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STATUTORY INSTRUMENTS

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**1985 No. 967**

**The Social Security (Industrial Injuries)  
(Prescribed Diseases) Regulations 1985**

**PART I  
GENERAL**

**Citation, commencement and interpretation**

**1.—(1)** These regulations may be cited as the Social Security (Industrial Injuries) (Prescribed Diseases) Regulations 1985 and shall come into operation on 31st July 1985.

**(2)** In these regulations, unless the context otherwise requires—

“the Act” means the Social Security Act 1975;

“the Workmen's Compensation Acts” means the Workmen's Compensation Acts 1925 to 1945, or the enactments repealed by the Workmen's Compensation Act 1925, or the enactments repealed by the Workmen's Compensation Act 1906;

“the Adjudication Regulations” means the Social Security (Adjudication) Regulations 1984**(1)**;

“the Benefit Regulations” means the Social Security (General Benefit) Regulations 1982**(2)**;

“the Claims and Payments Regulations” means the Social Security (Claims and Payments) Regulations 1979**(3)**;

“asbestosis” means fibrosis of the parenchyma of the lungs due to the inhalation of asbestos dust;

“asbestos textiles” means yarn or cloth composed of asbestos or of asbestos mixed with any other material;

“coal mine” means any mine where one of the objects of the mining operations is the getting of coal (including bituminous coal, cannel coal, anthracite, lignite, and brown coal);

“diffuse mesothelioma” means the disease numbered D3 in Part I of Schedule 1 to these regulations;

“employed earner” means employed earner for the purposes of industrial injuries benefit and the term “employed earner's employment” shall be construed accordingly;

“foundry” means those parts of industrial premises where the production of metal articles (other than pig iron or steel ingots) is carried on by casting (not being diecasting or other casting in metal moulds), together with any part of the same premises where any of the following processes are carried on incidentally to such production, namely, the drying and subsequent

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**(1)** amended by S.I. 1984/613, 1991 and 1985/159.

**(2)** relevant amending instruments are S.I. 1983/186, 981.

**(3)** relevant amending instruments are S.I. 1980/1621, 1982/1241, 1344, 1983/1015, 1984/458, 550 and 1985/600.

preparation of sand for moulding (including the reclamation of used moulding sand), the preparation of moulds and cores, knock-out operations and dressing or fettling operations;

“grindstone” means a grindstone composed of natural or manufactured sandstone and includes a metal wheel or cylinder into which blocks of natural or manufactured sandstone are fitted;

“a local office” means any office appointed by the Secretary of State as a local office for the purposes of the Act or of these regulations;

“lung cancer” means the disease numbered D8 in Part I of Schedule 1 to these regulations;

“medical board” has the same meaning as in regulation 30 of the Adjudication Regulations;

“mine” includes every shaft in the course of being sunk, and every level and inclined plane in the course of being driven, and all the shafts, levels, planes, works, tramways and sidings, both below ground and above ground, in and adjacent to and belonging to the mine, but does not include any part of such premises on which any manufacturing process is carried on other than a process ancillary to the getting or dressing of minerals or the preparation of minerals for sale;

“occupational asthma” means the disease numbered D7 in Part I of Schedule 1 to these regulations;

“occupational deafness” means the disease numbered A10 in Part I of Schedule 1 to these regulations;

“the old regulations” means the Social Security (Industrial Injuries) (Prescribed Diseases) Regulations 1980, as amended by the Social Security (Industrial Injuries) (Prescribed Diseases) Amendment Regulations 1980, the Social Security (Industrial Injuries) (Prescribed Diseases) Amendment Regulations 1982 and the Social Security (Industrial Injuries) (Prescribed Diseases) Amendment (No. 2) Regulations 1982;

“prescribed disease” means a disease or injury prescribed under Part II of these regulations, and references to a prescribed disease being contracted shall be deemed to include references to a prescribed injury being received;

“the Secretary of State” means the Secretary of State for Social Services;

“silica rock” means quartz, quartzite, ganister, sandstone, gritstone and chert, but not natural sand or rotten rock;

“special medical board” has the same meaning as in regulation 30 of the Adjudication Regulations;

“tuberculosis” in the description of the disease numbered B5 in Part I of Schedule 1 to these regulations means disease due to tuberculous infection, but when used elsewhere in these regulations in connection with pneumoconiosis means tuberculosis of the respiratory system only;

and other expressions have the same meanings as in the Act.

- (3) Unless the context otherwise requires, any reference in these regulations—
- (a) to a numbered section or Schedule is to the section or, as the case may be, the Schedule to the Act bearing that number; and
  - (b) to a numbered regulation is a reference to the regulations bearing that number in these regulations, and any reference in a regulation to a numbered paragraph is a reference to the paragraph of that regulation bearing that number; and
  - (c) to any provision made by or contained in any enactment or instrument shall be construed as including a reference to any provision which it re-enacts or replaces, with or without modification.

## PART II

### PRESCRIPTION OF DISEASES AND PRESUMPTION AS TO THEIR ORIGIN

#### Prescription of diseases and injuries and occupations for which they are prescribed

2. For the purposes of Chapter V of Part II of the Act—

- (a) subject to paragraphs (b) and (c) of this regulation and to regulation 43(3), (5) and (6), each disease or injury set out in the first column of Part I of Schedule 1 hereto is prescribed in relation to all persons who have been employed on or after 5th July 1948 in employed earner's employment in any occupation set against such disease or injury in the second column of the said Part;
- (b) pneumoconiosis is prescribed—
  - (i) in relation to all persons who have been employed on or after 5th July 1948 in employed earner's employment in any occupation set out in Part II of the said Schedule; and
  - (ii) in relation to all other persons who have been so employed in any occupation involving exposure to dust and who have not worked at any time (whether in employed earner's employment or not) in any occupation in relation to which pneumoconiosis is prescribed by virtue of regulations (apart from this sub-paragraph) in force—
    - (a) in the case of any claim for disablement benefit or a claim for death benefit in respect of the death of a person to whom disablement benefit has been awarded in respect of pneumoconiosis, on the date of the claim for disablement benefit;
    - (b) in the case of a claim for death benefit in respect of the death of any other person, on the date of the death of that person;
- (c) occupational deafness is prescribed in relation to all persons who have been employed in employed earner's employment—
  - (i) at any time on or after 5th July 1948; and
  - (ii) for a period or periods (whether before or after 5th July 1948) amounting in the aggregate to not less than 10 years

in one or more of the occupations set out in the second column of paragraph A10 of Part I of Schedule 1 to these regulations and in the case of a person who during such period as is specified above has been concurrently employed in two or more of the occupations described in sub-paragraphs (a), (b), (d), (e), (f), (g) and (h) of the said paragraph A10 those occupations shall be treated as a single occupation for the purposes of determining whether that person has been employed wholly or mainly in work described in those sub-paragraphs.

