

Status: Point in time view as at 11/04/2005.

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SCHEDULES

SCHEDULE 8

INDUSTRIAL INJURIES AND DISEASES (OLD CASES)

Modifications etc. (not altering text)

- C1** Sch. 8 modified (1.7.1992) by Social Security Administration (Northern Ireland) Act 1992 (c. 8), ss. 161, 168(4), Sch. 6 para. 1(4)

PART I

WORKMEN'S COMPENSATION AND INDUSTRIAL DISEASES BENEFIT IN RESPECT OF EMPLOYMENT BEFORE 5TH JULY 1948

Continuation of workmen's compensation

- 1 The Workmen's Compensation Acts and any other enactment repealed by section 88 of the ^{M1}National Insurance (Industrial Injuries) Act (Northern Ireland) 1946 shall continue to apply to any cases to which, if the Supplementation Act had not been passed, they would have applied by virtue of that section, being certain cases where a right to compensation arises or has arisen in respect of employment before 5th July 1948.

Marginal Citations

- M1** 1946 c. 21 (N.I.).

Regulations to provide for supplementing workmen's compensation

- 2 (1) The Department may, with the consent of the Department of Finance and Personnel, make regulations (in this Schedule referred to as "the regulations") conferring a right to allowances on persons who are, or have at any time after 23rd July 1951 been, entitled to weekly payments by way of workmen's compensation, other than a person whose entitlement to such payments—
- (a) arose in consequence of an accident happening after 31st December 1923; and
 - (b) ceased before 24th July 1956.
- (2) Subject to the provisions of this Schedule, the right to such an allowance or to a payment on account of such an allowance shall be subject to such conditions, and the rate of the allowance shall be such, as may be provided by the regulations.

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(3) The allowances for the payment of which the regulations may make provision shall be—

- (a) where the relevant accident happened before 1st January 1924, an allowance (in this paragraph referred to as a “basic allowance”) in respect of any period such as is mentioned in sub-paragraph (8) below;
- (b) an allowance in respect of any period such as is mentioned in sub-paragraph (8)(a) below (in this paragraph referred to as a “major incapacity allowance”);
- (c) subject to sub-paragraphs (4) and (5) below, an allowance in respect of any period such as is mentioned in sub-paragraph (8)(b) below (in this paragraph referred to as a “lesser incapacity allowance”);

and a major incapacity allowance or lesser incapacity allowance in respect of any period shall be payable whether or not a basic allowance is also payable in respect of that period.

(4) A lesser incapacity allowance—

- (a) shall not be payable to any person in respect of any period unless there is or may be expected to be (or, but for the cesser at a time after 28th February 1966 of that person’s entitlement to workmen’s compensation, would or might be expected to have been) payable to that person in respect of that period either a weekly payment by way of basic allowance or a weekly payment by way of workmen’s compensation which is not a notional payment;
- (b) except to a person who immediately before 1st March 1966 was receiving an allowance under a scheme made under the ^{M2}Workmen’s Compensation (Supplementation) Act (Northern Ireland) 1951, shall not be payable if the relevant accident happened after 31st December 1923 and the claimant’s entitlement to workmen’s compensation in consequence of it ceased before 1st March 1966.

(5) For the purposes of a lesser incapacity allowance, a weekly payment by way of workmen’s compensation shall be treated as a notional payment if awarded or paid for the purpose of safeguarding a potential entitlement to compensation and not related to any existing loss of earnings; and the regulations may provide that—

- (a) in such circumstances or cases as may be specified in the regulations; and
- (b) in particular, in cases where weekly payments by way of such compensation are being paid to a person to whom such payments were not made, or were made at a lower rate, during the period of 12 months immediately preceding such date not earlier than 30th November 1965 as may be specified in the regulations,

a weekly payment by way of such compensation shall be deemed to be a notional payment unless the contrary is proved.

(6) The weekly rate—

- (a) of a basic allowance shall not exceed £2 less the amount of the recipient’s workmen’s compensation and, in respect of a period such as is mentioned in sub-paragraph (8)(b) below which is a period of partial incapacity only, shall also not exceed the difference between 2/3rds of the amount representing his weekly loss of earnings determined in accordance with the regulations and the amount of his workmen’s compensation;

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- (b) of a major incapacity allowance shall be the corresponding disablement pension rate;
 - (c) of a lesser incapacity allowance shall not exceed [^{F1}£47·70].
- (7) Sub-paragraph (6)(b) above shall have effect in relation to any person who has retired, or is treated as having retired, from regular employment, for the purposes of Parts I to VI of this Act, for so long as he continues to be treated as retired for those purposes, as if at the end of the paragraph there were added the words “ less the amount of the recipient’s workmen’s compensation and less the amount of his basic allowance, if any ”.
- (8) The periods referred to in sub-paragraph (3) above are—
- (a) any period during which the person claiming or receiving an allowance under this paragraph—
 - (i) being or having been entitled to his workmen’s compensation in respect of any injury or disease, is as a result of that injury or disease totally incapable of work and likely to remain so incapable for a considerable period; or
 - (ii) being or having been entitled to his workmen’s compensation in respect of two or more injuries or diseases, is as the joint result of those injuries or diseases totally incapable of work and likely to remain so incapable for a considerable period;
 - (b) any period which, not being a period such as is mentioned in paragraph (a) above, is a period of total or partial incapacity for work resulting from the relevant injury or disease.

