



# Social Security Contributions and Benefits (Northern Ireland) Act 1992

## 1992 CHAPTER 7

### PART V

#### BENEFIT FOR INDUSTRIAL INJURIES

**Modifications etc. (not altering text)**

**C1** Pt. 5 (ss. 94-111): power to apply conferred (1.7.1992) by Social Security Administration (Northern Ireland) Act 1992 (c. 8), ss. 161, 168(4), **Sch. 6 para. 1(3)(a)**

#### *General provisions*

#### **94 Right to industrial injuries benefit.**

- (1) Industrial injuries benefit shall be payable where an employed earner suffers personal injury caused after 4th July 1948 by accident arising out of and in the course of his employment, being employed earner's employment.
- (2) Industrial injuries benefit consists of the following benefits—
  - (a) disablement benefit payable in accordance with sections 103 to 105 below, paragraphs 2 and 3 of Schedule 7 to this Act and Parts II and III of that Schedule;
  - (b) reduced earnings allowance payable in accordance with Part IV of that Schedule;
  - (c) retirement allowance payable in accordance with Part V of that Schedule; and
  - (d) industrial death benefit, payable in accordance with Part VI of that Schedule.
- (3) For the purposes of industrial injuries benefit an accident arising in the course of an employed earner's employment shall be taken, in the absence of evidence to the contrary, also to have arisen out of that employment.

*Status: Point in time view as at 24/09/1996.*

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- (4) Regulations may make provision as to the day which, in the case of night workers and other special cases, is to be treated for the purposes of industrial injuries benefit as the day of the accident.
- (5) Subject to sections 117 and 119 below, industrial injuries benefit shall not be payable in respect of an accident happening while the earner is outside Northern Ireland.
- (6) In the following provisions of this Part of this Act “work” in the contexts “incapable of work” and “incapacity for work” means work which the person in question can be reasonably expected to do.
- (7) Subsection (5) above shall cease to have effect on such day as the Head of the Department may by order appoint.

**Modifications etc. (not altering text)**

- C2** [S. 94\(2\)\(a\)](#) applied (1.7.1992) by [Social Security Administration \(Northern Ireland\) Act 1992 \(c. 8\)](#), [ss. 167\(1\)](#).

**95 Relevant employments.**

- (1) In section 94 above, this section and sections 98 to 109 below “employed earner’s employment” shall be taken to include any employment by virtue of which a person is, or is treated by regulations as being for the purposes of industrial injuries benefit, an employed earner.
- (2) Regulations may provide that any prescribed employment shall not be treated for the purposes of industrial injuries benefit as employed earner’s employment notwithstanding that it would be so treated apart from the regulations.
- (3) For the purposes of the provisions of this Act mentioned in subsection (1) above an employment shall be an employed earner’s employment in relation to an accident if (and only if) it is, or is treated by regulations as being, such an employment when the accident occurs.
- (4) Any reference in the industrial injuries and diseases provisions to an “employed earner” or “employed earner’s employment” is to be construed, in relation to any time before 6th April 1975, as a reference respectively to an “insured person” or “insurable employment” within the meaning of the provisions relating to industrial injuries and diseases which were in force at that time.
- (5) In subsection (4) above “the industrial injuries and diseases provisions” means—
  - (a) this section and sections 96 to 110 below;
  - (b) any other provisions of this Act so far as they relate to those sections; and
  - (c) any provisions of the Administration Act so far as they so relate.

**96 Persons treated as employers for certain purposes.**

In relation to—

- (a) a person who is an employed earner for the purposes of this Part of this Act otherwise than by virtue of a contract of service or apprenticeship; or
- (b) any other employed earner—

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- (i) who is employed for the purpose of any game or recreation and is engaged or paid through a club; or
- (ii) in whose case it appears to the Department there is special difficulty in the application of all or any of the provisions of this Part of this Act relating to employers,

regulations may provide for a prescribed person to be treated in respect of industrial injuries benefit and its administration as the earner's employer.

## **97 Accidents in course of illegal employments.**

- (1) Subsection (2) below has effect in any case where—
  - (a) a claim is made for industrial injuries benefit in respect of an accident, or of a prescribed disease or injury; or
  - (b) an application is made under section 42 of the Administration Act for a declaration that an accident was an industrial accident, or for a corresponding declaration as to a prescribed disease or injury.
- (2) The Department may direct that the relevant employment shall, in relation to that accident, disease or injury, be treated as having been employed earner's employment notwithstanding that by reason of a contravention of, or non-compliance with, some provision contained in or having effect under an enactment passed for the protection of employed persons or any class of employed persons, either—
  - (a) the contract purporting to govern the employment was void; or
  - (b) the employed person was not lawfully employed in the relevant employment at the time when, or in the place where, the accident happened or the disease or injury was contracted or received.
- (3) In subsection (2) above "relevant employment" means—
  - (a) in relation to an accident, the employment out of and in the course of which the accident arises; and
  - (b) in relation to a prescribed disease or injury, the employment to the nature of which the disease or injury is due.

