STATUTORY INSTRUMENTS

1974 No. 1415

SOCIAL SECURITY

The National Insurance (Industrial Injuries) (Prescribed Diseases) Amendment (No. 2) Regulations 1974

Made - - -	21*st August* 1974
Laid before Parliament	30*th August* 1974
Coming into Operation	27*th November* 1974

The Secretary of State for Social Services (**a**), in exercise of powers conferred by sections 56, 58(1), (2) and 85 of the National Insurance (Industrial Injuries) Act 1965(**b**) and section 57 of that Act as modified by section 8 of the National Insurance Act 1966(**c**) and section 5 of the National Insurance Act 1972(**d**), and of all other powers enabling her in that behalf, after reference to the Industrial Injuries Advisory Council, hereby makes the following regulations:—

Citation, interpretation and commencement

1. These regulations, which may be cited as the National Insurance (Industrial Injuries) (Prescribed Diseases) Amendment (No. 2) Regulations 1974 shall be read as one with the National Insurance (Industrial Injuries) (Prescribed Diseases) Regulations 1959(**e**) as amended (**f**) (hereinafter referred to as "the principal regulations"), and shall come into operation on 27th November 1974.

Amendment of regulation 1 *of the principal regulations*

2. In regulation 1(2) of the principal regulations (which paragraph relates to interpretation) after the definition of the term "occupational deafness" there shall be inserted the following definition:—

" 'diffuse mesothelioma' means the disease numbered 44 in Part I of the First Schedule to these regulations;".

Amendments relating to byssinosis

3.—(1) In regulation 2(*c*) of the principal regulations (which sub-paragraph specifies the insured persons in relation to whom byssinosis is prescribed) there shall be made the following amendments:—

(*a*) for the words "ten years" there shall be substituted the words "five years";

(a) For transfer of functions from the Minister of Pensions and National Insurance to (eventually) the Secretary of State, see Ministry of Social Security Act 1966 (c. 20) and S.I. 1968/1699 (1968 III, p. 4585).
(b) 1965 c. 52.
(c) 1966 c. 6.
(d) 1972 c. 57.
(e) S.I. 1959/467 (1959 II, p. 1943).
(f) The relevant amending instruments are S.I. 1965/1264, 1828, 1966/987, 1969/619, 1972/910, 1258, 1511, 1974/1414 (1965 II, p. 3596; 1965 III, p. 5515; 1966 II, p. 2366; 1969 I, p. 1727; 1972 II, p. 2862, 3768; 1972 III, p. 4455).

(*b*) for the words "the carding process" there shall be substituted the words "the winding or beaming process".

(2) For paragraph (2) of regulation 35 of the principal regulations there shall be substituted the following paragraph:—

"(2) Section 58(2) of the National Insurance (Industrial Injuries) Act 1965 in so far as it provides that disablement benefit shall not be payable in respect of byssinosis except where the claimant is totally and permanently incapacitated for work as the result thereof, shall not apply.".

Transitional provisions relating to byssinosis

4.—(1) Where a person, who has been employed on or at any time after 5th July 1948 in insurable employment

(*a*) in any of the occupations included in regulation 2(*c*) of the principal regulations by virtue of the amendment made by regulation 3(1)(*b*) of these regulations,

(*b*) in relation to whom byssinosis is prescribed by virtue of the extension of the said regulation 2(*c*) by the amendment made by regulation 3(1)(*a*) of these regulations, or

(*c*) in relation to whom disablement benefit in respect of byssinosis becomes payable by virtue of the amendment made by regulation 3(2) of these regulations,

is suffering from a loss of faculty as the result of byssinosis on the date on which these regulations come into operation, and the disease is due to the nature of that employment, the provisions of regulation 6 of the principal regulations (which relates to the date of development) shall be applied subject to the modification that the said date on which these regulations come into operation shall be treated as the day on which he first suffered from the relevant loss of faculty, and the date of development shall be determined accordingly.

(2) Where a person to whom the last foregoing paragraph applies is awarded disablement benefit in respect of byssinosis and claims an increase of that benefit under section 14 of the National Insurance (Industrial Injuries) Act 1965 (which section relates to increase of disablement pension in cases of special hardship) then, if at any time after having been employed as aforesaid but before the date on which these regulations come into operation that person has abandoned any occupation as a result of the disease, the fact that he has abandoned that occupation shall be disregarded in determining his regular occupation for the purposes of the said section 14.

Amendments relating to claims in respect of diffuse mesothelioma

5.—(1) In regulation 34 of the principal regulations (injury benefit not payable in respect of certain diseases) for the words "pneumoconiosis, byssinosis or occupational deafness" there shall be substituted the words" pneumoconiosis, byssinossis, occupational deafness or diffuse mesothelioma".

(2) Notwithstanding the amendment made by the foregoing paragraph of this regulation, where injury benefit in respect of diffuse mesothelioma is awarded to a claimant for a period commencing before the date on which these regulations come into operation, injury benefit shall continue to be available to him during any part of the relevant injury benefit period which falls after the said date and the provisions of regulation 16 of the principal regulations (disablement benefit not preceded by injury benefit) shall not apply to that case.

