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STATUTORY INSTRUMENTS

1985 No. 967

The Social Security (Industrial Injuries) (Prescribed Diseases) Regulations 1985

PART V

SPECIAL PROVISIONS AS TO PNEUMOCONIOSIS, BYSSINOSIS, OCCUPATIONAL DEAFNESS AND CERTAIN OTHER DISEASES

SECTION A

BENEFIT

*Special conditions for disablement benefit for
pneumoconiosis, byssinosis and diffuse mesothelioma*

20.—^[F1](1) On a claim for disablement pension in respect of pneumoconiosis ^[F2]or byssinosis] 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 ^[F3]or byssinosis] 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 ^[F4]or byssinosis] 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) ^[F5]on a reassessment of the extent of disablement or in consequence of an application for revision or supersession] 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.]

(2) Section 78(4)(b), in so far as it provides that disablement benefit shall not be payable in respect of byssinosis unless the claimant is found to be suffering from loss of faculty which is likely to be permanent, shall not apply.

(3) Notwithstanding paragraph 4(a) of Schedule 8 (period to be taken into account by an assessment of the extent of the claimant's disablement), the period to be taken into account by an assessment of the extent of the claimant's disablement in respect of byssinosis, if not limited by reference to the claimant's life, shall not be less than one year.

^[F6](4) On a claim for disablement pension in respect of diffuse mesothelioma—

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- (a) section 103(6) of the Social Security Contributions and Benefits Act 1992 shall apply as if for the words “after the expiry of the period of 90 days (disregarding Sundays) beginning with the day of the relevant accident”, there were substituted the words, “the day on which he first suffers from a loss of faculty due to diffuse mesothelioma”;
- (b) paragraph 6(1) of Schedule 6 to the Social Security Contributions and Benefits Act 1992 shall apply as if the words “beginning not earlier than the end of the period of 90 days referred to in section 103(6) above and in paragraph 9(3) of that Schedule and” were omitted.]

- F1** Reg. 20(1)(1A)(1B) substituted for reg. 20(1) (1.10.1986) by [The Social Security \(Industrial Injuries and Diseases\) Miscellaneous Provisions Regulations 1986 \(S.I. 1986/1561\)](#), regs. 1(1), **3(3)**
- F2** Words in reg. 20(1) substituted (29.7.2002) by [The Social Security \(Industrial Injuries\) \(Prescribed Diseases\) Amendment Regulations 2002 \(S.I. 2002/1717\)](#), regs. 1, **2(2)**
- F3** Words in reg. 20(1A) substituted (29.7.2002) by [The Social Security \(Industrial Injuries\) \(Prescribed Diseases\) Amendment Regulations 2002 \(S.I. 2002/1717\)](#), regs. 1, **2(2)**
- F4** Words in reg. 20(1B) substituted (29.7.2002) by [The Social Security \(Industrial Injuries\) \(Prescribed Diseases\) Amendment Regulations 2002 \(S.I. 2002/1717\)](#), regs. 1, **2(2)**
- F5** Words in reg. 20(1B)(a) substituted (4.7.1999) by [The Social Security Act 1998 \(Commencement No. 8, and Savings and Consequential and Transitional Provisions\) Order 1999 \(S.I. 1999/1958\)](#), art. 4, **Sch. 8 para. 7**
- F6** Reg. 20(4) inserted (9.4.1997) by [The Social Security \(Industrial Injuries\) \(Miscellaneous Amendments\) Regulations 1997 \(S.I. 1997/810\)](#), regs. 1, **5**

[^{F7}Diffuse mesothelioma—prescribed loss of faculty

20A.—(1) For the purposes of paragraph 1 of Schedule 6 to the Social Security Contributions and Benefits Act 1992 (which provides for the assessment of the extent of disablement for the purposes of industrial injuries disablement benefit), the loss of faculty set out in paragraph (2) below is prescribed under sub-paragraph (d) of that paragraph 1 (loss of faculty from which the resulting disabilities are to be taken as amounting to 100 per cent. disablement).

(2) The loss of faculty referred to in paragraph (1) above is impaired function of the pleura, pericardium or peritoneum function caused by diffuse mesothelioma.]

