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## STATUTORY INSTRUMENTS

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# 1982 No. 1408

## The Social Security (General Benefit) Regulations 1982

### PART III

#### PROVISIONS RELATING TO INDUSTRIAL INJURIES BENEFIT ONLY

##### PRINCIPLES OF ASSESSMENT

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

**11.**—(1) Schedule 8 to the Act (general principles relating to the assessment of the extent of disablement) shall have effect subject to the provisions of this regulation.

(2) When the extent of disablement is being assessed for the purposes of section 57, any disabilities which, though resulting from the relevant loss of faculty, also result, or without the relevant accident might have been expected to result, from a cause other than the relevant accident (hereafter in this regulation referred to as “the other effective cause”) shall only be taken into account subject to and in accordance with the following provisions of this regulation.

(3) [<sup>F1</sup>Subject to paragraphs (5A) and (5B)] an assessment of the extent of disablement made by reference to any disability to which paragraph (2) applies, in a case where the other effective cause is a congenital defect or is an injury or disease received or contracted before the relevant accident, shall take account of all such disablement except to the extent to which the claimant would have been subject thereto during the period taken into account by the assessment if the relevant accident had not occurred.

(4) [<sup>F2</sup>Subject to paragraphs (5A) and (5B)] any assessment of the extent of disablement made by reference to any disability to which paragraph (2) applies, in a case where the other effective cause is an injury or disease received or contracted after and not directly attributable to the relevant accident, shall take account of all such disablement to the extent to which the claimant would have been subject thereto during the period taken into account by the assessment if that other effective cause had not arisen and where, in any such case, the extent of disablement would be assessed at not less than 11 per cent if that other effective cause had not arisen, the assessment shall also take account of any disablement to which the claimant may be subject as a result of that other effective cause except to the extent to which he would have been subject thereto if the relevant accident had not occurred.

(5) [<sup>F3</sup>Subject to paragraphs (5A) and (5B)] any disablement to the extent to which the claimant is subject thereto as a result both of an accident and a disease or two or more accidents or diseases (as the case may be), being accidents arising out and in the course of, or diseases due to the nature of, employed earners' employment, shall only be taken into account in assessing the extent of disablement resulting from one such accident or disease being the one which occurred or developed last in point of time.

[<sup>F4</sup>(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 Social Security (Industrial Injuries)

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(Prescribed Diseases) Regulations 1985 (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 Social Security (Industrial Injuries) (Prescribed Diseases) Regulations 1985 (in this paragraph and paragraph (5B) referred to as “disease D12”); 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 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.]

(6) Where the sole injury which a claimant suffers as a result of the relevant accident is one specified in column 1 of Schedule 2 to these regulations, whether or not such injury incorporates 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 57 of, and Schedule 8 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 the provisions of the said Schedule 8 to the Act and to the foregoing paragraphs of this regulation, that degree of disablement does not provide a reasonable assessment of the extent of disablement resulting from the relevant loss of faculty.

(7) For the purposes of paragraph (6) where the relevant injury is one so specified in the said column 1 against which there is set in the said column 2 the degree of disablement of 100 per cent and the claimant suffers some disablement to which he would have been subject whether or not the relevant accident had occurred, no reduction of that degree of disablement shall be required if [<sup>F5</sup>the Secretary of State or, as the case may be, [<sup>F6</sup>the First-tier Tribunal]] is satisfied that, in the circumstances of the case, 100 per cent is a reasonable assessment of the extent of disablement from the relevant loss of faculty.

(8) For the purposes of assessing, in accordance with the provisions of Schedule 8 to the Act, the extent of disablement resulting from the relevant injury in any case which does not fall to be determined under paragraph (6) or (7), [<sup>F5</sup>the Secretary of State or, as the case may be, [<sup>F6</sup>the First-tier Tribunal]] may have such regard as may be appropriate to the prescribed degrees of disablement set against the injuries specified in the said Schedule 2.

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**Textual Amendments**

- F1** Words in reg. 11(3) inserted (13.9.1993) by [The Social Security \(Industrial Injuries\) \(Prescribed Diseases\) Amendment \(No. 2\) Regulations 1993](#) (S.I. 1993/1985), regs. 1, **7(a)**
- F2** Words in reg. 11(4) inserted (13.9.1993) by [The Social Security \(Industrial Injuries\) \(Prescribed Diseases\) Amendment \(No. 2\) Regulations 1993](#) (S.I. 1993/1985), regs. 1, **7(a)**
- F3** Words in reg. 11(5) inserted (13.9.1993) by [The Social Security \(Industrial Injuries\) \(Prescribed Diseases\) Amendment \(No. 2\) Regulations 1993](#) (S.I. 1993/1985), regs. 1, **7(a)**
- F4** Reg. 11(5A)-(5B) inserted (13.9.1993) by [The Social Security \(Industrial Injuries\) \(Prescribed Diseases\) Amendment \(No. 2\) Regulations 1993](#) (S.I. 1993/1985), regs. 1, **7(b)**
- F5** Words in reg. 11(7)(8) substituted (25.11.1999) by [The Social Security Act 1998](#) (Commencement No. 12 and Consequential and Transitional Provisions) Order 1999 (S.I. 1999/3178), reg. 3(1)(a), **Sch. 3 para. 2** (with reg. 3(1)(b), Schs. 21-23)
- F6** Words in reg. 11(7)(8) substituted (3.11.2008) by [The Tribunals, Courts and Enforcement Act 2007](#) (Transitional and Consequential Provisions) Order 2008 (S.I. 2008/2683), art. 1, **Sch. 1 para. 25**

