# 1988 No. 242

# SOCIAL SECURITY

## Pneumoconiosis, etc., (Workers' Compensation) (Payment of Claims) Regulations (Northern Ireland) 1988

*Made . . . . . 1st July 1988*

*Coming into operation . . 22nd August 1988*

*To be laid before Parliament under paragraph 3(3) of Schedule 1 to the Northern Ireland Act 1974*

The Department of Economic Development(**a**), in exercise of the powers conferred on it by Articles 3(3), 4(3), 11(1) and (4) of the Pneumoconiosis, etc., (Workers' Compensation) (Northern Ireland) Order 1979(**b**) and of every other power enabling it in that behalf, hereby makes the following Regulations:

*Citation, commencement, revocation and transitional provision*

**1.**—(1) These Regulations may be cited as the Pneumoconiosis, etc., (Workers' Compensation) (Payment of Claims) Regulations (Northern Ireland) 1988 and shall come into operation on 22nd August 1988 in relation to any case in which a person first satisfies the conditions of entitlement to a payment under the Order on or after that date.

(2) Subject to paragraph (3), the Pneumoconiosis, etc., (Workers' Compensation) (Payment of Claims) Regulations (Northern Ireland) 1986(**c**) are revoked.

(3) Notwithstanding the revocation in paragraph (2), those Regulations shall continue to have effect as provided in those Regulations in any case in which a person first satisfies the conditions of entitlement to a payment under the Order before 22nd August 1988.

*Interpretation*

**2.** In these Regulations—

"claim" means a claim made in accordance with the Pneumoconiosis, etc., (Workers' Compensation) (Determination of Claims) Regulations (Northern Ireland) 1986(**d**);

"determination" as respects a medical board or a medical appeal tribunal means a determination in connection with a claim for disablement benefit;

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(**a**) Formerly the Department of Manpower Services: *see* S.I. 1982/846 (N.I. 11) Article 3

(**b**) S.I. 1979/925 (N.I. 9) as amended by S.I. 1985/1209 (N.I. 16) Article 22 and S.I. 1986/1888 (N.I. 18), Article 40 and Schedule 3

(**c**) S.R. 1986 No. 208

(**d**) S.R. 1986 No. 207

"disease" means a disease to which the Order applies, namely pneumoconiosis, byssinosis, diffuse mesothelioma, primary carcinoma of the lung and bilaternal diffuse pleural thickening;

"medical board" means 2 or more adjudicating medical practitioners appointed under paragraph 1 of Schedule 12 to the Social Security (Northern Ireland) Act 1975(**a**) and nominated by the Department of Health and Social Services for Northern Ireland to act jointly in the consideration of a case;

"medical appeal tribunal" means a tribunal constituted in accordance with Schedule 12 to the Social Security (Northern Ireland) Act 1975;

"the Order" means the Pneumoconiosis, etc., (Workers' Compensation) (Northern Ireland) Order 1979;

"percentage assessment" means percentage disability assessed in respect of a disease by a medical board or medical appeal tribunal, as the case may be, for the purpose of determining entitlement to disablement benefit under section 76 of the Social Security (Northern Ireland) Act 1975 or under any corresponding provision of the former Industrial Injuries Acts(**b**);

"primary carcinoma of the lung" means primary carcinoma of the lung where there is accompanying evidence of one or both of the following:—

(i) asbestosis;

(ii) bilateral diffuse pleural thickening.

*Payments to persons disabled by a disease*

**3.**—(1) The amount of any payment made to any person disabled by a disease who has made a claim for, and in respect of whom there is entitlement to a payment under the Order, shall be determined in accordance with Table 1 of the Schedule.

