
STATUTORY INSTRUMENTS

1983 No. 136

**The Pneumoconiosis, Byssinosis and
Miscellaneous Diseases Benefit Scheme 1983**

PART II

ALLOWANCES AND DEATH BENEFIT

Benefit payable under this scheme

2.—(1) Subject to the following provisions of this scheme, benefit as hereinafter provided shall be payable out of the National Insurance Fund to or in respect of any person—

- (a) who is totally or partially disabled or dies, or who has died at any time after 31st December 1949, as a result of pneumoconiosis or byssinosis if the conditions in paragraph (2) are satisfied; or
- (b) who is a person who is totally or partially disabled (such disablement being likely to be permanent) as a result of any of the diseases set out in the first column of Schedule 1 or who dies or has died as a result of any of those diseases at any time after, in each case, the date set out in Schedule 4 against the number corresponding to the number given to that disease in the first column of Schedule 1, if he was a person who has been employed in Great Britain before 5th July 1948 in any of the occupations set against that disease in the second column of Schedule 1; or
- (c) who, being a person who satisfies the conditions for benefit for partial disablement under sub-paragraph (a) or (b), is totally incapable of work and likely to remain so incapable for a considerable period as a joint result either of 2 or more of the diseases referred to in those sub-paragraphs or of one such disease and one or more other relevant injuries or diseases.

(2) Benefit shall only be payable to or in respect of any person who is disabled or dies or who has died as a result of pneumoconiosis or byssinosis—

- (a) if he has been employed in Great Britain before 5th July 1948 in any of the occupations in the case of which the disease is prescribed in relation to persons employed in employed earner's employment by virtue of regulations made under section 76 of the Social Security Act which are in force at the date on which this scheme comes into operation or are made at any time thereafter during his lifetime;
- (b) if, except in a case where benefit under this scheme or any scheme revoked by this scheme, in respect of the disease has previously been awarded, the disease is not prescribed in relation to him under the Social Security Act;
- (c) if it is certified as provided in article 14—
 - (i) that he is totally disabled as a result of the disease; or
 - (ii) that, though not totally disabled, he is or was partially disabled, within the meaning of article 14, as a result of the disease; or
 - (iii) that he has died as a result of the disease.

(3) For the purposes of this scheme, the expression “partially disabled” means in relation to any person claiming benefit as a result of a disease other than pneumoconiosis or byssinosis that, though not totally disabled by any of the diseases set out in Schedule 1, that person is suffering from the disease to such a degree that his general physical capacity for employment is thereby impaired.

Restriction on payment of benefit

3.—(1) Subject to the provision of paragraph (2), benefit shall not be payable to or in respect of a person who is disabled or dies or has died as a result of pneumoconiosis or byssinosis or any of the diseases set out in Schedule 1 if throughout the employment mentioned in article 2 he was employed otherwise than as a workman within the meaning of the Workmen's Compensation Act 1925, or if in respect of any attack of the disease suffered by him—

- (a) he or any person is or has been entitled to benefit under Chapter IV or V of Part II of the Social Security Act;
- (b) he or any other person would be or would have been so entitled but for the operation of section 82, 85 or 91 of the Social Security Act (which sections relate respectively to disqualification and suspension, overlapping benefits and adjustment for successive accidents);
- (c) he or any person is or has been entitled to any payment corresponding to such benefit under any legislation of Northern Ireland;
- (d) he, or any person, being a member of his family within the meaning of the Workmen's Compensation Act 1925, has received or is entitled to compensation under the Workmen's Compensation Acts or by virtue of any scheme made or certified thereunder (other than compensation in respect of total or partial incapacity for work under the Refractories Industries (Silicosis) Scheme 1931 or the Sandstone Industry (Silicosis) Scheme 1931 (1) or by virtue of any scheme or law in force in any country or territory outside Great Britain providing for compensation in respect of the disease;
- (e) he would have received or would be entitled to such compensation under the Workmen's Compensation Acts or by virtue of any scheme made or certified as aforesaid but for the fact that he was or is entitled to receive compensation in respect of disablement from any other disease or in respect of an injury by accident; or
- (f) he, or his personal representative, or any of his relatives has recovered any sum by way of damages whether at common law or under the Fatal Accidents Act 1976, or the Law Reform (Miscellaneous Provisions) Act 1934.

