
STATUTORY INSTRUMENTS

1982 No. 1489

The Workmen's Compensation (Supplementation) Scheme 1982

PART II ALLOWANCES

Basic allowances under scheme

2.—(1) Subject to the following provisions of this scheme, a person who is or since the commencement of the 1951 Act has been entitled to weekly payments by way of workmen's compensation in consequence of an accident happening before 1st January 1924, shall be entitled to a basic allowance payable out of ^[F1]money provided by Parliament] during any period of total or partial incapacity for work resulting from the relevant injury or disease so long as he is ordinarily resident in the United Kingdom.

(2) In this article the expression “a period of total incapacity for work resulting from the relevant injury or disease” includes a period during which a person is treated as subject to such an incapacity under the provisions of article 3.

(3) The weekly rate of a basic allowance—

- (a) in the case of a basic allowance payable to a person in respect of a period of total incapacity for work resulting from the relevant injury or disease shall be £2.00 less the amount of his workmen's compensation; and
- (b) in the case of a basic allowance payable to a person in respect of a period of partial incapacity for work resulting from the relevant injury or disease shall be the difference between two-thirds of the amount representing his weekly loss of earnings (ascertained in accordance with article 7) due to the relevant injury or disease and the amount of his workmen's compensation, so however that the aggregate of the said weekly rate and the amount of his workmen's compensation shall in no such case exceed £2.00.

F1 Words in art. 2(1) substituted (9.1.1991) by [The Workmens Compensation \(Supplementation\) \(Amendment\) and the Pneumoconiosis, Byssinosis and Miscellaneous Diseases Benefit \(Amendment\) Scheme 1990 \(S.I. 1990/2538\)](#), arts. 1, **2(2)(a)**

Partial incapacity to be treated as total in certain circumstances

3.—(1) For the purpose of the references in article 2 to a period of total incapacity for work resulting from the relevant injury or disease, a person who is unable to obtain employment shall, subject to the provisions of paragraph (3) of this article, be treated as subject to such an incapacity:—

- (a) if he is being treated as being so for the purposes of his workmen's compensation in respect of the relevant injury or disease; or
- (b) if it appears to the appropriate determining authority—

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- (i) that, having regard to all the circumstances, it is probable that he would, but for the continuing effects of the relevant injury or disease, be able to obtain work in the same grade in the same class of employment as before the happening of the accident; or
- (ii) that his inability to obtain employment is a consequence, wholly or mainly, of the relevant injury or disease.

(2) Where a person who is unable to obtain employment fails to satisfy the conditions laid down in paragraph (1) of this article because of the supervening effects of an injury or disease other than the relevant injury or disease, or of physical or mental infirmity due to old age, he shall nevertheless be deemed to satisfy the said conditions if he proves—

- (a) that he would have satisfied either of the conditions set out in sub-paragraph (b) of the said paragraph at the time when he first became subject to the aforesaid supervening effects and that he was then unable to obtain employment; and
- (b) that since that time the effects of the relevant injury or disease have not become substantially less serious.

(3) This article shall not apply to any person for any period for which he receives unemployment benefit.

(4) This article shall also apply for the purposes of section 2(3) of the 1951 Act (which relates to the circumstances in which a person is to be treated as subject to total incapacity for work resulting from the relevant injury or disease).

Major incapacity allowances under scheme

4.—(1) Subject to the following provisions of this scheme, a major incapacity allowance shall be payable out of [^{F2}money provided by Parliament] to a person who is or has since 5th July 1956 been entitled to weekly payments by way of workmen's compensation—

- (a) in respect of any injury or disease other than pneumoconiosis or byssinosis if he is as a result of that injury or disease totally incapable of work and likely to remain so for a considerable period; or
- (b) in respect of pneumoconiosis if he is certified under a compensation scheme or is determined in accordance with article 14 of this scheme, to be totally disabled; or
- (c) in respect of byssinosis; or
- (d) in respect of 2 or more injuries or diseases such as are mentioned in the 3 foregoing sub-paragraphs, if he is as the joint result of those injuries or diseases totally incapable of work and likely to remain so for a considerable period;

so long as he is ordinarily resident in the United Kingdom.

(2) The weekly rate of a major incapacity allowance payable to a person shall be the corresponding disablement pension rate^{F3}

(3) For the purposes of this article an allowance payable by virtue of any scheme under the 1951 Act in force immediately before 1st March 1966 shall be treated as a weekly payment by way of workmen's compensation.

