

## 1988 No. 242

## SOCIAL SECURITY

**Pneumoconiosis, etc., (Workers' Compensation) (Payment of Claims) Regulations (Northern Ireland) 1988**

*Made* . . . . . 1st July 1988

*Coming into operation* . . . . . 22nd August 1988

*To be laid before Parliament under paragraph 3(3) of Schedule 1 to the Northern Ireland Act 1974*

The Department of Economic Development(a), in exercise of the powers conferred on it by Articles 3(3), 4(3), 11(1) and (4) of the Pneumoconiosis, etc., (Workers' Compensation) (Northern Ireland) Order 1979(b) and of every other power enabling it in that behalf, hereby makes the following Regulations:

*Citation, commencement, revocation and transitional provision*

1.—(1) These Regulations may be cited as the Pneumoconiosis, etc., (Workers' Compensation) (Payment of Claims) Regulations (Northern Ireland) 1988 and shall come into operation on 22nd August 1988 in relation to any case in which a person first satisfies the conditions of entitlement to a payment under the Order on or after that date.

(2) Subject to paragraph (3), the Pneumoconiosis, etc., (Workers' Compensation) (Payment of Claims) Regulations (Northern Ireland) 1986(c) are revoked.

(3) Notwithstanding the revocation in paragraph (2), those Regulations shall continue to have effect as provided in those Regulations in any case in which a person first satisfies the conditions of entitlement to a payment under the Order before 22nd August 1988.

*Interpretation*

2. In these Regulations—

“claim” means a claim made in accordance with the Pneumoconiosis, etc., (Workers' Compensation) (Determination of Claims) Regulations (Northern Ireland) 1986(d);

“determination” as respects a medical board or a medical appeal tribunal means a determination in connection with a claim for disablement benefit;

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(a) Formerly the Department of Manpower Services: see S.I. 1982/846 (N.I. 11) Article 3  
 (b) S.I. 1979/925 (N.I. 9) as amended by S.I. 1985/1209 (N.I. 16) Article 22 and S.I. 1986/1888 (N.I. 18), Article 40 and Schedule 3  
 (c) S.R. 1986 No. 208  
 (d) S.R. 1986 No. 207

- “disease” means a disease to which the Order applies, namely pneumoconiosis, byssinosis, diffuse mesothelioma, primary carcinoma of the lung and bilateral diffuse pleural thickening;
- “medical board” means 2 or more adjudicating medical practitioners appointed under paragraph 1 of Schedule 12 to the Social Security (Northern Ireland) Act 1975(a) and nominated by the Department of Health and Social Services for Northern Ireland to act jointly in the consideration of a case;
- “medical appeal tribunal” means a tribunal constituted in accordance with Schedule 12 to the Social Security (Northern Ireland) Act 1975;
- “the Order” means the Pneumoconiosis, etc., (Workers’ Compensation) (Northern Ireland) Order 1979;
- “percentage assessment” means percentage disability assessed in respect of a disease by a medical board or medical appeal tribunal, as the case may be, for the purpose of determining entitlement to disablement benefit under section 76 of the Social Security (Northern Ireland) Act 1975 or under any corresponding provision of the former Industrial Injuries Acts(b);
- “primary carcinoma of the lung” means primary carcinoma of the lung where there is accompanying evidence of one or both of the following:—
- (i) asbestosis;
  - (ii) bilateral diffuse pleural thickening.

*Payments to persons disabled by a disease*

3.—(1) The amount of any payment made to any person disabled by a disease who has made a claim for, and in respect of whom there is entitlement to a payment under the Order, shall be determined in accordance with Table 1 of the Schedule.

