons and widows.

The following sections of the present report include:

I. A list of the members of the Governing Body and the experts who took part in the work;

II. The text of the conclusions adopted by the Meeting of Experts.
LIST OF PERSONS ATTENDING THE MEETING OF EXPERTS

(1) REPRESENTATIVES OF THE GOVERNING BODY ON THE CORRESPONDENCE COMMITTEE ON SOCIAL INSURANCE

Government member:
Mr. Niilo A. Mannio, Secretary-General to the Ministry of Social Affairs, Helsinki (Finland).

Employers' member:
Mr. H. C. Oersted, Vice-Chairman of the Governing Body of the International Labour Office, Director, Bureau of Employers' Federations of the Northern Countries (Denmark).

Workers' member:
Mr. Tom Moore, Member of the Employment and Social Insurance Commission (Canada).

(2) MEMBERS OF THE CORRESPONDENCE COMMITTEE ON SOCIAL INSURANCE

Dr. A. Bohren, Director of the Swiss National Accident Insurance Fund, Lucerne (Switzerland).

Dr. Tadeusz Dyboski, Director of the Social Insurance Department in the Ministry of Social Assistance, Warsaw (Poland).

Mr. Mihail Enesco, Director-General of the Central Social Insurance Fund, Bucharest (Rumania).

Mr. Jan Gallas, Director, General Pension Institution for Employees, Prague (Czechoslovakia).

Mr. Povl Holck, Chairman of the Invalidity Insurance Court, Copenhagen (Denmark).

Mr. Arthur Jauniaux, Chairman of the Social Insurance Section in the National Welfare Council, Brussels (Belgium).

Dr. Armand Kayser, Government Counsellor, Chairman of the Central Committee of Sickness Insurance Funds (Luxemburg).

Dr. Robert Kerber, former Minister, Chief of Section in the Federal Ministry of Social Administration, Vienna (Austria).

Dr. Bela Kovrig, Director in the Central Institute of Social Insurance, Budapest (Hungary).
Mr. Lange, Director of the Autonomous Miners’ Fund, Paris (France).

Mr. J. F. Malherbe, Workmen’s Compensation Commissioner, Department of Labour and Social Welfare, Union Buildings, Pretoria (Union of South Africa).

Mr. Tsunezo Nagase, Engineer, Bureau of Social Affairs, Tokyo (Japan).

Mr. Clodoveu d’Oliveira, Chairman of the Actuarial Council, Ministry of Labour, Industry and Commerce, Rio de Janeiro (Brazil).

Dr. P. W. L. Penris, Medical Examining Officer, State Insurance Bank, Amsterdam (Netherlands).

Mr. Perez-Lavin, Director of the Industrial Accident Section, National Savings Fund, Santiago de Chile (Chile).

(3) Medical Specialists on Questions of the Assessment of Incapacity

Dr. Fernand Decourt, Secretary-General of the International Medical Association, Paris.


Dr. René Piédelièvre, Professor to the Faculty of Medicine, Medical Expert to the Tribunal of the Seine, Paris.

The Committee unanimously elected Dr. Dyboski as its Chairman.
§ 1. — Object of Evaluating Incapacity

1. (a) Under workmen's compensation laws, cash benefit is granted to compensate the economic loss due to industrial accidents, and the amount of benefit varies with the degree of loss suffered.

   (b) Invalidity insurance laws provide for cash benefit when the economic loss due to invalidity reaches or exceeds a certain level.

2. The economic loss due to disability takes the form of a loss or reduction of the worker's earning capacity; and the incapacity that has to be evaluated, whether under workmen's compensation laws or under invalidity insurance laws, is the incapacity for work.

§ 2. — Conception of Incapacity

There are three fundamental conceptions according to which the incapacity due to sickness or accident may be evaluated:

A. Physical invalidity;
B. Occupational incapacity;
C. General incapacity for work.

A. — Physical Invalidity

1. Conception of physical invalidity

   (a) Physical invalidity consists of the injury to the physique of a person, his loss of strength and fitness resulting from the loss or deterioration of a physical organ or function.

   (b) The loss or deterioration of each organ or function is evaluated in relation to the state of a normal able-bodied man.

2. Objections to this conception

   (a) The conception of physical invalidity lacks clearness. It is difficult to perceive according to what objective criteria a coefficient can be assigned to each organ and each function, indicating their value as part of the entire physical organism.

   (b) Even if it were scientifically possible to fix such coefficients, they would not measure the economic loss, for it is quite certain that disabilities that are identical from the physical point of view lead to
3. Possibility of applying this conception in legislation

The conception of physical invalidity should not be used for evaluating incapacity under workmen's compensation and invalidity insurance laws, since a fair assessment of the loss of earning capacity cannot leave out of account factors that play a fundamental part in determining the degree of economic loss caused by the invalidity, in particular the factors of age and previous occupation.

The nature and the severity of the disability is only one of the factors in the evaluation, the purpose of which is to determine the effects of physical condition on earning capacity.

B. — OCCUPATIONAL INCAPACITY

Occupational incapacity may be evaluated on the basis of:

1. incapacity for employment in a given undertaking or group of undertakings;
2. incapacity for employment in a given industry;
3. the loss or reduction of capacity for a given occupation or group of occupations.

Incapacity for Employment in a Given Undertaking or Group of Undertakings

1. Definition of incapacity

(a) Incapacity for a particular job or a similar or equivalent job is determined under existing legislation on the basis of the possibility of finding fresh employment within the undertaking or group of undertakings covered by a special insurance scheme.

(b) This definition of incapacity is in practice applied only in certain special invalidity insurance schemes and, quite exceptionally, in some workmen's compensation laws.

2. Objections to the application of this definition

(a) The practical importance of the definition of incapacity with respect to a particular job or a similar or equivalent job depends on the extent of the field in which fresh employment may be sought.

(i) If the undertaking is large or the group of undertakings employs tens of thousands of persons and offers a wide range of jobs, there are no very serious drawbacks to the use of the definition.

(ii) If, on the contrary, the undertaking is small or the group of undertakings employs a small number of persons and there is little variety in the kinds of work involved, the prospects
of finding fresh employment are slight, and the application of this definition may lead to the granting of invalidity pensions to persons who might easily carry on work at a normal or substantial rate of pay in undertakings not covered by the special insurance scheme.

Incapacity for Employment in a Given Industry

1. Definition of incapacity

(a) Incapacity is estimated in relation to the prospects of finding fresh employment in the whole of an industry.

(b) In point of fact, this definition is applied under a fair number of invalidity insurance laws for miners and seamen, the unfitness being for mining work or service at sea as the case may be.