- F7** Reg. 20A inserted (29.7.2002) by [The Social Security \(Industrial Injuries\) \(Prescribed Diseases\) Amendment Regulations 2002 \(S.I. 2002/1717\)](#), regs. 1, **2(3)**

[^{F8}Asbestos-related primary carcinoma of the lung – special conditions and prescribed loss of faculty

20B.—(1) This regulation shall apply to a claim for disablement pension made in respect of the diseases prescribed in paragraphs D8 and D8A of Part I of Schedule 1.

(2) On a claim to which this regulation applies—

- (a) section 103(6) of the Social Security Contributions and Benefits Act 1992 (entitlement after expiry of 90 days) shall apply as if for the words “after the expiry of the period of 90 days (disregarding Sundays) beginning with the day of the relevant accident” there were substituted the words “the day on which he first suffers from a loss of faculty due to primary carcinoma of the lung”; and
- (b) paragraph 6(1) of Schedule 6 to the Social Security Contributions and Benefits Act 1992 (period to be taken into account by an assessment) shall apply as if the words “beginning

not earlier than the end of the period of 90 days referred to in section 103(6) above and in paragraph 9(3) of that Schedule and” were omitted.

(3) On a claim to which this regulation applies, the loss of faculty prescribed for the purposes of sub-paragraph (d) of paragraph 1 of Schedule 6 to the Social Security Contributions and Benefits Act 1992 (assessment of extent of disablement) is lung impairment caused by primary carcinoma of the lung.]

F8 Reg. 20B inserted (6.4.2006) by [The Social Security \(Industrial Injuries\) \(Prescribed Diseases\) Amendment Regulations 2006 \(S.I. 2006/586\)](#), regs. 1(1), **2(2)**

Pneumoconiosis—effects of tuberculosis

21. Where any person is found to be suffering from pneumoconiosis accompanied by tuberculosis, the effects of the tuberculosis shall be treated for the purposes of Chapter V of Part II of the Act and of these regulations as if they were effects of the pneumoconiosis.

Pneumoconiosis—effects of emphysema and chronic bronchitis

22.—(1) [^{F9}Except in the circumstances specified in paragraph (1A),] where any person is disabled by pneumoconiosis or pneumoconiosis accompanied by tuberculosis to an extent which would, if his physical condition were otherwise normal, be assessed at not less than 50 per cent, the effects of any emphysema and of any chronic bronchitis from which that person is found to be suffering shall be treated for the purposes of Chapter V of Part II of the Act and of these regulations as if they were effects of the pneumoconiosis.

[^{F10}(1A) The circumstances referred to in paragraph (1) are that the person is entitled to industrial injuries disablement benefit on account of the disease set out in paragraph D12 of Part I of Schedule 1.]

(2) Where, on a claim for death benefit, the question arises whether the extent of a person's disablement resulting from pneumoconiosis or from pneumoconiosis accompanied by tuberculosis would, if his physical condition were otherwise normal, have been assessed at not less than 50 per cent—

- (a) if there has been no assessment of disablement resulting from pneumoconiosis or from pneumoconiosis accompanied by tuberculosis made during the person's life, or if there is no such assessment current at the time of death [^{F11}that issue shall be determined by the Secretary of State;]
- (b) if there is an assessment of disablement resulting from pneumoconiosis or from pneumoconiosis accompanied by tuberculosis current at the time of the person's death, that [^{F11}issue]shall be treated as having been determined by the decision of [^{F12}the][^{F11}Secretary of State or, as the case may be, appeal tribunal,] which made such assessment.

F9 Words in reg. 22(1) inserted (13.9.1993) by [The Social Security \(Industrial Injuries\) \(Prescribed Diseases\) Amendment \(No. 2\) Regulations 1993 \(S.I. 1993/1985\)](#), regs. 1, **5(2)**

F10 Reg. 22(1A) inserted (13.9.1993) by [The Social Security \(Industrial Injuries\) \(Prescribed Diseases\) Amendment \(No. 2\) Regulations 1993 \(S.I. 1993/1985\)](#), regs. 1, **5(3)**

F11 Words in reg. 22(2)(a)-(b) substituted (4.7.1999) by [The Social Security Act 1998 \(Commencement No. 8, and Savings and Consequential and Transitional Provisions\) Order 1999 \(S.I. 1999/1958\)](#), art. 4, Sch. 8 para. 8(a)(b)(i)(ii)