F2 Words in art. 4(1) substituted (9.1.1991) by [The Workmens Compensation \(Supplementation\) \(Amendment\) and the Pneumoconiosis, Byssinosis and Miscellaneous Diseases Benefit \(Amendment\) Scheme 1990 \(S.I. 1990/2538\)](#), arts. 1, **2(2)(a)**

F3 Words in art. 4(2) revoked (6.4.1987) by [The Workmens Compensation \(Supplementation\) Amendment Scheme 1987 \(S.I. 1987/419\)](#), arts. 1, **2(1)(a)**, with **2(2)**

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Lesser incapacity allowances under scheme

5.—(1) Subject to the following provisions of this scheme, a lesser incapacity allowance shall be payable out of [^{F4}money provided by Parliament] to a person, not being a person entitled to a major incapacity allowance, who was immediately before 1st March 1966 receiving an allowance payable by virtue of a scheme under the 1951 Act in force at that time, or who is or has since the commencement of the 1965 Act been entitled or may be expected to be entitled to a basic allowance or to weekly payments by way of workmen's compensation, other than notional payments, for any period during which he is either totally or partially incapable of work as a result of the relevant injury or disease, and is ordinarily resident in the United Kingdom.

(2) In any case where the lesser incapacity allowance awarded to a beneficiary was, immediately before [^{F5}11th April 2012], of an amount which is shown in the first column of Part I of Schedule 1 hereto, the rate of lesser incapacity allowance thereafter shall be the corresponding amount set out in the second column thereof.

(3) In a case to which article 5(2) of this scheme does not apply and subject to the provisions of the next succeeding paragraph, the weekly rate of a lesser incapacity allowance payable to a person shall be determined by reference to the loss of earnings (ascertained in accordance with the provisions of article 7) suffered by that person due to the relevant injury or disease; and where the loss of earnings, ascertained as aforesaid, is of an amount shown in the first column of Part II of Schedule 1 hereto, shall be the rate opposite thereto in the second column of that Part and where such loss of earnings is of an amount (not less than 5 pence) not so shown, shall be the rate in the said column opposite to the next larger amount which is so shown.

(4) For the purposes of this article:—

- (a) where the loss of earnings, ascertained as aforesaid, is in excess of the largest amount shown in the said first column, the weekly rate of lesser incapacity allowance shall be the rate in the second column opposite to such largest amount;
- (b) the weekly rate of lesser incapacity allowance payable to any person shall be reduced by the amount of any workmen's compensation payable to him for that week in excess of £2.00.

(5) In this article the expression “notional payment” means a payment by way of workmen's compensation awarded or paid for the purpose of safeguarding a potential entitlement to compensation and not related to any existing loss of earnings.

(6) For the purposes of this article a weekly payment by way of workmen's compensation made to any person shall be deemed to be a notional payment if—

- (a) the amount of such weekly payment is less than 2½ pence; or
- (b) during the period of 12 months immediately preceding 30th November 1965 either—
 - (i) no weekly payments by way of such compensation were made to that person; or
 - (ii) any such weekly payments made to him were of an amount less than 2½ pence;unless that person proves that such weekly payment is not a notional payment.

F4 Words in art. 5(1) substituted (9.1.1991) by [The Workmens Compensation \(Supplementation\) \(Amendment\) and the Pneumoconiosis, Byssinosis and Miscellaneous Diseases Benefit \(Amendment\) Scheme 1990 \(S.I. 1990/2538\)](#), arts. 1, **2(2)(a)**

F5 Words in art. 5(2) substituted (11.4.2012) by [The Workmen s Compensation \(Supplementation\) \(Amendment\) Scheme 2012 \(S.I. 2012/833\)](#), arts. 1(1), **2** (with art. 4)

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Amount of workmen's compensation

6.—(1) Subject to the following provisions of this article, any reference in articles 2^{F6}... and 5 to the amount of a person's workmen's compensation shall 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.

(2) For the purposes of paragraph (1) of this article:—

- (a) where in fixing the amount of those weekly payments under the provisions relating thereto 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 article be taken to be the reduced amount so fixed with the addition of the amount of the reduction;
- (b) where the amount of those weekly payments has not been fixed under the provisions relating thereto, it shall be fixed for the purpose of this article without regard to any such payment, allowance or benefit as aforesaid;
- (c) where an allowance or allowances under this scheme would, apart from the provisions of this sub-paragraph, be payable or be payable at a higher rate by reason of the amount of those weekly payments, fixed under the provisions relating thereto, not being the amount which ought reasonably and properly to be so fixed, the amount of those weekly payments shall, for the purposes of this article, be taken to be such as ought reasonably and properly to be so fixed, having regard to the rules for calculating such weekly payments under the provisions relating to his workmen's compensation.

