STATUTORY INSTRUMENTS

1979 No. 925 (N.I. 9)

Pneumoconiosis, etc., (Workers' Compensation) (Northern Ireland) Order 1979 [F1]

- - - - - - *[26th July 1979]*

F1 functions transf. by SR 1999/481

Modifications etc. (not altering text)

C1 Order: functions transferred (28.5.2006) by virtue of The Departments (Transfer of Functions) Order (Northern Ireland) 2006 (S.R. 2006/192), regs. 1(2), **3**

Title and commencement

1. This Order may be cited as the Pneumoconiosis, etc., (Workers' Compensation) (Northern Ireland) Order 1979 … *Commencement* …

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

[[F2]"the appropriate percentage" means, in the case of any disease, the percentage specified in subsection (1) of section 57 of the Social Security (Northern Ireland) Act 1975 or, if regulations have been made under section 77 of that Act specifying a different percentage in relation to that disease, the percentage specified in the regulations;

"the appropriate period" means, in the case of any disease, the period specified in subsection (4) of the said section 57 or, if regulations have been made under the said section 77 specifying a different period in relation to that disease, the period specified in the regulations;**]**

[F3]…

"Department" means the Department of Manpower Services;

"disablement benefit" means disablement benefit under section 76 of the Social Security (Northern Ireland) Act 1975**[**[F4] or section 108 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992**]** or under any corresponding provision of the former Industrial Injuries Acts;

"former Industrial Injuries Acts" means the National Insurance (Industrial Injuries) Act (Northern Ireland) 1946 and the National Insurance (Industrial Injuries) Act (Northern Ireland) 1966 ;

"prescribed" means prescribed by regulations under this Order.

[F5"relevant employer" has the meaning given in the Schedule.**]**

(3) Except where the context otherwise requires, any expression to which a meaning is assigned by the Social Security**[**F4 Contributions and Benefits (Northern Ireland) Act 1992 or the Social Security Administration (Northern Ireland) Act 1992**]**, or by any regulations made under**[**F4 either of those Acts**]**, has that meaning also for the purposes of this Order.

F2 1986 NI 18
F3 Words in art. 2(2) repealed (31.10.2016) by The Welfare Reform (Northern Ireland) Order 2015 (S.I. 2015/2006), art. 2(2), **Sch. 12 Pt. 6**; S.R. 2016/234, art. 3(3)
F4 1992 c. 9
F5 Art. 2(2): definition of "relevant employer" added (19.7.2007 for certain purposes and 10.8.2007 otherwise) by Welfare Reform Act (Northern Ireland) 2007 (c. 2), **ss. 52(2)**, 60(1); S.R. 2007/335, **art. 2**

Payments to persons disabled by pneumoconiosis, etc.

3.—(1) A person who is disabled by any of the following diseases, that is to say,—

(a) pneumoconiosis,

(b) byssinosis, or

(c) diffuse mesothelioma,**[**F6 or**]**

[F6(d) any disease specified by the Department by order under this sub-paragraph;**]**

may make a claim in accordance with paragraph (2) for a payment under paragraph (3) in respect of the disease.

(2) A claim under paragraph (1) shall be made in the prescribed manner—

(a) within the period of twelve months beginning on—

(i) the date on which disablement benefit first became payable in respect of the disease to the person so disabled, or

[F6(ii) in the case of pneumoconiosis, byssinosis or diffuse mesothelioma, 3rd September 1979 or in the case of a disease specified by order under paragraph (1)(d), the date of the commencement of that order,**]**

whichever is the later; or

(b) within such further period as the Department may allow.