**F7** ...DISABLEMENT BENEFIT

**Textual Amendments**

- F7** Words in regs. 12-16 heading omitted (6.4.1983) by virtue of [The Social Security \(Abolition of Injury Benefit\) \(Consequential\) Regulations 1983](#) (S.I. 1983/186), regs. 1(1), **13(3)**

**Injury benefit payable to persons who have not attained school-leaving age**

**F8** **12.** . . . . .

**Textual Amendments**

- F8** Reg. 12 revoked (6.4.1983) by [The Social Security \(Abolition of Injury Benefit\) \(Consequential\) Regulations 1983](#) (S.I. 1983/186), regs. 1(1), **13(4)**

**Day not treated as day of incapacity for work**

**F8** **13.** . . . . .

**Textual Amendments**

- F8** Reg. 12 revoked (6.4.1983) by [The Social Security \(Abolition of Injury Benefit\) \(Consequential\) Regulations 1983](#) (S.I. 1983/186), regs. 1(1), **13(4)**

**Amount of disablement gratuities**

**14.—(1)** 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 to these regulations, 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 calculated as the percentage of the maximum disablement gratuity (specified in paragraph 2 of Part V of Schedule 4 to the Act) which is

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shown in column 2 of Schedule 3 to these regulations as being appropriate to that degree of disablement;

- (b) in any other case, be the amount calculated as such a percentage of the maximum disablement gratuity as bears the same proportion to the percentage shown in column 2 of Schedule 3 to these regulations as being appropriate to that degree of disablement as the period taken into account by the assessment bears to a period of 7 years, a fraction of 5 pence being, for this purpose, treated as 5 pence.

[<sup>F9</sup>(1A) Paragraph (1) applies in relation to cases where the claim for benefit was made before 1st October 1986]

(2) For the purposes of this regulation, whenever such maximum disablement gratuity is altered by virtue of the passing of an Act or the making of an up-rating order, corresponding variations in the scale of gratuities payable under this regulation shall be payable only where the period taken into account by the assessment of the extent of disablement in respect of which the gratuity is awarded begins on or after the date of coming into operation of the provision altering the amount of the maximum disablement gratuity.

#### Textual Amendments

- F9** Reg. 14(1A) inserted (1.10.1986) by [The Social Security \(Industrial Injuries and Diseases\) Miscellaneous Provisions Regulations 1986 \(S.I. 1986/1561\)](#), regs. 1(1), **7(3)**

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

**15.** For the purpose of reducing the weekly rate of disablement pension payable by virtue of section 62 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 18(2) if that regulation applied to his case.

#### Earnings level for the purpose of unemployability supplement under section 58 of the Act

[<sup>F10</sup>**16.**—(1) For the purposes of section 58(3) (earnings level that does not disqualify for unemployability supplement) the prescribed amount of earnings in a year is determined as follows—

- (a) multiply the National Minimum Wage by 16;
- (b) where the amount determined by the calculation in sub-paragraph (a) would, but for this sub-paragraph, include an amount of—
- (i) less than 50p, the amount determined under sub-paragraph (a) shall be rounded up to the nearest 50p, or
- (ii) less than £1 but more than 50p, the amount determined under sub-paragraph (a) shall be rounded up to the nearest £1; and
- (c) multiply the amount resulting from sub-paragraph (a) or (b) by 52.

(2) In this regulation “National Minimum Wage” means the rate of the national minimum wage specified in regulation 11 of the National Minimum Wage Regulations 1999 (rate of the national minimum wage).]

**Textual Amendments**

- F10** Reg. 16 substituted (11.4.2011) by [The Social Security \(Miscellaneous Amendments\) Regulations 2011 \(S.I. 2011/674\)](#), regs. 1(4), 2

<sup>F11</sup>INCREASE OF ... DISABLEMENT BENEFIT

**Textual Amendments**

- F11** Words in regs. 17-22 heading omitted (6.4.1983) by virtue of [The Social Security \(Abolition of Injury Benefit\) \(Consequential\) Regulations 1983 \(S.I. 1983/186\)](#), regs. 1(1), **13(3)**

**Circumstances in which, for the purposes of section 60, a beneficiary may be treated as being incapable of following an occupation or employment notwithstanding that he has worked thereat**

17.—(1) For the purposes of [<sup>F12</sup>section 59A (reduced earnings allowance)], when it is being determined whether a beneficiary has at all times since the end of [<sup>F13</sup>the period of 90 days referred to in section 57(4)] 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 [<sup>F13</sup>that period of 90 days] 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 the next following paragraph.

(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 provision of the preceding paragraph, shall be—

- (a) in any case to which sub-paragraph (a) of that paragraph applies—
  - (i) any period during which he worked thereat for any of the said purposes with the approval of the Secretary of State 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 six months in the aggregate and
- (b) in any case to which sub-paragraph (b) of that paragraph 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.