(3) Where a person is or since the commencement of the 1951 Act has been entitled to payments under the Workmen's Compensation (War Addition) Acts 1917 and 1919 but had before that commencement ceased to be entitled to any other weekly payments by way of workmen's compensation in respect of the relevant injury or disease, the amount of his workmen's compensation shall for the purpose of articles 2^{F7}... and 5 be calculated as if he had not ceased to be entitled to such other payments.

(4) Where a person is or since the commencement of the 1965 Act has been entitled to payments under the Workmen's Compensation (Supplementary Allowances) Act 1940, as amended by the Workmen's Compensation (Temporary Increases) Act 1943, but had before that date ceased to be entitled to any other weekly payments by way of workmen's compensation in respect of the relevant injury or disease, the amount of his workmen's compensation shall for the purposes of article^{F8}... 5 be calculated as if he had not ceased to be entitled to such other payments.

(5) Where by reason of the seasonal nature of a person's employment, or for any other cause, weekly payments by way of workmen's compensation were not made to that person at the same rate for each week during the 12 months preceding the making of a claim for, or an application for [^{F9}revision or supersession] of a decision as to, an allowance, the amount of that person's workmen's compensation shall for the purposes of articles 2^{F8}... and 5 be calculated or estimated in such manner and on such basis as may be appropriate, having regard to all the circumstances of the case.

F6 Words in art. 6(1) revoked (6.4.1987) by [The Workmens Compensation \(Supplementation\) Amendment Scheme 1987 \(S.I. 1987/419\)](#), arts. 1, **2(1)(a)**, with **2(2)**

F7 Words in art. 6(3) revoked (6.4.1987) by [The Workmens Compensation \(Supplementation\) Amendment Scheme 1987 \(S.I. 1987/419\)](#), arts. 1, **2(1)(b)**, with **2(2)**

F8 Words in art. 6(4)(5) revoked (6.4.1987) by [The Workmens Compensation \(Supplementation\) Amendment Scheme 1987 \(S.I. 1987/419\)](#), arts. 1, **2(1)(b)**, with **2(2)**

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F9 Words in art. 6(5) substituted (5.7.1999) by [The Social Security Act 1998 \(Commencement No. 8, and Savings and Consequential and Transitional Provisions\) Order 1999 \(S.I. 1999/1958\)](#), art. 1, [Sch. 6 para. 2](#)

Computation of loss of earnings

7.—(1) For the purposes of section 2(6)(a) of the Act and of this scheme the amount representing a person's loss of earnings due to the relevant injury or disease shall, subject to the provisions of article 10(3) and of paragraph (5) of this article be ascertained by comparing the standard of remuneration obtaining during the period of 12 months, or such shorter period as the appropriate determining authority may determine, ending with the day on which that person makes a claim for an allowance, in the class of employment in which he was employed at the time when the accident happened with the amount which he was earning or able to earn during the said period in some suitable employment or business.

(2) Where the amount representing a person's loss of earnings has been ascertained in accordance with paragraph (1) of this article and the period taken into account for that purpose was 3 months or less, a final calculation of that person's loss of earnings shall be made 6 months after the date on which the claim was made for the purpose of comparing the standard of remuneration obtaining during that later period in the class of employment in which he was employed at the time when the accident happened or the disease developed with the amount which he was earning or able to earn during the said period in some suitable employment or business.

(3) In assessing, in relation to any person, the standard of remuneration in any class of employment, regard shall be had to that person's reasonable prospects of advancement and the class of employment in which he was employed at the time when the accident happened shall be treated, for this purpose, as extending to and including employment in the capacities to which persons so employed are, in the normal course, advanced and to which, if he had continued to be so employed without the accident having happened, he would have had at least the normal prospects of advancement.

(4) Notwithstanding the provisions of paragraphs (1) and (2) of this article, in any case where lesser incapacity allowance was in payment to a person before 15th November 1976 and that allowance is based on a computation of the loss of earnings due to the relevant injury or disease at a certain amount, that amount shall continue to represent that person's loss of earnings for the purposes of this scheme.