2. Objections to this definition

It is argued that this definition does not give sufficient consideration to the possibility of finding fresh employment for the disabled in another industry, where they can turn the remainder of their earning capacity to full account, and that it therefore tends towards the granting of an excessive number of invalidity pensions.

3. Possibility of applying this definition in legislation

(a) The fairly general adoption of this definition for mining work or service at sea in countries where these occupations are important is due to the desire to take into account the special problems and conditions of work of miners and seamen: long apprenticeship, serious occupational risks, special conditions of life, esprit de corps, the difficulty of transferring to another occupation, old-established legislation, etc.

(b) The application of this definition may be accepted in certain laws applicable to particular occupations, especially to miners and seamen.

Incapacity for a Given Group of Occupations

1. Definition of incapacity

(a) Occupational incapacity is evaluated under existing legislation with reference to the effects of invalidity on the prospects of employment and earning within the occupational group covered by a special insurance or compensation scheme.

(b) The prospects of employment and earning must be assessed on the basis of, among other things:

(i) physical condition;
(ii) occupational training and previous ordinary occupation;
(iii) social status;
(iv) age.
The application of this definition is due to the desire to prevent a decline either in social or in occupational status.

(i) The person concerned must remain in the social group to which he belonged when he was in full enjoyment of his strength and capacity.

(ii) He must not be compelled to accept work involving occupational qualifications of a definitely lower standard than that corresponding to his occupational training and previous ordinary occupation.

2. Objections to this definition

Various objections have occasionally been raised to this definition.

(a) Its application implies the existence of special insurance or compensation schemes for particular social or occupational groups of workers, hampers the unified organisation of insurance, and hardens the divisions between groups of workers.

(b) The limitation of the opportunities of fresh employment to the particular labour market formed by a group of occupations prevents making full use of the openings for employment and earning on the general labour market, especially after the occupational retraining of the individual, and thus leads to an unjustified increase in the cost of invalidity benefit.

3. Possibility of applying this definition in legislation

(a) In actual fact, this definition is applied primarily in special invalidity insurance schemes for salaried employees.

(b) Salaried employees' occupations in a country taken all together form a sufficiently wide and varied labour market to furnish opportunities of fresh employment for salaried employees suffering from invalidity, and this meets the objection as to the excessive cost of invalidity benefit.

(c) If a country decides to introduce a special invalidity insurance scheme for salaried employees alone, incapacity should be evaluated on the basis of the conception of occupational incapacity.

C. — GENERAL INCAPACITY FOR WORK

1. Definition of general incapacity

(a) General incapacity for work is evaluated with reference to the effects of disability on the prospects of employment and earning on the general labour market.

(b) In discussing the prospects of employment and earning, account should be taken in each case of individual factors and in particular of:
(i) physical condition;
(ii) occupational training and previous ordinary occupation;
(iii) age.

(c) The application of this definition of general incapacity for work, while making it possible to examine the prospects of finding fresh employment on the general labour market, must not, however, lead to the imposition of a considerable decline in occupational status. Thus the incapacity of a skilled worker must not be evaluated with reference to any capacity he may still have for work as a labourer.

2. Possibility of applying this conception in legislation

(a) The application of the conception of general incapacity for work allows of giving as full weight as possible to any reasonable prospects of finding fresh employment, and in particular to the results, if any, of occupational retraining; this may be of special importance in the case of young workers.

(b) The application of this conception is particularly to be recommended in general insurance or compensation schemes covering all employed persons or all workers.

§ 3. — Methods of Evaluating Incapacity

The Degree of Incapacity is expressed by the Ratio between Two Wage Rates

1. The loss of earning capacity is to be measured by the reduction (actual or presumed) in wages due to disability. The degree of incapacity may therefore be expressed by the ratio between two wage rates, which may be actual, presumed, or statutory.

2. The following are the wage rates that may be used for this ratio:

(a) the actual individual wage over a period preceding the incapacity;
(b) the actual individual wage when incapacity is evaluated;
(c) the presumed individual wage when incapacity is evaluated, regard being had to the effects of the disability in the present or in the future (difficulty in finding work, premature ageing, etc.);
(d) the individual wage which the worker would probably have earned when incapacity is evaluated if he had then been able-bodied, regard being had to changes in the level of wages between the commencement of incapacity and the evaluation.
(e) the average wage of an able-bodied worker of the same training in the same occupational category and placed in the same conditions as the disabled worker.
The rules set forth below for the adjustment of the individual wage to changes which occur between the date when the risk matures and the date of evaluation apply, *mutatis mutandis*, where the law provides for evaluation on the basis of a statutory wage.

3. There are four principal methods of evaluating incapacity resulting from the combinations of wage rates that can be used for the calculation of the ratio.

*First method: Evaluation of incapacity by the ratio between the actual individual wage when incapacity is evaluated and the actual individual wage over a period preceding the incapacity.*

1. *Actual individual wage when incapacity is evaluated*

   (1) When incapacity is evaluated, under the conditions specified by national laws, the wage actually earned may not be truly representative of the worker's earning capacity.

   (a) Owing to slackness, ill-health or the state of the labour market he may be unable to keep his job or find work, or he may have found a job in which he cannot do his best work and earn a wage corresponding to his actual earning capacity.

   (b) By making an effort exceeding what might reasonably be expected of him, or by exceptional good luck, he may have found a job entailing no loss of earnings. But the luck may not last, and the chances are against his being able to keep up such an exceptional effort. There may then appear a perhaps considerable loss of earnings, which may not have been taken into account when the incapacity was evaluated.

   (2) If the actual individual wage is taken for the ratio for evaluating incapacity, the evaluation must be delayed until the case is, medically speaking, cured, functional adaptation is complete, and the worker has been definitively reabsorbed into industry.

2. *Actual individual wage over a period preceding incapacity*

   (a) The actual individual wage is ascertained for a period which, under most national laws, is one year.

   (b) For various reasons this wage is not always representative of the injured worker's normal earning capacity before he was incapacitated. His employment during the period of calculation may have been interrupted by sickness, accident or involuntary unemployment; he may have been engaged in employment not corresponding to his ordinary occupation or normal occupational qualifications, this being the case when he suffers from a gradually increasing infirmity that by degrees reduces his working capacity.

   (c) Even if it does represent the injured worker's normal working capacity before he became incapacitated, this wage cannot always
be used for the ratio. For instance, in the case of an apprentice or a worker whose occupational training is incomplete, his wage cannot be taken for the ratio for evaluating the loss due to incapacity, since it does not represent the earning capacity that he would normally have attained later.

3. Possibility of applying this method in legislation

It does not seem that the application of this method should be recommended, owing to the considerable number of cases in which the actual individual wage when incapacity is evaluated is not truly representative of the worker's remaining earning capacity.

