

## 1993 No. 350

## SOCIAL SECURITY

**The Social Security (Industrial Injuries) (Prescribed Diseases) (Amendment No. 2) Regulations (Northern Ireland) 1993**

*Made* . . . . . 6th August 1993

*Coming into operation* . . . . . 13th September 1993

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by sections 108(2) and (4), 109(2) and (3) and 110(1) and (2) of, and paragraph 2 of Schedule 6 to, the Social Security Contributions and Benefits (Northern Ireland) Act 1992(a) and sections 5(1)(a) and (b), 56(1) and 60(1) of the Social Security Administration (Northern Ireland) Act 1992(b) and of all other powers enabling it in that behalf, hereby makes the following regulations:

*Citation, commencement and interpretation*

1.—(1) These regulations may be cited as the Social Security (Industrial Injuries) (Prescribed Diseases) (Amendment No. 2) Regulations (Northern Ireland) 1993 and shall come into operation on 13th September 1993.

(2) Regulations 1 to 7 and 10 shall be read as one with the Social Security (Industrial Injuries) (Prescribed Diseases) Regulations (Northern Ireland) 1986(c), hereinafter referred to as “the principal regulations”.

*Amendment of regulation 2 of the principal regulations*

2. In regulation 2 of the principal regulations (prescription of diseases and injuries and occupations for which they are prescribed) after paragraph (c) there shall be added the following paragraph—

“(d) the disease specified in paragraph D12 of Part I of Schedule 1 to these regulations is not prescribed in relation to persons to whom regulation 20 applies.”.

*Amendment of regulation 4 of the principal regulations*

3. In regulation 4 of the principal regulations (presumption that a disease is due to the nature of employment)—

(a) in paragraph (1) for “and D5” there shall be substituted “, D5 and D12”; and

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(a) 1992 c. 7

(b) 1992 c. 8

(c) S.R. 1986 No. 179; relevant amending regulations are S.R. 1987 No. 116, S.R. 1989 No. 319 and S.R. 1993 Nos. 148 and 168

- (b) after paragraph (5) there shall be added the following paragraph—
- “(6) Where a person in relation to whom chronic bronchitis or emphysema is prescribed in paragraph D12 of Part I of Schedule 1 to these regulations develops chronic bronchitis or emphysema, the disease shall, unless the contrary is proved, be presumed to be due to the nature of his employed earner’s employment.”

*Amendment of regulation 6 of the principal regulations*

4. In regulation 6(2) of the principal regulations (date of onset) for “or bilateral diffuse pleural thickening” in both places where it occurs there shall be substituted “, bilateral diffuse pleural thickening or chronic bronchitis or emphysema”.

*Amendment of regulation 7 of the principal regulations*

5. In regulation 7(1) of the principal regulations (recrudescence) for “or bilateral diffuse pleural thickening” there shall be substituted “, bilateral diffuse pleural thickening or chronic bronchitis or emphysema”.

*Amendment of regulation 20 of the principal regulations*

6. In regulation 20 of the principal regulations (pneumoconiosis — effects of emphysema and chronic bronchitis)—

- (a) in paragraph (1) at the beginning there shall be inserted “Except in the circumstances specified in paragraph (1A),”; and
- (b) after paragraph (1) there shall be inserted the following paragraph—

“(1A) The circumstances referred to in paragraph (1) are that the person is entitled to industrial injuries disablement benefit on account of the disease specified in paragraph D12 of Part I of Schedule 1 to these regulations.”

*Amendment of Schedule 1 to the principal regulations*

7. In Part I of Schedule 1 to the principal regulations (list of prescribed diseases and the occupations for which they are prescribed) after the entry relating to the disease numbered D11 (primary carcinoma of the lung where there is accompanying evidence of silicosis) there shall be inserted—

- (a) in the first column, the following disease—

“D12. Except in the circumstances specified in regulation 2(d)—

- (a) chronic bronchitis; or  
 (b) emphysema; or  
 (c) both,

where there is accompanying evidence of—

- (i) coal dust retention demonstrated by a chest radiograph to at least the level of Category 1 in the International Labour Office’s publication “The Classification of Radiographs of Pneumoconioses” Revised Edition 1980, 8th Impression 1992 published at Geneva; and

- (ii) a forced expiratory volume in one second of at least one litre below the mean value predicted in accordance with "Lung Function: Assessment and Application in Medicine" by J E Cotes, 4th Edition 1979 published at Oxford by Blackwell Scientific Publications Limited (ISBN 0-632-00033-3) for a person of the claimant's age, height and sex, measured from the position of maximum inspiration with the claimant making maximum effort.";

(b) in the second column, against the disease numbered D12—

"Exposure to coal dust by reason of working underground in a coal mine for a period of, or periods amounting in the aggregate to, at least 20 years (whether before or after 5th July 1948)."