(2) For the purpose of a determination as respects Table 1 of the Schedule the age of the person concerned and the percentage assessment shall be related to the first determination that he was suffering from the disease in the following manner—

- (a) in any case where the first determination was a determination of a medical board, the age of the person concerned shall be the age of that person at his last birthday preceding the first day of the month in which that determination was made, and the percentage assessment shall be that which is applicable either at the time or retrospectively for the period immediately following the date of the determination by that board;
- (b) in any case where the first determination was a determination of a medical appeal tribunal, the age of that person shall be his age at his last birthday preceding the first day of the month in which his case was last considered by a medical board (being at a time prior to the first

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(a) 1975 c. 15; Schedule 12 was amended by Articles 3 and 4 of and paragraphs 6 to 8 of Schedule 1 to and paragraph 7 of Schedule 2 to S.I. 1983/1524 (N.I. 17) and by Article 53 of and paragraph 15 of Schedule 5 to S.I. 1986/1888 (N.I. 18)

(b) 1946 c. 21 (N.I.) and 1966 c. 9 (N.I.)

determination of a medical appeal tribunal) and the percentage assessment shall be that which is applicable for the period immediately following the date of that last consideration by a medical board.

(3) In any case where, at the time of the first determination of a medical board or a medical appeal tribunal that the disabled person was suffering from the disease, the board or tribunal, as the case may be, diagnosed that pneumoconiosis was accompanied by tuberculosis, this regulation shall apply subject to regulation 6.

*Payments to dependants of persons disabled by a disease*

4.—(1) The amount of any payment made to a dependant of a person to whom disablement benefit in respect of a disease was payable immediately before he died, or would have been payable but for his disablement amounting to less than the appropriate percentage, being the dependant entitled to a payment under the Order, shall be determined by ascertaining the amount which would have been payable to the deceased in accordance with regulation 3 had he still been alive and had duly made a claim for payment under the Order, deducting from that amount the sum which would have been payable to the deceased if his age at his last birthday preceding his death were substituted for the age used in ascertaining the amount in accordance with regulation 3.

(2) Where the Department is satisfied that the deceased died as a result of the disease, there shall be added to the amount calculated in accordance with paragraph (1) a further amount determined in accordance with Table 2 of the Schedule and for this purpose—

- (a) the age of the deceased shall be his age at his last birthday preceding his death;
- (b) in the case of a disease other than diffuse mesothelioma, the percentage assessment shall be the same as that used in determining the amount payable under regulation 3.

(3) For the purpose of determining whether a payment should be made under paragraph (2), it shall be sufficient evidence that the deceased died as a result of the disease if death benefit is payable or was paid as a lump sum by reason of the deceased's death as a result of the disease.

(4) It shall not be open to the Department to be satisfied that the deceased died as a result of the disease if there is clear evidence that a claim for death benefit has been disallowed on the ground that the deceased did not die as a result of the disease.

(5) Where no claim for death benefit has been made, it shall not be open to the Department to be satisfied that the deceased died as a result of the disease if there is clear evidence available that in the opinion of two doctors of a medical board the deceased did not die as a result of the disease.

- (6) (a) A dependant of a person to whom disablement benefit in respect of a disease was not payable immediately before he died, being the dependant entitled to a payment under the Order, shall be paid an amount determined in accordance with Table 2 of the Schedule in cases where—

- (i) death benefit is payable to or in respect of the said dependant by reason of the deceased's death as a result of the disease; or
  - (ii) disablement benefit would have been payable to the deceased immediately before he died but for his not having claimed benefit, or but for his having died before he had suffered from the disease for the appropriate period.
- (b) The relevant percentage assessment for the purposes of Part A of that Table shall be that determined by a medical board in respect of the period immediately prior to the deceased's death or if no such determination was made the relevant percentage assessment shall be taken as 10 per cent. and the age of the deceased, for this purpose, shall be taken as his age at his last birthday preceding his death.

(7) As respects any claim made by the dependant of a deceased person where that person has died as a result of diffuse mesothelioma, this regulation shall apply subject to regulation 5.