Textual Amendments

F1 Sum in Sch. 8 para. 2(6)(c) substituted (11.4.2005) by [The Social Security Benefits Up-rating Order \(Northern Ireland\) 2005 \(S.R. 2005/82\)](#), arts. 1(1)(f), 7

Modifications etc. (not altering text)

C1 Sch. 8 para. 2 amended (1.7.1992) by [Social Security Administration \(Northern Ireland\) Act 1992 \(c. 8\)](#), ss. 161, 168(4), [Sch. 6 para. 1\(1\)](#).

C2 Sch. 8 para. 2 extended (1.7.1992) by [Social Security Administration \(Northern Ireland\) Act 1992 \(c. 8\)](#), ss. 161, 168(4), [Sch. 6 paras. 2\(1\), 3](#).

Marginal Citations

M2 1951 c. 16 (N.I.).

Provisions supplementary to paragraph 2

- 3 (1) For the purposes of paragraph 2 above—
- (a) the expressions “relevant accident” and “relevant injury or disease” mean the accident in consequence of which or, as the case may be, the injury or disease in respect of which, an entitlement to weekly payments by way of workmen’s compensation arose;
 - (b) any reference to the happening of an accident shall, in relation to a case of disease, be construed in the same way as for the purposes of the Workmen’s Compensation Acts;
 - (c) a payment—

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- (i) under the ^{M3M4}Workmen's Compensation (War Addition) Acts 1917 and 1919 ; or
- (ii) under the ^{M5}Workmen's Compensation (Supplementary Allowances) Act (Northern Ireland) 1940 as amended by the ^{M6}Workmen's Compensation (Temporary Increases) Act (Northern Ireland) 1943 ,

shall be treated as a weekly payment by way of workmen's compensation.

- (2) For the purposes of paragraph 2(1) above, a person shall be deemed to be or have been entitled to weekly payments by way of workmen's compensation at any time if he would be or, as the case may be, have been so entitled at that time if—
 - (a) the amount of any payment, allowance or benefit received by him otherwise than by way of workmen's compensation; or
 - (b) where the relevant accident happened before 1st January 1924, either that amount, or the amount he is earning or able to earn in some suitable employment or business, or both those amounts, were sufficiently reduced.
- (3) Subject to sub-paragraph (7) below, for the purpose of the reference in paragraph 2(8)(b) above to a period of total incapacity for work resulting from the relevant injury or disease, a person who is or has been unable to obtain employment shall be treated as subject to such an incapacity if he is treated as being so for the purposes of his workmen's compensation in respect of the relevant injury or disease and in such other circumstances as may be provided by the regulations.
- (4) Any reference in paragraph 2 above or this paragraph to the amount of a person's workmen's compensation shall (subject to sub-paragraphs (5) to (7) below) be taken as referring to the amount, if any, of the weekly payments to which for the time being he is, or would but for the determination of his right be, entitled in respect of the relevant injury or disease so, however, that—
 - (a) where in fixing the amount of those weekly payments under the provisions relating to them regard was had to any payment, allowance or benefit which he might receive during the period of his incapacity from the person liable for the compensation, and the amount is shown to have been reduced in consequence, the amount of those weekly payments shall for the purposes of this sub-paragraph be taken to be the reduced amount so fixed with the addition of the amount of the reduction; and
 - (b) where the amount of those weekly payments has not been fixed under the said provisions, it shall be fixed for the purposes of this sub-paragraph without regard to any such payment, allowance or benefit.
- (5) The regulations may include provision that, in such special circumstances or cases and for such purposes as may be specified in the regulations, any reference in paragraph 2 above or this paragraph to the amount of a person's workmen's compensation shall be taken as referring to such amount as it may be determined in manner provided by the regulations ought reasonably and properly to have been the amount of the weekly payments referred to in sub-paragraph (4) above.
- (6) Where a person is, or has at any time after 23rd July 1951 been, entitled to payments under the enactments referred to in sub-paragraph (1)(c)(i) or (ii) above but ceased before 24th July 1951 to be entitled to any other weekly payments by way of workmen's compensation in respect of the relevant injury or disease, the amount

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of his workmen's compensation shall for the purposes of paragraph 2 above be calculated as if he had not ceased to be entitled to such other payments.

- (7) The regulations may provide for modifying the operation of sub-paragraphs (3) to (5) above in relation to a person whose workmen's compensation is or was compensation under a contracting-out scheme in such manner as appears to the Department to be proper having regard to the provisions of the contracting-out scheme.

Marginal Citations

M3 1917 c. 42.

M4 1919 c. 83.

M5 1940 c. 18 (N.I.).

M6 1943 c. 13 (N.I.).

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