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## STATUTORY INSTRUMENTS

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# 1986 No. 1561

## SOCIAL SECURITY

### The Social Security (Industrial Injuries and Diseases) Miscellaneous Provisions Regulations 1986

<i>Made</i>	- - - -	<i>8th September 1986</i>
<i>Laid before Parliament</i>		<i>10th September 1986</i>
<i>Coming into Operation</i>		<i>1st October 1986</i>

The Secretary of State for Social Services, in exercise of the powers set out in the Schedule below, and of all other powers enabling him in that behalf, by this instrument, which contains only provisions consequential upon section 39 of the Social Security Act 1986, makes the following regulations:—

#### PART I GENERAL

##### **Citation, commencement and interpretation**

1.—(1) These regulations may be cited as the Social Security (Industrial Injuries and Diseases) Miscellaneous Provisions Regulations 1986 and shall come into operation on 1st October 1986.

(2) In these regulations, “the 1975 Act” means the Social Security Act 1975 and “the 1986 Act” means the Social Security Act 1986.

#### PART II MISCELLANEOUS PROVISIONS RELATING TO INDUSTRIAL INJURIES AND DISEASES

##### **Regular Occupation for the purposes of Reduced Earnings Allowance**

2.—(1) Employed earner's employment in which a claimant was engaged when the relevant accident took place but which was not his regular occupation shall be treated for the purposes of

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section 59A of the 1975 Act (reduced earnings allowance)(1) as if it had been his regular occupation where the claimant, at the time the relevant accident took place, had no regular occupation but was pursuing a course of full-time education, either by attendance at a recognised educational establishment or, if the education is recognised by the Secretary of State in accordance with section 2(1A) of the Child Benefit Act 1975(2), elsewhere.

(2) In determining for the purpose of paragraph (1) whether a person was pursuing a course of full-time education, any temporary interruption of that education not exceeding a period of 6 months, or such longer period as the Secretary of State may in any particular case determine, shall be disregarded.

### Aggregation of Percentages of Disablement

3.—(1) The Social Security (Industrial Injuries) (Prescribed Diseases) Regulations 1985 shall be amended in accordance with the following provisions of this regulation.

(2) After regulation 15 there shall be inserted the following regulations:—

#### “Aggregation of Percentages of Disablement

**15A.**—(1) After the extent of an employed earner's disablement resulting from the relevant disease has been determined, the Adjudication Officer shall add to the percentage of that disablement the assessed percentage of any present disablement of his resulting from

- (a) any accident after 4th July 1948 arising out of and in the course of his employment, being employed earner's employment, or
- (b) any other relevant disease due to the nature of that employment and developed after 4th July 1948,

and in respect of which a disablement gratuity was not paid to him under the Act after a final assessment of disablement.

(2) In determining the extent of an employed earner's disablement for the purposes of section 57 of the Act there shall be added to the percentage of disablement resulting from any relevant accident the assessed percentage of any present disablement of his resulting from any disease or injury prescribed for the purposes of Chapter V of Part II of the Act, which was both due to the nature of the employment and developed after 4th July 1948, and in respect of which a disablement gratuity was not paid to him under the Act after a final assessment of his disablement.

(3) This regulation is subject to the provisions of regulation 15B(3).

#### Rounding

**15B.**—(1) Subject to the provisions of this regulation, where the assessment of disablement is a percentage between 20 and 100 which is not a multiple of 10, it shall be treated—

- (a) if it is a multiple of 5, as being the next higher percentage which is a multiple of 10; and
- (b) if it is not a multiple of 5 as being the nearest percentage which is a multiple of 10, and where it is 14 per cent. or more but less than 20 per cent. it shall be treated as 20 per cent.

(2) In a case to which regulation 15A (aggregation of percentages of disablement) applies, paragraph (1) shall have effect in relation to the aggregate percentage and not in relation to any percentage forming part of the aggregate.

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(1) See paragraph 5 of Schedule 3 to the Social Security Act 1986 (c.50).

(2) Section 2(1A) was inserted by section 70(1)(b) of the Social Security Act 1986.

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(3) Where a reassessment states the degree of disablement due to occupational deafness as less than 20 per cent. that percentage shall be disregarded for the purposes of regulation 15A and this regulation.”