(2) The provisions of paragraph (1)(d), (e) and (f) shall not operate to prevent benefit from being payable to or in respect of any person in any case in which the disablement or death in respect of which the claim is made is the result of a separate and fresh contraction of the disease.

Allowances payable under this scheme

4.—(1) Subject to the provisions of this scheme, the benefit payable—

- (a) in cases of disablement due to pneumoconiosis, byssinosis or any of the diseases set out in Schedule 1 shall be an allowance—
 - (i) for any period during which the disablement is total, at the corresponding disablement pension rate; or
 - (ii) for any period during which the disablement is partial, at the weekly rate specified in section 7(2)(b) of the Act;

(1) , amended by S.R. & O. 1939/635, 1946/595.

- (b) in cases of total incapacity for work for a considerable period as a joint result of 2 or more relevant injuries or diseases, at least one of which is a disease referred to in article 2(1)(a) or (b), shall be an allowance at the corresponding disablement pension rate;

and such allowances shall be payable in any such case at the appropriate rate from the date (not being a date earlier than the date on which this scheme comes into operation) as from which it is determined by the appropriate determining authority that the claimant was totally incapable of work or totally or partially so disabled, as the case may be, having regard, in the case of disablement due to pneumoconiosis or byssinosis, to the date certified by a medical board in accordance with the provisions of article 14(4).

(2) For the purposes of paragraph (1)—

- (a) for any period during which the claimant is totally disabled as a result of one of the said diseases or totally incapable of work as a joint result of 2 or more of the said diseases or of one or more such diseases and one or more injuries or diseases entitling the claimant to workmen's compensation, the weekly rate of benefit shall be reduced—
 - (i) by the amount of any allowance payable to him in excess of £1.00 for partial disablement due to any of the said diseases; and
 - (ii) by the amount of any workmen's compensation payable to him in respect of any relevant injury or disease; and
- (b) subject to the provisions of sub-paragraph (a), a person shall not, in respect of the same period, be entitled to receive 2 or more allowances under this scheme at an aggregate weekly rate exceeding the corresponding disablement pension rate.

(3) A claimant shall not be entitled to an allowance unless he is ordinarily resident in the United Kingdom at the date of the claim or was, immediately before 10th March 1952, in receipt of any such benefit or payment as is mentioned in article 10.

(4) An increase of allowance under the provisions of article 5, 6, 7 or 8 shall not be payable for any period during which the person entitled to the allowance is absent from the United Kingdom, unless that person is absent in circumstances which, by virtue of the provisions of regulation 9(4) of the Social Security Benefit (Persons Abroad) Regulations 1975(2) if that regulation referred to absence from the United Kingdom, would except such a person from disqualification for receiving the increase of disablement pension under the Social Security Act corresponding to the increase of allowance claimed.

Increase of allowance in respect of wife

5.—(1) Subject to the provisions of paragraph (3), for any period during which a person entitled to an allowance in respect of total disablement would be treated as residing with his wife or contributing to her maintenance at a weekly rate of not less than the amount specified in paragraph (2) the weekly rate of the allowance payable to that person shall, subject to the provisions of Schedule 2, be increased by the amount specified in paragraph (2).

(2) For the purposes of paragraph (1) and of paragraph 2 of Schedule 2, the specified amount shall be an amount equal to the increase of benefit in respect of an adult dependant specified in paragraph 11 of Part V of Schedule 4 to the Social Security Act.

(3) Where a person is also entitled to an increase of allowance under the provisions of article 7(1), and is residing with his wife, the provisions of paragraph 1(b) of Schedule 2 shall not have effect, but where the earnings of his wife for the calendar week ending last before any week for which he is entitled to any such increase of allowance exceeded the amount first stated in section 66(4) of the Social Security Act, the increase of allowance under this article shall be reduced in the manner provided by the said section 66(4), and for those purposes the earnings of his wife shall be calculated

(2) , to which there are amendments not relevant to this scheme.

in accordance with the provisions of regulations 2 to 5 of the Social Security Benefits (Computation of Earnings) Regulations 1978.