Second method: Evaluation of incapacity by the ratio between the presumed individual wage when incapacity is evaluated and the actual individual wage over a period preceding incapacity

1. Presumed individual wage when incapacity is evaluated

(a) The individual wage is no longer ascertained, but presumed on the basis of the nature and severity of the infirmity or injury, the possibility of finding fresh employment, and output and remuneration in a group of occupations or on the labour market in general, according as the legislation in question has adopted the conception of occupational incapacity or of general incapacity for work.

Where the worker earns a wage, the actual individual wage is of value only as a guide.

(b) The adoption of this wage for the ratio makes it possible to replace the temporary incapacity benefit by permanent benefit without necessarily awaiting the complete medical cure of the case or definitive reabsorption into industry.

2. Actual individual wage over a period preceding incapacity

(a) The actual individual wage over a certain period preceding incapacity is in principle representative of the worker's previous earning capacity.

(b) This rule is, however, subject to numerous exceptions, and the previous actual wage cannot be considered as representative of the normal earning capacity in the following cases:

(i) where important changes have occurred in the level of wages;

(ii) where interruptions of work have occurred during the period of reckoning by reason of sickness, accident or involuntary unemployment, or where, during this period, the worker has been engaged in employment on work not corresponding to his ordinary occupation or ordinary occupational qualifications;

(iii) in the case of an apprentice or a worker whose occupational training was incomplete when he became incapacitated.
3. Possibility of applying this method in legislation

(a) This method aims at evaluating incapacity by the ratio between two individual wage rates, one before and the other after incapacity. 

(b) The application of this method is recommended for evaluating incapacity under workmen's compensation laws, which are intended to grant cash benefit varying, in each individual case, directly with the degree of economic loss due to the accident. It can, however, only yield correct results if the previous actual wage truly represents the normal earning capacity of the worker. Where this is not the case, the previous actual wage should be replaced by a wage adjusted or presumed according to the individual capacity of the worker.

Third method: Evaluation of incapacity by the ratio between the presumed individual wage after ascertainment of the disability and the wage which the worker would probably have earned at the time of evaluation if he had remained able-bodied

1. Presumed individual wage after ascertainment of disability
   See second method, 1.

2. Wage which the worker would probably have earned at the time of evaluation if he had remained able-bodied
   (a) In the case of an apprentice or a worker whose occupational training was incomplete when he became incapacitated, the actual individual wage should be replaced by the normal wage of an adult worker of the same kind whose occupational training is complete.
   (b) In the case of an adult whose occupational training is complete, the presumed wage is determined:
      (i) by adjusting the previous actual wage to changes in the level of wages which have occurred between the time when the actual wage was earned and the time of evaluation;
      (ii) by disregarding in the calculation of the wage reductions of earnings which are due to exceptional interruptions of work due, e.g., to accident, sickness or unemployment;
      (iii) by taking as the basis of calculation the sums which the worker would have earned if he had been working in his ordinary occupation and utilised his occupational qualifications.

3. Possibility of applying this method in legislation
   (a) This method aims at evaluating incapacity by the ratio between two wage rates, the one before, the other after incapacity, these rates being made to correspond as closely as possible to the individual case.
The actual earnings before the appearance of the incapacity remain, in principle, the basis of the evaluation, but they are adjusted, either in order to take account of changes in the level of wages, or in order to eliminate reductions of earnings due to exceptional interruptions of work referred to in 2 (b), or to the exercise of an occupation which does not correspond to the occupational qualifications of the worker concerned. In all cases account is taken, for the purpose of determining the presumed wage, of the personal capacity which the worker concerned exhibited before he became incapacitated.

In the case of apprentices and workers whose occupational training is incomplete, however, the previous actual earnings are disregarded in the evaluation of incapacity.

(b) The application of this method is recommended for evaluating incapacity under workmen's compensation in cases where the previous actual wage does not represent the normal earning capacity of the worker, or where appreciable changes have occurred in the level of wages.

Fourth method : Evaluation of incapacity by the ratio between the presumed individual wage when incapacity is evaluated and the average wage of a normal worker of similar training and experience placed in the same circumstances

1. Presumed individual wage when incapacity is evaluated
   See second method, 1.

2. Average wage of a normal worker of similar training and experience placed in the same circumstances
   (a) This wage is obtained from the average wage paid in the same district to a physically and mentally sound worker of similar training and experience, placed in the same circumstances as the worker concerned.

   (b) It may be provided that this average wage shall not fall below the wage of an able-bodied labourer in the same district.

3. Possibility of applying this method in legislation
   (a) This method aims at evaluating incapacity by comparing the injured worker's earning capacity after he became incapacitated with the earning capacity of a normal worker, exceptional cases being left out of account, in particular any very low wages earned by the worker before becoming incapacitated.

   (b) It appears that this method should be applied under invalidity insurance laws, which are not, strictly speaking, laws for compensating the individual loss suffered and frequently fix the amount of benefit granted with reference to other factors as well, in particular, the amount and number of contributions paid.
§ 4. — Incapacity Schedules

A. — Schedules at Present in Use for Applying National Laws

1. Incapacity schedules are in fact used for applying a considerable number of workmen's compensation and accident insurance laws. On the other hand their use is quite exceptional under invalidity insurance laws.

2. The schedules may be divided into two groups according as they do or do not take the age and occupation of the worker into account.

B. — Average Incapacity Schedules leaving Age and Occupation out of Account

1. Essential features of schedules
   The schedules comprise:
   (a) a list of infirmities or injuries varying in number from 15 to 200; the usual figure is between 20 and 30;
   (b) a single incapacity percentage is generally assigned to each injury or infirmity. Sometimes there are both a minimum and a maximum percentage;
   (c) some schedules, instead of giving incapacity percentages, state either the amount of compensation to be paid or the period (number of weeks) during which compensation is due.

2. Binding schedules
   These schedules may be:
   (a) strictly binding, in which case a single incapacity percentage is assigned to each injury or infirmity, and must be applied;
   (b) Binding as regards the maximum and minimum incapacity percentages, in which case the bodies responsible for evaluating incapacity are allowed a certain margin to take individual factors into consideration;
   (c) Binding only as regards the minimum incapacity percentage, which may be exceeded by the bodies responsible for evaluating incapacity in order to allow for individual factors.

3. Guide schedules
   The percentage assigned to each injury or infirmity is regarded only as a guide, and the bodies responsible for evaluating incapacity may fix a higher or lower percentage in accordance with individual factors.

4. Nature of incapacity percentages in the schedules
   (a) The incapacity percentage (or percentages) corresponding to each injury or infirmity mentioned in the list gives the average inca-
Capacity resulting from the injury or infirmity in question for workers of different ages and belonging to different occupations.

