1986 No. 340

SOCIAL SECURITY

The Social Security (Industrial Injuries and Diseases) (Miscellaneous Provisions) Regulations (Northern Ireland) 1986

Made	*19th November 1986*
Coming into operation . . .	*19th November 1986*

The Department of Health and Social Services for Northern Ireland, in exercise of the powers set out in the Schedule below and of all other powers enabling it in that behalf, hereby makes the following regulations:

PART I

GENERAL

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Social Security (Industrial Injuries and Diseases) (Miscellaneous Provisions) Regulations (Northern Ireland) 1986 and shall come into operation on 19th November 1986.

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

"the Act" means the Social Security (Northern Ireland) Act 1975(**a**);

"the Order" means the Social Security (Northern Ireland) Order 1986(**b**);

"the Claims and Payments Regulations" means the Social Security (Claims and Payments) Regulations (Northern Ireland) 1977(**c**);

"the General Benefit Regulations" means the Social Security (General Benefit) Regulations (Northern Ireland) 1984(**d**);

"the Persons Abroad Regulations" means the Social Security Benefit (Persons Abroad) Regulations (Northern Ireland) 1978(**e**);

"the Prescribed Diseases Regulations" means the Social Security (Industrial Injuries) (Prescribed Diseases) Regulations (Northern Ireland) 1986(**f**);

"recognised educational establishment" has the meaning assigned to it in Article 2(2) of the Child Benefit (Northern Ireland) Order 1975(**g**);

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

(3) Unless the context otherwise requires, any reference in these regulations to a numbered paragraph is a reference to the paragraph of that regulation bearing that number.

(4) The Interpretation Act 1978(**h**) shall apply to these regulations as it applies to an Act of the United Kingdom Parliament.

(**a**) 1975 c. 15
(**b**) S.I. 1986/1888 (N.I. 18)
(**c**) S.R. 1977 No. 351; the relevant amending regulations are S.R. 1986 No. 157
(**d**) S.R. 1984 No. 92; the relevant amending regulations are S.R. 1984 No. 174 and S.R. 1984 No. 317
(**e**) S.R. 1978 No. 114; the relevant amending regulations are S.R. 1983 No. 36
(**f**) S.R. 1986 No. 179
(**g**) S.I. 1975/1504 (N.I. 16); this definition was amended by Schedule 10 to the Social Security (Northern Ireland) Order 1986 with effect from 19th November 1986 by virtue of the Social Security (1986 Order) (Commencement No. 1) Order (Northern Ireland) 1986 (S.R. 1986 No. 339 (C. 6))
(**h**) 1978 c. 30

PART II

MISCELLANEOUS PROVISIONS RELATING TO INDUSTRIAL INJURIES AND DISEASES

Regular occupation for the purposes of reduced earnings allowance

2.—(1) Employed earner's employment in which a claimant was engaged when the relevant accident took place but which was not his regular occupation shall be treated for the purposes of section 59A of the Act (reduced earnings allowance)(**a**) as if it had been his regular occupation where the claimant, at the time the relevant accident took place, had no regular occupation but was pursuing a course of full-time education, either by attendance at a recognised educational establishment or, if the education is recognised by the Department in accordance with Article 4(1A) of the Child Benefit (Northern Ireland) Order 1975(**b**), elsewhere.

(2) In determining for the purpose of paragraph (1) whether a person was pursuing a course of full-time education, any temporary interruption of that education not exceeding a period of 6 months, or such longer period as the Department may in any particular case determine, shall be disregarded.

Aggregation of percentages of disablement

3.—(1) The Prescribed Diseases Regulations shall be amended in accordance with the following provisions of this regulation.

(2) After regulation 13 there shall be inserted the following regulations—

"*Aggregation of percentages of disablement*

13A.—(1) After the extent of an employed earner's disablement resulting from the relevant disease has been determined, the adjudication officer shall add to the percentage of that disablement the assessed percentage of any present disablement of his resulting from—

(*a*) any accident after 4th July 1948 arising out of and in the course of his employment, being employed earner's employment; or

(*b*) any other relevant disease due to the nature of that employment and developed after 4th July 1948,

and in respect of which a disablement gratuity was not paid to him under the Act after a final assessment of disablement.

(2) In determining the extent of an employed earner's disablement for the purposes of section 57 (disablement benefit) there shall be added to the percentage of disablement resulting from any relevant accident the assessed percentage of any present disablement of his resulting from any disease or injury prescribed for the purposes of Chapter V of Part II of the Act, which was both due to the nature of the employment and developed after 4th July 1948, and in respect of which a disablement gratuity was not paid to him under the Act after a final assessment of his disablement.