**Textual Amendments**

- F12** Words in reg. 17(1) substituted (1.10.1986) by [The Social Security \(Industrial Injuries and Diseases\) Miscellaneous Provisions Regulations 1986 \(S.I. 1986/1561\)](#), regs. 1(1), **7(4)**

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**F13** Words in reg. 17(1) substituted (6.4.1983) by [The Social Security \(Abolition of Injury Benefit\) \(Consequential\) Regulations 1983 \(S.I. 1983/186\)](#), regs. 1(1), **13(5)**

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

**18.**—(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 60 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 the preceding paragraph 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 the proviso to section 57(6), 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 60, and the weekly rate of such pension shall be determined in accordance with Schedule 4 of these regulations.

(3) For the purposes of paragraph (2) and notwithstanding the provisions of regulation 14(2) whenever the weekly rate of such pension is altered consequent upon the passing of an Act or the making of an uprating order, such variation shall have effect as from the date on which the provision varying the amount of the disablement pension specified in paragraph 3 of Part V of Schedule 4 to the Act comes into force, whether the period taken into account by the assessment began before or after that date.

(4) 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 60, 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 60 and, subject to the provisions of these regulations, the balance (if any) shall then be payable accordingly.

#### Modifications etc. (not altering text)

**C1** Reg. 18 modified (1.10.1986) by [The Social Security \(Industrial Injuries and Diseases\) Miscellaneous Provisions Regulations 1986 \(S.I. 1986/1561\)](#), regs. 1(1), **7(5)** (with reg. 7(6))

### Increase of disablement pension for constant attendance

**19.** The amount by which the weekly rate of disablement pension may be increased under section 61 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) of this regulation 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 the amount specified in paragraph 7(a) of Part V of Schedule 4 to the Act (unless the attendance so required is part-time only, in which case the amount shall be such sum as may be reasonable in the circumstances) or, where the extent of such attendance is greater by reason of the beneficiary's exceptionally severe disablement, a sum not exceeding one and a half times the amount specified in paragraph 7(a) of Part V of the said Schedule, a fraction of five pence being for this purpose treated as five pence;
- (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 the amount specified in paragraph 7(b) of Part V of Schedule 4 to the Act.

### **Determination of degree of disablement for constant attendance allowance**

**20.**—(1) For the purpose of determining whether a person is entitled to an increase by way of constant attendance allowance under section 61 or to a corresponding increase by virtue of section 159(3)(b) of the Act or section 7(3)(b) of the Industrial Injuries and Diseases (Old Cases) Act 1975 of any other benefit, the Secretary of State shall, in a case where that person is subject to disabilities in respect of which payments of two or more of the descriptions set out in the next following paragraph of this regulation fall to be made, determine the extent of that person's disablement by taking into account all such disabilities to which that person is subject.

(2) The payments which may be taken into account are those of the following descriptions:—

- (a) payments by way of disablement pensions under the Act;
- (b) weekly payments to which that person is or has been at any time after 4 July 1948 entitled in respect of injury or disease being payments by way of compensation under the Workmen's Compensation Acts or under any contracting-out scheme duly certified thereunder;
- (c) payments to which that person is or has been at any time after 4 July 1948 entitled as a former constable or fireman on account of an injury pension under or by virtue of any enactment in respect of an injury received or disease contracted by that person before 5 July 1948 or in respect of his retirement in consequence of such an injury or disease;
- (d) payments by way of benefit under the Industrial Injuries and Diseases (Old Cases) Act 1975; and
- (e) payments of personal benefit by way of disablement pension or gratuity under any Personal Injuries Scheme or Service Pensions Instrument or 1914–18 War Injuries Scheme.

(3) In sub-paragraph (2)(e) the expressions “personal benefit”, “disablement pension”, “Personal Injuries Scheme” and “Service Pensions Instrument” have the meanings which are assigned to them by the Social Security (Overlapping Benefits) Regulations 1979(1) for the purposes of those regulations.

### **Condition for receipt of increase of disablement pension for constant attendance under section 61 while receiving medical treatment as an in-patient**

**21.**—(1) For the purposes of section 61 (increase of disablement pension in respect of the need of constant attendance), subject to paragraph (2) it shall be a condition for the receipt of an increase of disablement pension under the said section 61 for any period in respect of any person that during that period he is not receiving, or has not received, free in-patient treatment, and for this purpose a person shall be regarded as receiving or having received free inpatient treatment if he would be so regarded for the purposes of the Social Security (Hospital In-Patients) Regulations 1975(2).

(2) Where a person was entitled to an increase of disablement pension under the said section 61 in respect of the period immediately before he commenced to undergo any treatment mentioned in paragraph (1), that paragraph shall not apply in respect of the first 4 weeks of any continuous period during which he is undergoing such treatment.

(3) For the purposes of paragraph (2), 2 or more distinct periods separated by an interval not exceeding 28 days, or by 2 or more such intervals, shall be treated as a continuous period equal in duration to the total of such distinct periods and ending on the last day of the later or last such period.

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(1) the relevant amending instrument is S.I. 1980/1927 .

(2) the relevant amending instrument is S.I. 1977/1693 .