#### Sequelae or resulting conditions

3. Where a person—

- (a) is or was in employed earner's employment and a disease is or was prescribed under the Act and these regulations in relation to him in such employment; and
- (b) is suffering from a condition which, in his case, has resulted from that disease;

the provisions of Chapter V of Part II of the Act and of these regulations shall apply to him as if he were suffering from that disease, whether or not the condition from which he is suffering is itself a prescribed disease.

### **Presumption that a disease is due to the nature of employment**

4.—(1) Where a person has developed a disease which is prescribed in relation to him in Part I of Schedule 1 hereto, other than the disease numbered A10, B5, D1, D2, D4 and D5 in that Schedule, that disease shall, unless the contrary is proved, be presumed to be due to the nature of his employed earner's employment if that employment was in any occupation set against that disease in the second column of the said Part and he was so employed on, or at any time within one month immediately preceding, the date on which, under the subsequent provisions of these regulations, he is treated as having developed the disease.

(2) Where a person in relation to whom tuberculosis is prescribed in paragraph B5 of Part I of Schedule 1 hereto develops that disease, the disease shall, unless the contrary is proved, be presumed to be due to the nature of his employed earner's employment if the date on which, under the subsequent provisions of these regulations, he is treated as having developed the disease is not less than 6 weeks after the date on which he was first employed in any occupation set against the disease in the second column of the said Part and not more than 2 years after the date on which he was last so employed in employed earner's employment.

(3) Where a person in relation to whom pneumoconiosis is prescribed in regulation 2(b)(i) develops pneumoconiosis, the disease shall, unless the contrary is proved, be presumed to be due to the nature of his employed earner's employment if he has been employed in one or other of the occupations set out in Part II of the said Schedule 1 for a period or periods amounting in the aggregate to not less than 2 years in employment which either—

- (a) was employed earner's employment; or
- (b) would have been employed earner's employment if it had taken place on or after 5th July 1948.

(4) Where a person in relation to whom byssinosis is prescribed in paragraph D2 of Part I of Schedule 1 hereto develops byssinosis, the disease shall, unless the contrary is proved, be presumed to be due to the nature of his employed earner's employment.

(5) Where a person in relation to whom occupational deafness is prescribed in regulation 2(c) develops occupational deafness the disease shall, unless the contrary is proved, be presumed to be due to the nature of his employed earner's employment.

## **PART III**

### **DATE OF ONSET AND RECRUDESCENCE**

#### **Development of disease**

5. If on a claim for benefit under Chapter V of Part II of the Act in respect of a prescribed disease a person is found to be or to have been suffering from the disease, or to have died as the result thereof, the disease shall, for the purposes of such claim, be treated as having developed on a date (hereafter in these regulations referred to as “the date of onset”) determined in accordance with the provisions of the next 2 following regulations.

#### **Date of onset**

6.—(1) For the purposes of the first claim in respect of a prescribed disease suffered by a person, the date of onset shall be determined in accordance with the following provisions of this regulation, and, save as provided in regulation 7, that date shall be treated as the date of onset for the purposes of any subsequent claim in respect of the same disease suffered by the same person, so however that—

- (a) subject to the provisions of section 117(4), as modified by paragraph 1 of Schedule 3 to the Adjudication Regulations, any date of onset determined for the purposes of that claim shall not preclude fresh consideration of the question whether the same person is suffering from the same disease on any subsequent claim for or award of benefit; and
  - (b) if, on the consideration of a claim, no award of benefit is made, any date of onset determined for the purposes of that claim shall be disregarded for the purposes of any subsequent claim.
- (2) Where the claim for the purposes of which the date of onset is to be determined is—
- (a) a claim for sickness benefit made by virtue of section 50A of the Act<sup>(4)</sup> by a person to whom regulation 8(1) applies (except in respect of pneumoconiosis, byssinosis, diffuse mesothelioma, occupational deafness, occupational asthma, lung cancer or bilateral diffuse pleural thickening) the date of onset shall be the first day on which the claimant was incapable of work as the result of the disease on or after 5th July 1948;
  - (b) a claim for disablement benefit (except in respect of occupational deafness), the date of onset shall be the day on which the claimant first suffered from the relevant loss of faculty on or after 5th July 1948; and the date of onset so determined shall be the date of onset for the purposes of a claim for sickness benefit made by virtue of section 50A of the Act in respect of pneumoconiosis, byssinosis, diffuse mesothelioma, occupational asthma, lung cancer or bilateral diffuse pleural thickening;
  - (c) a claim for disablement benefit in respect of occupational deafness, the date of onset shall be the day on which the claimant first suffered from the relevant loss of faculty on or after 3rd February 1975; or, if later—
    - (i) 3rd September 1979 in the case of a claim made before that date which results in the payment of benefit commencing on that date, and
    - (ii) in any other case, the date on which such claim is made as results in the payment of benefit; or
  - (d) a claim for death benefit, the date of onset shall be the date of death.

### **Recrudescence**

7.—(1) If a person after having been awarded benefit in respect of a prescribed disease other than pneumoconiosis, byssinosis, diffuse mesothelioma, occupational deafness, occupational asthma, lung cancer or bilateral diffuse pleural thickening suffers from another attack of the same disease, or dies as a result thereof, then—

- (a) if the further attack commences or the death occurs during a period taken into account by an assessment of disablement relating to such a previous award (which period is in this regulation referred to as a “relevant period”) the disease shall be treated as a recrudescence of the attack to which the relevant period relates, unless it is otherwise determined in the manner referred to in the following sub-paragraph;
- (b) if the further attack commences or the death occurs otherwise than during a relevant period, or if it is determined in the manner provided in Part IX of the Adjudication Regulations that the disease was in fact contracted afresh, it shall be treated as having been so contracted.