(b) As a matter of fact these average incapacity percentages are simply physical invalidity percentages.

5. Injuries or infirmities not mentioned in the schedules

(a) Incapacity due to an injury or infirmity not mentioned in the schedule may be evaluated by treating it as a similar injury or infirmity included in the schedule.

(b) It may also be evaluated without any reference to the schedule at all. In this case the bodies responsible for evaluating incapacity may use other criteria, in particular, the actual prospects of employment and earning, and therefore the worker's age and previous occupation.

6. Advantages of using schedules

(a) The use of a schedule makes it possible to obtain throughout a country uniform evaluations for identical injuries or infirmities (when mentioned in the schedule).

(b) The work of the bodies responsible for evaluating incapacity can be done more easily and quickly and the number of disputes tends to be smaller.

(c) These advantages are considered particularly important in countries with little experience of evaluating incapacity and without experts in this field, especially if they are very large and have undeveloped means of communication, so that cases of appeal necessarily involve long delays.

7. Objections to using schedules

(a) The loss of earning capacity due to the same injury or infirmity as listed may vary very much according to the individual, especially according to age and previous occupation.

(b) Percentages of average incapacity, that is of physical invalidity do not, unless accidentally, express the reduction of earning capacity due to the injury or infirmity, and cannot serve as a measure of the economic loss resulting from the incapacity.

(c) The arguments drawn from the simplicity and rapidity of evaluation and the reduction in the number of disputes when schedules are used apply in full only in the case of strictly binding schedules assigning a single percentage that must be applied in the case of each injury or infirmity.

(d) The lists of injuries and infirmities contained in the schedules are often very rudimentary and the number of cases in which those not mentioned have to be assimilated with those in the schedule remains considerable. In these cases the use of schedules loses much of the advantages of rapidity and simplicity.
(e) When the percentages contained in the schedules are regarded only as a guide, there is nevertheless a risk for them to become more or less binding in fact, owing to the tendency of the bodies responsible for evaluating incapacity to adopt them.

8. Possibility of using schedules in the application of legislation

(a) The use of strictly binding schedules cannot be recommended, since they do not allow of taking the individual factors into account that play a part of capital importance in determining loss of earning capacity, in particular, the worker's age and previous occupation.

(b) Schedules which are binding with regard either to a minimum percentage only or to a minimum and a maximum percentage, although suffering from less serious drawbacks than strictly binding schedules, equally prevent full account being taken of individual factors, in particular, age and previous occupation. Their use cannot therefore be recommended.

The use of guide schedules may, if necessary, be accepted for the application of workmen's compensation legislation, provided that:

(i) the injuries or infirmities are clearly defined;
(ii) the schedule contains a sufficiently complete list of injuries and infirmities;
(iii) the bodies responsible for evaluating incapacity do not hesitate to depart from the average percentage mentioned in the schedule when the individual circumstances of the case so require.

C. — INCAPACITY SCHEDULES, TAKING AGE AND OCCUPATION INTO ACCOUNT

There are very few of these schedules. In actual fact there are at present only two — the Brazilian and the Californian — which are used for evaluating incapacity under workmen's compensation legislation.

1. Essential features of these schedules

These schedules comprise:

(a) a relatively complete list of injuries and infirmities. In the two existing schedules the number exceeds 300;
(b) a list of occupations or trades;
(c) age tables;

To each injury or infirmity mentioned in the list are assigned incapacity percentages varying with occupation, and in each occupation with age.

The incapacity percentages mentioned in those schedules are binding.
2. **Objections to using these schedules**

(a) These schedules cannot be completely constructed on the basis of actual experience, since this would call for the observation and classification of hundreds of thousands of individual cases. In practice the percentages mentioned in each schedule are the result partly of experimental observation of individual cases and partly of estimates based on comparisons made by necessarily arbitrary methods.

(b) These schedules do not allow of taking fully into account in each individual case all the factors determining the degree of incapacity for work, in particular, the fact that injuries or infirmities bearing identical names may have different economic effects, even for workers of the same age and previous occupation.

3. **Advantages of using these schedules**

Where these schedules are used identical injuries and infirmities are uniformly evaluated throughout the country, the work of the bodies responsible for evaluating incapacity is facilitated, and the number of disputes is reduced.

4. **Possibilities of using these schedules in the application of legislation**

(a) These schedules form an instrument for evaluating incapacity of much greater value than those consisting of average incapacity percentages without reference to age and occupation.

(b) Their use cannot be recommended, unless:

(i) they are not binding;

(ii) they are constantly revised, supplemented, and improved in accordance with the results of experimental observation of an increasing number of individual cases.

§ 5. — **Minimum Degree of Incapacity entitling to Benefit**

A. — **Conception of Minimum Degree of Incapacity entitling to Benefit**

1. By definition total incapacity always gives the right to benefit. In cases of partial incapacity the right to benefit may be made subject to the condition that the loss suffered shall be clearly characterised and sufficiently substantial: a minimum degree of incapacity is then established, which must be reached or exceeded before there can be any right to benefit.

2. The function of the minimum degree of incapacity, which is to distinguish between the losses giving right to benefit and those which do not, is the same in workmen's compensation as in invalidity insurance, but the criteria for establishing the minimum differ in the two cases.
B. — MINIMUM DEGREE OF INCAPACITY IN WORKMEN’S COMPENSATION

1. Principle of the right to compensation and justification for a minimum degree of incapacity

(a) Principle of the right to compensation. — It is generally recognised that the injurious effects of industrial accidents give a right to compensation, its amount being in proportion to the severity of the loss suffered. It is also generally admitted that in cases of incapacity persisting after the consolidation of the injury or infirmity, compensation should preferably take the form of a pension.

(b) Establishment of a minimum degree of incapacity. — In a fair number of countries the establishment of a minimum degree of incapacity entitling to benefit is considered to be compatible with the principle of the right to compensation. For, in spite of the minimum, the injured worker retains his entire rights to compensation in respect of the accident (medical treatment, other benefits in kind, sickness benefit, possible survivors’ benefits, etc.), except the right to pension. Moreover, the right to this last benefit is not denied him once and for all, but only as long as the permanent incapacity remains less than the minimum. As soon as the incapacity exceeds the minimum to an appreciable degree, the pension rights of the person concerned can be restored as a result of review.

(c) Arguments in favour of fixing a minimum degree of incapacity. — (i) In the case of minor injuries, their evaluation is unlikely to be free from error. It is not possible, properly speaking, to evaluate cases of incapacity where the chances of error are greater than those of an accurate result, and such cases should therefore not give rise to benefit.

(ii) Minor injuries involve only a small compensation of no real value to the recipient. The abolition of such compensation would not affect any essential interest.