*Payment where death results from diffuse mesothelioma*

5.—(1) Subject to paragraph (2), in any case where the Department is satisfied, as respects a claim by a dependant of a deceased person who died on or after 22nd August 1966 (the said dependant being the dependant who is entitled to a payment under the Order), that the said deceased person died as a result of diffuse mesothelioma the amount of the payment to that dependant shall be:—

- (a) the amount payable in accordance with regulation 4 in respect of diffuse mesothelioma if—
  - (i) disablement benefit was payable to the deceased immediately before he died solely in respect of diffuse mesothelioma, or
  - (ii) where disablement benefit in respect of a disease was not payable to the deceased immediately before he died, death benefit is payable to or in respect of the said dependant by reason of the deceased's death as a result of the disease, or
  - (iii) disablement benefit would have been payable to the deceased immediately before he died but for his not having claimed the benefit or but for his having died before he had suffered from the disease for the appropriate period;
- (b) if disablement benefit was payable to the deceased immediately before he died solely in respect of pneumoconiosis, either—
  - (i) the total amount payable in accordance with regulation 4 in a case where the deceased's death resulted from pneumoconiosis or, if greater—
  - (ii) the amount payable in accordance with regulation 4(6) in respect of the deceased's death as a result of diffuse mesothelioma;
- (c) if disablement benefit was payable to the deceased immediately before he died in respect of both pneumoconiosis and diffuse mesothelioma or would have been payable to him but for the circumstances specified in sub-paragraph (a)(iii), either the amount payable in accordance with sub-paragraph (a) or that payable in

accordance with sub-paragraph (b)(i), whichever amount is the greater.

(2) In any case the amount payable to a dependant under this regulation shall be at least £1,263 more than the amount which would have been payable to him if he had been entitled to a payment calculated in accordance with regulation 4(6).

(3) If any amount is payable in accordance with this regulation to the dependant of a deceased person, the Department shall deduct from that amount a sum equal to any payment made under the provisions of the Order to the said deceased person prior to death, save that any amount so payable after any such deduction shall not, in any event, be less than the minimum payment prescribed in regulation 7.

*Payment where pneumoconiosis is accompanied by tuberculosis*

6.—(1) In any case where, at the time of the first determination of a medical board, or medical appeal tribunal that the disabled person was suffering from the disease, the board or tribunal, as the case may be, diagnosed that pneumoconiosis was accompanied by tuberculosis, the amount payable to any such disabled person under the provisions of the Order shall be determined by adding together—

- (a) the sum of £2,613, if the percentage assessment applicable for the period immediately following the date relevant for the purposes of regulation 3(2) was one hundred per cent. or if less than one hundred per cent. that percentage of £2,613, in respect of the year beginning on that date (that is to say the date relevant for the purpose of regulation 3(2)), and in respect of each successive year beginning on the anniversary of that date on the first day of which the said disabled person was, or appears to the Department to have been, suffering from pneumoconiosis accompanied by active tuberculosis, and
- (b) a lump sum determined in accordance with Table 1 of the Schedule, taking, for this purpose, the age of the disabled person as his age at his last birthday prior to the end of the last year to which paragraph (1)(a) applies, and taking also for this purpose the percentage assessment as that applicable for the period immediately following the end of the period during which the said disabled person was suffering from pneumoconiosis accompanied by active tuberculosis.

(2) The amount payable to a dependant of any disabled person who, had he been alive, would have been entitled to a payment determined in accordance with paragraph (1), being the dependant entitled to a payment under the Order, shall be determined in accordance with regulation 4, save that the amount which would have been payable to the deceased in accordance with paragraph (1) shall be substituted for the amount which would have been payable to him in accordance with regulation 3 with the percentage disablement taken for the purpose of determining the sum to be deducted under regulation 4(1) from the aforesaid amount being the percentage disablement used for the purpose of determining the lump sum under paragraph (1)(b).

(3) In any case to which this regulation applies and where it appears to the Department that tuberculosis either remains active at the time a claim is made

under the Order, or remained active until the time when the disabled person died, the amount of the payment shall be determined as if at the time of its first determination that the disabled person was suffering from the disease the medical board or medical appeal tribunal, as the case may be, had not diagnosed that pneumoconiosis was accompanied by tuberculosis.

(4) No payment made in accordance with this regulation shall exceed the amount which would have been payable if at the time of its first determination that the disabled person was suffering from the disease the medical board or medical appeal tribunal, as the case may be, had not diagnosed that pneumoconiosis was accompanied by tuberculosis.