(3) If, on such a claim, the Department is satisfied—

(a) that disablement benefit is payable in respect of the disease to the person so disabled**[**F7 or, subject to paragraph (3A), would be payable to him in respect of it but for his disablement amounting to less than the appropriate percentage**]**;

(b) that **[**F8every relevant employer of the person so disabled**]** has ceased to carry on business;

[F9(ba) that no application has been made for a payment under the Diffuse Mesothelioma Payment Scheme in respect of the disease (for the scheme, see the Mesothelioma Act 2014);**]** and

(c) that the person so disabled has not brought any action, or compromised any claim, for damages in respect of the disablement,

the Department shall pay the person so disabled the prescribed sum.

[F7(3A) No amount is payable under this Article in respect of disablement amounting to less than 1 per cent.**]**

(4) For the purposes of this Article any action which has been dismissed otherwise than on the merits (as for example for want of prosecution or under any enactment relating to the limitation of actions) shall be disregarded.

F6 1985 NI 16
F7 1986 NI 18
F8 Words in art. 3(3)(b) substituted (19.7.2007 for certain purposes and 10.8.2007 otherwise) by Welfare Reform Act (Northern Ireland) 2007 (c. 2), **ss. 52(3)**, 60(1); S.R. 2007/335, **art. 2**
F9 Art. 3(3)(ba) inserted (31.3.2014) by Mesothelioma Act 2014 (c. 1), s. 19(1), **Sch. 2 para. 4**; S.I. 2014/459, art. 3(d)

Payments to dependants of persons disabled by pneumoconiosis, etc.

4.—(1) The dependant of a person who, immediately before he died, was disabled by any of the following diseases, that is to say,

(a) pneumoconiosis,

(b) byssinosis, or

(c) diffuse mesothelioma,**[**F10 or**]**

[F10(d) any disease specified by the Department by order under Article 3(1)(d),**]**

may make a claim in accordance with paragraph (2) for a payment under paragraph (3) in respect of the disease.

(2) A claim under paragraph (1) shall be made in the prescribed manner—

(a) within twelve months of—

(i) the date of the death of the deceased, or

[F10(ii) in the case of pneumoconiosis, byssinosis or diffuse mesothelioma, 3rd September 1979 or in the case of a disease specified by order under Article 3(1)(d), the date of the commencement of that order,**]**

whichever is the later; or

(b) within such further period as the Department may allow.

(3) If, on such a claim, the Department is satisfied—

(a) that no payment under Article 3 in respect of the disease has been made to the deceased;

(b) F11... that disablement benefit was payable to the deceased in respect of the disease immediately before he died**[**F12 or, subject to paragraph (3A), would have been so payable to him—

(i) but for his disablement amounting to less than the appropriate percentage; or

(ii) but for his not having claimed the benefit; or

(iii) but for his having died before he had suffered from the disease for the appropriate period**]**;

(c) that every person who employed the deceased at any time during the period during which he was developing the disease and against whom the deceased might have had a claim for damages in respect of the disablement, has ceased to carry on business;

[F13(ca) that no application has been made by the deceased, or any dependant, for a payment under the Diffuse Mesothelioma Payment Scheme in respect of the disease (for the scheme, see the Mesothelioma Act 2014);**]** and

(d) that neither the deceased, his personal representatives, nor any relative of his, has brought any action, or compromised any claim, for damages in respect of the disablement or death,

the Department shall pay the dependant the prescribed sum.

[F12(3A) No amount is payable under this Article in respect of disablement amounting to less than 1 per cent.**]**

(4) Where any payment under paragraph (3) falls to be made to two or more persons, the payment shall be made to one of them or divided between some or all of them as the Department thinks fit.

(5) For the purposes of this Article any action which has been dismissed otherwise than on the merits (as for example for want of prosecution or under any enactment relating to the limitation of actions) shall be disregarded.