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### **Treatment of distinct periods of hospital in-patient treatment as continuous for the purposes of section 62 of the Act**

22. For the purposes of section 62 (increase of disablement benefit during hospital treatment) a person who receives medical treatment as an in-patient for 2 or more distinct periods separated by an interval of less than a week in each case shall be treated as receiving such treatment continuously from the beginning of the first period until the end of the last.

### **INDUSTRIAL DEATH BENEFIT**

#### **Widow's pension**

23. Section 67 (death benefit for widows) shall have effect as if the reference in section 67(1) (conditions of entitlement to such benefit) to periodical payments of not less than the prescribed amount were a reference to periodical payments which would amount to an average weekly rate of not less than 25 pence.

#### **Additional entitlement to higher permanent rate of widow's pension under section 67**

24.—(1) The following provisions of this regulation shall apply in determining whether a woman is entitled to industrial death benefit at the higher permanent rate specified in paragraph 13(b) of Part V of Schedule 4 to the Act by virtue of satisfying the requirement in section 68(2)(a) (higher weekly rate of industrial death benefit payable to the widow of the deceased for a period for which she is entitled or treated as entitled to an allowance under section 70 (industrial death benefit for children)).

(2) The widow of the deceased shall be treated as entitled to an allowance under the said section 70 for any period during which she is residing with a person under the age of 19 in respect of whom the deceased—

- (a) at his death was entitled to child benefit; or
- (b) at the time of his death could have been entitled to child benefit or treated as having been so entitled had that person then been under the age of 16 or not absent from Great Britain; and,

where, at the expiration of such a period as aforesaid, the widow has attained the age of forty, she shall be treated as entitled to that allowance for any period thereafter.

#### **Widows to be treated as entitled to a pension for the purposes of right to a remarriage gratuity**

25. A widow who would be entitled to a pension under section 67 immediately before her remarriage but for the operation of the proviso to section 67(2) shall be treated as if she were entitled thereto for the purpose of a right to a gratuity under section 67 on her remarriage.

#### **Death benefit for relatives**

26. For the purposes of section 72 (death benefit for such relatives of a deceased insured person as may be prescribed) the relatives shall be the persons who bear any such relationship to the deceased as is specified in Schedule 5 to these regulations (otherwise than as a parent within the meaning of section 71 (death benefit for parents)), and shall include any person who would be such a relative if some person born illegitimate had been born legitimate.

#### **Death benefit under section 72 for a posthumous son or daughter**

27. The provisions of section 72 shall apply to a posthumous son or daughter (whether legitimate or illegitimate) of a deceased man as if—



- (a) for the conditions specified in subsection (1) there were substituted the condition that the mother of such son or daughter was at the deceased's death being wholly or mainly maintained by the deceased, or would but for the relevant accident have been so maintained; and
- (b) the conditions specified in paragraphs (a) and (b) of subsection (2), and every reference to death benefit by way of a gratuity or an allowance and to the several conditions for the receipt of such benefit, were omitted; and
- (c) in subsection (7)—
  - (i) the references to a relative who was a child at the deceased's death were references to a relative who is a posthumous son or daughter of the deceased; and
  - (ii) for paragraph (b) there were substituted the following paragraph—
    - “(b) unless such relative is on ceasing to be a child permanently incapable of self-support by reason of some physical or mental infirmity which is congenital in origin.”.

#### **Calculation of the amount of parent's or relative's gratuity**

**28.** For the purposes of section 74(1)(b) (amount of death benefit payable by way of a gratuity to a beneficiary as a parent or relative other than a beneficiary who, at the deceased's death, was, or would but for the relevant accident have been, wholly maintained by the deceased) the maximum amount of any such gratuity payable to a beneficiary as a parent within the meaning of section 71 or as a relative prescribed for the purposes of section 72 shall be determined in accordance with the provisions of Schedule 6 to these regulations.

#### **Application of limits imposed on death gratuities by Schedule 9 to the Act**

**29.** In any case in which, but for the provisions of paragraph 6 of Schedule 9 to the Act (provisions limiting the amount of death benefit by way of gratuities payable in respect of any death), the aggregate amount of death benefit which would be payable to two or more persons by way of parents' or relatives' gratuities, as the case may be, would exceed the total amount respectively specified in relation to such gratuities in sub-paragraphs (1) and (2) of the said paragraph 6, being—

- (a) £78 in relation to parents' gratuities; and
- (b) £52 or £104 (as the case may be) in relation to relatives' gratuities;

the amount payable to any person by way of a parent's or a relative's gratuity (as the case may be) shall, subject to the provisions of the Act limiting the amount so payable to any one person, be determined in accordance with the provisions of Schedule 7 to these regulations.

#### **Death within prescribed period**

**30.** For the purposes of Schedule 9 to the Act (provisions limiting the benefit payable in respect of any death), and by virtue of the provisions of paragraph 8 of that Schedule, a person entitled, or who may become entitled, to any benefit mentioned in that Schedule in respect of any death shall be disregarded if he dies within 6 months after the deceased's death without being awarded that benefit.

#### **Priority of title to allowance or allowances under section 70**

**31.** Where in respect of the same death each of 2 or more persons satisfies the conditions of section 70 for the receipt of an allowance in respect of the same child, the person entitled to the allowance shall, as between such persons, be determined subject to the provisions of paragraph 1(c)

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of Schedule 9 to the Act in accordance with the order of priority specified in Schedule 8 to these regulations.