F12 Words in reg. 22(2)(b) substituted (19.4.1993) by [The Social Security \(Industrial Injuries and Adjudication\) Regulations 1993](#), arts. 1(1), 19(3)

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[^{F13}Reduced earnings allowance—special provision for pneumoconiosis cases

F13 Words in reg. 23 substituted (1.10.1986) by [The Social Security \(Industrial Injuries and Diseases\) Miscellaneous Provisions Regulations 1986 \(S.I. 1986/1561\)](#), regs. 1(1), **6(3)**

23. Where a beneficiary in receipt of a disablement pension in respect of pneumoconiosis receives advice from [^{F14}the Secretary of State] 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)] and for that purpose only—

- (a) the beneficiary shall be deemed, unless the contrary is proved by evidence other than the aforesaid advice—
 - (i) to be incapable of following his regular occupation and likely to remain permanently so incapable, and
 - (ii) to be incapable of following employment of an equivalent standard which is suitable in his case;
- (b) where the beneficiary has ceased to follow any occupation to which the aforesaid special restrictions were applicable, the fact that he had followed such an occupation in the period between the date of onset of the disease and the date of the current assessment of his disablement, or for a reasonable period of trial thereafter, shall be disregarded.

F14 Words in reg. 23 substituted (4.7.1999) by [The Social Security Act 1998 \(Commencement No. 8, and Savings and Consequential and Transitional Provisions\) Order 1999 \(S.I. 1999/1958\)](#), art. 4, **Sch. 8 para. 9**

[^{F15}Special requirement for pneumoconiosis claimants in unscheduled occupation cases

F15 Reg. 24 substituted (4.7.1999) by [The Social Security Act 1998 \(Commencement No. 8, and Savings and Consequential and Transitional Provisions\) Order 1999 \(S.I. 1999/1958\)](#), art. 4, **Sch. 8 para. 10**

24.—(1) A claim for disablement benefit in respect of pneumoconiosis by a person in relation to whom the disease is prescribed by virtue of regulation 2(b)(ii) shall be referred by the Secretary of State to a medical practitioner for a report, unless the Secretary of State is satisfied on reasonable grounds that the claimant is not suffering or has not suffered from pneumoconiosis, in which case he may decide the claim without such a report.

(2) The provisions of paragraph (1) of this regulation shall apply to an appeal tribunal and a Commissioner as they apply to the Secretary of State.]

Time for claiming benefit in respect of occupational deafness

25.—(1) Regulation 14 of the Claims and Payments Regulations (time for claiming benefit) shall not apply in relation to occupational deafness except in relation to a claim for sickness benefit payable by virtue of section 50A.

(2) Subject to regulation 27(1)(c), disablement benefit, or sickness benefit payable by virtue of section 50A of the Act, shall not be paid in pursuance of a claim in respect of occupational deafness which is made later than 5 years after the latest date, before the date of the claim, on which the

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claimant worked [F16:in employed earner’s employment] in an occupation prescribed in relation to occupational deafness. F17 ...

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<p>F16 Words in reg. 25(2) inserted (10.7.2000) by The Social Security (Industrial Injuries) (Prescribed Diseases) Amendment Regulations 2000 (S.I. 2000/1588), regs. 1, 3(2) (with reg. 7)</p> <p>F17 Words in reg. 25(2) omitted (14.3.2005) by virtue of The Social Security (Industrial Injuries) (Prescribed Diseases) Amendment Regulations 2005 (S.I. 2005/324), regs. 1(1), 2(2)</p>
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Claims in respect of occupational deafness

26. Where it appears that a person who has made a claim for sickness benefit by virtue of section 50A of the Act in respect of occupational deafness—

- (a) may be entitled to disablement benefit, and
- (b) has not previously made a claim for disablement benefit in respect of occupational deafness or such a previous claim has been disallowed,

such a claim for sickness benefit may also be treated as a claim for disablement benefit.