(2) For the purposes of paragraph (1), a further attack of a prescribed disease shall be deemed to have commenced on the date on which the person concerned was first incapable of work or first suffered from the relevant loss of faculty, whichever is earlier, as a result of that further attack.

(3) Where, under the foregoing provisions of this regulation, a disease is treated as having been contracted afresh, the date of onset of the disease in relation to the fresh contraction shall be the

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(4) Section 50A was inserted by the Social Security and Housing Benefits Act 1982 (c.24), section 39(4) .

date on which the person concerned was first incapable of work or first suffered from the relevant loss of faculty, whichever is earlier, as a result of the further attack, or in the event of his death, the date of death.

(4) Where, under the provisions aforesaid, a disease is treated as a recrudescence, any assessment of disablement in respect of the recrudescence during a period taken into account by a previous assessment of disablement shall be by way of review of the assessment relating to the relevant period, and the review shall be subject to the provisions of regulation 49 of the Adjudication Regulations.

(5) This regulation shall not apply in relation to a claim for sickness benefit made by virtue of section 50A of the Act except where such a claim is made by a person to whom regulation 8(1) applies.

### **Workmen's compensation cases**

**8.—**(1) If under the foregoing provisions of this Part of these regulations a date of onset has to be determined for the purposes of a claim for benefit in respect of a prescribed disease, other than pneumoconiosis or byssinosis, suffered by a person to whom compensation under the Workmen's Compensation Acts has been awarded or paid in respect of the same disease and, at the date of such claim for benefit, or, if it is a claim for death benefit, at the date of death—

- (a) that person was in receipt of weekly payments in respect of such compensation; or
- (b) any liability or alleged liability for such compensation had been redeemed by the payment of a lump sum, or had been the subject of a composition agreement under the provisions of the said Acts;

the disease in respect of which the claim is made shall be treated for the purposes of these regulations as a recrudescence of the disease in respect of which such compensation was awarded or paid and not as having developed on or after 5th July 1948 unless it is determined in the manner provided in Part IX of the Adjudication Regulations that the disease was in fact contracted afresh.

(2) If it is determined as provided in the foregoing paragraph that the disease was contracted afresh, or if compensation is not being or has not been paid as provided in sub-paragraph (a) or (b) thereof, the date of onset shall be determined in accordance with regulations 5 to 7 as if no compensation under the Workmen's Compensation Acts had been paid in respect of that disease.

(3) If the date of onset has to be determined as aforesaid in respect of pneumoconiosis or byssinosis suffered by a person to whom compensation has been awarded or paid in respect of the same disease or in respect of whose death compensation has been awarded or paid under the provisions of any scheme made under the provisions of the Workmen's Compensation Acts relating to compensation for silicosis, asbestosis, pneumoconiosis or byssinosis, the disease in respect of which the claim is made shall (subject to the provisions of regulation 9(2)(b)) be treated for the purposes of these regulations as not having developed on or after 5th July 1948.

(4) If, after the date of a claim for benefit in respect of a prescribed disease, the claimant receives a weekly payment of compensation in respect of that disease under the Workmen's Compensation Acts which he was not receiving at the date of such claim, or if the amount of any such weekly payment which he was receiving at that date is increased, then any decision on any question arising in connection with that claim, if given before the date of, or in ignorance of the fact of, the receipt of such weekly payment or increased weekly payment, may be reviewed as if it had been given in ignorance of a material fact, and on such review the question may be decided as if the claimant had been in receipt of such weekly payment or increased weekly payment at the date of the claim, and the foregoing provisions of this regulation shall apply accordingly.

(5) For the purposes of this regulation, a person shall be deemed to be, or to have been, in receipt of a weekly payment of compensation if—

- (a) he is or was in fact receiving such payment; or

(b) he is or was entitled thereto under an award or agreement made under the Workmen's Compensation Acts.

(6) This regulation shall apply to compensation under any contracting out scheme duly certified under the Workmen's Compensation Acts as it applies to compensation under those Acts.

### **Re-employment of pneumoconiotics and special provisions for benefit (workmen's compensation cases)**

9.—(1) Where a person—

- (a) has been certified by a medical board under the provisions of any scheme made under the provisions of the Workmen's Compensation Acts to be suffering from silicosis or pneumoconiosis not accompanied in either case by tuberculosis and has been awarded or paid compensation under the provisions of any such scheme, and by reason of such certification has been suspended from employment in any industry or process or in any particular operation or work in any industry, and
- (b) wishes to start work in employed earner's employment in any occupation involving work underground in any coal mine, or the working or handling above ground at any coal mine of any minerals extracted therefrom, or any operation incidental thereto, being an occupation in which he is allowed by certificate of the medical board under the provisions of the scheme to engage,

he shall, before starting any such work, submit himself under arrangements made or approved by the Secretary of State for medical examination by a special medical board.

(2) Where a person submits himself for medical examination in accordance with the provisions of the foregoing paragraph, the provisions of the Act and the regulations made thereunder shall apply to him subject to the following modifications:—

- (a) The special medical board shall determine at what degree the extent of disablement resulting from pneumoconiosis at the time of their examination would be assessed in his case, if that question had been referred to them for determination by an adjudication officer on consideration of a claim for disablement benefit, and the provisions of the Act and of the Adjudication Regulations which relate to the determination of disablement questions (other than the provisions relating to the review of assessments on the ground of unforeseen aggravation) shall apply as if the decision of the special medical board were a final assessment of the extent of disablement.
- (b) Where the extent of disablement has been determined in his case in accordance with the provisions of the foregoing sub-paragraph by a special medical board or a medical appeal tribunal, and he starts any such work as is mentioned in the foregoing paragraph, the provisions of regulation 38(a) (periodical examinations) shall apply to him as if he were making a claim for benefit in respect of pneumoconiosis, and the provisions of regulation 8(3) (pneumoconiosis shall in certain cases be treated as not having developed on or after 5th July 1948) shall cease to apply to him as from the date of starting such work.
- (c) If, after having started work as aforesaid, he makes a claim at any time for disablement benefit in respect of pneumoconiosis, the extent of disablement in his case shall be assessed as if, to the extent certified in the decision of the special medical board or medical appeal tribunal given under sub-paragraph (a) of this paragraph, his disabilities resulting from pneumoconiosis were contracted before the date of onset and were not incurred as the result of the relevant loss of faculty.
- (d) A person to whom a disablement pension is payable in respect of an assessment made in accordance with the provisions of the last foregoing sub-paragraph and who requires constant attendance shall, if the sum of that assessment and the assessment made in his case in accordance with the provisions of sub-paragraph (a) of this paragraph is not less

than 100 per cent, have the like right to payments in respect of the need of such constant attendance as if the disablement pension were payable in respect of an assessment of 100 per cent.

