1969. No. 8 [C]

NATIONAL INSURANCE (INDUSTRIAL INJURIES)

Benefit

REGULATIONS, DATED 17TH JANUARY 1969, MADE BY THE INDUSTRIAL INJURIES JOINT AUTHORITY AND THE MINISTRY OF HEALTH AND SOCIAL SERVICES UNDER THE NATIONAL INSURANCE (INDUSTRIAL INJURIES) ACTS (NORTHERN IRELAND) 1966.

The Industrial Injuries Joint Authority, in exercise of powers conferred by the provisions set out in column (1) of Schedule 1, and the Ministry of Health and Social Services, in exercise of powers conferred by the provisions set out in column (2) of that Schedule, and of all other powers enabling them in that behalf, hereby make the following regulations:

PART I

GENERAL

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the National Insurance (Industrial Injuries) (Benefit) Regulations (Northern Ireland) 1969 and shall come into operation on 18th January 1969.

(2) In these regulations—

"the Act" means the National Insurance (Industrial Injuries) Act (Northern Ireland) 1966(**a**);

"the National Insurance Act" means the National Insurance Act (Northern Ireland) 1966(**b**);

"the Workmen's Compensation Acts" means the Workmen's Compensation Acts (Northern Ireland) 1927 to 1943(**c**), or the enactments repealed by the Workmen's Compensation Act (Northern Ireland) 1927(**d**), or the enactments repealed by the Workmen's Compensation Act 1906(**e**);

"determining authority" means, as the case may require, an insurance officer appointed under section 67 of the National Insurance Act or a local tribunal constituted under section 76 of that Act or the Commissioner.

PART II

INJURY AND DISABLEMENT BENEFIT

Further definition of the principles of assessment of disablement and prescribed degrees of disablement

2.—(1) Schedule 4 (general principles relating to the assessment of the extent of disablement) to the Act shall have effect subject to the provisions of this regulation.

(a) 1966. c. 9 (N.I.). (b) 1966. c. 6 (N.I.).
(c) 17 & 18 Geo. 5. c. 16 (N.I.); 21 & 22 Geo. 5. c. 16 (N.I.); 4 & 5 Geo. 6. c. 18 (N.I.); 5 & 6 Geo. 6. c. 16 (N.I.); 1943. c. 6; 1943. c. 13.
(d) 17 & 18 Geo. 5. c. 16 (N.I.). (e) 6 Edw. 7. c. 58.

(2) Where a claimant suffers as the result of the relevant accident from some loss of physical or mental faculty any assessment of the extent of the resulting disablement, made by reference to the disabilities which are to be treated as having been incurred as a result of the relevant loss of faculty in accordance with the provisions of paragraph 1 of Schedule 4 to the Act shall, subject to the provisions of paragraph (3), not take account of any such disablement to the extent that the claimant either—

(*a*) would have been subject thereto as the result of a congenital defect or of an injury or disease received or contracted before the relevant accident whether or not that accident had occurred; or

(*b*) would not have been subject thereto but for some injury or disease received or contracted after, and not directly attributable to, that accident.

(3) In any case where the extent of disablement resulting from the relevant loss of faculty would, but for the provisions of this paragraph, be assessed at not less than 20 per cent., any disability to which the claimant is subject as a result both of the relevant injury and of some injury or disease received or contracted after the relevant accident shall be treated as having been incurred as a result of the relevant loss of faculty and the assessment shall take account of any such disablement to the extent to which the claimant would not have been subject thereto if the relevant accident had never occurred:

Provided that any such disablement attributable to an accident and a disease or to two or more accidents or diseases (as the case may be) against which the claimant is insured under the Act shall only be treated, by virtue of this paragraph, as having been incurred as a result of the loss of faculty resulting from one such accident or disease, being that one which occurred or developed last in point of time.

(4) Where the sole injury which a claimant suffers as a result of the relevant accident is one specified in column (1) of Schedule 2, whether or not such injury includes one or more other injuries so specified, the loss of faculty suffered by the claimant as a result of that injury shall be treated, for the purposes of section 12 (disablement benefit) of, and Schedule 4 to, the Act as resulting in the degree of disablement set against such injury in column (2) of the said Schedule 2 subject to such increase or reduction of that degree of disablement as may be reasonable in the circumstances of the case where, having regard to which disabilities are and which disabilities are not to be treated in accordance with the provisions of Schedule 4 to the Act as having been incurred as a result of the relevant loss of faculty, and having regard to paragraphs (1) to (3) of this regulation, that degree of disablement does not provide a reasonable assessment of the extent of disablement resulting from the relevant injury.