(3) This regulation is subject to the provisions of regulation 13B(3).

Rounding

13B.—(1) Subject to the provisions of this regulation, where the assessment of disablement is a percentage between 20 and 100 which is not a multiple of 10, it shall be treated—

(*a*) if it is a multiple of 5, as being the next higher percentage which is a multiple of 10; and

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(**a**) Section 59A was inserted by paragraph 5(1) of Schedule 3 to the Social Security (Northern Ireland) Order 1986

(**b**) Article 4(1A) was inserted by Article 71(1)(*b*) of the Social Security (Northern Ireland) Order 1986

(*b*) if it is not a multiple of 5, as being the nearest percentage which is a multiple of 10,

and where it is 14 per cent. or more, but less than 20 per cent., it shall be treated as 20 per cent.

(2) In a case to which regulation 13A (aggregation of percentages of disablement) applies, paragraph (1) shall have effect in relation to the aggregate percentage and not in relation to any percentage forming part of the aggregate.

(3) Where a re-assessment states the degree of disablement due to occupational deafness as less than 20 per cent. that percentage shall be disregarded for the purposes of regulation 13A and this regulation.''.

(3) For paragraph (1) of regulation 18 there shall be substituted the following paragraphs—

''(1) On a claim for disablement pension in respect of pneumoconiosis, byssinosis or diffuse mesothelioma, section 57(1) shall apply as if for ''14 per cent.'' there was substituted ''1 per cent.''.

(1A) Where on a claim for disablement pension in respect of pneumoconiosis, byssinosis or diffuse mesothelioma the extent of the disablement is assessed at 1 per cent. or more, but less than 20 per cent., disablement pension shall be payable at the 20 per cent. rate if the resulting degree of disablement is greater than 10 per cent. and if it is not at one-tenth of the 100 per cent. rate, with any fraction of a penny being for this purpose treated as a penny.

(1B) Where immediately before 19th November 1986 a person is entitled to a disablement pension on account of pneumoconiosis, byssinosis or diffuse mesothelioma and in determining the extent of his disablement other disabilities were taken into account in accordance with regulation 11 of the Benefit Regulations, disablement pension shall continue to be payable on or after 19th November 1986 at the weekly rate applicable to the degree of disablement determined on the last assessment made before 19th November 1986 until—

(*a*) on a re-assessment or review of the extent of disablement the degree of disablement is assessed either as less than 1 per cent. or as equal to or more than that determined on that last assessment, or

(*b*) the other disability ceases to exist.''.

PART III

CONSEQUENTIAL AMENDMENTS OF REGULATIONS

Amendment of the Persons Abroad Regulations

4. In regulation 9 of the Persons Abroad Regulations—

(*a*) in paragraph (2), for ''disablement benefit (other than any increase thereof under sections 58 to 63 or 66 of the Act)'' there shall be substituted ''disablement benefit (other than any increase thereof under sections 58, 59, 61, 62, 63 or 66 of the Act)'';

(*b*) in paragraph (4), for ''an increase of disablement pension in respect of special hardship under section 60 of the Act'' there shall be substituted ''reduced earnings allowance under section 59A of the Act'' and for the words ''such increase'' in sub-paragraph (*b*), and in both places where they appear in sub-paragraph (*c*), there shall be substituted ''such allowance''.

Amendment of the Claims and Payments Regulations

5. In Schedule 1 to the Claims and Payments Regulations—

(*a*) in paragraph 10, in column (1), the reference to section 60, and the words ''special hardship'', shall be omitted, and

(*b*) after paragraph 10, there shall be added, in column (1), "11. Reduced earnings allowance under section 59A." and in column (2), "The period of 3 months from the first day on which the conditions, other than the making of a claim, for receipt of the allowance are satisfied.".

Amendment of the Prescribed Diseases Regulations

6.—(1) The Prescribed Diseases Regulations shall be amended in accordance with the following provisions of this regulation.

(2) For regulation 15 there shall be substituted the following regulation—

"*Special provisions as to determination of regular occupation in relation to persons claiming reduced earnings allowance*

15. Where a person who has been assessed as at least 1 per cent. disabled 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 in respect of which he was so assessed, then for the purpose of determining his right to, or the rate of, reduced earnings allowance under section 59A, any occupation he has so abandoned may be treated as his regular occupation for the purposes of that section.".

