

SCHEDULES

SCHEDULE 3

Section 39.

INDUSTRIAL INJURIES AND DISEASES

Social Security Act 1975 (c. 14)

- 1 The Social Security Act 1975 shall have effect as provided by this Schedule.
- 2 The following subsection shall be substituted for section 50(1)—
 - “(1) Subject to the provisions of this Act, industrial injuries benefit shall be payable where an employed earner suffers personal injury caused after 4th July 1948 by accident arising out of and in the course of his employment, being employed earner's employment.”.
- 3 (1) In subsection (1) of section 57 (disablement benefit) " 14 per cent." shall be substituted for " 1 per cent ".
- (2) The following subsections shall be inserted after that subsection—
 - “(1A) In the determination of the extent of an employed earner's disablement for the purposes of this section there may be added to the percentage of the disablement resulting from the relevant accident the assessed percentage of any present disablement of his resulting from any other accident after 4th July 1948 which arose out of and in the course of his employment being employed earner's employment, and in respect of which a disablement gratuity was not paid to him under this Act after a final assessment of his disablement.
 - (1B) Subject to subsection (1C) below, where the assessment of disablement is a percentage between 20 and 100 which is not a multiple of 10, it shall be treated—
 - (a) if it is a multiple of 5, as being the next higher percentage which is a multiple of 10; and
 - (b) if it is not a multiple of 5, as being the nearest percentage which is a multiple of 10,and where it is a percentage of 14 or more but less than 20 it shall be treated as a percentage of 20.
 - (1C) Where subsection (1A) above applies, subsection (1B) above shall have effect in relation to the aggregate percentage and not in relation to any percentage forming part of the aggregate.”.
- (3) Subsection (5) of that section shall cease to have effect except in relation to cases where the claim for benefit was made before this paragraph comes into force.
- (4) Subsection (6) shall have effect, except in relation to such cases, as if the words " Where disablement benefit is payable for a period, it shall be paid " were substituted for the words from the beginning to " payable ".

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4 Sections 58 and 59 and 64 to 66 (unemployability supplement) shall cease to have effect, except in relation to beneficiaries in receipt of unemployability supplement immediately before this paragraph comes into force.

5 (1) The following section shall be inserted after section 59—

“59A Reduced earnings allowance.

(1) Subject to the provisions of this Part of this Act, an employed earner shall be entitled to reduced earnings allowance if—

(a) he is entitled to a disablement pension or would be so entitled if that pension were payable where disablement is assessed at not less than 1 per cent.;

(b) as a result of the relevant loss of faculty, he is either—

(i) incapable, and likely to remain permanently incapable, of following his regular occupation; and

(ii) incapable of following employment of an equivalent standard which is suitable in his case,

or is, and has at all times since the end of the period of 90 days referred to in section 57(4) above been, incapable of following that occupation or any such employment.

(2) The Secretary of State may by regulations provide that in prescribed circumstances employed earner's employment in which a claimant was engaged when the relevant accident took place but which was not his regular occupation is to be treated as if it had been his regular occupation.

(3) In subsection (1) above—

(a) references to a person's regular occupation are to be taken as not including any subsidiary occupation, except to the extent that they fall to be treated as including such an occupation by virtue of regulations under subsection (2) above ; and

(b) employment of an equivalent standard is to be taken as not including employment other than employed earner's employment;

and in assessing the standard of remuneration in any employment, including a person's regular occupation, regard is to be had to his reasonable prospect of advancement.

(4) For the purposes of this section a person's regular occupation is to be treated as extending to and including employment in the capacities to which the persons in that occupation (or a class or description of them to which he belonged at the time of the relevant accident) are in the normal course advanced, and to which, if he had continued to follow that occupation without having suffered the relevant loss of faculty, he would have had at least the normal prospects of advancement; and so long as he is, as a result of the relevant loss of faculty, deprived in whole or in part of those prospects, he is to be treated as incapable of following that occupation.

(5) Regulations may for the purposes of this section provide that a person is not to be treated as capable of following an occupation or employment merely because of his working thereat during a period of trial or for purposes of rehabilitation or training or in other prescribed circumstances.

