
STATUTORY INSTRUMENTS

1993 No. 1985

SOCIAL SECURITY

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

Made - - - - *5th August 1993*
Laid before Parliament *12th August 1993*
Coming into force - - *13th September 1993*

The Secretary of State for Social Security, in exercise of the powers conferred by sections 108(2) and (4), 109(2) and (3), 110(1) and (2), 122(1) and 175(1) and (3) of and paragraph 2 of Schedule 6 to the Social Security Contributions and Benefits Act 1992(1) and sections 5(1)(a) and (b), 58(1) (b) and 189(1) and (4) of the Social Security Administration Act 1992(2), and of all other powers enabling him in that behalf, after reference to the Industrial Injuries Advisory Council(3) hereby makes the following Regulations:

Citation, commencement and interpretation

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

(2) In these Regulations “the principal Regulations” means the Social Security (Industrial Injuries) (Prescribed Diseases) Regulations 1985(4).

Amendment of regulation 2 of the principal Regulations

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

“(d) the disease specified in paragraph D12 of Part I of Schedule 1 is not prescribed in relation to persons to whom regulation 22 applies.”.

(1) 1992 c. 4. Section 122 is cited for the definition which it ascribes to the word “prescribe”.
(2) 1992 c. 5.
(3) See section 172 of the Social Security Administration Act 1992.
(4) S.I. 1985/967; the relevant amending instruments are S.I. 1987/335 and 1989/1207.

Amendment of regulation 4 of the principal Regulations

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

- (a) in paragraph (1), for “and D5” there shall be substituted “, D5 and D12”; and
- (b) after paragraph (5) there shall be added the following paragraph—

“(6) Where a person in relation to whom chronic bronchitis or emphysema is prescribed in paragraph D12 of Schedule 1 develops chronic bronchitis or emphysema, the disease shall, unless the contrary is proved, be presumed to be due to the nature of his employed earner’s employment.”.

Amendment of regulations 6 and 7 of the principal Regulations

4. In paragraph (2)(a) and (b) of regulation 6 and paragraph (1) of regulation 7 of the principal Regulations (date of onset and recrudescence) for the words “or bilateral diffuse pleural thickening” in each place where they occur there shall be substituted the words “, bilateral diffuse pleural thickening or chronic bronchitis or emphysema”.

Amendment of regulation 22 of the principal Regulations

5.—(1) Regulation 22 of the principal Regulations (pneumoconiosis-effects of emphysema and chronic bronchitis) shall be amended in accordance with the following paragraphs of this regulation.

(2) In paragraph (1), at the beginning, there shall be inserted the words “Except in the circumstances specified in paragraph (1A),”.

(3) After paragraph (1) there shall be inserted the following paragraph—

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

Amendment of Schedule 1 to the principal Regulations

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

<p>“D12 Except in the circumstances specified in regulation 2(d),</p> <ul style="list-style-type: none"> (a) chronic bronchitis; or (b) emphysema; or (c) both <p>where there is accompanying evidence of—</p> <ul style="list-style-type: none"> (i) coal dust retention demonstrated by a chest radiograph to at least the level of Category 1 in the International Labour Office’s 	<p>Exposure to coal dust by reason of working underground in a coal mine for a period of, or periods amounting in the aggregate to, at least 20 years (whether before or after 5th July 1948).”.</p>
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- publication “The Classification of Radiographs of Pneumoconioses” Revised Edition 1980, 8th Impression 1992 published at Geneva; and
- (ii) a forced expiratory volume in one second at least one litre below the mean value predicted in accordance with “Lung Function: Assessment and Application in Medicine” by J. E. Cotes, 4th Edition 1979 published at Oxford by Blackwell Scientific Publications Limited (ISBN 0-632-00033-3) for a person of the claimant’s age, height and sex, measured from the position of maximum inspiration with the claimant making maximum effort.

Amendment of regulation 11 of the Social Security (General Benefit) Regulations 1982

7. Regulation 11 of the Social Security (General Benefit) Regulations 1982 (further definition of the principles of assessment of disablement and prescribed degrees of disablement)(5) shall be amended as follows—

- (a) at the beginning of paragraphs (3), (4) and (5) there shall be inserted the words “Subject to paragraphs (5A) and (5B)”; and
- (b) after paragraph (5) there shall be inserted the following paragraphs—
- “(5A) Where—
- (a) a person has an award of industrial injuries disablement benefit in respect of the disease specified in paragraph D1 of Part I of Schedule 1 to the Social Security

(Industrial Injuries) (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.”.

Amendment of the Social Security (Adjudication) Regulations 1986

8.—(1) The Social Security (Adjudication) Regulations 1986⁽⁶⁾ shall be amended in accordance with the following paragraphs of this regulation.

(2) In regulation 29(2) (determination of medical questions), for “D9, D10 or D11” there shall be substituted “D9, D10, D11 or D12”.

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

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

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

Transitional provision with respect to claims for prescribed disease D12

9.—(1) In this regulation—

“prescribed disease D12” means the disease bearing that number and listed in Part I of Schedule 1 to the principal Regulations⁽⁷⁾ (chronic bronchitis and emphysema);

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

⁽⁶⁾ S.I. 1986/2218; the relevant amending instrument is S.I. 1993/861.

⁽⁷⁾ S.I. 1985/967.

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

(2) The provisions of the Social Security (Claims and Payments) Regulations 1987⁽⁸⁾ shall apply in relation to a relevant claim subject to the following provisions of this regulation.

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

(4) A person who is aged less than 70 on 13th September 1993 and who, on the date the claim is made, has an award of attendance allowance at the higher rate under section 65(3) of the Social Security Contributions and Benefits Act 1992⁽⁹⁾ or of the care component of disability living allowance at the highest rate under section 72(4) of that Act, may make a relevant claim at any time in the period beginning with 13th September 1993 and ending with 28th February 1994, and if so made the claim shall be treated as having been made on the relevant date.

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

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

5th August 1993

Henley
Parliamentary Under-Secretary of State,
Department of Social Security

⁽⁸⁾ S.I. 1987/1968.

⁽⁹⁾ 1992 c. 4.

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EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations further amend the Social Security (Industrial Injuries) (Prescribed Diseases) Regulations 1985 (S.I.1985/967) (“the principal Regulations”) by providing for the prescription of chronic bronchitis and emphysema as an industrial disease (“PD D12”) where either condition has, or both conditions have, been contracted after working for twenty years underground in a coal mine (regulation 6). In order to qualify for benefit a claimant must show—

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

The International Labour Office publication may be obtained from its British office, Vincent House, Vincent Square, London SW1, whilst Cotes is available from booksellers.

Consequential amendments to regulations 2, 4, 6, 7 and 22 of the principal Regulations are also made (regulations 2, 3, 4 and 5).

Regulation 7 amends regulation 11 of the Social Security (General Benefit) Regulations 1982 (S.I.1982/1408). The regulation is amended to make special provision for the interaction between awards for chronic bronchitis, emphysema and pneumoconiosis.

Regulation 8 makes consequential amendments to the Social Security (Adjudication) Regulations 1986 (S.I.1986/2218).

Regulation 9 makes transitional provision in respect of claims. The “relevant date” is defined as 13th September 1993 or the date on which the claimant first satisfies the conditions in Schedule 1 to the principal Regulations in respect of PD D12, whichever is the later.

A person who—

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

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

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

The Regulations will lead indirectly to increased costs for businesses employing coal miners as records and employment histories will be required in order to establish that the prescription criteria are satisfied, although they do not impose a charge upon business. An assessment of the cost to business of applying these Regulations has been placed in the Libraries of both Houses of

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