Further claims in respect of occupational deafness

27.—(1) In the event of disallowance of a claim for disablement benefit or sickness benefit made by virtue of section 50A of the Act in respect of occupational deafness because the claimant has failed to satisfy the minimum hearing loss requirement prescribed in column 1 of paragraph A10 of Part I of Schedule 1 hereto, disablement benefit or sickness benefit made by virtue of section 50A of the Act shall not be paid in pursuance of a further claim in respect of occupational deafness made by or on behalf of that claimant unless—

- (a) it is a claim made after the expiration of 3 years from the date of a claim which was disallowed because the claimant was not suffering from occupational deafness; or
- (b) it is a claim made after the expiration of 3 years from the date of a reassessment by [F18:the Secretary of State or an appeal tribunal] or medical appeal tribunal of the extent of the claimant's disablement at less than 20 per cent; or
- (c) if the claimant would otherwise be precluded by regulation 25(2) from making a further claim after the expiration of 3 years from the date of the disallowed claim or from the date of a reassessment by [F18:the Secretary of State or an appeal tribunal] or a medical appeal tribunal of the extent of his disablement at less than 20 per cent, as the case may be, it is the first claim made since that date and within 5 years from the latest date, before the date of the claim, on which he worked [F19:in employed earner’s employment] in any occupation specified in column 2 of paragraph A10 of Part I of Schedule 1 hereto.

[F20:(2) A claim to be paid benefit by virtue of paragraph (1)(c) may be disallowed by the Secretary of State, an appeal tribunal or a Commissioner (“the determining authority”) without reference to a medical practitioner where the determining authority is satisfied by medical evidence that the claimant is not suffering from occupational deafness.]

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- F18** Words in reg. 27(1)(b)(c) substituted (4.7.1999) by [The Social Security Act 1998 \(Commencement No. 8, and Savings and Consequential and Transitional Provisions\) Order 1999 \(S.I. 1999/1958\)](#), art. 4, [Sch. 8 para. 12\(a\)](#)
- F19** Words in reg. 27(1)(c) inserted (10.7.2000) by [The Social Security \(Industrial Injuries\) \(Prescribed Diseases\) Amendment Regulations 2000 \(S.I. 2000/1588\)](#), regs. 1, [4](#) (with reg. 7)
- F20** Reg. 27(2) substituted (4.7.1999) by [The Social Security Act 1998 \(Commencement No. 8, and Savings and Consequential and Transitional Provisions\) Order 1999 \(S.I. 1999/1958\)](#), art. 4, [Sch. 8 para. 12\(b\)](#)

Availability of disablement benefit in respect of occupational deafness

28. Where a person is awarded disablement benefit in respect of occupational deafness, section 57(4) (period for which disablement benefit is not available) shall not apply.

Period to be covered by assessment of disablement in respect of occupational deafness

[^{F21}**29.** Paragraph 6(1) and (2) of Schedule 6 to the Social Security Contributions and Benefits Act 1992 shall be modified so that in respect of occupational deafness, the period to be taken into account by an assessment of the extent of a claimant’s disablement shall be the remainder of the claimant’s life.]

- F21** Reg. 29 substituted (22.9.2003) by [The Social Security \(Industrial Injuries\) \(Prescribed Diseases\) Amendment \(No.2\) Regulations 2003 \(S.I. 2003/2190\)](#), regs. 1(1), [2\(2\)](#)

Review of assessment for unforeseen aggravation in respect of occupational deafness

^{F22}**30.**

- F22** Reg. 30 revoked (22.9.2003) by [The Social Security \(Industrial Injuries\) \(Prescribed Diseases\) Amendment \(No.2\) Regulations 2003 \(S.I. 2003/2190\)](#), regs. 1(1), [2\(3\)](#)

^{F23}**31.**

- F23** Reg. 31 revoked (22.9.2003) by [The Social Security \(Industrial Injuries\) \(Prescribed Diseases\) Amendment \(No.2\) Regulations 2003 \(S.I. 2003/2190\)](#), regs. 1(1), [2\(3\)](#)

No appeal against initial provisional assessment of disablement in respect of occupational deafness

^{F24}**32.**

- F24** Reg. 32 revoked (22.9.2003) by [The Social Security \(Industrial Injuries\) \(Prescribed Diseases\) Amendment \(No.2\) Regulations 2003 \(S.I. 2003/2190\)](#), regs. 1(1), [2\(3\)](#)

Cases in which reassessment of disablement in respect of occupational deafness is final