**Circumstances in which higher rate of allowance under section 70(2) is payable to a person other than the widow of the deceased**

**32.**—(1) For the purposes of section 70(2) (industrial death benefit at higher rate) for any period during which the conditions of paragraph (2) of this regulation are satisfied, a person, not being the widow of the deceased person, who is entitled to an allowance in respect of a child under section 70(1) shall be entitled to that allowance at the higher rate referred to in the said section 70(2).

(2) The conditions referred to in paragraph (1) are—

- (a) that the widow of the deceased is entitled to benefit under sections 67 and 68 in respect of the death of the deceased person; and
- (b) that the said widow was, immediately before the period referred to in paragraph (1), entitled to the higher rate of allowance provided for in section 70(2) in respect of the child; and
- (c) that the said widow has not ceased to reside with the child.

**Circumstances in which a deceased person who was not entitled to child benefit is to be treated as having been so entitled for the purposes of sections 70 or 73**

**33.**—(1) A deceased person shall be treated, for the purposes of sections 70 or 73 as having been entitled to child benefit in respect of a child at his death, or as the case may be, throughout the period between the date of the relevant accident and his death, if—

- (a) that child was a legitimate son or daughter of the deceased and either the deceased or his spouse was living with the child or was contributing towards the cost of providing for the child at the appropriate rate or the deceased would, but for the relevant injury or disease, have so contributed; or
- (b) the child was an illegitimate son or daughter of the deceased and the deceased was either living with the child or was contributing towards the cost of providing for the child at the appropriate rate or would but for the relevant injury or disease have so contributed; or
- (c) the child, not being a son or daughter of the deceased, was wholly or mainly maintained by the deceased or would, but for the relevant injury or disease, have been so maintained; or
- (d) the child, not being a son or daughter of the deceased, was living at the time of the deceased's death with the deceased's spouse or was being maintained by that spouse at the appropriate rate and he or she was a child who at the time of the death of a person to whom the deceased's spouse had previously been married (and whose marriage to the deceased's spouse had been terminated by death) had been living with or maintained at the appropriate rate by that person; or
- (e) the child was a posthumous legitimate child of the deceased.

(2) The expression 'appropriate rate' in paragraph (1) means a weekly rate not less than the rate which would have been payable as child benefit in respect of an only, elder or eldest child.

**Circumstances in which a deceased person is to be treated as not having been entitled to child benefit for the purposes of sections 68 or 70**

**34.** Notwithstanding that he was at his death entitled to child benefit in respect of a child, a deceased person shall be treated, for the purposes of section 68 (rate of widow's industrial death benefit) or section 70 (industrial death benefit for children) as having been not so entitled if—

- (a) that child was not his son or daughter; and

- (b) neither of the conditions set out in sub-paragraph (c) or (d) of the last foregoing regulation was fulfilled in relation to him; and
- (c) the child was not a step-child of the deceased.

**Circumstances in which a person is to be treated as if he were entitled to child benefit for the purposes of section 70**

**35.**—(1) Any person to whom section 70 (industrial death benefit for children) applies shall, for the purposes of the said section 70, be treated as if he were entitled to child benefit in respect of a child if the period in question is one throughout which—

- (a) that person, or his spouse with whom he is residing, would have been entitled to child benefit in respect of that child had the child been born at the end of the week immediately preceding the week in which birth occurred; or
- (b) that person satisfies the conditions for entitlement to child benefit with the exception only of a condition in section 6(2) or section 13(3)(b) of the Child Benefit Act (period for which claim to child benefit may be effective and condition relating to presence in Great Britain respectively) or regulations<sup>(3)</sup> made under the latter section.

(2) For the purpose of determining whether a person is entitled to industrial death benefit for a child under section 70, where in respect of a child the said benefit is payable to a person for a continuous period of 7 days and would have been payable to that person for the immediately preceding 7 days had he been entitled to child benefit in respect of that child for an earlier week, he shall be treated as if he were entitled to child benefit for that earlier week.

(3) The expression 'earlier week' in paragraph (2) means the week immediately preceding the first week for which the person referred to in that paragraph was entitled to child benefit in respect of the child referred to in that paragraph.

(4) For the purposes of paragraph (1) the word 'week' has the meaning assigned to it by section 24(1) of the Child Benefit Act.

**Circumstances in which a person entitled to child benefit is to be treated as if he were not so entitled**

**36.** For the purposes of section 70 (industrial death benefit for children) a person who is entitled to child benefit in respect of a child shall be treated as if he were not so entitled for any day following the day on which that child died.

**Provisions as to maintenance for purposes of death benefit**

**37.**—(1) For the purposes of the provisions of Chapters IV and V of Part II of the Act which relate to death benefit, a deceased person shall not, subject to the provisions of the next succeeding paragraph, be deemed to have been, at his death, or for any period before his death—

- (a) wholly maintaining another person unless he normally contributed the whole of the actual cost of that other person's maintenance;
- (b) mainly maintaining another person unless he normally contributed more than half the actual cost of that other person's maintenance;
- (c) to a substantial extent maintaining another person unless he normally contributed not less than an average weekly amount of 25 pence towards the cost of that person's maintenance.