## **98 Earner acting in breach of regulations, etc.**

An accident shall be taken to arise out of and in the course of an employed earner's employment, notwithstanding that he is at the time of the accident acting in contravention of any statutory or other regulations applicable to his employment, or of any orders given by or on behalf of his employer, or that he is acting without instructions from his employer, if—

- (a) the accident would have been taken so to have arisen had the act not been done in contravention of any such regulations or orders, or without such instructions, as the case may be; and
- (b) the act is done for the purposes of and in connection with the employer's trade or business.

## **99 Earner travelling in employer's transport.**

- (1) An accident happening while an employed earner is, with the express or implied permission of his employer, travelling as a passenger by any vehicle to or from his

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place of work shall, notwithstanding that he is under no obligation to his employer to travel by that vehicle, be taken to arise out of and in the course of his employment if—

- (a) the accident would have been taken so to have arisen had he been under such an obligation; and
- (b) at the time of the accident, the vehicle—
  - (i) is being operated by or on behalf of his employer or some other person by whom it is provided in pursuance of arrangements made with his employer; and
  - (ii) is not being operated in the ordinary course of a public transport service.

(2) In this section references to a vehicle include a ship, vessel, hovercraft or aircraft.

### **100 Accidents happening while meeting emergency.**

An accident happening to an employed earner in or about any premises at which he is for the time being employed for the purposes of his employer's trade or business shall be taken to arise out of and in the course of his employment if it happens while he is taking steps, on an actual or supposed emergency at those premises, to rescue, succour or protect persons who are, or are thought to be or possibly to be, injured or imperilled, or to avert or minimise serious damage to property.

### **101 Accident caused by another's misconduct, etc.**

An accident happening after 19th December 1961 shall be treated for the purposes of industrial injuries benefit, where it would not apart from this section be so treated, as arising out of an employed earner's employment if—

- (a) the accident arises in the course of the employment; and
- (b) the accident either is caused—
  - (i) by another person's misconduct, skylarking or negligence, or
  - (ii) by steps taken in consequence of any such misconduct, skylarking or negligence, or
  - (iii) by the behaviour or presence of an animal (including a bird, fish or insect),
 or is caused by or consists in the employed earner being struck by any object or by lightning; and
- (c) the employed earner did not directly or indirectly induce or contribute to the happening of the accident by his conduct outside the employment or by any act not incidental to the employment.

### *Sickness benefit*

<sup>F1</sup>102 .....

#### **Textual Amendments**

- F1** S. 102 repealed (13.4.1995) by S.I. 1994/1898 (N.I. 12), art. 13(1)(2), Sch. 1, Pt. I para. 29, Sch. 2 (with art. 15(1)); S.R. 1994/450, art. 2, Sch.

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### *Disablement pension*

#### **103 Disablement pension.**

- (1) Subject to the provisions of this section, an employed earner shall be entitled to disablement pension if he suffers as the result of the relevant accident from loss of physical or mental faculty such that the assessed extent of the resulting disablement amounts to not less than 14 per cent. or, on a claim made before 19th November 1986, 20 per cent.
- (2) In the determination of the extent of an employed earner's disablement for the purposes of this section there may be added to the percentage of the disablement resulting from the relevant accident the assessed percentage of any present disablement of his—
  - (a) which resulted from any other accident after 4th July 1948 arising out of and in the course of his employment, being employed earner's employment, and
  - (b) in respect of which a disablement gratuity was not paid to him after a final assessment of his disablement,(as well as any percentage which may be so added in accordance with regulations under subsection (2) of section 109 below made by virtue of subsection (4)(b) of that section).
- (3) Subject to subsection (4) below, where the assessment of disablement is a percentage between 20 and 100 which is not a multiple of 10, it shall be treated—
  - (a) if it is a multiple of 5, as being the next higher percentage which is a multiple of 10, and
  - (b) if it is not a multiple of 5, as being the nearest percentage which is a multiple of 10,and where the assessment of disablement on a claim made on or after 19th November 1986 is less than 20 per cent., but not less than 14 per cent., it shall be treated as 20 per cent.
- (4) Where subsection (2) above applies, subsection (3) above shall have effect in relation to the aggregate percentage and not in relation to any percentage forming part of the aggregate.
- (5) In this Part of this Act "assessed", in relation to the extent of any disablement, means assessed in accordance with Schedule 6 to this Act; and for the purposes of that Schedule there shall be taken to be no relevant loss of faculty when the extent of the resulting disablement, if so assessed, would not amount to 1 per cent.
- (6) A person shall not be entitled to a disablement pension until after the expiry of the period of 90 days (disregarding Sundays) beginning with the day of the relevant accident.
- (7) Subject to subsection (8) below, where disablement pension is payable for a period, it shall be paid at the appropriate weekly rate specified in Schedule 4, Part V, paragraph 1.
- (8) Where the period referred to in subsection (7) above is limited by reference to a definite date, the pension shall cease on the death of the beneficiary before that date.