(3) In regulation 35(1) of the principal regulations (payment of pension instead of gratuity in certain cases for disablement of less than twenty per cent) for the words "pneumoconiosis or byssinosis" there shall be substituted the words "pneumoconiosis, byssinosis or diffuse mesothelioma".

(4) In regulation 40(4) of the principal regulations (finality of diagnosis by pneumoconiosis medical board) for the words "pneumoconiosis or byssinosis" there shall be substituted the words "pneumoconiosis, byssinosis or diffuse mesothelioma".

(5) The amendment made by the last foregoing paragraph of this regulation (decision of pneumoconiosis medical board on any diagnosis question in respect of diffuse mesothelioma to be final) shall not have effect—

(i) in relation to any appeal or reference to a medical appeal tribunal brought or in respect of which notification is given, as the case may be, before the date on which these regulations come into operation, and,

(ii) in relation to any appeal or reference to a medical appeal tribunal in respect of a decision given before the date on which these regulations come into operation, during the period in which an appeal may be brought or a notification given in respect of such decision, as the case may be,

and accordingly regulation 30 of the principal regulations (appeal or reference to medical appeal tribunal) shall apply to such appeal or reference made in respect of diffuse mesothelioma.

Amendments extending special provisions relating to determination of medical questions in certain diseases

6.—(1) In regulation 22 of the principal regulations (application of procedure for determination of claims and questions) for the words "diseases numbered 43 and 44" there shall be substituted the words "diseases numbered 17, 36, 37(*b*), 40, 43 and 44".

(2) In regulation 25(2) of the principal regulations (reference of diagnosis and recrudescence questions for report) for the words "diseases numbered 43 and 44" there shall be substituted the words "diseases numbered 17, 36, 37(*b*), 40, 43 and 44".

(3) In regulation 26(1A) of the principal regulations (power to dispense with reference for report) after the words "farmer's lung" there shall be inserted the words "or each of the diseases numbered 17, 36, 37(*b*) and 40".

(4) In regulation 40(2) of the principal regulations (powers of pneumoconiosis medical boards) for the words "diseases numbered 43 and 44" there shall be substituted the words "diseases numbered 17, 36, 37(*b*), 40, 43 and 44".

(5) There shall be substituted for paragraph (3) of regulation 40 of the principal regulations (powers of pneumoconiosis medical boards to make examinations and tests) the following paragraph:—

"(3) Pneumoconiosis medical boards shall have power to make or cause to be made a radiographic examination of the lungs of the claimant, and to obtain the report of a radiologist on the case, and to make or cause to be made serological, lung function and such other tests as they consider necessary and to obtain reports upon the results of such tests.".

Amendments withdrawing powers of suspension from employment from pneumoconiosis medical boards

7.—(1) Regulations 43 and 44 of, and the Third Schedule to, the principal regulations (suspension from employment on initial and on periodical examination) are hereby revoked.

(2) A certificate of suspension issued under the provisions of either regulation 43 or 44 of the principal regulations and in force immediately before the date on which these regulations come into operation shall continue in force subject to and in accordance with the provisions of regulation 45 of the principal regulations (conditions of suspension).

Barbara Castle,
Secretary of State for Social Services.

21st August 1974.

EXPLANATORY NOTE

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

These Regulations which amend the National Insurance (Industrial Injuries) (Prescribed Diseases) Regulations 1959, give effect to certain of the recommendations of the Report of the Industrial Injuries Advisory Council on Pneumoconiosis and Byssinosis (Cmnd 5443) and make other changes relating to byssinosis.

They reduce from ten years to five years the minimum period of employment in an occupation prescribed in relation to byssinosis and extend the occupations in relation to which byssinosis is prescribed to include those followed in any room where the process of spinning, winding or beaming is performed in factories where the working of cotton or flax is carried on. They also remove the condition for entitlement to benefit that the loss of faculty resulting from byssinosis shall be permanent, and thus extend cover for benefit to people suffering from an earlier stage of the disease. The Regulations also contain transitional provisions relating to persons covered by the amendments who are already suffering from the disease on the date when the Regulations come into operation.

They provide for the inclusion of the prescribed disease of diffuse mesothelioma with those of pneumoconiosis and byssinosis for the purposes of certain of the special provisions attaching to such diseases.

These Regulations also provide that medical questions relating to the diseases prescribed by paragraph 17 (poisoning by nitrous fumes), 36 (poisoning by beryllium), 37(*b*) (nickel cancer) and 40 (poisoning by cadmium) of Part I of the First Schedule to the principal regulations (as amended) shall in future be dealt with by pneumoconiosis medical boards instead of by general medical boards.

They also provide that pneumoconiosis medical boards shall no longer have power to suspend claimants suffering from pneumoconiosis, tuberculosis or certain other diseases from certain employments but that suspensions already in force shall continue to have effect.

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