^{F25}**33.**

F25 Reg. 33 revoked (22.9.2003) by [The Social Security \(Industrial Injuries\) \(Prescribed Diseases\) Amendment \(No.2\) Regulations 2003 \(S.I. 2003/2190\)](#), regs. 1(1), **2(3)**

*Assessment of extent of disablement and rate of disablement
benefit payable in respect of occupational deafness*

34.—(1) Subject to the provisions of Schedule 8 and regulations made thereunder and the following provisions of this regulation, the first assessment of the extent of disablement in respect of occupational deafness made in pursuance of a claim made before 3rd September 1979 by a person to whom disablement benefit in respect of occupational deafness is payable for a period before 3rd September 1979 [^{F26}shall be the percentage calculated by—

- (a) determining the average total hearing loss due to all causes for each ear at 1, 2 and 3 kHz frequencies; and then by
- (b) determining the percentage degree of disablement for each ear in accordance with Part I of Schedule 3; and then by
- (c) determining the average percentage degree of binaural disablement in accordance with the formula set out in Part III of Schedule 3.]

(2) Except in any case to which paragraph (1) applies and subject to the provisions of Schedule 8 and regulations made thereunder and the following provisions of this regulation, the extent of disablement in respect of occupational deafness [^{F27}shall be the percentage calculated by—

- (a) determining the average total hearing loss due to all causes for each ear at 1, 2 and 3 kHz frequencies; and then by
- (b) determining the percentage degree of disablement for each ear in accordance with Part II of Schedule 3; and then by
- (c) determining the average percentage degree of binaural disablement in accordance with the formula set out in Part III of Schedule 3.]

(3) In ^{F28}... Schedule 3 hereto “better ear” means that ear in which the claimant's hearing loss due to all causes is the less and “worse ear” means that ear in which the claimant's hearing loss due to all causes is the more.

[^{F29}(3A) For the purposes of determining the percentage degree of disablement in Parts I and II of Schedule 3 to these Regulations, any fraction of an average hearing loss shall, where the average hearing loss is over 50dB, be rounded down to the next whole figure.]

(4) The extent of disablement in respect of occupational deafness may be subject to such increase or reduction of the degree of disablement as may be reasonable in the circumstances of the case where, having regard to the provisions of Schedule 8 and to regulations made thereunder, that degree of disablement does not provide a reasonable assessment of the extent of disability resulting from the relevant loss of faculty.

[^{F30}(5) Where on re-assessment of the extent of disability in respect of occupational deafness the average sensorineural hearing loss over 1, 2 and 3 kHz frequencies is not 50 db or more in each ear, or where there is such a loss but the loss in one or each ear is not 50 db or more due to occupational noise, the extent of disablement shall be assessed at less than 20 per cent.]

(6) Where the extent of disablement is reassessed at less than 20 per cent disablement benefit [^{F31}or reduced earnings allowance] shall not be payable.

(7) In the case of a person to whom disablement benefit by reason of occupational deafness was payable in respect of a period before 3rd September 1979—

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- (a) if no assessment of the extent of his disability has been made, [^{F32}revised or superseded] on or after that date, the rate of any disablement benefit payable to him shall be the rate payable for the degree of disablement assessed in accordance with paragraph (1), but
- (b) if such an assessment has been made, [^{F32}revised or superseded] in respect of a period commencing on or after that date and before 3rd October 1983, the rate of any disablement benefit payable to him shall be either—
 - (i) the rate which would be payable if an assessment were made in accordance with paragraph (2), or
 - (ii) the rate which was payable immediately before the first occasion on which such [^{F32}revision or supersession] took place,

whichever is the more favourable to him.

(8) Where in the case of a person to whom disablement benefit by reason of occupational deafness was payable in respect of a period before 3rd September 1979 the extent of his disability is reassessed and the period taken into account on reassessment begins on or after 3rd October 1983 and—

- (a) immediately before that date, by virtue of paragraph (7) the rate at which disablement benefit was payable to him was higher than the rate which would otherwise have been payable, or,
- (b) the reassessment is the first reassessment for a period commencing after 3rd September 1979,

the rate of disablement benefit payable to him shall be whichever of the rates specified in paragraph (9) is applicable.