*Minimum amount payable to dependant*

7. In any case where entitlement to payment under the Order has been established by the dependant of any person who immediately before he died was disabled by a disease and the amount of any payment to the dependant under the foregoing provisions is less than the sum of £1,263 the amount actually payable to that dependant shall, in no such case, be less than that sum.

Sealed with the Official Seal of the Department of Economic  
Development on 1st July 1988.

(L.S.)

*M. A. Warnock*

Assistant Secretary

## SCHEDULE

Regulations 3, 4, 5  
and 6

## TABLE 1

(1) Table 1 is for the determination of payments to disabled persons under regulation 3 (or regulation 6), and for the determination of payments to dependants of deceased sufferers under regulation 4(1).

(2) The relevant period is the period specified in regulation 3(2) or, in the case of a disabled person to whom regulation 6 applies (Payment where pneumoconiosis is accompanied by tuberculosis), the period specified in paragraph (1)(b) of that regulation.

(3) The age to be taken for the purpose of determining the amount payable to a disabled person is his age on the date specified in regulation 3(2) or, in the case of a disabled person to whom regulation 6 applies (Payment where pneumoconiosis is accompanied by tuberculosis) his age on the date specified in paragraph (1) of that regulation. With a view to determining the amount payable to a dependant of a disabled person under regulation 4(1), the age to be taken for the purpose of calculating the sum to be deducted from the amount which would have been payable to the disabled person had he still been alive is the age of the deceased at his last birthday preceding his death.

PAYMENTS TO DISABLED PERSONS TO WHOM IS PAYABLE DISABILITY BENEFIT UNDER SECTION 76 OF THE SOCIAL SECURITY (NORTHERN IRELAND) ACT 1975 OR UNDER ANY CORRESPONDING PROVISION OF THE FORMER INDUSTRIAL INJURIES ACTS, OR WOULD BE PAYABLE BUT FOR THE DISABILITY AMOUNTING TO LESS THAN THE APPROPRIATE PERCENTAGE.

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Age of Disabled Person	Percentage assessment for the relevant period									
	10% or less	11-20%	21-30%	40%	50%	60%	70%	80%	90%	100%
	£	£	£	£	£	£	£	£	£	£
37 and under	14,630	26,126	30,653	31,525	32,396	33,091	33,789	34,486	35,182	35,879
38	14,212	25,081	29,731	30,794	31,698	32,396	33,091	33,789	34,486	35,182
39	13,794	24,035	28,808	30,061	31,003	31,698	32,396	33,091	33,789	34,486
40	13,377	22,990	27,885	29,330	30,305	31,003	31,698	32,396	33,091	33,789
41	12,958	21,945	26,961	28,597	29,610	30,305	31,003	31,698	32,396	33,091
42	12,539	20,900	26,039	27,867	28,912	29,610	30,305	31,003	31,698	32,396
43	11,913	19,681	25,114	27,311	28,425	29,260	29,957	30,653	31,350	32,048
44	11,286	18,461	24,192	26,752	27,937	28,912	29,610	30,305	31,003	31,698
45	10,659	17,243	23,269	26,195	27,449	28,564	29,260	29,957	30,653	31,350
46	10,032	16,023	22,346	25,637	26,961	28,215	28,912	29,610	30,305	31,003
47	9,406	14,805	21,422	25,081	26,474	27,867	28,564	29,260	29,957	30,653
48	8,864	14,315	20,692	23,965	25,637	26,892	27,588	28,285	28,981	29,679
49	8,325	13,829	19,960	22,850	24,802	25,916	26,613	27,311	28,007	28,704
50	7,786	13,341	19,228	21,737	23,965	24,941	25,637	26,334	27,031	27,727
51	7,246	12,854	18,496	20,622	23,130	23,965	24,662	25,359	26,056	26,752
52	6,705	12,366	17,766	19,507	22,293	22,990	23,688	24,383	25,081	25,776
53	6,200	11,496	16,650	18,532	21,457	22,293	22,990	23,688	24,383	25,081
54	5,695	10,624	15,535	17,557	20,622	21,597	22,293	22,990	23,688	24,383
55	5,191	9,753	14,422	16,581	19,785	20,900	21,597	22,293	22,990	23,688
56	4,685	8,883	13,306	15,606	18,951	20,204	20,900	21,597	22,293	22,990
57	4,179	8,012	12,192	14,630	18,114	19,507	20,204	20,900	21,597	22,293

