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STATUTORY INSTRUMENTS

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**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**

*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 [<sup>F1</sup>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 [<sup>F2</sup>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 <sup>F3</sup>... 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.

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[<sup>F4</sup>(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.

[<sup>F5</sup>(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 [<sup>F6</sup>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—

- (a) if no assessment of the extent of his disability has been made, [<sup>F7</sup>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, [<sup>F7</sup>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 [<sup>F7</sup>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—

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- (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.

- F1** 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)**
- F2** 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)**
- F3** 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)**
- F4** 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)**
- F5** 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**
- F6** 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)**
- F7** 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**

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