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

8.—(1) The Social Security (General Benefit) Regulations (Northern Ireland) 1984(a) shall be amended in accordance with paragraphs (2) and (3) of this regulation.

(2) In regulation 1(2) (interpretation) after the definition of "parent" there shall be inserted the following definition—

" "the Prescribed Diseases Regulations" means the Social Security (Industrial Injuries) (Prescribed Diseases) Regulations (Northern Ireland) 1986(b);"

(3) In regulation 11 (further definition of the principles of assessment of disablement and prescribed degrees of disablement)—

(a) in paragraphs (3), (4) and (5) at the beginning there shall be inserted "Subject to paragraphs (5A) and (5B),"; and

(b) after paragraph (5) there shall be inserted the following paragraphs—

"(5A) Where—

(a) a person has an award of industrial injuries disablement benefit in respect of the disease specified in paragraph D1 of Part I of Schedule 1 to the Prescribed Diseases Regulations (in this paragraph and in paragraph (5B) referred to as "disease D1"); and

(b) by virtue of either paragraph (3) or (4) that award takes account of disablement resulting from the effects of chronic bronchitis or emphysema, not being chronic bronchitis or emphysema prescribed in paragraph D12 of Part I of Schedule 1 to the Prescribed Diseases Regulations (in this paragraph and paragraph (5B) referred to as "disease D12"); and

(a) S.R. 1984 No. 92, to which there are amendments not relevant to these regulations

(b) S.R. 1986 No. 179; relevant amendment is insertion of disease D12 by regulation 7 of these regulations

- (c) after the date on which the award referred to in sub-paragraph (a) of this paragraph was made, the person becomes entitled to industrial injuries disablement benefit in respect of disease D12,

then, during any period when such disablement benefit is payable in respect of disease D12, paragraphs (3), (4) and (5) shall not apply to the assessment in respect of disease D1 for the purpose of assessing the extent of disablement resulting from disease D12.

(5B) Where—

- (a) a person has an award of industrial injuries disablement benefit in respect of the disease D12; and
- (b) by virtue of either paragraph (3) or (4) that award takes account of disablement resulting from the effects of pneumoconiosis, not being disease D1; and
- (c) after the date on which the award referred to in sub-paragraph (a) of this paragraph was made, the person becomes entitled to industrial injuries disablement benefit in respect of disease D1,

then, during any period when such disablement benefit is payable in respect of disease D1, paragraphs (3), (4) and (5) shall not apply to the assessment in respect of disease D12 for the purpose of assessing the extent of disablement resulting from disease D1.”.

*Amendment of the Social Security (Adjudication) Regulations*

9.—(1) The Social Security (Adjudication) Regulations (Northern Ireland) 1987(a) shall be amended in accordance with paragraphs (2) to (5) of this regulation.

(2) In regulation 33(2) (disqualification from acting as an adjudicating medical authority etc.) for “D9, D10 or D11” there shall be substituted “D9, D10, D11 or D12”.

(3) In regulation 41(2)(b) (application of Part III of the 1975 Act and of these regulations) for “D9, D10 and D11” there shall be substituted “D9, D10, D11 and D12”.

(4) In regulation 42(1) (reference of diagnosis and recrudescence questions for medical report) for “D9, D10 and D11” there shall be substituted “D9, D10, D11 and D12”.

(5) In regulation 51(1) (additional provisions relating to the powers and decisions of adjudicating medical authorities) for “D9, D10 and D11” there shall be substituted “D9, D10, D11 and D12”.

*Transitional provision with respect to claims for prescribed disease D12*

10.—(1) In this regulation—

“prescribed disease D12” means the disease bearing that number and listed in Part I of Schedule 1 to the principal regulations (chronic bronchitis or emphysema or both);

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(a) S.R. 1987 No. 82; relevant amending regulations are S.R. 1993 No. 168

“relevant claim” means a claim for benefit in respect of prescribed disease D12;

“relevant date” means 13th September 1993, or the date upon which the claimant in question first satisfies the conditions specified in Part I of Schedule 1 to the principal regulations in respect of prescribed disease D12, whichever is the later.

