1976 No. 334

SOCIAL SECURITY

The Social Security (Industrial Injuries) (Prescribed Diseases) (Amendment No. 2) Regulations (Northern Ireland) 1976

Made . . . . . 9*th November* 1976

Coming into operation . . . 31*st January* 1977

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by section 113(1) and (2)(*c*) 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, interpretation and commencement

1.—(1) These regulations, which may be cited as the Social Security (Industrial Injuries) (Prescribed Diseases) (Amendment No. 2) Regulations (Northern Ireland) 1976, shall be read as one with the National Insurance (Industrial Injuries) (Prescribed Diseases) Regulations (Northern Ireland) 1960(**b**) (hereinafter referred to as "the principal regulations"), as amended(**c**), and shall come into operation on 31st January 1977.

(2) The Interpretation Act (Northern Ireland) 1954(**d**) shall apply to these regulations as it applies to a Measure of the Northern Ireland Assembly.

Amendment of regulation 28 *of the principal regulations*

2. In regulation 28(2) of the principal regulations (reference to medical appeal tribunal at instance of the Department(**e**)) there shall be deleted "Subject as aforesaid".

Amendment of regulation 37A *of the principal regulations*

3. For regulation 37A of the principal regulations (finality of decision of a medical board on any diagnosis question in respect of pneumoconiosis, byssinosis or diffuse mesothelioma) there shall be substituted the following regulation:—

"**37A.**—(1) Where in respect of a claim for disablement benefit by reason of pneumoconiosis or byssinosis a medical board or, as the case may be, a medical appeal tribunal gives a decision under the foregoing provisions that the claimant is or, as the case may be, was suffering from one or other of those diseases—

(*a*) that board or, as the case may be, that tribunal may, on the evidence before it at the time of its decision, determine also the date from which the claimant has or, as the case may be, had suffered from that disease;

(**a**) 1975 c. 15
(**b**) S.R. & O. (N.I.) 1960 No. 209 (p. 731)
(**c**) The relevant amending regulations are S.R. 1974 No. 222 (I, p. 939)
(**d**) 1954 c. 33 (N.I.)
(**e**) Formerly Ministry: *see* 1973 c. 36 Sch. 5 para. 8(1)

(*b*) notwithstanding the provisions of section 117(1) of the Act (finality of decisions), in making that determination, the board or, as the case may be, the tribunal shall not be bound by any previous decision of an insurance officer or a medical board that the claimant was not suffering from that disease; and

(*c*) any such previous decision, in so far as inconsistent with the said determination, shall cease to have effect.

(2) In relation to any decision of a medical board on a diagnosis question in respect of pneumoconiosis or byssinosis raised by a claimant for disablement benefit by reason of either disease, regulation 28(1) (appeal to medical appeal tribunal) shall only apply subject to the following conditions, namely that:

(*a*) before the date of that decision on at least 3 separate occasions—

(i) the claimant has claimed the said benefit on account of pneumoconiosis or, as the case may be, byssinosis; and

(ii) such a board has given a decision (other than a decision given only on review under regulation 30) that no such disease was diagnosed; and accordingly

(iii) the claim was or, as the case may be, remained rejected; and

(*b*) by that date—

(i) not less than 2 years have elapsed since the date of the first of the decisions referred to in sub-paragraph (*a*)(ii) above; and

(ii) in a case where an appeal has previously been made by the claimant to a medical appeal tribunal in respect of a decision on a diagnosis question relating to pneumoconiosis or, as the case may be, byssinosis, not less than 2 years have elapsed since the rejection of the last such appeal.".

Transitional provisions

4.—(1) In the circumstances prescribed in the next succeeding paragraph, regulation 28(1) of the principal regulations (appeal to medical appeal tribunal) shall on and after the date on which these regulations come into operation apply to a decision of a medical board on a diagnosis question in respect of pneumoconiosis, byssinosis or diffuse mesothelioma, notwithstanding—

(*a*) in the case of such decision in respect of pneumoconiosis or byssinosis, that the conditions prescribed in regulation 37A(2) of the principal regulations, as substituted by these regulations, have not all been satisfied after these regulations come into operation;

(*b*) in the case of such decision in respect of diffuse mesothelioma, that the decision was given before the date on which these regulations come into operation.

(2) The circumstances referred to in the last preceding paragraph are that—

(*a*) in the case of such decision in respect of pneumoconiosis or byssinosis—

(i) the decision against which the appeal is brought was given on or after that date; and

(ii) before that decision was given, the conditions described in the said regulation 37A(2) were in fact satisfied either before, or in part before and in part after, these regulations come into operation;