(3) Where a person to whom sub-paragraph (a) of paragraph (1) applies has started any such work as is mentioned in sub-paragraph (b) thereof without having submitted himself for medical examination in accordance with the provisions of that paragraph, he may nevertheless, at any time whilst he is engaged in any such work, so submit himself for medical examination, and the provisions of the foregoing paragraph shall, if he continues thereafter to be engaged in any such work, apply to him as if he had started that work immediately after the medical examination.

(4) The Secretary of State, in making or approving any such arrangements for medical examination of any person as are mentioned in paragraph (1) shall, as far as possible, co-ordinate those arrangements with any arrangements for medical examination of that person made or approved under Part V of these regulations or under the Workmen's Compensation Acts.

## PART IV

### APPLICATION OF CHAPTERS IV AND VI OF PART II OF THE ACT AND OF REGULATIONS MADE THEREUNDER

#### **Definition of “relevant disease”**

**10.** In this Part of these regulations, unless the context otherwise requires, the expression “relevant disease” means, in relation to any claim for benefit in respect of a prescribed disease, the prescribed disease in respect of which benefit is claimed, but does not include any previous or subsequent attack of that disease, suffered by the same person, which, under the provisions of Part III of these regulations, is or has been treated—

- (a) as having developed on a date other than the date which, under the said provisions, is treated as the date of onset for the purposes of the claim under consideration;
- (b) as a recrudescence of a disease for which compensation has been paid or awarded under the Workmen's Compensation Acts.

#### **Application of Chapters IV and VI of Part II of the Act**

**11.** The provisions of Chapters IV and VI of Part II of the Act which relate to industrial injuries benefit and sickness benefit made by virtue of section 50A of the Act shall, in relation to prescribed diseases, be subject to the following provisions of this Part of these regulations, and, subject as aforesaid, to the additions and modifications set out in Schedule 2 hereto.

#### **Application of Claims and Payments Regulations and Benefit Regulations**

**12.—(1)** Save in so far as they are expressly varied or excluded by, or are inconsistent with, the provisions of this Part of these regulations or of regulation 25 or 36, the Claims and Payments Regulations and the Benefit Regulations shall apply in relation to prescribed diseases as they apply in relation to accidents.

(2) Save as provided in this Part of these regulations or where the context otherwise requires, references in the aforesaid regulations to accidents shall be construed as references to prescribed diseases, references to the relevant accident shall be construed as references to the relevant disease, references to the date of the relevant accident shall be construed as references to the date of onset of the relevant disease, and in regulation 17 of the Benefit Regulations (increase of disablement pension



in cases of special hardship), the reference to the effects of the relevant injury shall be construed as a reference to the effects of the relevant disease.

### **Benefit not payable in cases covered by the Industrial Injuries and Diseases (Old Cases) Act 1975**

13. Benefit shall not be payable by virtue of the provisions of these regulations in respect of the incapacity, disablement or death of any person as a result of any disease, if an award of benefit under the provisions of any Scheme made under the Industrial Injuries and Diseases (Old Cases) Act 1975 (not being an award which is subsequently reversed on review) has at any time been made in respect of any attack of the disease suffered by him, or in respect of his death.

### **Diseases contracted outside Great Britain**

14. For section 50(5) (accidents happening outside Great Britain) there shall be substituted the provision that, subject to the provisions of sections 129, 131 and 132, for the purpose of determining whether a prescribed disease is, or, under the provisions of Part II of these regulations is to be presumed to be, due to the nature of the person's employed earner's employment, that person shall be regarded as not being or as not having been in employed earner's employment during any period for which he is or was outside Great Britain, and accordingly benefit shall not be payable in respect of a prescribed disease which is due to the nature of employment in an occupation in which the person has only been engaged outside Great Britain.

### **Assessment of extent of disablement**

15. For the purposes of paragraph 1(b) of Schedule 8 (disabilities to be taken into account in assessing the extent of the claimant's disablement) and of regulation 11 of the Benefit Regulations (which further defines the principles of assessment of disablement), an injury or disease other than the relevant disease shall be treated as having been received or contracted before the relevant disease if it was received or contracted on or before the date of onset, and as having been received or contracted after the relevant disease if it was received or contracted after that date.

### **Death benefit for woman having care of deceased's children**

16.—(1) Section 73 (the entitlement to death benefit of a woman having the care of a child or children in respect of whom the deceased was entitled to child benefit) shall have effect as if for references to the date of the relevant accident there were substituted references to the relevant date.

(2) For the purposes of the last foregoing paragraph, the relevant date means the date of onset of the relevant disease, or the first day of the period of 26 weeks ending with the date of death, whichever is the later.

### **Special provisions as to determination of regular occupation in relation to persons claiming an increase of benefit for special hardship**

17. Where a person who is or has been awarded disablement benefit in respect of a prescribed disease establishes that he has abandoned any occupation as a result of the relevant disease at any time after having been employed in employed earner's employment in any occupation prescribed for that disease but before the first day for which he is or has been awarded disablement benefit in respect of that disease, then for the purpose of determining his right to, or the rate of, an increase of that benefit under section 60 (increase of disablement benefit for special hardship), any occupation he has so abandoned may be treated as his regular occupation for the purposes of section 60.

### **Exception from requirements as to notice**

18. Regulation 24 of the Claims and Payments Regulations (giving of notice of accidents in respect of which benefit may be payable) shall not apply in relation to prescribed diseases.