(2) The provisions of the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(a) shall apply in relation to a relevant claim subject to paragraphs (3) to (5) of this regulation.

(3) A person who is aged not less than 70 on 13th September 1993 may make a relevant claim at any time in the period beginning with 13th September 1993 and ending with 28th February 1994, and if so made the claim shall be treated as having been made on the relevant date.

(4) A person who is aged less than 70 on 13th September 1993 and who, on the date the claim is made, has an award of attendance allowance at the higher rate under section 65(3) of, or an award of the care component of disability living allowance at the highest rate under section 72(4)(a) of, the Social Security Contributions and Benefits (Northern Ireland) Act 1992, may make a relevant claim at any time in the period beginning with 13th September 1993 and ending with 28th February 1994, and if so made, the claim shall be treated as having been made on the relevant date.

(5) A person who does not fall within either paragraph (3) or (4) may not make a relevant claim before 1st March 1994, but if such a person, or a person falling within paragraph (4) who has not previously made a relevant claim, makes a relevant claim in the period beginning with that day and ending with 31st August 1994 that claim shall be treated as having been made on the relevant date.

### *Revocation*

**11.** Regulation 3(4)(c)(ii), (5) and (6)(a) of the Social Security (Industrial Injuries and Adjudication) (Amendment) Regulations (Northern Ireland) 1993(b) is hereby revoked.

Sealed with the Official Seal of the Department of Health and Social Services for Northern Ireland on 6th August 1993.

(L.S.)

*L. Frew*

Assistant Secretary

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(a) S.R. 1987 No. 465

(b) S.R. 1993 No. 168

*(This note is not part of the Regulations.)*

These regulations further amend the Social Security (Industrial Injuries) (Prescribed Diseases) Regulations (Northern Ireland) 1986 ("the principal regulations").

They provide for the prescription of chronic bronchitis and emphysema as an industrial disease ("PD D12") where either condition has, or both conditions have, been contracted after working for twenty years underground in a coal mine (regulation 7).

In order to qualify for industrial injuries disablement benefit in respect of PD D12 a claimant must show—

- (a) by means of a chest radiograph that he has coal dust retention to at least the level of Category 1 in the International Labour Office's publication "The Classification of Radiographs of Pneumoconioses" Revised Edition 1980, 8th Impression 1992 published at Geneva; and
- (b) a forced expiratory volume in one second of at least one litre below the mean value predicted in accordance with "Lung Function: Assessment and Application in Medicine" by J E Cotes, 4th Edition 1979 published at Oxford (ISBN 0-632-00033-3) ("Cotes") for a person of the claimant's age, height and sex, measured from the position of maximum inspiration with the claimant making maximum effort.

The International Labour Office publication may be obtained from its British office, Vincent House, Vincent Square, London SW 1, whilst Cotes is available from booksellers.

Consequential amendments to regulations 2, 4, 6, 7 and 20 of the principal regulations are also made (regulations 2 to 6).

Regulation 8 amends the Social Security (General Benefit) Regulations (Northern Ireland) 1984 so as to make special provision for the interaction between awards for chronic bronchitis, emphysema and pneumoconiosis.

Regulation 9 makes consequential amendments to the Social Security (Adjudication) Regulations (Northern Ireland) 1987.

Regulation 10 makes transitional provision in respect of claims. The "relevant date" is defined as 13th September 1993 or the date on which the claimant first satisfies the conditions specified in Part I of Schedule 1 to the principal regulations in respect of PD D12, whichever is the later.

The transitional provisions provide that a person who—

is aged at least 70 on 13th September 1993 and who makes a claim on or after that date but before 1st March 1994; or

is aged less than 70 on 13th September 1993 and has an award of attendance allowance at the higher rate or of the care component of disability living allowance at the highest rate at the time he makes his claim and who makes a claim on or after 13th September 1993 but before 1st March 1994,

will have his claim treated as if it had been made on the relevant date. Any other person may not make a claim before 1st March 1994, but if he makes it on or after that date and before 1st September 1994, he will also have it treated as having been made on the relevant date.

Regulation 11 contains a consequential revocation.