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58	3,850	7,281	10,887	13,132	16,301	17,591	18,340	19,072	19,785	20,482
59	3,518	6,548	9,578	11,636	14,490	15,675	16,476	17,243	17,974	18,670
60	3,188	5,817	8,273	10,136	12,680	13,760	14,612	15,415	16,163	16,860
61	2,856	5,085	6,967	8,639	10,868	11,844	12,749	13,585	14,352	15,048
62	2,526	4,354	5,660	7,140	9,058	9,928	10,887	11,757	12,539	13,237
63	2,351	3,396	5,085	6,384	8,056	8,917	9,824	10,659	11,425	12,122
64	2,179	3,518	4,510	5,626	7,055	7,907	8,761	9,562	10,311	11,007
65	2,004	3,101	3,936	4,868	6,052	6,897	7,698	8,465	9,196	9,893
66	1,829	2,683	3,361	4,110	5,052	5,887	6,636	7,367	8,082	8,778
67	1,656	2,263	2,786	3,353	4,050	4,877	5,574	6,270	6,967	7,663
68	1,611	2,194	2,691	3,213	3,910	4,685	5,356	6,078	6,749	7,437
69	1,568	2,124	2,595	3,075	3,771	4,494	5,139	5,887	6,533	7,210
70	1,523	2,055	2,499	2,935	3,631	4,302	4,920	5,695	6,314	6,985
71	1,481	1,986	2,404	2,795	3,492	4,110	4,702	5,504	6,097	6,758
72	1,438	1,916	2,308	2,657	3,353	3,919	4,484	5,312	5,877	6,533
73	1,402	1,882	2,273	2,604	3,301	3,831	4,398	5,173	5,704	6,340
74	1,367	1,846	2,238	2,552	3,250	3,744	4,311	5,033	5,530	6,149
75	1,333	1,812	2,204	2,499	3,195	3,658	4,224	4,894	5,356	5,956
76	1,298	1,776	2,168	2,447	3,143	3,572	4,137	4,756	5,181	5,766
77 and over	1,263	1,741	2,134	2,395	3,091	3,484	4,050	4,617	5,007	5,574

TABLE 2

(1) Table 2 is for the determination of additional payments under regulation 4(2) to dependants of deceased sufferers who died as a result of the disease and for the determination of payments to dependants under regulation 4(6).

(2) The relevant period is the period specified in regulation 3(2) or, in the case of a disabled person to whom regulation 6 applies (Payment where pneumoconiosis is accompanied by tuberculosis), the period specified in paragraph (1)(b) of that regulation.

## PART A

PAYMENTS TO DEPENDANTS TO WHOM DEATH BENEFIT UNDER SECTION 76 OF THE SOCIAL SECURITY (NORTHERN IRELAND) ACT 1975 IS PAYABLE, OR TO DEPENDANTS OF PERSONS TO WHOM DISABLEMENT BENEFIT UNDER THAT SECTION OR UNDER ANY CORRESPONDING PROVISION OF THE FORMER INDUSTRIAL INJURIES ACTS WAS PAYABLE, OR TO DEPENDANTS OF A PERSON TO WHOM DISABLEMENT BENEFIT WOULD HAVE BEEN PAYABLE IMMEDIATELY BEFORE HE DIED BUT FOR THE OCCURRENCE OF ONE OF THE CIRCUMSTANCES LISTED IN REGULATION 5(1)(a)(iii) OR BUT FOR HIS DISABLEMENT AMOUNTING TO LESS THAN THE APPROPRIATE PERCENTAGE, IN CIRCUMSTANCES WHERE THE DISABLED PERSON DIED AS A RESULT OF A DISEASE OTHER THAN DIFFUSE MESOTHELIOMA.