(iii) Minor injuries are usually readjusted speedily. The will of the injured person to recover his full working capacity may be lessened if he is granted benefit.

(iv) Minor injuries, owing to their large number, entail heavy expenditure, which would be better devoted to compensating seriously disabled persons.

(d) Objections to fixing a minimum degree of incapacity. — (i) In virtue of the principle of the right to compensation, any loss resulting from an industrial accident should give right to compensation. The severity of the loss must affect the amount of the compensation but not the actual right to it.

(ii) Workmen’s compensation schemes substitute the principle of occupational risk for that of liability under the general law; since a minimum giving right to compensation is not provided for in the general law, it would be wrong to establish it under insurance or compensation schemes.
(iii) If a minimum degree of incapacity is established, even persons who are only slightly affected by an accident would claim to be suffering from incapacity at least equal to such minimum. The bodies responsible for evaluating incapacity would accept such claims and the result would be increased costs.

(e) Reasons why a minimum degree of incapacity has been fixed in fact. — In some countries a minimum degree of incapacity has been fixed for the sole purpose of protecting the rights of seriously disabled persons. The total funds allotted to workmen's compensation having declined heavily owing to economic depression, it has been held preferable to cease compensating minor injuries rather than interfere with the pensions of the seriously disabled.

(f) Justification for fixing a minimum degree of incapacity. — It does not seem impossible to reconcile with the principle of the right to compensation the fixing of a minimum degree of incapacity and the exclusion from the right to compensation of victims of accidents whose incapacity, after consolidation has occurred, does not reach the minimum.

Nevertheless, where the law in question replaces the legal provisions concerning the civil responsibility of the employer in case of industrial accident, it is for consideration whether any person affected should be allowed the possibility of suing his employer at common law.

2. Fixing of minimum degree of incapacity

(a) Method of fixing the minimum degree. — The fixing of the minimum degree of incapacity may be:

(i) left to administrative and judicial practice, which usually takes many years to become defined and established;

(ii) laid down in a provision with the force of law which is binding on the bodies responsible for evaluating incapacity.

It appears preferable to have a decision with the force of law rather than to rely on administrative and judicial practice.

(b) Minimum degree of incapacity. — The minimum degree of incapacity varies in the countries which have adopted this system between 5 and 20 per cent., a variation attributable to the different conceptions adopted in fixing the degree.

(i) Rates not exceeding 10 per cent.: These rates are fixed with a view to excluding from compensation only such cases as entail no more than a slight degree of inconvenience that can be eliminated by adaptation, and those the effects of which are not substantial enough for reliable measurement.

(ii) Rates of over 10 per cent.: These are based on the idea that if the funds for the compensation of accidents are inadequate and cannot be increased, the cases of incapacity that can be measured but do not reach a certain degree should not give
a right to pension. Where a minimum degree of incapacity of over 10 per cent. is fixed, the general functions that workmen's compensation schemes ought to fulfil in normal conditions become severely restricted.

3. Special rules applying to cases of incapacity of less than a certain degree

To meet the disadvantages that may attach to the payment of small monthly pensions, various measures other than the fixing of a minimum degree of incapacity have been adopted in a fair number of countries where compensation is usually paid in the form of a pension.

(a) Payment of small pensions at longer intervals than a month. — Where the monthly rate of a pension is small, the pension may be paid by the quarter, half-year or year. This avoids the disadvantages attaching to the payment of small sums, without detriment to the interests of the recipient.

(b) Commutation of small pensions. — Pensions due for cases of slight incapacity, the monthly rate of which falls below a certain amount, may or must be commuted by the payment of the corresponding capital sum. The following standard methods may be found in legislation:

(i) The payer of the pension may commute it *with* the consent of the pensioner.

(ii) The payer of the pension may commute it *without* the consent of the pensioner.

(iii) The authority competent to settle cases of dispute as to the right to compensation may order commutation at the request of either the payer of the pension or the pensioner.

Commutation of the pension by the payment of a capital sum does not affect the essential interests of the pensioner, provided that his rights in case of a serious aggravation of the effects of the accident are protected.

(c) Limitation of the right to pension to a period fixed irrespective of the actual duration of incapacity. — Pensions for cases of incapacity falling below a certain degree expire not later than the end of the period considered sufficient to allow, taking an average of all cases, of the recovery of full working capacity by retraining or habituation. The following are examples:

(i) Pensions for incapacity of less than 25 per cent. are paid during not more than two years.

(ii) Pensions for incapacity of less than 25 per cent. are paid during not more than three years.

In judging this method, account should be taken of the maximum period fixed for the payment of the pension and the degree of incapacity involving the application of the method.
(d) Payment of fixed compensation irrespective of the actual duration of incapacity. — The following are examples:

(i) In cases of incapacity of not more than 20 per cent. a lump sum equal to three times the annual amount of the proportionate pension calculated according to the general rules is paid.

(ii) In cases of incapacity of not more than 20 per cent. a lump sum equal to a fraction of the annual basic wage of the injured person is paid. This fraction varies according as the reduction of capacity is from 15 to 20, 10 to 15, 5 to 10, or under 5 per cent.

In judging this method, account should be taken of the amount of the lump sum and the degree of incapacity involving the application of the method.

C. — Minimum Degree of Incapacity in Invalidity Insurance

1. Minimum degree of incapacity for award of a pension

(a) Function of minimum degree of incapacity. — Since invalidity pensions are not graduated according to the severity of the loss suffered, it is necessary to fix the degree of incapacity above which injured persons are held to satisfy the condition of invalidity entitling to a pension.

Invalidity insurance schemes may be divided into two groups:

(i) The minimum degree of incapacity is explicitly fixed by the law, and the bodies responsible for evaluating incapacity may not depart from the criterion so established.

(ii) The minimum degree of incapacity is not defined in the law, and it is left to the discretion of the bodies responsible for evaluating incapacity to decide in each particular case whether the degree of incapacity is sufficient to justify the award of a pension.

(b) Advantages of fixing the minimum degree of incapacity in the law itself. — The fixing of the minimum degree of incapacity in the law itself:

(i) establishes an objective criterion which can be applied in the same way to all claimants whoever they may be;

(ii) gives claimants the certainty that they will be awarded a pension provided that their incapacity reaches the minimum;

(iii) facilitates the work of the bodies responsible for evaluating incapacity, which apply the minimum degree fixed by the law to all claimants without distinction.
(c) Disadvantages of fixing the minimum degree of incapacity in the law itself. — Where the minimum degree of incapacity is fixed in the law itself:

(i) it can establish only a formal criterion which, being applied to all persons, may be sometimes too strict, sometimes too liberal;

(ii) it is an obstacle to the claims of persons who have no reasonable chance of using such working capacity as they have left, even though it may not be held to have been reduced to the extent determined by the minimum;

(iii) it limits the margin of discretion left to the bodies responsible for evaluating incapacity, since they must keep to the fixed minimum, while noting the special circumstances of each case.