(5) For the purpose of assessing, in accordance with the provisions of Schedule 4 to the Act, the extent of disablement resulting from the relevant injury in any case which does not fall to be determined under paragraph (4) of this regulation, the medical appeal tribunal, the medical board or the single medical practitioner acting instead of a medical board (as the case may be) may have such regard as may be appropriate to the prescribed degrees of disablement set against the injuries specified in the said Schedule 2.

(6) (*a*) Where in any case an assessment of the extent of disablement has been made in accordance with the provisions of this regulation or with the corresponding provisions of regulations in force before 1st August 1968 and there has been an amendment to any relevant item in the said

Schedule 2 since the date of that assessment, the insurance officer shall either

(i) review that assessment and make such adjustment of it as may be necessary to give effect to the said amendment from the date of the coming into force of the said amendment, or

(ii) refer the question to a medical board for determination in accordance with the provisions of sub-paragraph (*b*);

(*b*) a medical board shall, on a reference by the insurance officer under sub-paragraph (*a*), review the assessment so as to give effect to the said amendment from the date of the coming into force of the said amendment, if they are satisfied that it is necessary to do so and in so doing shall proceed upon the facts included in the record of the decision of the medical board or medical appeal tribunal which made that assessment;

(*c*) a beneficiary who is dissatisfied with the decision of the insurance officer under sub-paragraph (*a*) may appeal against that decision to a medical board by giving notice in writing to the Ministry within 10 days after he has been notified of that decision or such longer period as the Ministry may in any case allow and the insurance officer shall then refer the question to a medical board which shall deal with it as if it were a reference under sub-paragraph (*a*):

Provided that no assessment made on review by virtue of the provisions of this paragraph shall be lower than the assessment which has been so reviewed.

Amount of disablement gratuities

3. Where the extent of a claimant's disablement is assessed at any of the degrees of disablement severally specified in column (1) of Schedule 3, the amount of any disablement gratuity payable shall—

(*a*) if the period taken into account by that assessment is limited by reference to the claimant's life or is not less than 7 years, be the amount specified in column (2) of that Schedule as appropriate to that degree of disablement;

(*b*) in any other case, be an amount which bears the same proportion to the amount so specified as the period taken into account by the assessment bears to a period of 7 years, a fraction of a shilling being, for this purpose, treated as a shilling.

Injury benefit payable to persons of school age

4.—(1) Subject to the provisions of paragraphs (2) and (3), a person under the upper limit of compulsory school age shall be entitled to injury benefit in accordance with the provisions of section 11 of the Act.

(2) The weekly rate of injury benefit in the case of any such person (hereafter in this regulation referred to as "the beneficiary") shall be—

(*a*) £4 where the relevant employment or (if more than one) the relevant employments was or amounted in the aggregate to, full-time employment or substantially full-time employment;

(*b*) £1 8s. in any other case;

and such injury benefit shall not be payable otherwise than to a parent or guardian of the beneficiary or a person appointed by the Ministry to receive the benefit on behalf of the beneficiary.

(3) In paragraph (2), the expression "relevant employment" means any employment in which the beneficiary was or would but for the relevant injury have been employed during the calendar week in which as the result of the relevant injury he first became incapable of work.

PART III

INCREASE OF INJURY AND DISABLEMENT BENEFIT

Circumstances in which for the purposes of section 14 of the Act a beneficiary may be treated as being incapable of following an occupation or employment notwithstanding that he has worked thereat

5.—(1) For the purposes of section 14 of the Act (increase of disablement pension in respect of special hardship), in determining whether a beneficiary has at all times since the end of the injury benefit period been incapable of following his regular occupation or employment of an equivalent standard which is suitable in his case, and in determining that question only, the fact that since the end of the injury benefit period such beneficiary had worked at that occupation or any such employment (as the case may be)—

(*a*) for the purpose of rehabilitation or training or of ascertaining whether he had recovered from the effects of the relevant injury; or

(*b*) before obtaining surgical treatment for the effects of the said injury;

shall be disregarded in respect of the periods specified in paragraph (2).