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- (6) Reduced earnings allowance shall be awarded—
- (a) for such period as may be determined at the time of the award ; and
 - (b) if at the end of that period the beneficiary submits a fresh claim for the allowance, for such further period as may be determined.
- (7) The award may not be for a period longer than the period to be taken into account under paragraph 4 or 4A of Schedule 8 to this Act.
- (8) Reduced earnings allowance shall be payable at a rate determined by reference to the beneficiary's probable standard of remuneration during the period for which it is granted in any employed earner's employments which are suitable in his case and which he is likely to be capable of following as compared with that in the relevant occupation, but in no case at a rate higher than 40 per cent, of the maximum rate of a disablement pension or at a rate such that the aggregate of disablement pension and reduced earnings allowance awarded to the beneficiary exceeds 140 per cent, of the maximum rate of a disablement pension.
- (9) In subsection (8) above " the relevant occupation " means—
- (a) in relation to a person who is entitled to reduced earnings allowance by virtue of regulations under subsection (2) above, the occupation in which he was engaged when the relevant accident took place; and
 - (b) in relation to any other person who is entitled to reduced earnings allowance, his regular occupation within the meaning of subsection (1) above.
- (10) On any award except the first the probable standard of his remuneration shall be determined in such manner as may be prescribed ; and, without prejudice to the generality of this subsection, regulations may provide in prescribed circumstances for the probable standard of remuneration to be determined by reference—
- (a) to the standard determined at the time of the last previous award of reduced earnings allowance ; and
 - (b) to scales or indices of earnings in a particular industry or description of industries or any other data relating to such earnings.
- (11) A person who—
- (a) attains pensionable age after this section comes into force; and
 - (b) has retired from regular employment before that day; and
 - (c) was entitled to reduced earnings allowance on the day immediately before he retired from regular employment,
- shall be treated as entitled as from the day on which he retires from regular employment to reduced earnings allowance at a rate not higher at any time than that at which the allowance was payable to him immediately before he retired from regular employment.”.
- (2) Section 60 (increase of disablement pension for special hardship) shall cease to have effect.
- (3) A person who—
- (a) is over pensionable age on the day on which this paragraph comes into force ; and

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- (b) has retired from regular employment before that day ; and
- (c) was entitled on the day immediately before that day to an increase under section 60,

shall be treated as entitled as from the day on which this paragraph comes into force to reduced earnings allowance at a rate not higher at any time than that at which the increase was payable to him immediately before that day.

- (4) Where for any period commencing before 6th April 1987 a person is entitled both to reduced earnings allowance under section 59A and to an additional pension of a long-term benefit or, if the long-term benefit is invalidity pension, to either an invalidity allowance or an additional pension, or both, his reduced earnings allowance shall be reduced in respect of any part of the period falling on or after 6th April 1987 by the amount of any increase in the additional pension or invalidity allowance as the result of an order under section 63 above taking effect on or after that date.
 - (5) Where for any period commencing on or after 6th April 1987 a person is entitled as mentioned in sub-paragraph (4) above, his reduced earnings allowance shall be reduced by the amount of any additional pension or invalidity allowance to which he is entitled.
 - (6) Where a reduction falls to be made under sub-paragraph (4) or (5) above, the person to whom it falls to be made shall be entitled to reduced earnings allowance only if there is a balance after the reduction and, if there is such a balance, of an amount equal to it.
 - (7) Where the weekly rate of a benefit is reduced under section 29 of the Social Security Pensions Act 1975, there shall be subtracted from the amount which would otherwise fall to be deducted under sub-paragraph (4) or (5) above an amount equal to the reduction under that section.
 - (8) In the preceding sub-paragraphs references to an additional pension are references to that pension after any increase under section 9(3) of the Social Security Pensions Act 1975 but without any increase under Schedule 1, paragraphs 1 and 2, to that Act.
- 6 The following subsections shall be inserted after subsection (2) of section 61 (constant attendance allowance)—
- “(3) The Secretary of State may by regulations direct that any provision of section 35 above shall have effect, with or without modifications, in relation to increases of pension under this section.
 - (4) In subsection (3) above " modifications " includes additions and omissions.”.
- 7 Section 62 (increase during hospital treatment) shall cease to have effect, except in relation to a period during which a person is receiving medical treatment as an in-patient in a hospital or similar institution and which—
- (a) commenced before the coming into force of this paragraph ; or
 - (b) commenced after it but within a period of 28 days from the end of the period during which he last received an increase of benefit under that section in respect of such treatment for the relevant injury or loss of faculty.
- 8 The following provisions (which all relate to industrial death benefit)—
- (a) sections 67 and 68 ;
 - (b) sections 70 to 75 ; and
 - (c) Schedule 9,

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shall cease to have effect.