(3) For paragraph (1) of regulation 20 there shall be substituted the following paragraphs:—

“(1) On a claim for disablement pension in respect of pneumoconiosis, byssinosis or diffuse mesothelioma, section 57(1) shall apply as if for “14 per cent.” there was substituted “1 per cent.”.

(1A) Where on a claim for disablement pension in respect of pneumoconiosis, byssinosis or diffuse mesothelioma the extent of the disablement is assessed at one per cent. or more, but less than 20 per cent., disablement pension shall be payable at the 20 per cent. rate if the resulting degree of disablement is greater than 10 per cent. and if it is not at one-tenth of the 100 per cent. rate, with any fraction of a penny being for this purpose treated as a penny.

(1B) Where immediately before 1st October 1986 a person is entitled to a disablement pension on account of pneumoconiosis, byssinosis or diffuse mesothelioma and in determining the extent of his disablement other disabilities were taken into account in accordance with regulation 11 of the Social Security (General Benefit) Regulations 1982, disablement pension shall continue to be payable on or after 1st October 1986 at the weekly rate applicable to the degree of disablement determined on the last assessment made before 1st October 1986 until—

- (a) on a reassessment or review of the extent of disablement the degree of disablement is assessed either as less than 1 per cent. or as equal to or more than that determined on that last assessment, or
- (b) the other disability ceases to exist.”.

### PART III

#### CONSEQUENTIAL AMENDMENTS OF REGULATIONS

##### **Amendment of the Social Security Benefit (Persons Abroad) Regulations 1975**

**4.** In regulation 9 of the Social Security Benefit (Persons Abroad) Regulations 1975(3)—

- (a) in paragraph (3), for the words “disablement benefit (other than any increase under sections 58 to 63 or 66 of the Act)” there shall be substituted the words “disablement benefit (other than any increase thereof under sections 58, 59, 61, 62, 63 or 66 of the Act)”;
- (b) in paragraph (5), for the words “an increase of disablement pension in respect of special hardship under section 60 of the Act”, there shall be substituted the words “reduced earnings allowance under section 59A of the Act,” and for the words, in respectively sub-paragraphs (b) and (c), “such increase” there shall be substituted the words “such allowance”.

##### **Amendment of the Social Security (Claims and Payments) Regulations 1979**

**5.** In Schedule 1 to the Social Security (Claims and Payments) Regulations 1979(4)—

- (a) in paragraph 10, in column (1), the reference to section 60, and the words “special hardship”, shall be omitted, and

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(3) The relevant amending instruments are S.I. 1977/1679 and 1983/186.

(4) The relevant amending instrument is S.I. 1986/903.

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- (b) after paragraph 10, there shall be inserted, in column 1, the words “10A. Reduced Earnings Allowance under section 59A” and in column 2, the words “The period of 3 months from the first day on which the conditions, other than the making of a claim, for receipt of the allowance are satisfied.”.

### **Amendment of the Social Security (Industrial Injuries) (Prescribed Diseases) Regulations 1985**

6.—(1) The Social Security (Industrial Injuries) (Prescribed Diseases) Regulations 1985 shall be amended in accordance with the following provisions of this regulation.

- (2) For regulation 17 there shall be substituted the following regulation:—

#### **“Special provisions as to determination of regular occupation in relation to persons claiming reduced earnings allowance**

17. Where a person who has been assessed as at least one per cent. disabled in respect of a prescribed disease establishes that he has abandoned any occupation as a result of the relevant disease at any time after having been employed in employed earner's employment in any occupation prescribed for that disease but before the first day in respect of which he was so assessed, then for the purpose of determining his right to, or the rate of, reduced earnings allowance under Section 59A, any occupation he has so abandoned may be treated as his regular occupation for the purposes of that section.”.

- (3) In regulation 23, for the words preceding “and for that purpose only” there shall be substituted the words—

#### **“Reduced earnings allowance—special provision for pneumoconiosis cases**

23. Where a beneficiary in receipt of a disablement pension in respect of pneumoconiosis receives advice from a special medical board that in consequence of the disease he should not follow his regular occupation unless he complies with certain special restrictions as to the place, duration or circumstances of his work, or otherwise, then for the purpose of determining whether he fulfils the conditions laid down in section 59A (reduced earnings allowance)”.

- (4) In regulation 34(6), after the words “disablement benefit” there shall be inserted the words “or reduced earnings allowance”.