(2) For the purpose of a determination as respects Table 1 of the Schedule the age of the person concerned and the percentage assessment shall be related to the first determination that he was suffering from the disease in the following manner—

(*a*) in any case where the first determination was a determination of a medical board, the age of the person concerned shall be the age of that person at his last birthday preceding the first day of the month in which that determination was made, and the percentage assessment shall be that which is applicable either at the time or retrospectively for the period immediately following the date of the determination by that board;

(*b*) in any case where the first determination was a determination of a medical appeal tribunal, the age of that person shall be his age at his last birthday preceding the first day of the month in which his case was last considered by a medical board (being at a time prior to the first

(a) 1975 c. 15; Schedule 12 was amended by Articles 3 and 4 of and paragraphs 6 to 8 of Schedule 1 to and paragraph 7 of Schedule 2 to S.I. 1983/1524 (N.I. 17) and by Article 53 of and paragraph 15 of Schedule 5 to S.I. 1986/1888 (N.I. 18)

(b) 1946 c. 21 (N.I.) and 1966 c. 9 (N.I.)

determination of a medical appeal tribunal) and the percentage assessment shall be that which is applicable for the period immediately following the date of that last consideration by a medical board.

(3) In any case where, at the time of the first determination of a medical board or a medical appeal tribunal that the disabled person was suffering from the disease, the board or tribunal, as the case may be, diagnosed that pneumoconiosis was accompanied by tuberculosis, this regulation shall apply subject to regulation 6.

*Payments to dependants of persons disabled by a disease*

**4.**—(1) The amount of any payment made to a dependant of a person to whom disablement benefit in respect of a disease was payable immediately before he died, or would have been payable but for his disablement amounting to less than the appropriate percentage, being the dependant entitled to a payment under the Order, shall be determined by ascertaining the amount which would have been payable to the deceased in accordance with regulation 3 had he still been alive and had duly made a claim for payment under the Order, deducting from that amount the sum which would have been payable to the deceased if his age at his last birthday preceding his death were substituted for the age used in ascertaining the amount in accordance with regulation 3.

(2) Where the Department is satisfied that the deceased died as a result of the disease, there shall be added to the amount calculated in accordance with paragraph (1) a further amount determined in accordance with Table 2 of the Schedule and for this purpose—

(*a*) the age of the deceased shall be his age at his last birthday preceding his death;

(*b*) in the case of a disease other than diffuse mesothelioma, the percentage assessment shall be the same as that used in determining the amount payable under regulation 3.

(3) For the purpose of determining whether a payment should be made under paragraph (2), it shall be sufficient evidence that the deceased died as a result of the disease if death benefit is payable or was paid as a lump sum by reason of the deceased's death as a result of the disease.

(4) It shall not be open to the Department to be satisfied that the deceased died as a result of the disease if there is clear evidence that a claim for death benefit has been disallowed on the ground that the deceased did not die as a result of the disease.

(5) Where no claim for death benefit has been made, it shall not be open to the Department to be satisfied that the deceased died as a result of the disease if there is clear evidence available that in the opinion of two doctors of a medical board the deceased did not die as a result of the disease.

(6) (*a*) A dependant of a person to whom disablement benefit in respect of a disease was not payable immediately before he died, being the dependant entitled to a payment under the Order, shall be paid an amount determined in accordance with Table 2 of the Schedule in cases where—

(i) death benefit is payable to or in respect of the said dependant by reason of the deceased's death as a result of the disease; or

(ii) disablement benefit would have been payable to the deceased immediately before he died but for his not having claimed benefit, or but for his having died before he had suffered from the disease for the appropriate period.

(*b*) The relevant percentage assessment for the purposes of Part A of that Table shall be that determined by a medical board in respect of the period immediately prior to the deceased's death or if no such determination was made the relevant percentage assessment shall be taken as 10 per cent. and the age of the deceased, for this purpose, shall be taken as his age at his last birthday preceding his death.

(7) As respects any claim made by the dependant of a deceased person where that person has died as a result of diffuse mesothelioma, this regulation shall apply subject to regulation 5.

