STATUTORY INSTRUMENTS

1968 No. 1007

SOCIAL SECURITY

The National Insurance (Industrial Injuries) (Benefit) Amendment (No. 2) Regulations 1968

Made - - -	*26th June* 1968
Laid before Parliament	*8th July* 1968
Coming into Operation	*17th July* 1968

The Industrial Injuries Joint Authority, in exercise of the powers conferred by Schedule 4, paragraphs 1(*d*) and 2, of the National Insurance (Industrial Injuries) Act 1965(**a**) and the Minister of Social Security, in exercise of the power conferred by Section 7(1) of the National Insurance Act 1966(**b**) and of all other powers enabling them in that behalf, hereby make the following regulations which have been referred to the Industrial Injuries Advisory Council:—

Citation, interpretation and commencement

1. These regulations, which may be cited as the National Insurance (Industrial Injuries) (Benefit) Amendment (No. 2) Regulations 1968, shall be read as one with the National Insurance (Industrial Injuries) (Benefit) Regulations 1964(**c**) as amended(**d**) (hereinafter referred to as " the principal regulations ") and shall come into operation on 17th July 1968.

Regulation substituted for regulation 2 of the principal regulations

2. For regulation 2 of the principal regulations there shall be substituted the following regulation:—

" *Further definition of the principles of assessment of disablement and prescribed degrees of disablement*

2.—(1) Schedule 4 (general principles relating to the assessment of the extent of disablement) to the National Insurance (Industrial Injuries) Act 1965 (hereafter in this regulation referred to as ' the Act of 1965 ') shall have effect subject to the provisions of this regulation.

(2) Where a claimant suffers as the result of the relevant accident from some loss of physical or mental faculty any assessment of the extent of the resulting disablement, made by reference to the disabilities which are to be treated as having been incurred as a result of the relevant loss of faculty in accordance with the provisions of paragraph 1 of Schedule 4 to the Act of 1965, shall, subject to the provisions of the next following paragraph, not take account of any such disablement to the extent that the claimant either:—

(*a*) would have been subject thereto as the result of a congenital defect or of an injury or disease received or contracted before the relevant accident whether or not that accident had occurred; or

(**a**) 1965 c. 52. (**b**) 1966 c. 6. (**c**) S.I. 1964/504 (1964 I, p. 833).
(**d**) The relevant amending instruments are S.I. 1966/338, 1968/92 (1966 I, p. 788; 1968 I, p. 268).

(*b*) would not have been subject thereto but for some injury or disease received or contracted after, and not directly attributable to, that accident.

(3) In any case where the extent of disablement resulting from the relevant loss of faculty would, but for the provisions of this paragraph, be assessed at not less than twenty per cent, any disability to which the claimant is subject as a result both of the relevant injury and of some injury or disease received or contracted after the relevant accident shall be treated as having been incurred as a result of the relevant loss of faculty and the assessment shall take account of any such disablement to the extent to which the claimant would not have been subject thereto if the relevant accident had never occurred:

Provided that any such disablement attributable to an accident and a disease or to two or more accidents or diseases (as the case may be) against which the claimant is insured under the Act of 1965 shall only be treated, by virtue of this paragraph, as having been incurred as a result of the loss of faculty resulting from one such accident or disease, being that one which occurred or developed last in point of time.

(4) Where the sole injury which a claimant suffers as a result of the relevant accident is one specified in column 1 of Schedule 2 to these regulations, whether or not such injury includes one or more other injuries so specified, the loss of faculty suffered by the claimant as a result of that injury shall be treated, for the purposes of Section 12 (disablement benefit) of, and Schedule 4 to, the Act of 1965 as resulting in the degree of disablement set against such injury in column 2 of the said Schedule 2 subject to such increase or reduction of that degree of disablement as may be reasonable in the circumstances of the case where, having regard to which disabilities are and which disabilities are not to be treated in accordance with the provisions of Schedule 4 to the Act of 1965 as having been incurred as a result of the relevant loss of faculty, and having regard to the foregoing paragraphs of this regulation, that degree of disablement does not provide a reasonable assessment of the extent of disablement resulting from the relevant injury.

(5) For the purpose of assessing, in accordance with the provisions of Schedule 4 to the Act of 1965, the extent of disablement resulting from the relevant injury in any case which does not fall to be determined under paragraph (4) of this regulation, the medical appeal tribunal, the medical board or the single medical practitioner acting instead of a medical board (as the case may be) may have such regard as may be appropriate to the prescribed degrees of disablement set against the injuries specified in the said Schedule 2.