F10 1985 NI 16
F11 Words in art. 4(3)(b) repealed (31.10.2016) by The Welfare Reform (Northern Ireland) Order 2015 (S.I. 2015/2006), art. 2(2), **Sch. 12 Pt. 6**; S.R. 2016/234, art. 3(3)
F12 1986 NI 18
F13 Art. 4(3)(ca) inserted (31.3.2014) by Mesothelioma Act 2014 (c. 1), s. 19(1), **Sch. 2 para. 5**; S.I. 2014/459, art. 3(d)

Meaning of "dependant"

5.—(1) In Article 4 "dependant" means—

(a) if the deceased left a spouse**[**F14 or a civil partner**]** who was residing with him or who was receiving or was entitled to receive from him periodical payments for the maintenance of that spouse**[**F14 or that civil partner**]**, that spouse**[**F14 or that civil partner**]**;

(b) if sub-paragraph (*a*) does not apply but the deceased left a child or children falling within paragraph (2), that child or those children;

[F15(c) if neither sub-paragraph (a) nor sub-paragraph (b) applies but the deceased left a person who was residing with him and with whom he was in a qualifying relationship, that person;**]**

(d) if none of the preceding sub-paragraphs applies, any relative or relatives of the deceased who fall within paragraph (2) and who were, in the opinion of the Department, wholly or mainly dependent on the deceased at the date of his death.

(2) A person falls within this paragraph if, at the date of the deceased's death or at**[**F16 the relevant commencement date**]**, whichever is the later, he was—

(a) under the age of 16;

(b) under the age of 21 and not gainfully employed full-time; or

(c) permanently incapable of self-support.

[F17(2A) For the purposes of paragraph (1)(c), two persons are in a qualifying relationship if they are living together as if spouses of each other.**]**

(3) In this Article—

"adopted" means adopted in pursuance of an adoption order made in any part of the United Kingdom, the Isle of Man or any of the Channel Islands or, subject to sections 5 and 6 of the

Adoption (Hague Convention) Act (Northern Ireland) 1969 , a foreign adoption as defined by section 4(3) of that Act;

"child" includes posthumous child;

"relative" means brother, sister, lineal ancestor or lineal descendant;

[F16"relevant commencement date" means in the case of pneumoconiosis, byssinosis or diffuse mesothelioma, 3rd September 1979 or in the case of a disease specified by order under Article 3(1)(d), the date of the commencement of that order;**]**

and for the purposes of this Article a relationship shall be established as if any adopted, illegitimate or step child of a person had been a child born to him in wedlock**[**F14 or in the course of a civil partnership**]**.

F14 SR 2005/479
F15 Art. 5(1)(c) substituted (29.6.2007) by Welfare Reform Act (Northern Ireland) 2007 (c. 2), **ss. 53(1)**, 60(1)(2)(a)
F16 1985 NI 16
F17 Art. 5(2A) substituted for art. 5(2A)(2B) (13.1.2020) by The Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019 (S.I. 2019/1514), regs. 1(2), **62** (with regs. 6-9)

Reconsideration of determinations

6.—(1) Subject to paragraph (2), the Department may reconsider a determination that a payment should not be made under Article 3 or Article 4 on the ground—

(a) that there has been a material change of circumstances since the determination was made; or

(b) that the determination was made in ignorance of, or was based on a mistake as to, some material fact;

and the Department may, on the ground set out in sub-paragraph (*b*), reconsider a determination that such a payment should be made.

(2) Regulations shall prescribe the manner in which and the period within which—

(a) an application may be made to the Department for reconsideration of a determination; and

(b) the Department may of its own motion institute such a reconsideration.

(3) If—

(a) whether fraudulently or otherwise, any person misrepresents or fails to disclose any material fact; and

(b) in consequence of the misrepresentation or failure a payment is made under Article 3 or Article 4,

the person to whom the payment was made shall be liable to repay the amount of that payment to the Department unless he can show that the misrepresentation or failure occurred without his connivance or consent.

(4) Except as provided by paragraph (3), no payment under Article 3 or Article 4 shall be recoverable by virtue of a reconsideration of a determination under paragraph (1).

Power of inquiry

7. The Department may, if it thinks fit, before determining any claim under Article 3 or Article 4 or before reconsidering such a determination under Article 6 appoint a person to hold an inquiry