### **Amendment of the Social Security (General Benefit) Regulations 1982**

7.—(1) The Social Security (General Benefit) Regulations 1982 shall be amended in accordance with the following provisions of this regulation.

- (2) In regulation 2—

- (a) in paragraph (2) after the words “disablement benefit” there shall be inserted the words “, reduced earnings allowance”;
- (b) in paragraph (6) after the words “increase thereof” there shall be inserted the words “or reduced earnings allowance”.

- (3) In regulation 14, after paragraph (1), there shall be inserted the following paragraph:—

“(1A) Paragraph (1) applies in relation to cases where the claim for benefit was made before 1st October 1986”.

- (4) In regulation 17(1), for the words “section 60 (increase of disablement pension for special hardship)” there shall be substituted the words “section 59A (reduced earnings allowance)”.

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(5) Subject to paragraph (6), regulation 18 and Schedule 4 shall continue to apply to a beneficiary who immediately before 1st October 1986 was entitled to benefit under that regulation, as though section 60(7) of the 1975 Act had not been repealed and as if references to an increase of disablement pension under section 60 of that Act were references to reduced earnings allowance payable under [F1section 59A of that Act, or in a case to which section 59B of the 1975 Act applies (ending of entitlement to reduced earnings allowance) to retirement allowance payable under that section; and for the purposes of this provision the reference to retirement allowance includes a reference to a retirement allowance which would have been payable but for any failure to satisfy the requirement in subsection (2) of section 59B as to the weekly rate or aggregate weekly rate of reduced earnings allowance payable.]

(6) Regulation 18 and Schedule 4 shall apply in accordance with paragraph (5) until—

- (a) the period of the assessment has expired or the assessment is reviewed, or
- (b) benefit under section 59A [F2or, as the case may be, section 59B] of the 1975 Act has ceased to be payable,

whichever is the earlier, so however that where an award of a disablement pension in lieu of a gratuity is revised on review and a further award made, regulation 18(2) shall not apply to that award.

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| <p><b>F1</b> Words in reg. 7(5) substituted (1.11.1989) by <a href="#">The Social Security (Industrial Injuries and Diseases) Miscellaneous Provisions (Amendment) Regulations 1989 (S.I. 1989/1824)</a>, regs. 1(1), <b>2(1)(a)</b></p> <p><b>F2</b> Words in reg. 7(6)(b) inserted (1.11.1989) by <a href="#">The Social Security (Industrial Injuries and Diseases) Miscellaneous Provisions (Amendment) Regulations 1989 (S.I. 1989/1824)</a>, regs. 1(1), <b>2(1)(b)</b></p> |
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## PART IV

### TRANSITIONAL PROVISIONS

#### Awards in respect of two or more accidents

8.—(1) Where a person—

- (a) was awarded a disablement gratuity under section 57(5) of the 1975 Act following any provisional assessment of the extent of his disablement arising from a relevant accident, and
- (b) no final assessment of the extent of disablement in respect of that accident has been made, and
- (c) has suffered one or more other relevant accidents in respect of which he claimed a disablement pension on or after 1st October 1986, and
- (d) the degree of disablement arising from any such other accident is assessed as at least one per cent. for a period which coincides wholly or partly with the period of any such provisional assessment (the common period), and
- (e) the aggregate of the degrees of disablement resulting from the relevant accidents for the common period entitles him to a disablement pension, that pension shall be payable to him until the expiration of the common period at the appropriate weekly rate for a degree of disablement calculated in accordance with the provisions of section 57(1B) of the 1975 Act (rounding of assessments)(5) but deducting from the resulting aggregate the degree of disablement in respect of which any disablement gratuity has been paid.

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(5) See paragraph 3 of Schedule 3 to the Social Security Act 1986.

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(2) Where payment of an award of disablement gratuity is suspended in accordance with regulation 41 of the Social Security (General Benefit) Regulations 1982<sup>(6)</sup>, paragraph (1) above shall apply as if references to “provisional assessment” included a reference to a final assessment, and sub-paragraph (b) was omitted.

(3) Where the degree of disablement in respect of which a pension is payable under paragraph (1) is less than 20 per cent. the weekly rate of pension shall be calculated by treating each percentage point as equivalent to 1 per cent. of the amount payable for the degree of disablement of 100 per cent. as specified in paragraph 3 of Part V of Schedule 4 to the 1975 Act, and any resultant fraction of a penny shall be treated as a penny.