- 9 (1) This paragraph shall have effect in relation to widows who on the day before paragraph 8 above comes into force are entitled to death benefit under section 67.
- (2) A widow who is entitled to a pension at the initial rate specified in Schedule 4, Part V, paragraph 13(a) shall be treated as satisfying the conditions of entitlement to a widow's allowance specified in subsection (1) of section 24 and her entitlement to the allowance under that section shall, subject to the proviso to subsection (2) of that section, continue for so long as she would have been entitled to a pension under section 67 at the initial rate.
- (3) A widow who—
- (a) is not entitled to a pension at the initial rate but has one or more dependent children ; or
 - (b) is pregnant on the day before paragraph 8 above comes into force,
- shall be treated as satisfying the conditions of entitlement to a widowed mother's allowance under section 25 and her entitlement to the allowance shall, subject to the proviso to subsection (3) of that section, continue for so long as she satisfies either of the conditions specified in paragraph (a) or (b) of subsection (1) of that section.
- (4) A widow who—
- (a) is under 60 ; and
 - (b) has no dependent child ; and
 - (c) does not fall to be treated as entitled to a widow's allowance or a widowed mother's allowance,
- shall be treated as satisfying the conditions of entitlement to a widow's pension under section 26 and the pension shall be payable for any period during which she satisfies the provisions of subsection (3) of that section.
- (5) Subject to sub-paragraph (6) below, the rate of a widow's pension under sub-paragraph (4) above shall be—
- (a) in the case of a widow who was entitled to an allowance under section 70 after her husband died, but has ceased to be so entitled, the rate for a widow of the age she was when she so ceased;
 - (b) in the case of a widow who was not so entitled, the rate for a widow of the age she was when her late husband died,
- and for the purposes of this subsection a woman who was under the age of 40 at the relevant time shall be treated as having been of the age of 40 at that time.
- (6) The rate of pension for a widow who is entitled under section 68(2) to a pension at the higher permanent rate specified in Schedule 4, Part V, paragraph 13(b), shall be the rate specified in section 13 of the Social Security Pensions Act 1975 and shall be that rate notwithstanding anything in subsection (3) of that section.
- (7) Regulations may provide that a widow who on the day before paragraph 8 above comes into force is entitled to death benefit under section 67 shall be entitled to a prescribed benefit at a prescribed rate.
- (8) In this paragraph " dependent child " means a child in respect of whom the widow is entitled to child benefit if one of the conditions specified in section 43(1) is for the time being satisfied with respect to the child and the child is either—
- (a) a son or daughter of the widow and her late husband ; or

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- (b) a child in respect of whom her late husband was immediately before his death entitled to child benefit; or
 - (c) if the widow and her late husband were residing together immediately before his death, a child in respect of whom she was then entitled to child benefit.
- 10 In any case where—
- (a) an employed earner who is married dies as a result—
 - (i) of a personal injury of a kind mentioned in section 50(1); or
 - (ii) of a disease or injury such as is mentioned in section 76(1);
 - (b) the contribution conditions are not wholly satisfied in respect of him; those conditions shall be taken to be satisfied for the purposes of his widow's entitlement to—
 - (i) a widow's allowance or widow's payment;
 - (ii) a widowed mother's allowance ;
 - (iii) a widow's pension ; or
 - (iv) a Category B retirement pension at the same weekly rate as her widow's pension.
- 11 Section 69 (widower's death benefit) shall cease to have effect, except in relation to widowers in receipt of death benefit immediately before this paragraph comes into force.
- 12 The Secretary of State may by regulations provide for the payment of prescribed amounts in prescribed circumstances to persons who immediately before the repeal of sections 71 to 73 were entitled to any benefit by virtue of any of those sections, but in determining the amount which is to be payable in any case or class of cases the Secretary of State may take into account—
- (a) the extent to which the weekly rate of industrial death benefit has been modified in that case or class of cases by virtue of section 74 ;
 - (b) the age of the beneficiary and of any person or persons formerly maintained by the deceased ; and
 - (c) the length of time that entitlement to the benefit would have been likely to continue if those sections had not been repealed.
- 13 In section 77 (regulations as to industrial diseases) the following subsections shall be inserted after subsection (3)—
- “(4) The regulations may also provide—
- (a) that in the determination of the extent of an employed earner's disablement resulting from a prescribed disease or injury there may be added to the percentage of that disablement the assessed percentage of any present disablement of his resulting from—
 - (i) any accident after 4th July 1948 arising out of and in the course of his employment, being employed earner's employment;
 - (ii) any other prescribed disease or injury due to the nature of that employment and developed after 4th July 1948, and in respect of which a disablement gratuity was not paid to him under this Act after a final assessment of his disablement; and
 - (b) that in the determination of the extent of an employed earner's disablement for the purposes of section 57 above there may be added to the percentage of disablement resulting from the relevant