(4) Where in any case a person is entitled to an increase of allowance under the provisions of article 7(1), the foregoing provisions of this article shall apply but with the substitution of the words “paragraph 12” for the words “paragraph 11” in paragraph (2).

Increase of allowance in respect of children

6.—(1) Subject to the provisions of paragraph (2), for any period during which a person is entitled to child benefit in respect of a child or children within the meaning of sections 64 and 65 of the Social Security Act the weekly rate of the allowance payable to that person shall be increased by an amount equal to the increase (if any) which would be payable to him in respect of that child or those children under the said sections 64 and 65—

- (a) if, in the case of a person entitled to an allowance in respect of total disablement but not to an increase of allowance under the provisions of article 7(1), he were entitled to injury benefit;
- (b) if, in the case of a person entitled to an increase of allowance under the provisions of article 7(1), he were entitled to a disablement pension plus unemployability supplement.

(2) Where, for any period, the conditions for the receipt by a person of an increase of allowance under this article are satisfied, such increase of allowance shall be adjusted by reference to the weekly rate at which an allowance or an increase of benefit in respect of that child or those children is payable for that period under the Social Security Act so as to be payable (if at all) for that period at a weekly rate arrived at by deducting from the weekly rate at which the increase of allowance under this article would otherwise have been payable the said weekly rate of an allowance or increase of benefit payable under that Act.

Increase of allowance on account of unemployability

7.—(1) Where a person could for the purposes of section 58 of the Social Security Act (unemployability supplement) be treated as incapable of work and likely to remain permanently so incapable as the result of any disease in respect of which he is entitled to an allowance in respect of disablement, the weekly rate of the allowance payable to him shall, subject to the provisions of paragraph (3), be increased by an amount equal to the increase of disablement pension (if any) which would be payable to him under the said section 58 or, as the case may be, the said section 58 and section 59 of the said Act if he were entitled to disablement pension in respect of the disease.

(2) For the purposes of this article, the reference in section 59(2) of the Social Security Act (increase of unemployability supplement by reference to beneficiary's age on qualifying date) to “the qualifying date” shall, subject to the provisions of subsections (3), (4) and (5) of that section, mean the beginning of the first week for which a person qualified for an increase of allowance under this article.

(3) An increase of an allowance under this article shall be payable for such period as may be determined at the time it is granted, but may be renewed from time to time.

(4) An increase of an allowance under this article shall not be payable to any person for any period during which he is entitled to an increase of disablement pension by way of unemployability supplement under section 58 or 159 of the Social Security Act.

(5) Where a person is entitled to an allowance in respect of partial disablement and is also entitled to an increase of that allowance under this article, the provisions of article 5 shall apply to him for any period during which he is entitled to such increase as they apply to a person entitled to an allowance in respect of total disablement and an increase of that allowance under this article.

Increase of allowance when constant attendance needed and in respect of exceptionally severe disablement

8.—(1) Where a person is entitled to an allowance in respect of total disablement and requires constant attendance as a result of that disablement, the weekly rate of the allowance payable to him shall, subject to the provisions of paragraph (2), be increased by an amount equal to the increase of disablement pension (if any) which would be payable to him under section 61 of the Social Security Act (constant attendance allowance) or under section 63 of the said Act (exceptionally severe disablement allowance) if he were entitled in respect of the disease to a disablement pension calculated by reference to an assessment of 100 per cent.

(2) An increase of an allowance under this article shall not be payable to any person in respect of any period during which he is entitled to an increase of disablement pension in respect of the need for constant attendance or in respect of exceptionally severe disablement under section 61, 63 or 159 of the Social Security Act.

Death benefit

9.—(1) The benefit payable in cases of death due to pneumoconiosis, byssinosis or any of the said diseases set out in Schedule 1 shall be payable to or for the benefit of such of the dependants of the deceased as are specified in paragraph (2) and, subject to the following provisions of this scheme, shall be a capital sum of an amount calculated in accordance with the provisions of paragraphs (4) and (5).