*Payment where death results from diffuse mesothelioma*

**5.**—(1) Subject to paragraph (2), in any case where the Department is satisfied, as respects a claim by a dependant of a deceased person who died on or after 22nd August 1966 (the said dependant being the dependant who is entitled to a payment under the Order), that the said deceased person died as a result of diffuse mesothelioma the amount of the payment to that dependant shall be:—

(*a*) the amount payable in accordance with regulation 4 in respect of diffuse mesothelioma if—

(i) disablement benefit was payable to the deceased immediately before he died solely in respect of diffuse mesothelioma, or

(ii) where disablement benefit in respect of a disease was not payable to the deceased immediately before he died, death benefit is payable to or in respect of the said dependant by reason of the deceased's death as a result of the disease, or

(iii) disablement benefit would have been payable to the deceased immediately before he died but for his not having claimed the benefit or but for his having died before he had suffered from the disease for the appropriate period;

(*b*) if disablement benefit was payable to the deceased immediately before he died solely in respect of pneumoconiosis, either—

(i) the total amount payable in accordance with regulation 4 in a case where the deceased's death resulted from pneumoconiosis or, if greater—

(ii) the amount payable in accordance with regulation 4(6) in respect of the deceased's death as a result of diffuse mesothelioma;

(*c*) if disablement benefit was payable to the deceased immediately before he died in respect of both pneumoconiosis and diffuse mesothelioma or would have been payable to him but for the circumstances specified in sub-paragraph (*a*)(iii), either the amount payable in accordance with sub-paragraph (*a*) or that payable in

accordance with sub-paragraph (*b*)(i), whichever amount is the greater.

(2) In any case the amount payable to a dependant under this regulation shall be at least £1,263 more than the amount which would have been payable to him if he had been entitled to a payment calculated in accordance with regulation 4(6).

(3) If any amount is payable in accordance with this regulation to the dependant of a deceased person, the Department shall deduct from that amount a sum equal to any payment made under the provisions of the Order to the said deceased person prior to death, save that any amount so payable after any such deduction shall not, in any event, be less than the minimum payment prescribed in regulation 7.

*Payment where pneumoconiosis is accompanied by tuberculosis*

**6.**—(1) In any case where, at the time of the first determination of a medical board, or medical appeal tribunal that the disabled person was suffering from the disease, the board or tribunal, as the case may be, diagnosed that pneumoconiosis was accompanied by tuberculosis, the amount payable to any such disabled person under the provisions of the Order shall be determined by adding together—

(*a*) the sum of £2,613, if the percentage assessment applicable for the period immediately following the date relevant for the purposes of regulation 3(2) was one hundred per cent. or if less than one hundred per cent. that percentage of £2,613, in respect of the year beginning on that date (that is to say the date relevant for the purpose of regulation 3(2)), and in respect of each successive year beginning on the anniversary of that date on the first day of which the said disabled person was, or appears to the Department to have been, suffering from pneumoconiosis accompanied by active tuberculosis, and

(*b*) a lump sum determined in accordance with Table 1 of the Schedule, taking, for this purpose, the age of the disabled person as his age at his last birthday prior to the end of the last year to which paragraph (1)(*a*) applies, and taking also for this purpose the percentage assessment as that applicable for the period immediately following the end of the period during which the said disabled person was suffering from pneumoconiosis accompanied by active tuberculosis.

(2) The amount payable to a dependant of any disabled person who, had he been alive, would have been entitled to a payment determined in accordance with paragraph (1), being the dependant entitled to a payment under the Order, shall be determined in accordance with regulation 4, save that the amount which would have been payable to the deceased in accordance with paragraph (1) shall be substituted for the amount which would have been payable to him in accordance with regulation 3 with the percentage disablement taken for the purpose of determining the sum to be deducted under regulation 4(1) from the aforesaid amount being the percentage disablement used for the purpose of determining the lump sum under paragraph (1)(*b*).

(3) In any case to which this regulation applies and where it appears to the Department that tuberculosis either remains active at the time a claim is made