<i>Age of disabled person at his last birthday preceding death</i>	<i>Percentage assessment for the relevant period</i>				
	10% or less	11-20%	21-30%	40%	50% and over
	£	£	£	£	£
37 and under	6,880	13,412	15,327	15,850	16,286
38	6,671	12,819	14,805	15,327	15,883
39	6,462	12,227	14,282	14,805	15,484
40	6,252	11,636	13,760	14,282	15,083
41	6,043	11,043	13,237	13,760	14,682
42	5,835	10,451	12,714	13,237	14,282
43	5,460	9,684	12,243	12,766	13,899
44	5,085	8,917	11,773	12,296	13,512
45	4,711	8,152	11,304	11,825	13,132
46	4,336	7,385	10,833	11,355	12,749
47	3,962	6,617	10,364	10,887	12,366
48	3,675	6,409	10,016	10,520	11,896
49	3,387	6,200	9,666	10,155	11,425
50	3,101	5,991	9,319	9,788	10,955
51	2,812	5,782	8,971	9,423	10,484
52	2,526	5,574	8,621	9,058	10,016
53	2,395	5,085	7,960	8,552	9,632
54	2,263	4,598	7,297	8,046	9,249
55	2,134	4,110	6,636	7,542	8,864
56	2,004	3,623	5,974	7,037	8,481
57	1,872	3,136	5,312	6,533	8,098
58	1,750	2,786	4,555	5,644	7,037

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59	1,628	2,438	3,798	4,756	5,974
60	1,507	2,091	3,039	3,867	4,912
61	1,386	1,741	2,282	2,979	3,850
62	1,263	1,393	1,523	2,091	2,786
63	1,263	1,367	1,472	1,924	2,482
64	1,263	1,341	1,419	1,759	2,179
65	1,263	1,315	1,367	1,594	1,872
66	1,263	1,290	1,315	1,428	1,568
67 and over	1,263	1,263	1,263	1,263	1,263

## PART B

PAYMENTS TO DEPENDANTS OF PERSONS WHO DIED AS A RESULT OF DIFFUSE  
MESOTHELIOMA

<i>Age of disabled person at his last birthday preceding death</i>	<i>Payment</i>
	£
37 and under	16,286
38	15,883
39	15,484
40	15,083
41	14,682
42	14,282
43	13,899
44	13,512
45	13,132
46	12,749
47	12,366
48	11,896
49	11,425
50	10,955
51	10,484
52	10,016
53	9,632
54	9,249
55	8,864
56	8,481
57	8,098
58	7,037
59	5,974
60	4,912
61	3,850
62	2,786
63	2,482
64	2,179
65	1,872
66	1,568
67 and over	1,263

## EXPLANATORY NOTE

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

These Regulations, which come into force on 22nd August 1988 prescribe the amount of payments to be made under the Pneumoconiosis, etc., (Workers' Compensation) (Northern Ireland) Order 1979 ("the Order"), as amended by the Social Security (Northern Ireland) Order 1985, S.I. 1985/1209 (N.I. 16) and the Social Security (Northern Ireland) Order 1986, S.I. 1986/1888 (N.I. 18) to persons disabled by a disease to which the Order applies (namely pneumoconiosis, byssinosis, diffuse mesothelioma, primary carcinoma of the lung (where accompanied by asbestosis or bilateral diffuse pleural thickening) and bilateral diffuse pleural thickening) or to dependants of persons who immediately before they died were disabled by such a disease. All such persons should satisfy the conditions of entitlement prescribed in Article 3 (payments to disabled persons) or as the case may be, Article 4 (payments to dependants of disabled persons) of the Order.

The Regulations re-enact the Pneumoconiosis, etc., (Workers' Compensation) (Payment of Claims) Regulations (Northern Ireland) 1986 ("the 1986 Regulations") which are revoked. In addition to minor and drafting amendments they make the following changes of substance:—

- (a) the amount of payments laid down by the 1986 Regulations is increased by 8.5% rounded up or down to the nearest £1 as appropriate.
- (b) regulations 4 and 5 are amended to take account of the changes made to the conditions of entitlement in Articles 3 and 4 of the Order by the Social Security (Northern Ireland) Order 1986.