### **Provisions as to medical examination**

19. Those provisions of section 89(1) and (2) which relate to the obligation of claimants to submit themselves to medical examination for the purpose of determining the effect of the relevant accident shall apply also to medical examinations for the purpose of determining whether a claimant or beneficiary is suffering or has suffered from a prescribed disease, and regulation 26 of the Claims and Payments Regulations shall be construed accordingly.

## **PART V**

### **SPECIAL PROVISIONS AS TO PNEUMOCONIOSIS, BYSSINOSIS, OCCUPATIONAL DEAFNESS AND CERTAIN OTHER DISEASES**

#### **SECTION A**

#### **BENEFIT**

#### *Special conditions for disablement benefit for pneumoconiosis, byssinosis and diffuse mesothelioma*

20.—(1) No disablement gratuity shall be payable in respect of pneumoconiosis, byssinosis or diffuse mesothelioma, but if in any case the extent of disablement is such that, when assessed in accordance with section 57 (disablement benefit), it amounts to less than 20 per cent, the beneficiary shall, subject to the proviso to section 57(6), be entitled to a disablement pension for the period taken into account by the assessment, payable, if such assessment does not exceed 10 per cent, at the weekly rate specified in Schedule 4 to the Benefit Regulations (rate of disablement pension payable in lieu of disablement gratuity) for a degree of disablement of less than 11 per cent but not less than 6 per cent, and in any other case at the weekly rate so specified for a degree of disablement of less than 20 per cent but not less than 16 per cent.

(2) Section 78(4)(b), in so far as it provides that disablement benefit shall not be payable in respect of byssinosis unless the claimant is found to be suffering from loss of faculty which is likely to be permanent, shall not apply.

(3) Notwithstanding paragraph 4(a) of Schedule 8 (period to be taken into account by an assessment of the extent of the claimant's disablement), the period to be taken into account by an assessment of the extent of the claimant's disablement in respect of byssinosis, if not limited by reference to the claimant's life, shall not be less than one year.

#### *Pneumoconiosis—effects of tuberculosis*

21. Where any person is found to be suffering from pneumoconiosis accompanied by tuberculosis, the effects of the tuberculosis shall be treated for the purposes of Chapter V of Part II of the Act and of these regulations as if they were effects of the pneumoconiosis.

*Pneumoconiosis—effects of emphysema and chronic bronchitis*

**22.**—(1) Where any person is disabled by pneumoconiosis or pneumoconiosis accompanied by tuberculosis to an extent which would, if his physical condition were otherwise normal, be assessed at not less than 50 per cent, the effects of any emphysema and of any chronic bronchitis from which that person is found to be suffering shall be treated for the purposes of Chapter V of Part II of the Act and of these regulations as if they were effects of the pneumoconiosis.

(2) Where, on a claim for death benefit, the question arises whether the extent of a person's disablement resulting from pneumoconiosis or from pneumoconiosis accompanied by tuberculosis would, if his physical condition were otherwise normal, have been assessed at not less than 50 per cent—

- (a) if there has been no assessment of disablement resulting from pneumoconiosis or from pneumoconiosis accompanied by tuberculosis made during the person's life, or if there is no such assessment current at the time of death, that question shall be determined by a medical board and the provisions of the Act shall apply as if such question were a disablement question;
- (b) if there is an assessment of disablement resulting from pneumoconiosis or from pneumoconiosis accompanied by tuberculosis current at the time of the person's death, that question shall be treated as having been determined by the decision of the medical board or medical appeal tribunal, as the case may be, which made such assessment.

*Increase of benefit for special hardship—special provision for pneumoconiosis cases*

**23.** Where a beneficiary in receipt of a disablement pension in respect of pneumoconiosis receives advice from a special medical board that in consequence of the disease he should not follow his regular occupation unless he complies with certain special restrictions as to the place, duration or circumstances of his work, or otherwise, then for the purpose of determining whether he fulfils the conditions laid down in section 60(1) (increase of disablement pension for special hardship) and for that purpose only—

- (a) the beneficiary shall be deemed, unless the contrary is proved by evidence other than the aforesaid advice—
  - (i) to be incapable of following his regular occupation and likely to remain permanently so incapable, and
  - (ii) to be incapable of following employment of an equivalent standard which is suitable in his case;
- (b) where the beneficiary has ceased to follow any occupation to which the aforesaid special restrictions were applicable, the fact that he had followed such an occupation in the period between the date of onset of the disease and the date of the current assessment of his disablement, or for a reasonable period of time thereafter, shall be disregarded.

*Special requirement for pneumoconiosis claimants in unscheduled occupation cases*

**24.**—(1) Part IX of the Adjudication Regulations shall apply to any claim for disablement benefit in respect of pneumoconiosis by a person in relation to whom the disease is prescribed by virtue of regulation 2(b)(ii) subject to the modification that if the claimant fails to show to the satisfaction of the adjudication officer that there is reasonable cause for suspecting that the claimant is suffering or has suffered from the disease the adjudication officer shall on that ground, and without referring the diagnosis question as provided in regulation 43(2) of the Adjudication Regulations, determine that an award cannot be made.

(2) The provisions of the last foregoing paragraph shall apply to a social security appeal tribunal and a Commissioner as they apply to the adjudication officer.

*Time for claiming benefit in respect of occupational deafness*

**25.**—(1) Regulation 14 of the Claims and Payments Regulations (time for claiming benefit) shall not apply in relation to occupational deafness except in relation to a claim for sickness benefit payable by virtue of section 50A.

(2) Subject to regulation 27(1)(c), disablement benefit, or sickness benefit payable by virtue of section 50A of the Act, shall not be paid in pursuance of a claim in respect of occupational deafness which is made later than 5 years after the latest date, before the date of the claim, on which the claimant worked in an occupation prescribed in relation to occupational deafness unless—

- (a) the claimant has been employed in one or more of the occupations so prescribed for a period or periods amounting in aggregate to not less than 10 years, and
- (b) that period or the last of those periods ended on or after 8th October 1977, and
- (c) the claim is made within the period of one year beginning on 3rd October 1983, and
- (d) either—
  - (i) the claimant, not being a person to whom regulation 27(1)(c) applies, has not within the period of 3 years before the claim was made previously made a claim which was disallowed because he was not suffering from occupational deafness, or
  - (ii) where a previous claim was made by him, a medical board or a medical appeal tribunal have not within the period of 3 years before the claim was made reassessed the extent of his disablement at less than 20 per cent.