(d) Expediency of fixing a minimum degree of incapacity. — It appears desirable to fix a minimum degree of incapacity in the law itself, especially when an insurance scheme is first introduced, and this appears all the more expedient where a large number of occupations are left open to the applicant under the insurance scheme.

(i) General incapacity for work: Since the limits within which the applicant's capacity is assessed are determined in relation to the general labour market, the minimum degree of incapacity entitling to pension affords an objective criterion;

(ii) Occupational incapacity: Since the applicant's capacity is assessed in relation to his ordinary occupation or in relation to one or more similar occupations, the explicit fixing of the minimum degree of incapacity may prove useful in determining his remaining capacity in relation to an occupation other than his ordinary occupation;

(iii) Incapacity for a given employment: It does not appear desirable to fix a minimum degree of incapacity if the remaining capacity is assessed only in relation to the employment hitherto held or to similar or equivalent work in an undertaking or group of undertakings or in an industry, for the nature of each employment considered individually will determine the degree of capacity below which it may be held that the employment can no longer be carried on.

2. Fixing of minimum degree of incapacity

(a) Minimum degree of incapacity expressed as a fraction of a normal worker's average wage. — (i) Invalidity insurance covers the risk of total or substantial loss of earning capacity. Regarded as an economic value, this capacity takes the material form of a wage, which expresses its value.

(ii) The minimum degree of incapacity is expressed as a fraction of the average wage of a normal worker in the same circumstances. This fraction is deemed to correspond to the minimum degree of incapacity entitling to pension.
(b) Criteria for fixing the minimum degree of incapacity. — If an invalidity insurance scheme were to grant a pension only in cases of total incapacity, it would be ineffective, for even severely disabled persons usually retain a certain measure of capacity. It therefore becomes necessary to fix the degree above which the reduction of capacity becomes so great that it gives a right to pension.

The minimum degree of incapacity being expressed by a fraction of a normal worker's average wage, this fraction should be determined in such a way as to admit to pension claimants

(i) whose remaining capacity is in practice insufficient for continuous effort;

(ii) who in view of the competitive conditions on the labour market have no reasonable chance of finding suitable employment;

(iii) who cannot be considered capable of earning even by continuous effort a sum sufficient to represent an appreciable contribution to their subsistence.

3. Minimum degree of incapacity in inter-occupational insurance schemes

(a) Fraction of a normal worker's average wage expressing the minimum degree of incapacity. — Two rates are to be found in the laws that fix the minimum degree of incapacity:

(i) Minimum fixed at less than one-third of a normal worker's average wage. Only claimants considered unable to earn one-third of this wage are admitted to pension.

This minimum, first fixed for the German invalidity insurance scheme, has been adopted by most of the European inter-occupational schemes in force. It is, in fact, also observed by the bodies responsible for evaluating incapacity in certain countries where the law fixes no minimum entitling to pension.

(ii) Minimum fixed at less than half a normal worker's average wage. Only claimants considered unable to earn half this wage are admitted to pension.

This minimum is to be found in a few recent inter-occupational schemes.

The difference of level between the two rates at which the minimum degree of incapacity is fixed in inter-occupational schemes affects only an intermediate group of cases, since most claimants can be definitely classed either above or below the minimum.

(b) Appreciation of the level at which the minimum degree of incapacity is fixed. — To appreciate whether the fixing of the minimum degree of incapacity at one-third of a normal worker's average wage is justifiable the following points should be considered:

(i) Whether, with a substantial reduction of working capacity, even though not as much as 67 per cent., the claimant can be considered able to make a continuous effort;
(ii) Whether so substantial a reduction allows him a reasonable chance of finding suitable employment;

(iii) Whether earnings which, even if continuous, do not much exceed one-third of the average wage of a normal worker in the same circumstances may be considered to represent an appreciable contribution to subsistence.

(iv) Whether economic conditions do not prevent the admission to pension rights of persons whose incapacity does not reach this minimum.

4. Minimum degree of incapacity in occupational insurance schemes

(a) Fraction of a normal worker's average wage expressing the minimum degree of incapacity. — Several occupational insurance schemes have fixed the minimum degree of incapacity at half the average wage of a normal worker in the same circumstances. This minimum is, in fact, observed also by the bodies responsible for evaluating incapacity in certain countries where the law fixes no minimum entitling to pension.

(b) Appreciation of the level at which the minimum degree of incapacity is fixed. — In occupational schemes the fixing of a minimum degree of incapacity at less than half the average wage of a normal worker in the same circumstances appears to be based on the following considerations:

(i) Where the remaining occupational capacity of the applicant is not less than half, he has a reasonable chance of finding suitable employment under normal economic conditions.

(ii) A remuneration of not less than half the average remuneration of a normal worker in the same circumstances may be considered as representing an appreciable contribution to subsistence provided that it is earned continuously.

§ 6. — Starting Point of Permanent Incapacity Benefit

A. — Practical Importance of the Question

1. The fixing of the starting point for the payment of benefit for what is known as permanent incapacity is very important both to the person responsible for payment and to the recipient, because when this point is reached there is generally a change in the conception of incapacity and in the form, conditions of award, and amount of benefit.

2. Benefit for temporary incapacity.

(a) The conception of incapacity is as a rule unfitness for carrying on the last occupation, and incapacity is generally regarded as total.

(b) Benefit takes the form of a daily or weekly allowance, most frequently equal to 50 per cent. of the worker's basic wage.
(c) The recipient is usually required to undergo frequent medical examination (in most cases once a week or once a fortnight) and the allowance may be withdrawn at any time.

(d) Nevertheless, a certain number of workmen's compensation laws provide for the eventuality of temporary partial incapacity, and therefore for the evaluation of incapacity in this case: the benefits thus vary according to the evolution of the incapacity.

3. Benefit for what is known as permanent incapacity.

(a) The granting of benefit for what is known as permanent incapacity is subject to an evaluation of the degree of incapacity. According to the law concerned, the conception of occupational incapacity or of general incapacity for work is adopted.

(b) Benefit takes the form of a pension or, in some cases, of a lump sum:

(i) Under workmen's compensation laws, the amount of benefit varies with the degree of incapacity. According to that degree, the pension, for instance, may be higher or lower than the daily or weekly allowance.

(ii) Under invalidity insurance laws, benefit is granted only in cases exceeding the minimum degree of incapacity, and the amount varies generally more or less directly with the number and amount of contributions paid. The completion of a qualifying period is generally required. The benefit is usually less than the daily or weekly sickness allowance, especially in the case of young persons.