(6) (*a*) Where in any case an assessment of the extent of disablement has been made in accordance with the provisions of this regulation or with the provisions replaced by this regulation and there has been an amendment to any relevant item in the said Schedule 2 since the date of that assessment, the insurance officer shall either

(i) review that assessment and make such adjustment of it as may be necessary to give effect to the said amendment from the date of the coming into force of the said amendment, or

(ii) refer the question to a medical board for determination in accordance with the provisions of the next following sub-paragraph;

(*b*) a medical board shall, on a reference by the insurance officer under the preceding sub-paragraph, review the assessment so as to give effect to the said amendment from the date of the coming into force of the said amendment, if they are satisfied that it is necessary to do so and in so

doing shall proceed upon the facts included in the record of the decision of the medical board or medical appeal tribunal which made that assessment;

(*c*) a beneficiary who is dissatisfied with the decision of the insurance officer under sub-paragraph (*a*) of this paragraph may appeal against that decision to a medical board by giving notice in writing to any office appointed by the Minister as a local office for the purpose of the Act of 1965 or any regulation made thereunder within ten days after he has been notified of that decision or such longer period as the Minister may in any case allow and the insurance officer shall then refer the question to a medical board which shall deal with it as if it were a reference under sub-paragraph (*a*) of this paragraph:

Provided that no assessment made on review by virtue of the provisions of this paragraph shall be lower than the assessment which has been so reviewed.".

Transitional provisions

3.—(1) Notwithstanding the provisions of regulation 2 of these regulations, in any case falling within the next following paragraph the extent of disablement resulting from the relevant loss of faculty shall, until such time as a final assessment has been made, be assessed in accordance with the principles of assessment in force before the coming into operation of these regulations where the application of those principles results in a higher assessment of disablement than would be made in accordance with such principles as further defined by these regulations.

(2) The cases to which this regulation shall apply are all those in which, before the coming into operation of these regulations, there had been made in respect of a period which included the date of such coming into operation or which commences after that date, an assessment, other than a final assessment, of the extent of disablement which included some disability treated as incurred as a result of the relevant loss of faculty by virtue of the provisions of regulation 2(5) of the principal regulations as then in force.

(3) For the purposes of this regulation a final assessment, made by the decision of a medical board or a single medical practitioner acting instead of a medical board, shall be deemed not to be final until the time has elapsed in which the claimant may appeal or the Minister may direct a reference of that case to a medical appeal tribunal, in either case without leave of the chairman of the tribunal, and, where such an appeal is made or reference directed, until the tribunal have given their decision thereon:

Provided that, where the chairman of a medical appeal tribunal for good reason allows the claimant to appeal from such a decision or the Minister to direct reference of such a case after the time for doing so without leave has elapsed, such an assessment shall be further deemed not to be final for the purposes of this regulation in its application to that case until the tribunal have given their decision thereon.

Revocation of regulations

4. The National Insurance (Industrial Injuries) (Benefit) Amendment Regulations 1968(**a**) (which amended regulation 2 of the principal regulations) are hereby revoked.

(**a**) S.I. 1968/92 (1968 I, p. 268).

Given under the Official Seal of the Industrial Injuries Joint Authority.

(L.S.)

A. Patterson,
A person authorised by the Industrial Injuries Joint Authority to act on behalf of the Secretary, Industrial Injuries Joint Authority.

25th June 1968.

Judith Hart,
Minister of Social Security.

26th June 1968.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These regulations amend provisions in the principal regulations which further define the principles of assessment of disablement contained in Schedule 4 to the National Insurance (Industrial Injuries) Act 1965. Those provisions, including the special principles for assessing disablement resulting from an injury to a part of the body which is one of two similar organs, are, by this amendment, replaced by a regulation which, whilst emphasising and elaborating the general principles of assessment in the said Schedule 4, modifies those principles so as to allow an assessment to take account of any additional disability resulting from serious injury because of some other disabling condition which develops after the relevant accident.

These regulations also make transitional arrangements so as to ensure that in certain cases disablement provisionally assessed in accordance with provisions revoked by these regulations shall continue to be so assessed, if this results in a higher assessment than would be made by virtue of these regulations, until a final assessment has been made.