(4) Where the degree of disablement in respect of which a pension is payable under paragraph (1) is over 20 per cent. but is not a percent age specified in column 2 of paragraph 3 of Part V of Schedule 4 to the 1975 Act, the amount of pension shall be calculated—

- (a) by reference to the amount payable in respect of the next lowest percentage degree of disablement which is so specified, and
- (b) by adding to that amount for each percentage point by which the appropriate rate exceeds that percentage degree of disablement 1 per cent. of the amount payable for the degree of disablement of 100 per cent.,

any resultant fraction of a penny being treated as a penny.

(5) In this regulation and regulation 12 “accident” includes a disease prescribed under Part II of the Social Security (Industrial Injuries) (Prescribed Diseases) Regulations 1985.

### **Reduced Earnings Allowance payable before 6th April 1987**

9. The aggregate of disablement pension and reduced earnings allowance awarded to a beneficiary shall not, for any part of the period which falls before 6th April 1987, exceed the maximum rate of disablement pension.

### **Persons entitled immediately before 1st October 1986 to an increase under section 60 of the 1975 Act**

10. A beneficiary who on 30th September 1986 was entitled for any period to an increase of disablement pension under section 60 of the 1975 Act (increase for special hardship) shall be treated as entitled for any part of that period which falls after that day and in respect of which he would have satisfied the conditions of entitlement specified in that section but for paragraph 5(2) of Schedule 3 to the 1986 Act, to reduced earnings allowance either—

- (a) at the weekly rate at which the increase was payable to him in respect of the week ending 30th September 1986, or
- (b) where on a review a decision is revised after 30th September 1986, at the weekly rate of increase or, as the case may be, allowance, which is appropriate to the date of the review, increased as appropriate in accordance with any order made under section 124 of the 1975 Act (power to increase rates of benefit).

### **Unemployability Supplement and Reduced Earnings Allowance**

11. A reduced earnings allowance under section 59A of the 1975 Act and an unemployability supplement shall not be payable for the same period.

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(6) The relevant amending instrument is S.I. 1983/186.

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## Unforeseen Aggravation

**12.**—(1) Where a claim for disablement benefit has been made before 1st October 1986 and an application is made on or after that date for the assessment of the extent of disablement to be reviewed on the ground that since the making of the assessment there has been an unforeseen aggravation of the results of the relevant accident, the application for review shall be determined in accordance with the following paragraphs.

(2) Where—

(a) the assessment

(i) was final and the period of any new assessment begins on a day earlier than 1st October 1986, or

(ii) was provisional, or

(b) (i) the assessment was final, and

(ii) the period taken into account by the review begins on or after 1st October 1986, and

(iii) the beneficiary at the date of the review is entitled to a disablement pension in lieu of a gratuity under regulation 18 of the Social Security (General Benefit) Regulations 1982,

then the application for review shall be determined as though paragraph 3(1) of Schedule 3 to the 1986 Act had not been enacted and paragraph 3(2) had been enacted to the extent only of inserting subsection (1B) of section 57 of the 1975 Act but omitting the words “Subject to paragraph (1C)” and the words “from where it is” to the end of the subsection and section 57(5) of the 1975 Act had not been repealed.

(3) In a case to which paragraph (2)(b) refers, where on a subsequent assessment the extent of the beneficiary's disablement is assessed at 1 per cent. or more but less than 14 per cent., that assessment shall be determined as though section 57(5) of the 1975 Act had not been repealed, but no entitlement to a further pension in lieu of a gratuity shall arise.

## Delayed claims

<sup>F3</sup>**13.** .....

**F3** [Reg. 13](#) ceases to have effect (1.11.1989) by virtue of [The Social Security \(Industrial Injuries and Diseases\) Miscellaneous Provisions \(Amendment\) Regulations 1989](#) (S.I. 1989/1824), regs. 1(1), **2(2)**

## Claims for disablement benefit made before 1st October 1986

**14.** Where a claim for disablement benefit is made before 1st October 1986, that claim shall be determined as though—

(a) paragraph 3(1) of Schedule 3 to the 1986 Act had not been enacted,

(b) paragraph 3(2) had been enacted to the extent only of inserting subsection (1B) of section 57 of the 1975 Act but omitting the words “Subject to paragraph (1C)” and the words from “and where it is” to the end of the subsection.