*Claims in respect of occupational deafness*

**26.** Where it appears that a person who has made a claim for sickness benefit by virtue of section 50A of the Act in respect of occupational deafness—

- (a) may be entitled to disablement benefit, and
- (b) has not previously made a claim for disablement benefit in respect of occupational deafness or such a previous claim has been disallowed,

such a claim for sickness benefit may also be treated as a claim for disablement benefit.

*Further claims in respect of occupational deafness*

**27.**—(1) In the event of disallowance of a claim for disablement benefit or sickness benefit made by virtue of section 50A of the Act in respect of occupational deafness because the claimant has failed to satisfy the minimum hearing loss requirement prescribed in column 1 of paragraph A10 of Part I of Schedule 1 hereto, disablement benefit or sickness benefit made by virtue of section 50A of the Act shall not be paid in pursuance of a further claim in respect of occupational deafness made by or on behalf of that claimant unless—

- (a) it is a claim made after the expiration of 3 years from the date of a claim which was disallowed because the claimant was not suffering from occupational deafness; or
- (b) it is a claim made after the expiration of 3 years from the date of a reassessment by a medical board or medical appeal tribunal of the extent of the claimant's disablement at less than 20 per cent; or

- (c) if the claimant would otherwise be precluded by regulation 25(2) from making a further claim after the expiration of 3 years from the date of the disallowed claim or from the date of a reassessment by a medical board or a medical appeal tribunal of the extent of his disablement at less than 20 per cent, as the case may be, it is the first claim made since that date and within 5 years from the latest date, before the date of the claim, on which he worked in any occupation specified in column 2 of paragraph A10 of Part I of Schedule I hereto.

(2) A claim to be paid benefit by virtue of paragraph (1)(c) may be disallowed by the adjudication officer, social security appeal tribunal or Commissioner, as the case may be (hereinafter called “the determining authority”), without referring the disablement question to a medical board or medical appeal tribunal where the determining authority is satisfied from the medical evidence given on the disallowed claim that the claimant is not suffering from occupational deafness.

*Availability of disablement benefit in respect of occupational deafness*

**28.** Where a person is awarded disablement benefit in respect of occupational deafness, section 57(4) (period for which disablement benefit is not available) shall not apply.

*Period to be covered by assessment of disablement in respect of occupational deafness*

- 29.** Subject to the proviso to section 57(6) (cessation of pension on death of beneficiary)—
- (a) every initial assessment of the extent of a claimant's disablement in respect of occupational deafness shall be a provisional assessment and the period to be taken into account by such an assessment shall be a period of 5 years;
  - (b) the period to be taken into account by any subsequent reassessment of the extent of the claimant's disablement in respect of occupational deafness, if not limited by reference to the claimant's life, shall not be less than 5 years.

*Review of assessment for unforeseen aggravation in respect of occupational deafness*

**30.—(1)** The provisions of section 110(2) (review of assessment in case of unforeseen aggravation) shall not apply to an assessment of the extent of disablement in respect of occupational deafness until after the expiration of 5 years from the date of commencement of the period taken into account by that assessment.

(2) The provisions of section 110(2) shall not apply to an assessment of the extent of disablement in respect of occupational deafness which is less than 20 per cent.

**31.** Subject to the provisions of regulation 30 and notwithstanding the provisions of section 110(5) (leave of medical appeal tribunal required to review assessment in certain cases), a life assessment in respect of occupational deafness made by a medical board or a medical appeal tribunal shall not be reviewed in accordance with section 110(2) (review of assessment in case of unforeseen aggravation) without leave of a medical appeal tribunal, and in the case of a provisional assessment in respect of occupational deafness no such leave shall be required.

*No appeal against initial provisional assessment of disablement in respect of occupational deafness*

**32.** Notwithstanding section 109(2), but subject to the provisions of section 109(3), no appeal shall lie against an initial provisional assessment of the extent of disablement in respect of occupational deafness.

*Cases in which reassessment of disablement in respect of occupational deafness is final*

**33.** Where in any case the extent of disablement in respect of occupational deafness has been provisionally assessed at 20 per cent or more and on any reassessment the extent of disablement in respect of occupational deafness is assessed at less than 20 per cent that assessment shall be final.

*Assessment of extent of disablement and rate of disablement  
benefit payable in respect of occupational deafness*

**34.—(1)** Subject to the provisions of Schedule 8 and regulations made thereunder and the following provisions of this regulation, the first assessment of the extent of disablement in respect of occupational deafness made in pursuance of a claim made before 3rd September 1979 by a person to whom disablement benefit in respect of occupational deafness is payable for a period before 3rd September 1979 shall be the percentage calculated by applying the formula set out in Part III of Schedule 3 hereto to the percentages specified in column 2 of Part I of that Schedule opposite the appropriate amount of hearing loss in the better ear and the worse ear respectively specified in column 1 of that Schedule, being the total hearing loss due to all causes, measured in each case by pure tone audiometry over the 1, 2 and 3 kHz frequencies.

(2) Except in any case to which paragraph (1) applies and subject to the provisions of Schedule 8 and regulations made thereunder and the following provisions of this regulation, the extent of disablement in respect of occupational deafness shall be assessed at the percentage calculated by applying the formula set out in Part III of Schedule 3 hereto to the percentages specified in column 2 of Part II of that Schedule opposite the appropriate amount of hearing loss in the better ear and the worse ear respectively specified in column 1 of that Schedule, being the total hearing loss due to all causes, measured in each case by pure tone audiometry over the 1, 2 and 3 kHz frequencies.

(3) In this regulation and in Schedule 3 hereto “better ear” means that ear in which the claimant's hearing loss due to all causes is the less and “worse ear” means that ear in which the claimant's hearing loss due to all causes is the more.

(4) The extent of disablement in respect of occupational deafness may be subject to such increase or reduction of the degree of disablement as may be reasonable in the circumstances of the case where, having regard to the provisions of Schedule 8 and to regulations made thereunder, that degree of disablement does not provide a reasonable assessment of the extent of disability resulting from the relevant loss of faculty.