(9) The rate of disablement benefit payable in the case of a person to whom paragraph (8) applies shall be—

- (a) if the current rate appropriate to the extent of his disability as reassessed is the same as or more than the rate at which disablement benefit was payable immediately before the beginning of the period taken into account on reassessment, the current rate, or
- (b) if the current rate is less than the rate at which disablement benefit was payable immediately before the beginning of the period taken into account on reassessment, the lower of the following rates—
 - (i) the rate at which benefit would have been payable if the reassessment of the extent of his disability had been made in accordance with paragraph (1), or
 - (ii) the rate at which benefit was payable immediately before the beginning of the period taken into account on reassessment.

- | | |
|------------|---|
| F26 | Words in reg. 34(1) substituted (16.10.1989) by The Social Security (Industrial Injuries) (Prescribed Diseases) Amendment Regulations 1989 (S.I. 1989/1207) , regs. 1, 4(1) |
| F27 | Words in reg. 34(2) substituted (16.10.1989) by The Social Security (Industrial Injuries) (Prescribed Diseases) Amendment Regulations 1989 (S.I. 1989/1207) , regs. 1, 4(2) |
| F28 | Words in reg. 34(3) deleted (16.10.1989) by The Social Security (Industrial Injuries) (Prescribed Diseases) Amendment Regulations 1989 (S.I. 1989/1207) , regs. 1, 4(3) |
| F29 | Words in reg. 34(3A) inserted (16.10.1989) by The Social Security (Industrial Injuries) (Prescribed Diseases) Amendment Regulations 1989 (S.I. 1989/1207) , regs. 1, 4(4) |
| F30 | Reg. 34(5) substituted (1.9.1986) by The Social Security (Industrial Injuries and Adjudication) Miscellaneous Amendments Regulations 1986 (S.I. 1986/1374) , regs. 1, 3 |
| F31 | Words in reg. 34(6) inserted (1.10.1986) by The Social Security (Industrial Injuries and Diseases) Miscellaneous Provisions Regulations 1986 (S.I. 1986/1561) , regs. 1(1), 6(4) |

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F32 Words in reg. 34(7)(a)-(b) substituted (4.7.1999) by [The Social Security Act 1998 \(Commencement No. 8, and Savings and Consequential and Transitional Provisions\) Order 1999 \(S.I. 1999/1958\)](#), art. 4, [Sch. 8 para. 16](#)

Commencement date of period of assessment in respect of occupational deafness

35. Notwithstanding ^{F33}... Schedule 8, the period to be taken into account by an assessment of the extent of disablement in respect of occupational deafness shall not commence before 3rd February 1975.

F33 Words in reg. 35 deleted (4.7.1999) by [The Social Security Act 1998 \(Commencement No. 8, and Savings and Consequential and Transitional Provisions\) Order 1999 \(S.I. 1999/1958\)](#), art. 4, [Sch. 8 para. 17](#)

Time for claiming benefit in respect of occupational asthma

36.—(1) Subject to paragraphs (2) and (3), disablement benefit and sickness benefit payable by virtue of section 50A shall not be paid in pursuance of a claim in respect of occupational asthma which is made later than 10 years after the latest date, before the date of the claim, on which the claimant or, as the case may be, the person in respect of whom the claim is made worked [^{F34}in employed earner's employment] in an occupation prescribed in relation to occupational asthma.

(2) Paragraph (1) shall not apply to any claim made before 29th March 1983 by or in respect of a person who ceased on or after 29th March 1972 to [^{F35}work in employed earner's employment] in an occupation prescribed in relation to occupational asthma.

(3) Paragraph (1) shall not apply to any claim made by or in respect of a person who has at any time been found to be suffering from asthma as a result of an industrial accident and by virtue of that finding has been awarded disablement benefit either for life or for a period which includes the date on which the aforesaid claim is made.

(4) Subject to paragraphs (5) and (6), industrial death benefit shall not be paid in pursuance of a claim in respect of occupational asthma where the person in respect of whose death the benefit is being claimed died more than 10 years after the latest day on which he worked [^{F36}in employed earner's employment] in an occupation prescribed in relation to occupational asthma.

(5) Paragraph (4) shall not apply to any claim made in respect of the death of a person who died before 29th March 1983 and who on or after 29th March 1972 had not worked [^{F37}in employed earner's employment] in an occupation prescribed in relation to occupational asthma.