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accident the assessed percentage of any present disablement of his resulting from any prescribed disease or injury due to the nature of his employment and developed after 4th July 1948 and in respect of which a disablement gratuity was not paid to him under this Act after a final assessment of his disablement

- (5) Where the regulations make provision such as is mentioned in subsection (4) above and also make provision corresponding to subsection (1B) of section 57 above, they may also make provision to the effect that the corresponding provisions shall have effect in relation to the aggregate percentage and not in relation to any percentage forming part of the aggregate.”.

14 In section 108 (disablement questions)—

- (a) in subsection (1) the following words shall be added at the end, but not as part of paragraph (b)—

“but questions relating to the aggregation of percentages of disablement resulting from different accidents are not disablement questions.”; and

- (b) the following subsection shall be inserted after subsection (4)—

“(4A) In the case of a claimant for disablement benefit the adjudication officer may refer to one or more adjudicating medical practitioners for determination any question as to the extent of any present disablement of his resulting from an accident other than the accident which is the basis of the claim.”.

15 In Schedule 8 (assessment of extent of disablement)—

- (a) paragraph 4 shall be renumbered as sub-paragraph (1) of that paragraph; and
(b) the following sub-paragraph shall be inserted after that sub-paragraph—

“(2) Where—

- (a) the assessed extent of a claimant's disablement amounts to 13 per cent, or less ;
(b) it seems likely that the assessed extent of a claimant's disablement will be aggregated with the assessed extent of any present disablement of his and the likely aggregate amounts to 13 per cent, or less,

the period to be taken into account by the assessment of the disablement shall not end earlier than any date by which it seems likely that the extent of the disablement or the aggregate will be at least 1 per cent.”.

Industrial Injuries and Diseases (Old Cases) Act 1975 (c. 16)

16 For the purposes of section 159 and of section 7 of the Industrial Injuries and Diseases (Old Cases) Act 1975 paragraph 4 of this Schedule shall be deemed not to have been enacted.

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Pneumoconiosis etc. (Workers' Compensation) Act 1979 (c. 41)

- 17 (1) Section 2 of the Pneumoconiosis etc. (Workers' Compensation) Act 1979 (conditions of entitlement to lump sum payments) shall be amended as follows.
- (2) At the end of subsection (1)(a) there shall be added the words " or, subject to subsection (3A) below, would be payable to him in respect of it but for his disablement amounting to less than the appropriate percentage ".
- (3) At the end of subsection (2)(b) there shall be added the words " or, subject to subsection (3A) below, would have been so payable to him—
- (i) but for his disablement amounting to less than the appropriate percentage; or
 - (ii) but for his not having claimed the benefit; or
 - (iii) but for his having died before he had suffered from the disease for the appropriate period ".
- (4) In subsection (3) the following definitions shall be inserted before the definition of " death benefit "—
- "the appropriate percentage " means, in the case of any disease, the percentage specified in subsection (1) of section 57 of the Social Security Act 1975 or, if regulations have been made under section 77 of that Act specifying a different percentage in relation to that disease, the percentage specified in the regulations ;
- " the appropriate period " means, in the case of any disease, the period specified in subsection (4) of the said section 57 or, if regulations have been made under the said section 77 specifying a different period in relation to that disease, the period specified in the regulations;"
- (5) The following subsection shall be inserted after that subsection—
- “(3A) No amount is payable under this Act in respect of disablement amounting to less than 1 per cent”.