(2) The periods during which the beneficiary worked at his regular occupation or at employment of equivalent standard, which shall be disregarded in accordance with the provisions of paragraph (1), shall be—

(*a*) in any case to which paragraph (1)(*a*) applies—

(i) any period during which he worked thereat for any of the said purposes with the approval of the Ministry or on the advice of a medical practitioner; and

(ii) any other period or periods during which he worked thereat for any of the said purposes and which did not exceed 6 months in the aggregate; and

(*b*) in any case to which paragraph (1)(*b*) applies—

(i) any period during which he worked thereat and throughout which it is shown that having obtained the advice of a medical practitioner to submit himself to such surgical treatment he was waiting to undergo the said treatment in accordance therewith; and

(ii) any other period during which he worked thereat and throughout which it is shown that he was in process of obtaining such advice.

Payments in respect of special hardship where beneficiary is entitled to a gratuity

6.—(1) Where in any case a beneficiary is entitled to or has received a disablement gratuity, such beneficiary shall as respects that gratuity have the like rights to payments in respect of special hardship as he would have had by way of increase of disablement pension under section 14 of the Act if the disablement gratuity had been a disablement pension payable during the period taken into account by the assessment.

(2) A beneficiary who is entitled as respects a disablement gratuity to payments in respect of special hardship by virtue of paragraph (1) shall, if he makes an application in that behalf at any time before that gratuity or any part thereof has been paid to him, be entitled, subject to section 12(6) of the Act, to a disablement pension in lieu of such gratuity for any part of the period taken into account by the assessment during which he may be entitled to an increase of such pension in respect of special hardship under section 14 of the Act, and the weekly rate of such pension shall be determined in accordance with Schedule 4 to these regulations.

(3) Where a pension has been payable under paragraph (2) in lieu of a gratuity for any period and the beneficiary ceases to be entitled to an increase of such pension under the provisions of section 14 of the Act, the amount of that gratuity shall be treated as reduced by the amounts which have been paid to the beneficiary by way of such pension, other than any increase thereof under the said section 14 and, subject to the provisions of these regulations, the balance (if any) shall then be payable accordingly.

Increase of disablement pension for constant attendance

7. The amount by which the weekly rate of a disablement pension may be increased under section 15 of the Act where constant attendance is required by a beneficiary as a result of the relevant loss of faculty shall—

(*a*) where the beneficiary (not being a case to which paragraph (*b*) relates) is to a substantial extent dependent on such attendance for the necessities of life and is likely to remain so dependent for a prolonged period, be £3 (unless the attendance so required is part time only, in which case the amount shall be such lesser sum as may be reasonable in the circumstances) or, where the extent of such attendance required is greater by reason of the beneficiary's exceptionally severe disablement, a sum not exceeding £4 10s.;

(*b*) where the beneficiary is so exceptionally severely disabled as to be entirely or almost entirely dependent on such attendance for the necessities of life, and is likely to remain so dependent for a prolonged period and the attendance so required is whole time, be £6.

Weekly value of gratuity for purposes of reduction of increase of disablement benefit during hospital treatment

8. For the purpose of reducing the weekly rate of a disablement pension payable by virtue of section 16 of the Act to a person awarded a disablement gratuity wholly or partly in respect of the same period, the weekly value of the gratuity shall be the weekly rate of disablement pension which would be payable to that person in lieu thereof in accordance with regulation 6(2) if that regulation applied in his case.

Increase of benefit in respect of a wife, and computation of earnings

9.—(1) Subject to the provisions of paragraphs (2) and (3) a beneficiary shall not be entitled to an increase of benefit in respect of his wife under section 18 of the Act (increase of benefit in respect of adult dependants) for any period during which his wife is engaged in any gainful occupation or occupations from which her weekly earnings, calculated or estimated in accordance with the provisions of regulations 3, 4 and 5 of the National Insurance (Computation of Earnings) Regulations (Northern Ireland) 1967(f) as if the manner and basis of the calculation or estimate were for the purposes of the National Insurance Act and of any regulations made thereunder, exceed the amount of the increase specified in the said section 18.

(2) Regulation 4(2) of the said regulations (disregard of Christmas bonus) shall apply for the purposes of every calculation or estimate of earnings for the purposes of this regulation.

(3) In the case of a disablement pension payable to a beneficiary who is entitled to an unemployability supplement, the week by reference to which earnings by the wife shall be calculated shall be the calendar week ending last before any week for which the beneficiary is entitled to a disablement pension.

(f) S.R. & O. (N.I.) 1967, No. 130.