(5) Where on reassessment of the extent of disability in respect of occupational deafness the sensorineural hearing loss is less than 50dB in each ear, being due in the case of at least one ear to occupational noise, the extent of disablement shall be assessed at less than 20 per cent.

(6) Where the extent of disablement is reassessed at less than 20 per cent disablement benefit shall not be payable.

(7) In the case of a person to whom disablement benefit by reason of occupational deafness was payable in respect of a period before 3rd September 1979—

- (a) if no assessment of the extent of his disability has been made, reviewed or varied on or after that date, the rate of any disablement benefit payable to him shall be the rate payable for the degree of disablement assessed in accordance with paragraph (1), but
- (b) if such an assessment has been made, reviewed or varied in respect of a period commencing on or after that date and before 3rd October 1983, the rate of any disablement benefit payable to him shall be either—
  - (i) the rate which would be payable if an assessment were made in accordance with paragraph (2), or

- (ii) the rate which was payable immediately before the first occasion on which such review or variation took place,

whichever is the more favourable to him.

(8) Where in the case of a person to whom disablement benefit by reason of occupational deafness was payable in respect of a period before 3rd September 1979 the extent of his disability is reassessed and the period taken into account on reassessment begins on or after 3rd October 1983 and—

- (a) immediately before that date, by virtue of paragraph (7) the rate at which disablement benefit was payable to him was higher than the rate which would otherwise have been payable, or,
- (b) the reassessment is the first reassessment for a period commencing after 3rd September 1979,

the rate of disablement benefit payable to him shall be whichever of the rates specified in paragraph (9) is applicable.

(9) The rate of disablement benefit payable in the case of a person to whom paragraph (8) applies shall be—

- (a) if the current rate appropriate to the extent of his disability as reassessed is the same as or more than the rate at which disablement benefit was payable immediately before the beginning of the period taken into account on reassessment, the current rate, or
- (b) if the current rate is less than the rate at which disablement benefit was payable immediately before the beginning of the period taken into account on reassessment, the lower of the following rates—
  - (i) the rate at which benefit would have been payable if the reassessment of the extent of his disability had been made in accordance with paragraph (1), or
  - (ii) the rate at which benefit was payable immediately before the beginning of the period taken into account on reassessment.

*Commencement date of period of assessment in respect of occupational deafness*

**35.** Notwithstanding the provisions of section 108 and Schedule 8, the period to be taken into account by an assessment of the extent of disablement in respect of occupational deafness shall not commence before 3rd February 1975.

*Time for claiming benefit in respect of occupational asthma*

**36.—**(1) Subject to paragraphs (2) and (3), disablement benefit and sickness benefit payable by virtue of section 50A shall not be paid in pursuance of a claim in respect of occupational asthma which is made later than 10 years after the latest date, before the date of the claim, on which the claimant or, as the case may be, the person in respect of whom the claim is made worked in an occupation prescribed in relation to occupational asthma.

(2) Paragraph (1) shall not apply to any claim made before 29th March 1983 by or in respect of a person who ceased on or after 29th March 1972 to be employed in an occupation prescribed in relation to occupational asthma.

(3) Paragraph (1) shall not apply to any claim made by or in respect of a person who has at any time been found to be suffering from asthma as a result of an industrial accident and by virtue of that finding has been awarded disablement benefit either for life or for a period which includes the date on which the aforesaid claim is made.

(4) Subject to paragraphs (5) and (6), industrial death benefit shall not be paid in pursuance of a claim in respect of occupational asthma where the person in respect of whose death the benefit

is being claimed died more than 10 years after the latest day on which he worked in an occupation prescribed in relation to occupational asthma.

(5) Paragraph (4) shall not apply to any claim made in respect of the death of a person who died before 29th March 1983 and who on or after 29th March 1972 had not worked in an occupation prescribed in relation to occupational asthma.

(6) Paragraph (4) shall not apply to any claim made in respect of the death of a person who had at any time been found to be suffering either from asthma as a result of an industrial accident or from occupational asthma and by virtue of that finding had been awarded disablement benefit either for life or for a period which included the date of his death.

(7) Regulation 14 of the Claims and Payments Regulations (time for claiming benefit) shall not apply to a claim in respect of occupational asthma made before 29th March 1983.

## SECTION B

### MEDICAL EXAMINATIONS AND SUSPENSION

#### Initial examinations

**37.**—(1) Where any person is, on or after 5th July 1948, engaged for employment in any occupation specified in paragraph (3), or is transferred by his employer to such employment, he shall submit himself, before the end of the second month of such new employment, for medical examination (hereafter in these regulations referred to as an “initial examination”) under arrangements made or approved by the Secretary of State, so however that a person who—

- (a) being 21 years of age or over, has been employed, within the 3 years previous to such engagement or transfer, in that occupation or in some other occupation specified in paragraph (3); or
- (b) being under 21 years of age, has previously submitted himself for medical examination as aforesaid and has been found on such examination to satisfy the requirements with respect to physique set out in paragraph (2),

shall not be required to submit himself to an initial examination under the provisions of this paragraph.

(2) For the purposes of the foregoing paragraph of this regulation, the requirements with respect to physique shall be that the person is not suffering from any of the following conditions, namely:—

- (a) Tuberculosis of any organ, active or inactive, except a healed pulmonary primary focus.
- (b) Pneumoconiosis or other marked pulmonary abnormality to an extent discernible by radiological examination.
- (c) Chronic bronchitis or asthma if causing marked incapacity.
- (d) Severe thoracic deformity.
- (e) Rheumatic valvular heart disease.
- (f) Other heart disease causing disability.

(3) For the purposes of this regulation, the specified occupations shall be any occupation in an industry or process to which the First Schedule to the Silicosis and Asbestosis (Medical Arrangements) Scheme 1931<sup>(5)</sup> applied immediately before 5th July 1948, or to which the said Schedule would have applied if such industry or process had been carried on at that time.

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(5) amended by S.R. & O. 1934/889, 1939/705.