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#### **104 Increase where constant attendance needed.**

- (1) Where a disablement pension is payable in respect of an assessment of 100 per cent., then, if as the result of the relevant loss of faculty the beneficiary requires constant attendance, the weekly rate of the pension shall be increased by an amount, not exceeding the appropriate amount specified in Schedule 4, Part V, paragraph 2 determined in accordance with regulations by reference to the extent and nature of the attendance required by the beneficiary.
- (2) An increase of pension under this section shall be payable for such period as may be determined at the time it is granted, but may be renewed from time to time.
- (3) The Department may by regulations direct that any provision of sections 64 to 67 above shall have effect, with or without modifications, in relation to increases of pension under this section.
- (4) In subsection (3) above, “modifications” includes additions and omissions.

#### **105 Increase for exceptionally severe disablement.**

- (1) Where a disablement pension is payable to a person—
  - (a) who is or, but for having received medical or other treatment as an in-patient in a hospital or similar institution, would be entitled to an increase of the weekly rate of the pension under section 104 above, and the weekly rate of the increase exceeds the amount specified in Schedule 4, Part V, paragraph 2(a); and
  - (b) his need for constant attendance of an extent and nature qualifying him for such an increase at a weekly rate in excess of that amount is likely to be permanent,
 the weekly rate of the pension shall, in addition to any increase under section 104 above, be further increased by the amount specified in Schedule 4, Part V, paragraph 3.
- (2) An increase under this section shall be payable for such period as may be determined at the time it is granted, but may be renewed from time to time.

#### *Other benefits and increases*

#### **106 Benefits and increases subject to qualifications as to time.**

Schedule 7 to this Act shall have effect in relation—

- (a) to unemployment supplement;
- (b) to disablement gratuity;
- (c) to increases of disablement pension during hospital treatment;
- (d) to reduced earnings allowance;
- (e) to retirement allowance; and
- (f) to industrial death benefit,

for all of which the qualifications include special qualifications as to time.

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### *Successive accidents*

#### **107 Adjustments for successive accidents.**

- (1) Where a person suffers two or more successive accidents arising out of and in the course of his employed earner's employment—
  - (a) he shall not for the same period be entitled (apart from any increase of benefit mentioned in subsection (2) below) to receive industrial injuries benefit by way of two or more disablement pensions at an aggregate weekly rate exceeding the appropriate amount specified in Schedule 4, Part V, paragraph 4; and
  - (b) regulations may provide for adjusting—
    - (i) disablement benefit, or the conditions for the receipt of that benefit, in any case where he has received or may be entitled to a disablement gratuity;
    - (ii) any increase of benefit mentioned in subsection (2) below, or the conditions for its receipt.
- (2) The increases of benefit referred to in subsection (1) above are those under the following provisions of this Act—
  - section 104,
  - section 105,
  - paragraph 2, 4 or 6 of Schedule 7.

### *Prescribed industrial diseases, etc.*

#### **108 Benefit in respect of prescribed industrial diseases, etc.**

- (1) Industrial injuries benefits shall, in respect of a person who has been in employed earner's employment, be payable in accordance with this section and sections 109 and 110 below in respect of—
  - (a) any prescribed disease, or
  - (b) any prescribed personal injury (other than an injury caused by accident arising out of and in the course of his employment),which is a disease or injury due to the nature of that employment and which developed after 4th July 1948.
- (2) A disease or injury may be prescribed in relation to any employed earners if the Department is satisfied that—
  - (a) it ought to be treated, having regard to its causes and incidence and any other relevant considerations, as a risk of their occupations and not as a risk common to all persons; and
  - (b) it is such that, in the absence of special circumstances, the attribution of particular cases to the nature of the employment can be established or presumed with reasonable certainty.
- (3) Regulations prescribing any disease or injury for those purposes may provide that a person who developed the disease or injury on or at any time after a date specified in the regulations (being a date before the regulations came into force but not before 5th July 1948) shall be treated, subject to any prescribed modifications of this section or

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section 109 or 110 below, as if the regulations had been in force when he developed the disease or injury.