(5) In ascertaining the amount representing a person's weekly loss of earnings under paragraph (1) of this article—

- (a) where the class of employment in which he was employed at the time when the accident happened has ceased to exist or cannot be related to the wage structure obtaining from time to time in the industry in which he was employed at that time, the standard of remuneration shall be taken to be such as is appropriate, having regard to all the circumstances of the case;
- (b) in a case of disease, where a person proves that he left any class of employment as a result of the relevant disease before the date which was treated as his date of disablement from that disease for the purposes of the Acts relating to workmen's compensation, then any class of employment which he so left may be treated as the class of employment in which he was employed on the said date of disablement if it would have been so treated had the said date of disablement fallen immediately before he left that class of employment;
- (c) the reference to the amount which a person was earning or able to earn in some suitable employment or business shall be taken as referring to such amount as that person would have been able to earn but for the supervening effects of an injury or disease other than

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the relevant injury or disease, or of physical or mental infirmity due to old age or of that person's retirement from any such employment or business;

- (d) the amount which represents a person's weekly loss of earnings under paragraph (1) of this article may be determined without having regard to the rules for calculating the weekly payments in the case of partial incapacity under the provisions relating to his workmen's compensation.

Corresponding payments under Northern Ireland legislation

8. Subject to the provisions of any reciprocal arrangements made by the Secretary of State under section 13 of the Act—

- (a) a basic allowance shall not be payable to a person in respect of the relevant injury or disease for any period during which he is entitled under any legislation of Northern Ireland to any payment corresponding to a basic allowance in respect of the said injury or disease; and
- (b) a major incapacity allowance shall not be payable to a person for any period during which he is entitled under any legislation of Northern Ireland to any payment corresponding to a major incapacity allowance; and
- (c) a lesser incapacity allowance shall not be payable to a person for any period during which he is entitled under any legislation of Northern Ireland to any payment corresponding to a major incapacity allowance or to a lesser incapacity allowance.

Allowances payable to beneficiaries who have ceased to be ordinarily resident in the United Kingdom

9. Where a beneficiary ceases to be ordinarily resident in the United Kingdom he shall not by reason of that fact cease to be entitled to allowances under this scheme—

- (a) where an application for a reference to a medical referee has been made and the medical referee certifies in accordance with paragraph 18 of Schedule 1 of the Workmen's Compensation Act 1906 or section 16 of the Workmen's Compensation Act 1925 that the incapacity resulting from the relevant injury or disease is likely to be of a permanent nature; or
- (b) where no such application has been made, if the appropriate determining authority is satisfied that the said incapacity is likely to be of a permanent nature.

Allowances in respect of 2 or more different injuries or diseases

10.—(1) Subject to the provisions of this scheme, where a claimant or beneficiary is entitled for the same period to weekly payments by way of workmen's compensation in respect of 2 or more different injuries or diseases, or has been so entitled at any time since, in the case of basic allowance the commencement of the 1951 Act or, in the case of any other allowance the commencement of the 1965 Act, he shall be entitled to an allowance under this scheme in respect of each such injury or disease during any period of total or partial incapacity for work resulting from that injury or disease.

(2) For the purpose of the last foregoing paragraph, a claimant or beneficiary—

- (a) shall not for the same period be entitled to receive 2 or more basic allowances at an aggregate weekly rate which exceeds £2.00; and
- (b) shall not in respect of any period for which he is entitled to a major incapacity allowance by reason of one or the joint result of 2 or more of such injuries or diseases, be entitled to receive any other allowance under this scheme, except for a basic allowance, by reason of any injury or disease; and

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(c) shall not for the same period be entitled to receive 2 or more lesser incapacity allowances at an aggregate weekly rate which exceeds the amount specified in section 2(6)(c) of the Act.

(3) In such a case as is mentioned in paragraph (1) of this article, in ascertaining for the purposes of this scheme the amount of loss of earnings due to the relevant injury or disease the joint results of both or all such injuries or diseases may be treated as the result of any one of them but, in respect of any period during which such results are so treated, the claimant or beneficiary shall not be entitled to receive more than one basic allowance or more than one lesser incapacity allowance under this scheme.

(4) Where a claimant or beneficiary is entitled for any period to an allowance under any scheme made under section 5 of the Act—

(a) in respect of total disablement or total incapacity for a considerable period, he shall not be entitled to receive, for that period, any allowance under this scheme;

(b) in respect of partial disablement, he shall not be entitled to receive by way of lesser incapacity allowance, for that period, a total weekly sum exceeding £1.00.

(5) A person shall not, in respect of the same period, be entitled to receive 2 or more allowances under this scheme or under this scheme and a scheme made under section 5 of the Act at an aggregate weekly rate exceeding the corresponding disablement pension rate.

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Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- Sch.1 substituted by [S.I. 1996/598 art.3Sch.](#)
- Sch.1 substituted by [S.I. 1996/598 art.3Sch.](#)
- Sch.1 Pts.1.II substituted by [S.I. 2000/697 art.3Sch.](#)