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Signed by the authority of the Secretary of State for Social Services.

*John Major*  
Parliamentary Under-Secretary of State  
Department of Health and Social Security



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## SCHEDULE

### PROVISIONS CONFERRING POWERS EXERCISED IN MAKING THESE REGULATIONS

<i>Column (1)</i> <i>Provisions</i>	<i>Column (2)</i> <i>Relevant Amendment</i>
The Social Security Act 1975	59A(2) and (5) The Social Security Act 1986 (c.50) section 39, Schedule 3, paragraph 5(1).
	76 None.
	77 The Social Security and Housing Benefits Act 1982 (c.24), section 48(6), Schedule 5. The Social Security Act 1986, section 39; Schedule 3, paragraph 13.
	78 None.
	81(6) None.
	82(5) None.
	91(1)(b)(i) The Social Security and Housing Benefits Act 1982 (c.24), section 48(6), Schedule 5.
	165A(1) The Social Security Act 1985 (c.53) section 17.
	166(2)—(3A) The Social Security Act 1986, section 62(1).
The Social Security Act 1986	83(1) None.
	89(1) None.

### EXPLANATORY NOTE

These regulations contain provisions consequential upon the changes made to chapters IV and V of Part II of the Social Security Act 1975 (industrial injuries and diseases) by section 39 of and Schedule 3 to the Social Security Act 1986 (“the 1986 Act”). As they are also made earlier than 6 months from the commencement of section 39 (1st October 1986), they are exempted by section 61(5)(b) of the 1986 Act from the requirement under section 141 of the Social Security Act 1975 to refer proposals to the Industrial Injuries Advisory Council and are made without reference to that Council.

Part I of the Regulations relates to their citation, commencement and interpretation.

Part II of the Regulations contains miscellaneous provisions relating to industrial injuries and diseases.

Regulation 2 provides that for the purposes of reduced earnings allowance, employed earner's employment in which a claimant was engaged when an industrial accident took place may be treated as if it had been his regular occupation where he had no regular occupation but was pursuing a course of full-time education.

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Regulation 3 amends the Social Security (Industrial Injuries) (Prescribed Diseases) Regulations 1985 (“the Prescribed Diseases Regulations”) and provides for the aggregation of degrees of disablement assessed in respect of an industrial accident with those assessed in respect of an industrial disease. It further amends regulation 20 of the Prescribed Diseases Regulations to enable disablement pension to be awarded in respect of pneumoconiosis, byssinosis or diffuse mesothelioma where the degree of disablement is assessed as at least 1 per cent.

Part III of the Regulations contains minor consequential amendments to other sets of social security regulations. In addition, regulation 7 which amends the Social Security (General Benefit) Regulations 1982 provides that a person entitled to a disablement gratuity before 1st October 1986 shall be entitled to reduced earnings allowance until a final assessment expires or reduced earnings allowance is no longer payable.

Part IV contains transitional provisions. Regulation 8 provides, where a person was awarded a disablement gratuity before 1st October 1986, for the aggregation of degrees of disablement where a person has suffered 2 or more accidents and for calculating the disablement pension where the assessments of disablement share a common period.

Regulations 9 and 10 specify the maximum rate of reduced earnings allowance to apply until 6th April 1987, and the circumstances in which those formerly entitled to an increase of disablement pension under section 60 of the Social Security Act 1975 shall be treated as entitled to a reduced earnings allowance. Regulation 11 prevents payment for the same period of both unemployment supplement and reduced earnings allowance.

Regulation 12 specifies the circumstances in which claims for disablement benefit made before 1st October 1986 may be reviewed after that date on the ground that there has been an unforeseen aggravation of the results of the injury and the extent to which the provisions of the 1986 Act are to be taken account of in determining the review.

Regulation 13 deals with claims made after 30th September 1986 in respect of industrial accidents which occurred before 1st October 1986.

Regulation 14 enables awards of disablement benefit to be made where the disablement is assessed below 14 per cent. but the claim to benefit was made before 1st October 1986.

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**Changes and effects yet to be applied to :**

- reg. 13 revoked by