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(3) See S.I. 1976/963 regulation 5, as amended by S.I. 1976/1758.

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(2) In the case of a posthumous son or daughter of the deceased, such son or daughter shall be deemed to have been wholly maintained by the deceased at his death if the condition specified in regulation 27(a) is satisfied in his case.

(3) Where—

- (a) a person was partly maintained by each of two or more employed earners of whom the first-mentioned person was a parent within the meaning of section 71 or a relative prescribed for the purposes of section 72, as the case may be; and
- (b) the employed earners have died as the results of accidents arising out of and in the course of their employed earner's employment;

the parent or relative may by notice in writing designate one of those employed earners as shall thereafter be treated as having received from the person so designated contributions to his maintenance equal to the aggregate amount which the said employed earners were together contributing before the accidents happened, and as having received nothing from the others.

#### ADJUSTMENT OF BENEFIT FOR SUCCESSIVE ACCIDENTS

##### **Adjustment of benefit for successive accidents where a disablement gratuity is payable**

**38.**—(1) In a case where—

- (a) a person who is entitled, as a result of an accident, to a disablement pension (hereafter in this paragraph referred to as an “existing pension”) which is payable in respect of an assessment for a period which is limited by reference to that person's life, becomes as a result of any other accident, entitled to an award as a result of an assessment of disablement in respect of which a disablement gratuity would, but for this regulation, be payable; and
- (b) the aggregate amount of the assessment in respect of the existing pension and of the assessment in respect of which such disablement gratuity would be payable would, if it were the amount of the assessment of the extent of the disablement resulting from any one accident suffered by that person, have entitled him to receive a disablement pension at a higher rate than the rate of such existing pension;

then, if, at any time before his claim for disablement benefit is determined, he so elects, that person shall be entitled to a disablement pension in lieu of the said disablement gratuity at a rate equal to the difference between the said higher rate and the rate of the existing pension.

(2) In a case in which a person who is entitled as a result of any accident to a disablement pension would but for the provisions of this paragraph become entitled in respect of any other accident to a disablement gratuity (not being a case in which he is entitled to a disablement pension in lieu of such gratuity)—

- (a) if the assessment in respect of which such pension is payable to him amounts to not less than 100 per cent, such person shall not be entitled to receive any disablement gratuity in respect of such other accident;
- (b) in any other case, such person shall not be entitled to receive, by way of disablement gratuity in respect of such other accident, an amount exceeding that which would be payable in respect of an assessment equal to the difference between 100 per cent and the percentage of the assessment in respect of which such pension is payable to him.

(3) For the respective purposes of the two preceding paragraphs of this regulation—

- (a) references to an existing pension within the meaning of paragraph (1) and to any disablement pension in paragraph (2) respectively shall include references to all such pensions which may be payable to the person concerned, and references to the amount of the assessment in respect of which, and the rate at which, any such pension is payable

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shall include references to the aggregate amount of the assessments in respect of which or the aggregate of the rates at which all such pensions are payable as aforesaid;

- (b) the extent by which an assessment is increased by virtue of the provisions of section 62 of the Act (increase of disablement benefit during hospital treatment) shall be disregarded;
- (c) for the purposes of paragraph (1)(a) a person shall be deemed to be entitled to a disablement pension and to an award as described in the said sub-paragraph from the respective dates of commencement of the periods taken into account by the assessments relating to such pension and to such award.

**Adjustment of increase of benefit in respect of successive accidents**

**39.**—(1) Where a person who is entitled to a disablement pension in respect of any accident suffered by him—

- (a) has received, or is entitled to, a disablement gratuity in respect of any other accident; and
- (b) as a result of the loss of faculty in respect of which he has received, or is entitled to that gratuity, is incapable of work and is likely to remain permanently so incapable;

the provisions of section 58 (increase of disablement pension by way of unemployability supplement) shall apply as if that loss of faculty resulted from the accident in respect of which such disablement pension is payable.

(2) Where a person—

- (a) would be entitled to a disablement pension in respect of any accident but for the provisions of section 91(1)(a) (limitations on the aggregate weekly rates of benefit payable for the same period in respect of successive accidents); and
- (b) by reason only of those provisions, is unable to satisfy the conditions for the receipt of an increase of that pension by way of unemployability supplement under section 58;

the provisions of the said section 58 shall apply as if such disablement pension were payable to that beneficiary.

(3) At any time at which the sum total of the several assessments in respect of two or more accidents suffered by any person amounts to not less than 100 per cent during the continuance of the periods respectively taken into account thereby, the weekly rate of any disablement pension which is payable to him may be increased in accordance with the provisions of section 61 if he requires constant attendance as a result of the loss of faculty resulting from any one or more of such accidents, whether or not that pension is payable in respect of an assessment of 100 per cent or in respect of that loss of faculty.

(4) A beneficiary who has suffered two or more accidents shall not be entitled at any time to more than one of each of the following increases of benefit, that is to say—

- (a) by way of unemployability supplement under section 58;
- (b) in respect of the need of constant attendance under section 61;
- (c) in respect of a child, under section 64;
- (d) in respect of an adult dependant, under section 66.