(6) Paragraph (4) shall not apply to any claim made in respect of the death of a person who had at any time been found to be suffering either from asthma as a result of an industrial accident or from occupational asthma and by virtue of that finding had been awarded disablement benefit either for life or for a period which included the date of his death.

(7) Regulation 14 of the Claims and Payments Regulations (time for claiming benefit) shall not apply to a claim in respect of occupational asthma made before 29th March 1983.

F34 Words in reg. 36(1) inserted (10.7.2000) by [The Social Security \(Industrial Injuries\) \(Prescribed Diseases\) Amendment Regulations 2000 \(S.I. 2000/1588\)](#), regs. 1, [5\(2\)](#)

F35 Words in reg. 36(2) substituted (10.7.2000) by [The Social Security \(Industrial Injuries\) \(Prescribed Diseases\) Amendment Regulations 2000 \(S.I. 2000/1588\)](#), regs. 1, [5\(3\)](#)

F36 Words in reg. 36(4) inserted (10.7.2000) by [The Social Security \(Industrial Injuries\) \(Prescribed Diseases\) Amendment Regulations 2000 \(S.I. 2000/1588\)](#), regs. 1, [5\(4\)](#)

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F37 Words in reg. 36(5) inserted (10.7.2000) by [The Social Security \(Industrial Injuries\) \(Prescribed Diseases\) Amendment Regulations 2000 \(S.I. 2000/1588\)](#), regs. 1, **5(5)**

SECTION B

MEDICAL EXAMINATIONS AND SUSPENSION

Initial examinations

^{F38}**37.**

F38 Reg. 37 revoked (10.10.1994) by [The Social Security \(Industrial Injuries\) \(Prescribed Diseases\) Amendment Regulations 1994 \(S.I. 1994/2343\)](#), regs. 1, **5**

Periodical examinations

^{F39}**38.**

F39 Reg. 38 revoked (10.10.1994) by [The Social Security \(Industrial Injuries\) \(Prescribed Diseases\) Amendment Regulations 1994 \(S.I. 1994/2343\)](#), regs. 1, **5**

Suspension from employment

39. A certificate of suspension issued under the provisions of either regulation 43 or regulation 44 of the National Insurance (Industrial Injuries) (Prescribed Diseases) Regulations 1959 (regulations revoked with effect from 27th November 1974 by regulation 7(1) of the National Insurance (Industrial Injuries) (Prescribed Diseases) Amendment (No. 2) Regulations 1974) and in force immediately before 27th November 1974 shall continue in force subject to and in accordance with the provisions of regulation 40 of these regulations.

Conditions of suspension

40.—(1) A certificate of suspension issued under the provisions of either regulation 43 or regulation 44 of the National Insurance (Industrial Injuries) (Prescribed Diseases) Regulations 1959, and remaining in force by virtue of the last preceding regulation, shall suspend the person to whom it relates from further employment in any occupation in relation to which pneumoconiosis is prescribed, with such exceptions and subject to such conditions (if any) as may be specified in the certificate.

(2) [^{F40}The Secretary of State] may at any time revoke or vary a certificate of suspension on the application of the person to whom it relates, but unless so revoked or varied such certificate shall remain in force throughout the life of such person.

(3) No person who has been suspended from employment may engage or continue in employment, and no employer may employ or continue to employ any such person, in any occupation in relation to which pneumoconiosis is prescribed, except in accordance with the terms of the certificate of suspension in his case.

F40 Words in reg. 40(2) substituted (4.7.1999) by [The Social Security Act 1998 \(Commencement No. 8, and Savings and Consequential and Transitional Provisions\) Order 1999 \(S.I. 1999/1958\)](#), art. 4, **Sch. 8 para. 18**

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Duties of employers

^{F41} **41.**

F41 Reg. 41 revoked (10.10.1994) by [The Social Security \(Industrial Injuries\) \(Prescribed Diseases\) Amendment Regulations 1994 \(S.I. 1994/2343\)](#), regs. 1, **5**

Fees for initial and periodical examination

^{F42} **42.**

F42 Reg. 42 revoked (10.10.1994) by [The Social Security \(Industrial Injuries\) \(Prescribed Diseases\) Amendment Regulations 1994 \(S.I. 1994/2343\)](#), regs. 1, **5**

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