- (4) Provision may be made by regulations for determining—
- (a) the time at which a person is to be treated as having developed any prescribed disease or injury; and
  - (b) the circumstances in which such a disease or injury is, where the person in question has previously suffered from it, to be treated as having recrudesced or as having been contracted or received afresh.
- (5) Notwithstanding any other provision of this Act, the power conferred by subsection (4)
- (a) above includes power to provide that the time at which a person shall be treated as having developed a prescribed disease or injury shall be the date on which he first makes a claim which results in the payment of benefit by virtue of this section or section 110 below in respect of that disease or injury.
- (6) Nothing in this section or in section 109 or 110 below affects the right of any person to benefit in respect of a disease which is a personal injury by accident within the meaning of this Part of this Act, except that a person shall not be entitled to benefit in respect of a disease as being an injury by accident arising out of and in the course of any employment if at the time of the accident the disease is in relation to him a prescribed disease by virtue of the occupation in which he is engaged in that employment.

## **109 General provisions relating to benefit under s. 108.**

- (1) Subject to the power to make different provision by regulations, and to the following provisions of this section and section 110 below—
- (a) the benefit payable under section 108 above in respect of a prescribed disease or injury, and
  - (b) the conditions for receipt of benefit,
- shall be the same as in the case of personal injury by accident arising out of and in the course of employment.
- (2) In relation to prescribed diseases and injuries, regulations may provide—
- (a) for modifying any provisions contained in this Act or the Administration Act which relate to disablement benefit or reduced earnings allowance or their administration; and
  - (b) for adapting references in this Act and that Act to accidents,
- and for the purposes of this subsection the provisions of the Administration Act which relate to the administration of disablement benefit or reduced earnings allowance shall be taken to include section 1 and any provision which relates to the administration of both the benefit in question and other benefits.
- (3) Without prejudice to the generality of subsection (2) above, regulations under that subsection may in particular include provision—
- (a) for presuming any prescribed disease or injury—
    - (i) to be due, unless the contrary is proved, to the nature of a person's employment where he was employed in any prescribed occupation at the time when, or within a prescribed period or for a prescribed length of time (whether continuous or not) before, he developed the disease or injury,



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- (ii) not to be due to the nature of a person's employment unless he was employed in some prescribed occupation at the time when, or within a prescribed period or for a prescribed length of time (whether continuous or not) before, he developed the disease or injury;
  - (b) for such matters as appear to the Department to be incidental to or consequential on provisions included in the regulations by virtue of subsection (2) and paragraph (a) above.
- (4) Regulations under subsection (2) above may also provide—
  - (a) that, in the determination of the extent of an employed earner's disablement resulting from a prescribed disease or injury, the appropriate percentage may be added to the percentage of that disablement; and
  - (b) that, in the determination of the extent of an employed earner's disablement for the purposes of section 103 above, the appropriate percentage may be added to the percentage of disablement resulting from the relevant accident.
- (5) In subsection (4)(a) above "the appropriate percentage" means the assessed percentage of any present disablement of the earner which resulted—
  - (a) from any accident after 4th July 1948 arising out of and in the course of his employment, being employed earner's employment, or
  - (b) from any other prescribed disease or injury due to the nature of that employment and developed after 4th July 1948,and in respect of which a disablement gratuity was not paid to him after a final assessment of his disablement.
- (6) In subsection (4)(b) above "the appropriate percentage" means the assessed percentage of any present disablement of the earner—
  - (a) which resulted from any prescribed disease or injury due to the nature of his employment and developed after 4th July 1948, and
  - (b) in respect of which a disablement gratuity was not paid to him after a final assessment of his disablement.
- (7) Where regulations under subsection (2) above—
  - (a) make provision such as is mentioned in subsection (4) above, and
  - (b) also make provision corresponding to that in section 103(3) above,they may also make provision to the effect that those corresponding provisions shall have effect in relation to the aggregate percentage and not in relation to any percentage forming part of the aggregate.

## **110 Respiratory diseases.**

- (1) As respects pneumoconiosis, regulations may further provide that, where a person is found to be suffering from pneumoconiosis accompanied by tuberculosis, the effects of the tuberculosis shall be treated for the purposes of this section and sections 108 and 109 above as if they were effects of the pneumoconiosis.
- (2) Subsection (1) above shall have effect as if after "tuberculosis" (in both places) there were inserted "emphysema or chronic bronchitis", but only in relation to a person the extent of whose disablement resulting from pneumoconiosis, or from pneumoconiosis accompanied by tuberculosis, would (if his physical condition were otherwise normal) be assessed at not less than 50 per cent.

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- (3) A person found to be suffering from pneumoconiosis shall be treated for the purposes of this Act as suffering from a loss of faculty such that the assessed extent of the resulting disablement amounts to not less than 1 per cent.

*Old cases*

## **111 Workmen’s compensation, etc.**

Schedule 8 to this Act shall have effect—

- (a) to continue workmen’s compensation;
- (b) to enable regulations—
  - (i) to supplement workmen’s compensation; and
  - (ii) to provide for the payment of allowances or other benefits for industrial diseases in respect of employment before 5th July 1948; and
- (c) to enable regulations to confer rights to payments in respect of such employment.

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