**DISQUALIFICATION FOR RECEIPT OF BENEFIT AND  
SUSPENSION OF BENEFIT PENDING APPEALS ETC**

**Disqualification for receipt of benefit, suspension of proceedings on claims and suspension of payment of benefit**

**40.**—<sup>F14</sup>(1) .....

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(2) If, without good cause—

- (a) a claimant fails to furnish to the prescribed person any information required for the determination of the claim or of any question arising in connection therewith; or
- (b) a beneficiary fails to give notice to the prescribed person of any change of circumstances affecting the continuance of the right to benefit or to the receipt thereof, or to furnish as aforesaid any information required for the determination of any question arising in connection with the award; or
- (c) a claimant for, or a beneficiary in receipt of, [<sup>F15</sup>disablement benefit] fails to comply with any requirement of regulation 26 of the Social Security (Claims and Payments) Regulations 1979 (obligations of claimants for, and beneficiaries in receipt of, <sup>F16</sup>... disablement benefit);

he shall, subject to the following provisions of this regulation, if the [<sup>F17</sup>determining authority] so decide, be disqualified for receiving any benefit claimed in respect of the period of such failure.

(3) If a claimant or beneficiary wilfully obstructs, or is guilty of other misconduct in connection with any examination or treatment to which he is required under regulation 26 of the Social Security (Claims and Payments) Regulation 1979 to submit himself, or any proceedings under the Act for the determination of his right to benefit or to the receipt thereof, he shall, subject to the provisions of this regulation, be disqualified for receiving any benefit claimed for such period as the [<sup>F17</sup>determining authority] shall determine.

(4) In any case to which any of the foregoing paragraphs of this regulation relates, proceedings on the claim or payment of benefit, as the case may be, may be suspended for such period as the [<sup>F17</sup>determining authority] may determine.

(5) Nothing in this regulation providing for the disqualification for the receipt of benefit for any of the following matters, that is to say:—

- <sup>F18</sup>(a) .....
- (b) for failure to comply with the requirements of regulation 26 of the Social Security (Claims and Payments) Regulation 1979;
- (c) for obstruction of, or misconduct in connection with, medical examination or treatment;

shall authorise the disentitlement of a claimant or beneficiary to benefit for a period exceeding 6 weeks on any disqualification.

(6) No person shall be disqualified for receiving any benefit for refusal to undergo a surgical operation not being one of a minor character.

(7) A person who would be entitled to any benefit but for the operation of any of the foregoing provisions of this regulation shall be treated as if he were entitled thereto for the purpose of any rights or obligations under the Act (whether of himself or any other person) which depend on his being so entitled, other than the right to payment of that benefit.

**Textual Amendments**

- F14** Reg. 40(1) revoked (6.4.1983) by [The Social Security \(Abolition of Injury Benefit\) \(Consequential\) Regulations 1983 \(S.I. 1983/186\)](#), regs. 1(1), **13(6)**
- F15** Words in reg. 40(2)(c) substituted (6.4.1983) by [The Social Security \(Abolition of Injury Benefit\) \(Consequential\) Regulations 1983 \(S.I. 1983/186\)](#), regs. 1(1), **13(7)**
- F16** Words in reg. 40(2)(c) omitted (6.4.1983) by virtue of [The Social Security \(Abolition of Injury Benefit\) \(Consequential\) Regulations 1983 \(S.I. 1983/186\)](#), regs. 1(1), **13(7)**

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- F17** Words in reg. 40(2)-(4) substituted (29.11.1999) by [The Social Security Act 1998 \(Commencement No. 12 and Consequential and Transitional Provisions\) Order 1999 \(S.I. 1999/3178\)](#), reg. 3(1)(a), **Sch. 3 para. 3** (with reg. 3(1)(b), Schs. 21-23)
- F18** Reg. 40(5)(a) revoked (6.4.1983) by [The Social Security \(Abolition of Injury Benefit\) \(Consequential\) Regulations 1983 \(S.I. 1983/186\)](#), regs. 1(1), **13(6)**

## Suspension of payment of benefit pending appeals or references

<sup>F19</sup>**41.** .....

### Textual Amendments

- F19** Reg. 41 revoked (11.4.1988) by [The Social Security \(Claims and Payments\) Regulations 1987 \(S.I. 1987/1968\)](#), regs. 1, 48, **Sch. 10**

## PAYMENTS UNDER THE ACT TO CERTAIN PERSONS WHO CONTRACTED DISEASES OR WERE INJURED BEFORE 5 JULY 1948

### Payments by way of unemployability supplement and increases for children and adult dependants for persons entitled to Workmen's Compensation

**42.**—(1) A person who—

- (a) is or has been on or after 5 July 1948(4) entitled in respect of any injury or disease to weekly payments by way of compensation under the Workmen's Compensation Acts or under any contracting-out scheme duly certified thereunder; and
- (b) as the result of that injury or disease could, for the purposes of Section 58 be treated as being incapable of work and likely to remain permanently so incapable;

shall have the like right to payments under the Act by way of unemployability supplement, together with the like right to payments under the Act in respect of a child or adult dependant, as if the injury or disease were one in respect of which a disablement pension were for the time being payable.