(c) Benefit, while not granted permanently, is more stable than the allowance for temporary incapacity, for review is less frequent.

B. — Benefit for "Permanent" Incapacity is Granted when the State of the Disabled Person is Deemed to be Finally Stabilised

1. Permanent incapacity from the medico-social point of view

(a) From the medico-social point of view, incapacity cannot be deemed to be permanent until the bodies responsible for evaluating it have ascertained that the state of the disabled person has become finally stable. To determine whether this is the case, they must take into consideration the following factors, among others:

(i) Physical condition;

(ii) Functional readjustment and habituation to invalidity;

(iii) Occupational retraining and change of employment.
2. **Advantage of this conception**

The application of this medico-social conception of permanent incapacity means that the amount of benefit need not be fixed until the state of the disabled person has become finally stable and the economic loss due to invalidity can be measured on a reliable basis.

3. **Objections to this conception**

   (a) The time taken for an injury or infirmity to reach a finally stable condition varies very much:

   (i) with the nature and gravity of the injury or infirmity;

   (ii) with the individual, and in particular with age and physical strength, even in cases of the same or similar injuries or infirmities;

   (iii) with the methods of treatment adopted.

   (b) It is therefore impossible to fix a general time limit at the end of which it is to be assumed that incapacity has become permanent. Recourse must be had to individual decisions, for in some cases the permanent nature of an incapacity can be established only after several years.

   (c) The adoption of this conception leaves both the payer and the recipient of benefit in a state of uncertainty, which may last several years, as to the final amount of their obligations and rights.

   (i) The payer of benefit wishes to know as soon as possible what his final obligations will be. This applies especially in the case of an employer who is not insured.

   (ii) The recipient wishes to know as soon as possible the final amount of the benefit to which he is entitled. The uncertainty in which he may be kept for several years may lead to a state of anxiety and nervousness that will hamper his occupational retraining and interfere with any serious effort to find employment in which he could do his best work.

4. **Possibility of applying this conception in legislation**

   (a) This conception has been applied partially in several workmen's compensation laws and some invalidity insurance laws under which benefit for so-called permanent incapacity is granted when the state of the disabled person has become stable from the medical point of view.

   (b) The full application of this conception can hardly be recommended, in view of the psychological and practical difficulties attaching to the maintenance of temporary incapacity benefit during a period that may in certain cases last several years.

   Nevertheless, it may be recommended for workmen's compensation schemes which provide benefits for temporary incapacity proportionate to the degree of incapacity.
C. — Benefit for "Permanent" Incapacity is granted if Incapacity continues after the Expiry of a Fixed Period, starting from the Beginning of the Sickness or the Date of the Accident

This system of a fixed period is very frequently adopted in both workmen's compensation laws and in invalidity insurance laws.

1. Workmen's compensation
   
   (a) The period varies from six months to two or even three years, being in most cases six months or one year.

   (b) The benefit for "permanent" incapacity, when it takes the form of a pension, is not final. The evaluation of incapacity may be reviewed, at least during a certain number of years.

2. Invalidity insurance
   
   (a) If the injured person is insured against both sickness and invalidity, invalidity benefit is granted if the incapacity lasts after he has exhausted his right to sickness benefit, that is to say, in general after 26 weeks and in some cases a year or longer.

   (b) If he is not insured against sickness, benefit is granted:

      (i) as soon as the lasting, if not permanent, nature of the incapacity can be determined, even before the expiry of a period of six months;

      (ii) at the end of the period of six months, even if it is certain that the incapacity is temporary or it is not yet possible to determine whether it is permanent.

   (c) The evaluation of incapacity is not final and may be the subject of review at least during a certain number of years.

3. Objections to the fixed period

   (a) The fixing of the starting point for the payment of benefit for "permanent" incapacity at the end of a certain period is an empirical method, which leaves out of account the fact that the time taken for an incapacity to become permanent varies greatly with the injury or infirmity and the individual.

   (b) Consequently, this method leads to the granting of "permanent" incapacity benefit in a number of cases for injuries or infirmities which are still in process of change and may become better or worse.

   (c) Moreover, the application of this method cannot contribute towards producing that sense of security which both the insured persons and the institutions should enjoy.
4. Advantages of the fixed period

(a) The fixed period is a compromise between medico-social considerations and administrative or practical requirements. It allows of dividing competence and responsibility between the sickness insurance and invalidity insurance schemes. In actual fact, experience shows that the vast majority of cases of temporary incapacity are covered in a period of six months.

(b) Moreover, the fixed period introduces into the system of "permanent" incapacity benefit a certain degree of stability which meets the wishes and interests of both the person paying and the person receiving benefit.

5. Possibility of applying the fixed period in legislation

(a) The fixed period system is applied under a very large number of workmen's compensation and invalidity insurance laws.

(b) The application of this system is to be recommended for administrative and practical reasons provided that it is agreed

(i) that notwithstanding the wording of the law the incapacity in question is not in fact permanent nor the evaluation of it final;

(ii) that the first evaluation may be reviewed at least during a certain number of years.

§ 7. — Review of Evaluation of Incapacity

1. Principle of review

The principle of the review of the evaluation of incapacity must be accepted when the right to benefit for "permanent" incapacity is not necessarily dependent on an actual finding that the incapacity is in fact permanent, for in the general interest of the beneficiary and the person responsible for payment account must be taken of possible or probable changes for the better or worse in the degree of incapacity.

2. The party entitled to claim review

The right to claim review must be granted to the parties interested in fixing the benefit on the basis of as exact an evaluation as possible, that is to say:

(i) the beneficiary;

(ii) the person responsible for paying benefit (the insurance institution or uninsured employer).

3. Receivability of application for review

(a) In order to prevent repeated and unjustified claims for review, which unnecessarily create a constant state of uncertainty for both
parties, the law should provide that claims for review may be considered only if the application is accompanied by proof or presumptive evidence that there has been either a substantial change in the condition of the injured person since the previous evaluation of incapacity or an obvious error of judgment.

(b) If the law empowers the insurance institution to review the evaluation of incapacity, a right of appeal against the decision of the institution reviewing his incapacity should be allowed to the beneficiary.

4. **Length of period of review**

(a) The time taken for an incapacity to become permanent varies very much with the nature and gravity of the injury or infirmity, and even, in the case of the same injury or infirmity, with physique, age, sex, etc. From the medico-social standpoint it is not desirable to introduce by law or regulation a general and absolute limit for the period of review, to be applied in all cases.

(b) On the other hand the bodies responsible for evaluating incapacity should have the right in individual cases to decide that the evaluation may no longer be subject to review when they have become sure that the incapacity is permanent. The beneficiary should have a right of appeal against any such decision.