(2) The dependants of a person entitled to claim death benefit under this scheme are such of the members of the deceased's family as were wholly or in part dependent on the deceased at the time of his death or are treated as being so dependent under the provisions of paragraph (3), and for the purposes of this paragraph the expression “member of a family” has the same meaning as it has for the purposes of the Workmen's Compensation Act 1925 .

(3) For the purposes of paragraph (2), a person shall be treated as having been wholly or in part dependent (as the case may be) upon the deceased at the time of his death if that person would have been so dependent but for the disablement due to the disease.

(4) The capital sum payable by way of death benefit in respect of a deceased person shall, subject to the condition that where, under the following provisions of this paragraph, such sum is payable to more than one person the total payment shall not exceed £300, be calculated and payment made in accordance with those provisions and with the order of priority herein set out:—

(a) where the deceased is survived by—

(i) his widow who was residing with him at his death, or

(ii) her widower who was wholly dependent upon her and who was residing with her at her death,

the sum of £300 shall be payable to that widow or, as the case may be, to that widower;

(b) where the deceased is survived by no such widow or widower as aforesaid but is survived by—

(i) either his widow who was at his death receiving or entitled to receive or would but for the relevant disease have been receiving from him periodic payments for her maintenance of not less than the amount prescribed by regulations for the purposes of section 67(1)(b) of the Social Security Act or, where the deceased was a woman, by her widower who was wholly dependent upon her; and

(ii) a child who was at his or her death residing with him or her and in respect of whom he or she was entitled to child benefit,

the sum of £300 shall be divided equally between the widow or, as the case may be, widower and that child or, if there is more than one child, between the widow or widower and those children;

- (c) where the deceased is survived by such a widow or widower as is mentioned in paragraph (4)(b)(i) but by no such child as described in paragraph (4)(b)(ii) the sum of £300 shall be payable to that widow or, as the case may be, to that widower;
 - (d) where the deceased is survived by no such widow or widower as is mentioned in the foregoing sub-paragraphs but is survived by a child who was at his death, residing with him and in respect of whom he was entitled to child benefit, the sum of £300 shall be payable to that child or, if more than one, divided equally between those children;
 - (e) where the deceased is survived by no such person as aforesaid but is survived by a member of his family who was wholly maintained by him at the date of his death, the sum of £300 shall be payable to that member or, if more than one, divided equally between those members;
 - (f) where the deceased is survived by no such person as aforesaid but is survived by any member of his family who was partly maintained by him at the date of his death, such sum or sums not exceeding in total £300 shall be payable to that member or, if more than one, those members, as may be reasonable and proportionate to the loss sustained by such member or members.
- (5) For the purposes of this article, a dependant shall be disregarded—
- (a) where the dependant has died (whether he had made a claim for death benefit or not) before an award of such benefit in respect of the deceased has been made; or
 - (b) where the dependent was not ordinarily resident in the United Kingdom at the date of the death of the deceased.

Reduction of allowance or death benefit where benefit payable or paid under pre-1949 benefit schemes

10.—(1) Where benefit is payable or has been paid to or in respect of any person under the Byssinosis (Benefit) Scheme 1941(3) or the Pneumoconiosis (Benefit) Scheme 1943—

- (a) the amount of an allowance payable to him for any period in respect of pneumoconiosis or byssinosis shall be reduced by the amount of any weekly payments of such benefit for the same period; and
- (b) the amount of death benefit shall be reduced by the amount of any benefit paid or payable in respect of his death under the said Pneumoconiosis (Benefit) Scheme .

(2) For the purposes of paragraph (1) of this article, any payments made by the National Coal Board to or in respect of a person in whose case benefit would have been payable under the Pneumoconiosis (Benefit) Scheme 1943, but for the fact that he was certified as totally disabled, or that he had died, more than 5 years after 1st July 1943, shall be treated as if they had been payments by way of benefit under the said scheme up to the amount of the benefit which would have been so payable.