**1983 No. 260**

## SOCIAL SECURITY

### The Social Security (Industrial Injuries) (Prescribed Diseases) (Amendment No. 2) Regulations (Northern Ireland) 1983

*Made* . . . . . *2nd September 1983*

*Coming into operation* . . . *3rd October 1983*

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by sections 76, 77 and 113 of the Social Security (Northern Ireland) Act 1975(**a**) and of all other powers enabling it in that behalf, hereby makes the following regulations:

*Citation, commencement and interpretation*

**1.**—(1) These regulations may be cited as the Social Security (Industrial Injuries) (Prescribed Diseases) (Amendment No. 2) Regulations (Northern Ireland) 1983 and shall come into operation on 3rd October 1983.

(2) In these regulations "the principal regulations" means the Social Security (Industrial Injuries) (Prescribed Diseases) Regulations (Northern Ireland) 1983(**b**).

*Amendment of regulation 1 of the principal regulations*

**2.** Regulation 1(2) of the principal regulations (interpretation) shall be amended as follows—

(*a*) in the definition of "diffuse mesothelioma" for "numbered 44" there shall be substituted "numbered D3";

(*b*) the definition of "farmer's lung" shall be omitted;

(*c*) in the definition of "occupational asthma" for "numbered 53" there shall be substituted "numbered D7";

(*d*) in the definition of "occupational deafness" for "numbered 48" there shall be substituted "numbered A10";

(*e*) the definition of "pneumoconiosis" shall be omitted;

(*f*) in the definition of "tuberculosis" for "numbered 38" there shall be substituted "numbered B5".

*Amendment of regulation 2 of the principal regulations*

**3.**—(1) Regulation 2 of the principal regulations (prescription of diseases and injuries and occupations for which they are prescribed) shall be amended as follows—

(*a*) in paragraph (*a*) for "paragraph (*d*)" there shall be substituted "paragraphs (*b*) and (*d*)" and for "regulation 50(2) and (4)" there shall be substituted "regulation 50(2), (3) and (4)";

(*b*) paragraph (*c*) shall be omitted;

(*c*) for paragraph (*d*) there shall be substituted—

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(**a**) 1975 c. 15
(**b**) S.R. 1983 No. 19, amended by S.R. 1983 No. 37

"(*d*) 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 2 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.".

(2) For Part I of Schedule 1 to the principal regulations there shall be substituted the Part set out in Schedule 1 to these regulations.

*Amendment of regulation 4 of the principal regulations*

**4.** Regulation 4 of the principal regulations (presumption that a disease is due to the nature of employment) shall be amended as follows—

(*a*) in paragraph (1) for "numbered 38, 41, 42 and 48" there shall be substituted "numbered A10, B5, D1, D2, D4 and D5";

(*b*) in paragraph (2) for "paragraph 38" there shall be substituted "paragraph B5";

(*c*) in paragraph (4) for "regulation 2(*c*)" there shall be substituted "paragraph D2 of Part I of Schedule 1 to these regulations".

*Amendment of regulations 20 and 23 of the principal regulations*

**5.** In regulation 20 and regulation 23(2) of the principal regulations for "numbered 17, 36, 37(*b*), 40, 43, 44 and 53" there shall be substituted "numbered B6, C15, C17, C18, C22(*b*), D3 and D7".

*Amendment of regulation 24 of the principal regulations*

**6.** In regulation 24(2) of the principal regulations (power to dispense with reference for medical report) for "numbered 17, 36, 37(*b*), 40 and 43" there shall be substituted "numbered B6, C15, C17, C18 and C22(*b*)".

*Amendment of regulation 31 of the principal regulations*

**7.** In regulation 31 of the principal regulations (constitution and procedure of a medical board and medical appeal tribunal) for "numbered 17, 36, 37(*b*), 40, 43, 44 and 53" there shall be substituted "numbered B6, C15, C17, C18, C22(*b*), D3 and D7".

*Amendment of regulation 38 of the principal regulations*

**8.** Regulation 38 of the principal regulations (occupational deafness—time limit for claiming benefit) shall be amended as follows—

(*a*) in paragraph (1) after "occupational deafness" there shall be inserted "except in relation to a claim for sickness benefit payable by virtue of section 50A(**a**)";

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(a) Section 50A was inserted by Article 32(4) of the Social Security (Northern Ireland) Order 1982 (S.I. 1982/1084 (N.I. 16))

(*b*) for paragraph (2) there shall be substituted the following paragraph—

"(2) Subject to regulation 39(1)(*c*), disablement benefit, or sickness benefit payable by virtue of section 50A, 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 39(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 re-assessed the extent of his disablement at less than 20 per cent.".

*Amendment of regulation 39 of the principal regulations*

**9.** Regulation 39 of the principal regulations (occupational deafness—further claim) shall be amended as follows—

(*a*) in paragraph (1) for "paragraph 48" there shall be substituted "paragraph A10" and in sub-paragraph (*a*) for "the disallowed claim" there shall be substituted "a claim which was disallowed because the claimant was not suffering from occupational deafness";

(*b*) for sub-paragraphs (*b*) and (*c*) of paragraph (1) there shall be substituted—

"(*b*) it is a claim made after the expiration of 3 years from the date of a re-assessment by a medical board or medical appeal tribunal of the extent of the claimant's disablement at less than 20 per cent.; or

(*c*) where the claimant would otherwise be precluded by regulation 38(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 re-assessment 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 the second column of paragraph A10 of Part I of Schedule 1 to these regulations.";

(*c*) in paragraph (2) for the words from "was not" to the end there shall be substituted "is not suffering from occupational deafness".

*Revocation of regulation 40 of the principal regulations*

**10.** Regulation 40 of the principal regulations (occupational deafness—effect of presbyacusis on assessment) is hereby revoked.

*Substitution of regulation 41 of the principal regulations*

**11.** For regulation 41 of the principal regulations (occupational deafness—period to be covered by assessment of disablement) there shall be substituted the following regulation—

"**41.** 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 re-assessment 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.".

*Amendment of regulation 42 of the principal regulations*

**12.** Regulation 42 of the principal regulations (occupational deafness—review of assessment for unforeseen aggravation) shall be renumbered as paragraph (1) of that regulation and after that provision as so renumbered there shall be inserted the following paragraph—

"(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.".

*Re-assessent of disablement*

**13.** After regulation 44 there shall be inserted the following regulation—

"*Occupational deafness – cases in which re-assessment of disablement is final*

**44A.** 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 re-assessment the extent of disablement in respect of occupational deafness is assessed at less than 20 per cent. that assessment shall be final.".

*Substitution of regulation 45 of the principal regulations*

**14.**—(1) For regulation 45 of the principal regulations (occupational deafness—lower and upper limits of assessment) there shall be substituted the following regulation—

"*Occupational deafness – assessment of extent of disablement and rate of disablement benefit payable*

**45.**—(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 2A to these regulations to the percentages specified in the second column of Part I of that Schedule opposite the appropriate amount of hearing loss in the better ear and the worse ear respectively specified in the first column 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 2A to these regulations to the percentages specified in the second column of Part II of that Schedule opposite the appropriate amount of hearing loss in the better ear and the worse ear respectively specified in the first

column 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 2A to these regulations "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 re-assessment 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 re-assessed 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 re-assessed and the period taken into account on re-assessment 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 re-assessment is the first re-assessment 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 re-assessed 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 re-assessment, the current rate, or