(2) A person shall not be entitled—

- (a) at any time to payment in accordance with the provisions of this regulation in respect of more than one injury or disease;
- (b) to a payment in accordance with the provisions of this regulation during any period for which he is entitled to an increase of disablement pension by way of unemployability supplement under section 58;
- (c) to a payment in respect of a child in accordance with the provisions of this regulation during any period for which an increase of an allowance is payable in respect of that child under the Pneumoconiosis, Byssinosis and Miscellaneous Diseases Benefit Scheme 1966(5).

(3) For the purposes of this regulation, the meaning in section 59(2) (increase of unemployability supplement by reference to beneficiary's age, on qualifying date) of “the qualifying date” shall, subject to the provisions of subsections (3), (4) and (5) of that section, be the beginning of the first week for which the said person qualified for a payment by way of unemployability supplement under this regulation.

(4) See S.I. 1948/53.

(5) relevant amending instruments are S.I. 1971/1222 and 1977/380.

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**Payments in respect of the need of constant attendance and in respect of exceptionally severe disablement for persons entitled to Workmen's Compensation**

43.—(1) A person who—

- (a) is or has been on or after 5 July 1948 entitled in respect of any injury or disease to weekly payments by way of compensation under the Workmen's Compensation Acts or under any contracting-out scheme duly certified thereunder; and
- (b) as the result of that injury or disease—
  - (i) is subject to disabilities which are such that if they had resulted from an accident against which he had been insured under the Act the extent of the resulting disablement would be assessed at 100 per cent, and
  - (ii) requires constant attendance,

shall have the like right to payments in respect of the need of such constant attendance and in respect of exceptionally severe disablement under section 63 as if the said injury or disease were one in respect of which a disablement pension were for the time being payable in respect of an assessment of 100 per cent.

(2) References in this regulation to an injury or disease in respect of which a person is or has been entitled as aforesaid to weekly payments by way of compensation shall be construed as including every such injury or disease in respect of which he is so entitled, and references in this regulation to the disabilities resulting from an injury or disease and the extent of the resulting disablement shall be construed accordingly.

**Payment by way of unemployability supplement and in respect of the need of constant attendance and in respect of exceptionally severe disablement to certain former constables and firemen**

44.—(1) The following provisions of this regulation shall apply to a former constable or fireman who is or has been on or after 5 July 1948 entitled as such former constable or fireman to payments on account of an injury pension payable under or by virtue of any enactment in respect of an injury received or disease contracted by him before that date or in respect of his retirement in consequence of such an injury or disease.

(2) If as the result of the said injury or disease he could, for the purposes of section 58, be treated as being incapable of work and likely to remain permanently so incapable, he shall have, as from 19 May 1955, the like right to payments under the Act by way of unemployability supplement as if the injury or disease were one in respect of which a disablement pension were for the time being payable.

(3) A person shall not be entitled under the provisions of paragraph (2) to payment during any period for which he is entitled to an increase of disablement pension by way of unemployability supplement under section 58 or under regulation 42.

(4) For the purpose of this regulation, the meaning in section 59(2) (increase of unemployability supplement by reference to the beneficiary's age on qualifying date) of the “qualifying date” shall be the same as that prescribed by regulation 42(3) in relation to persons entitled to payments by way of unemployability supplement.

(5) The provisions of regulation 43 of these regulations (which confer a right in certain cases to payments in respect of constant attendance and in respect of exceptionally severe disablement) shall apply to him as they apply to a person who is or has been entitled on or after 5 July 1948 to weekly payments under the Workmen's Compensation Acts.

(6) In this regulation—

“former constable or fireman” means a person who has been—



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- (a) a member of a police force maintained for any police area mentioned in Schedule 8 of the Police Act 1964 or maintained by virtue of any scheme under that Act or under the Police (Scotland) Act 1967;
- (b) a special constable appointed under the Police Act 1964 or in Scotland under the Police (Scotland) Act 1967, or the corresponding provisions of any local Act;
- (c) a member of a fire brigade maintained by a local authority, or
- (d) a member of the National Fire Service.

“injury pension” includes any pension or similar benefit payable in respect of a person's employment or former employment, being a pension or benefit which would not be payable or be payable at a lesser rate but for an injury or disease referable to that employment.

### Application of the provisions of the Act and regulations

45. Subject to the provisions of the three last preceding regulations, the provisions of the Act and of the regulations for the time being in force thereunder relating to benefit and to the making of claims and payments and the determination of claims and questions, in so far as those provisions apply in relation to unemployability supplement or to an increase of a disablement pension in respect of the need of constant attendance or in respect of exceptionally severe disablement, or in respect of a child or adult dependant, shall apply in relation to any payment under any of the three last regulations as if such payments were an unemployability supplement under section 58 or an increase of a disablement pension in respect of the need of constant attendance under section 61 or in respect of exceptionally severe disablement under section 63 or in respect of a child or adult dependant under section 64 or section 66, as the case may be.

### MISCELLANEOUS PROVISIONS

#### Conditions relating to payment of additional benefit under awards made before the day appointed for an increase of benefit under any Act amending the Act or under any up-rating order

<sup>F20</sup> 46. ....

#### Textual Amendments

**F20** Reg. 46 revoked (06/04/1992) by virtue of The Social Security Benefits Up-rating Regulations 1992 (S.I.1992/469), regs. 1(1), 7

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