### **Periodical examinations**

**38.** Any person employed on or after 5th July 1948 in employed earner's employment in an occupation in relation to which pneumoconiosis is prescribed under regulation 2 shall submit himself for medical examination (hereafter in these regulations referred to as a "periodical examination"), under arrangements made or approved by the Secretary of State, on the occasions and at the intervals specified in such of the following provisions of this regulation as may be appropriate in his case, that is to say—

- (a) in the case of any person who makes a claim for benefit in respect of pneumoconiosis—  
when required to do so on making such claim, and, if required by a special medical board, at such intervals thereafter as such a board may in his case from time to time direct;
- (b) in the case of a person who is employed in an occupation specified in paragraph (3) of the last foregoing regulation—  
at intervals of 2 years whilst so employed, or at such other intervals as a special medical board may in his case from time to time direct.

### **Suspension from employment**

**39.** A certificate of suspension issued under the provisions of either regulation 43 or regulation 44 of the National Insurance (Industrial Injuries) (Prescribed Diseases) Regulations 1959 (regulations revoked with effect from 27th November 1974 by regulation 7(1) of the National Insurance (Industrial Injuries) (Prescribed Diseases) Amendment (No. 2) Regulations 1974) and in force immediately before 27th November 1974 shall continue in force subject to and in accordance with the provisions of regulation 40 of these regulations.

### **Conditions of suspension**

**40.—(1)** A certificate of suspension issued under the provisions of either regulation 43 or regulation 44 of the National Insurance (Industrial Injuries) (Prescribed Diseases) Regulations 1959, and remaining in force by virtue of the last preceding regulation, shall suspend the person to whom it relates from further employment in any occupation in relation to which pneumoconiosis is prescribed, with such exceptions and subject to such conditions (if any) as may be specified in the certificate.

(2) A special medical board may at any time revoke or vary a certificate of suspension on the application of the person to whom it relates, but unless so revoked or varied such certificate shall remain in force throughout the life of such person.

(3) No person who has been suspended from employment may engage or continue in employment, and no employer may employ or continue to employ any such person, in any occupation in relation to which pneumoconiosis is prescribed, except in accordance with the terms of the certificate of suspension in his case.

### **Duties of employers**

**41.** Every employer who employs or intends to employ any persons in any occupation specified in regulation 37(3) —

- (a) shall give notice to the Secretary of State of his commencing to carry on any industry or process which will involve the employment of any persons in any such occupation;
- (b) shall arrange for the initial examination of any person newly engaged or transferred to his employment in circumstances in which such examination is required by regulation 37;

- (c) shall provide such facilities as the Secretary of State may reasonably require for the periodical examination of any persons employed by him in circumstances in which such examination is required by regulation 38(b).

### **Fees for initial and periodical examination**

**42.** When a person undergoes an initial examination or a periodical examination under the provisions of regulation 38(b), the employer by whom that person is employed at the time of such examination shall pay to the National Insurance Fund, in respect of an initial examination a fee of 30p, and in respect of a periodical examination a fee of 95p with an additional fee of £1.57 if a radiographic examination is required.

## **PART VI**

### **TRANSITIONAL PROVISIONS AND REVOCATION**

#### **Transitional provisions regarding relevant dates**

**43.—(1)** Subject to paragraph (2) the “relevant date”, in relation to each disease set out in the first column of Schedule 4 hereto, is the date set against that disease in the second column of that Schedule.

(2) Where a disease set out in the first column of Schedule 4 hereto was prescribed in relation to any person by regulations which came into operation on a date earlier than the date set against that disease in the second column of that Schedule, the “relevant date” in relation to such disease is such earlier date on which the disease was prescribed in relation to the person in question.

(3) It shall be a condition of a person's right to benefit in respect of any disease set out in Schedule 4 that he was—

- (a) incapable of work, or
- (b) suffering from a loss of faculty,

as a result of that disease on or after the relevant date.

(4) The “relevant date” in relation to byssinosis—

- (a) in the case of a person employed in an occupation involving work in any room in which the weaving of cotton or flax or any other process which takes place between, or at the same time as, the winding or beaming and weaving of cotton or flax is carried on in a factory in which any or all of those processes are carried on is 3rd October 1983;
- (b) in any other case, is 6th April 1979 except that where the disease was prescribed in relation to any person by regulations which came into operation on a date earlier than 6th April 1979 the relevant date is that earlier date.

(5) Byssinosis is not prescribed in relation to any person if neither of the following conditions is satisfied, namely:—

- (a) that he was suffering from a loss of faculty as a result of byssinosis on or after the relevant date;
- (b) that he has been employed in employed earner's employment in any occupation mentioned in regulation 2(c) of the old regulations for a period or periods (whether before or after 5th July 1948) amounting in the aggregate to 5 years.

(6) Notwithstanding that a person does not satisfy paragraph (3) infection by leptospira is prescribed in relation to any person if he is or has been either incapable of work or suffering from a loss of faculty as a result of infection by—

- (a) leptospira icterohaemorrhagiae in the case of a person employed in employed earner's employment before 7th January 1980 in any occupation involving work in places which are, or are liable to be, infested by rats, or
- (b) leptospira canicola in the case of a person so employed in any occupation involving work at dog kennels or the care or handling of dogs.

(7) A person who, immediately before 3rd October 1983, was in receipt of benefit in respect of a disease or injury which was prescribed by virtue of the old regulations, or who makes a claim for benefit in respect of a prescribed disease after 2nd October 1983 where the date of onset of the disease or injury was before 3rd October 1983, shall be treated for the purpose only of determining whether the disease or injury is in relation to him a prescribed disease by virtue of the occupation in which he is or was engaged as if the old regulations were still in force and these regulations had not come into operation, if that would be more favourable to him.

#### **Transitional provisions regarding dates of development and dates of onset**

44. Where a claim for benefit has been made before 6th April 1983 or a date of onset is determined which is before 6th April 1983 or a claim for injury benefit is made after 5th April 1983 for a day falling or a period beginning before 6th April 1983, these regulations shall take effect subject to the provisions of Schedule 5.

#### **Revocation**

45. The regulations specified in Schedule 6 hereto are hereby revoked to the extent mentioned in the third column of that Schedule.

Signed by authority of the Secretary of State for Social Services.

24th June 1985

*Tony Newton*  
Minister of State  
Department of Health and Social Security