(3) In the heading to regulation 21 for "Increase of benefit for special hardship" there shall be substituted "Reduced earnings allowance" and in regulation 21 for "section 60(1) (increase of disablement pension for special hardship)" there shall be substituted "section 59A (reduced earnings allowance)".

(4) In regulation 32(6), after "disablement benefit" there shall be inserted "or reduced earnings allowance".

Amendment of the General Benefit Regulations

7.—(1) The General Benefit Regulations shall be amended in accordance with the following provisions of this regulation.

(2) In regulation 2—

(*a*) in paragraph (2) after "disablement benefit" there shall be inserted ", reduced earnings allowance";

(*b*) in paragraph (6) after "increase thereof" there shall be inserted "or reduced earnings allowance".

(3) In regulation 12, after paragraph (1), there shall be inserted the following paragraph—

"(1A) Paragraph (1) applies in relation to cases where the claim for benefit was made before 19th November 1986.".

(4) In the heading to regulation 15 for "section 60" there shall be substituted "section 59A" and in regulation 15(1), for "section 60 (increase of disablement pension for special hardship)" there shall be substituted "section 59A (reduced earnings allowance)".

(5) Subject to paragraph (6), regulation 16 and Schedule 4 shall continue to apply to a beneficiary who immediately before 19th November 1986 was entitled to benefit under that regulation, as though section 60(7) of the Act had not been repealed(**a**) and as if references to an increase of disablement pension under section 60 of the Act were references to reduced earnings allowance payable under section 59A of the Act.

(6) Regulation 16 and Schedule 4 shall apply in accordance with paragraph (5) until—

(**a**) Section 60(7) is repealed by Schedule 10 to the Social Security (Northern Ireland) Order 1986 with effect from 19th November 1986 by virtue of S.R. 1986 No. 339 (C. 6))

(*a*) the period of the assessment has expired or the assessment is reviewed, or

(*b*) benefit under section 59A of the Act has ceased to be payable,

whichever is the earlier, so however that where an award of a disablement pension in lieu of a gratuity is revised on review and a further award made, regulation 16(2) shall not apply to that award.

PART IV

TRANSITIONAL PROVISIONS

Awards in respect of two or more accidents

8.—(1) Where a person—

(*a*) was awarded a disablement gratuity under section 57(5) of the Act following any provisional assessment of the extent of his disablement arising from a relevant accident, and

(*b*) no final assessment of the extent of disablement in respect of that accident has been made, and

(*c*) has suffered one or more other relevant accidents in respect of which he claimed a disablement pension on or after 19th November 1986, and

(*d*) the degree of disablement arising from any such other accident is assessed as at least 1 per cent. for a period which coincides wholly or partly with the period of any such provisional assessment (the common period), and

(*e*) the aggregate of the degrees of disablement resulting from the relevant accidents for the common period entitles him to a disablement pension,

that pension shall be payable to him until the expiration of the common period at the appropriate weekly rate for a degree of disablement calculated in accordance with the provisions of section 57(1B) of the Act (rounding of assessments)(**a**) but deducting from the resulting aggregate the degree of disablement in respect of which any disablement gratuity has been paid.

(2) Where payment of an award of disablement gratuity is suspended in accordance with regulation 39 of the General Benefit Regulations, paragraph (1) shall apply as if references to "provisional assessment" included a reference to a final assessment, and sub-paragraph (*b*) was omitted.

(3) Where the degree of disablement in respect of which a pension is payable under paragraph (1) is less than 20 per cent. the weekly rate of pension shall be calculated by treating each percentage point as equivalent to 1 per cent. of the amount payable for the degree of disablement of 100 per cent. as specified in paragraph 3 of Part V of Schedule 4 to the Act, and any resultant fraction of a penny shall be treated as a penny.

(4) Where the degree of disablement in respect of which a pension is payable under paragraph (1) is over 20 per cent. but is not a percentage specified in paragraph 3 of Part V of Schedule 4 to the Act, the amount of pension shall be calculated—

(*a*) by reference to the amount payable in respect of the next lowest percentage degree of disablement which is so specified, and

(*b*) by adding to that amount for each percentage point by which the appropriate rate exceeds that percentage degree of disablement 1 per cent. of the amount payable for the degree of disablement of 100 per cent.,

any resultant fraction of a penny being treated as a penny.

(5) In this regulation and regulation 12 below "accident" includes a disease prescribed under Part II of the Prescribed Diseases Regulations.

(**a**) Section 57(1B) was inserted by paragraph 3(2) of Schedule 3 to the Social Security (Northern Ireland) Order 1986