5. **Frequency of review**

(a) Since the rate at which an injury or infirmity and the degree of incapacity it produces change with the nature and gravity of the injury or infirmity, and even, in the case of the same injury or infirmity, with physique, age, sex, etc., it does not appear desirable to fix by law or regulation a single rigid interval between two successive reviews.

(b) In order, however, to prevent unjustified and superfluous application for review, the bodies responsible for evaluating incapacity should have the right in each individual case of evaluation to rule that another evaluation shall not take place until a certain interval has passed.

This ruling may, however, be overridden if the applicant can prove or give serious evidence that there has been a substantial and lasting change in his condition since the previous evaluation.

§ 8. — **Bodies Responsible for Evaluating Incapacity**

A. — **Types of Bodies Responsible for Evaluating Incapacity**

1. The evaluation of incapacity is sometimes left under certain workmen’s compensation laws to agreement between the parties, which may be:
(a) concluded without any intervention by a public authority;
(b) subject to registration by such authority;
(c) subject to supervision and approval by such authority.

In countries where insurance is not undertaken by social insurance institutions, the evaluation of incapacity should be supervised by a public authority.

2. In most countries, however, the evaluation of incapacity is entrusted to a public authority. The types of authorities responsible for evaluation may be reduced to three:

(a) social insurance institutions;
(b) the ordinary law courts;
(c) special tribunals or special assessment committees.

B. — Social Insurance Institutions

1. Bodies responsible for evaluation

The evaluation of incapacity may be entrusted to:

(a) the manager or an official of the institution acting for the manager;
(b) the managing committee or governing body of the institution;
(c) special assessment committees formed in the institution:
   (i) these committees may consist either of insured persons and employers or also of officials designated by the institution.
   (ii) the members of the committees may be appointed by the governing body of the institution or elected by the employers and insured persons forming the general meeting of the institution or appointed or proposed by workers’ and employers’ organisations.

2. Objections to the intervention of social insurance institutions

(a) The organs of social insurance institutions run the risk of having doubt thrown on their impartiality, since the institution, which is responsible for paying benefit, becomes at once judge and party in the case.

(b) This objection is of some force if evaluation is entrusted to the manager or the managing committee responsible for the financial administration of the institution or to a body designated by the manager or the managing committee and subject to its influence.

(c) The objection is much less valid if the organ of the institution responsible for evaluating incapacity is independent of the manager or the managing committee and if it includes worker and employer members.
3. Advantages of evaluation by social insurance institutions

(a) The organs of social insurance institutions have specialised in the study of insurance questions and therefore offer serious guarantees of technical and practical competence.

(b) The social insurance institutions can make use of their administrative and technical services and in particular their medical service.

(c) The procedure of evaluation can thus be simple, rapid and inexpensive.

C. — Ordinary Law Courts

1. Advantage of entrusting evaluation of incapacity to the ordinary law courts

The ordinary courts offer every guarantee of impartiality and judicial competence.

2. Objections

(a) The judges of the ordinary courts, who have numerous duties, cannot acquire all the necessary technical and practical knowledge for efficiently evaluating incapacity.

(b) It is sometimes alleged that they lack a social outlook and are insufficiently acquainted with the social circumstances of the parties.

(c) The procedure of the ordinary courts, which are often overburdened with cases, is slow and costly.

(d) These objections lose some of their validity if certain judges or sections of the ordinary courts can be required to specialise in social insurance cases and more especially in cases involving the evaluation of incapacity.

(e) In addition, the ordinary courts can always have recourse to experts for explanations on technical and practical points.

D. — Special Tribunals and Special Assessment Committees

1. Nature of such special tribunals and committees

These tribunals and committees are independent of the insurance institutions and have specialised in insurance cases or in some instances even in cases involving the evaluation of incapacity.

They may consist solely of judges, or of judges, insured persons and employers, and in some instances may include doctors.

2. Objection

The creation of special bodies increases the complexity of the institutions involved in the working of social insurance.
3. Advantages

(a) These special tribunals and committees, like the ordinary courts, are independent of the parties and afford every guarantee of impartiality.

(b) Specialisation enables their members to acquire all the necessary technical and practical knowledge.

(c) Specialisation also allows of the adoption of simple and rapid procedure, better adapted for the evaluation of incapacity.

(d) By reason of their specialisation the special tribunals and committees guarantee in a very large measure uniformity of decisions.

(e) Special tribunals and committees are imbued with the spirit of social legislation; by their means compromises incompatible with the character of social insurance legislation are avoided.

E. — Participation of Workers and Employers in the Bodies Responsible for Evaluating Incapacity

1. Principle of participation of workers and employers

(a) There can be no doubt of the value of allowing workers' and employers' representatives to take part in evaluating incapacity, for they have the necessary technical and practical knowledge, especially as regards wages, the openings for employment for the disabled, the need for or desirability of occupational retraining, the probable output and wages of the disabled, etc.

(b) Workers and employers may act on the bodies responsible for evaluating incapacity in two ways:

(i) they may be called in as experts;

(ii) they may be members of the bodies.

2. Workers and employers as experts

(a) Whatever the nature of the bodies responsible for evaluating incapacity, whether they are organs of the insurance institutions, ordinary law courts, special tribunals or special assessment committees, it is always possible for workers and employers to act on them as experts.

(b) There does not appear to be any objection to their acting in this capacity.

3. Workers and employers as judges

Workers and employers, as assessors on the bodies responsible for evaluating incapacity, should have the right to vote.

If the workers and employers are members of bodies responsible for evaluation they contribute fully their technical and practical knowledge at all stages of the procedure.
Practical experience has shown that the objection sometimes made that employers and insured persons may be lacking in impartiality is generally unfounded.

F. — Participation of Doctors

1. Principle of doctors' participation

(a) The evaluation of incapacity raises a number of difficult medical problems and it is obvious that medical participation is necessary.

(b) The material on the basis of which incapacity is evaluated includes medical opinions, which quite often differ, e.g. the opinion of the claimant's doctor and that of the employer's doctor or the insurance institution's doctor.

(c) It is therefore necessary for the body responsible for evaluating incapacity to be able to have recourse to one or more doctors to give an opinion, if necessary, after examination of the claimant. These doctors may collaborate in two ways:

(i) they may be called in as experts;
(ii) they may be members of the bodies responsible for evaluating incapacity.

2. Capacity in which doctors may act

It does not seem advisable for doctors to act as voting members of the bodies responsible for evaluating incapacity.

On the other hand doctors should serve as experts whatever may be the nature of the bodies responsible for evaluation: their intervention cannot give rise to any objection provided that the doctors are experts who have given proof of their competence to give an opinion on the cases submitted to them, and are quite independent.