STATUTORY INSTRUMENTS

1974 No. 1414

SOCIAL SECURITY

The National Insurance (Industrial Injuries) (Prescribed Diseases) Amendment Regulations 1974

Made - - - -	*20th August* 1974
Laid before Parliament	*29th August* 1974
Coming into Operation	*28th October* 1974

The Secretary of State for Social Services(a), in exercise of powers conferred by sections 56 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 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 28th October 1974.

Amendment of Part I of the First Schedule to the principal regulations

2. Part I of the First Schedule to the principal regulations shall be amended by the addition at the end of the first and second columns thereof, respectively, of the disease hereinafter referred to as "occupational deafness", specified in the first column of the Schedule hereto and of the occupations set against the said disease in the second column of that Schedule.

Amendment of regulation 1 *of the principal regulations*

3. In regulation 1(2) of the principal regulations (interpretation) after the definition of the term "farmer's lung" there shall be inserted the following definition:—

" 'occupational deafness' means the disease numbered 48 in Part I of the First Schedule to these regulations.".

(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, 1966/987, 1248, 1969/619, 1972/910, 1258, 1511 (1965 II, p. 3596; 1966 II, p. 2366; III, p. 3376; 1969 I, p. 1727; 1972 II, p. 2862, 3768; III, p. 4455).

Amendment of regulation 2 *of the principal regulations*

4.—(1) Regulation 2(*a*) of the principal regulations (prescription of diseases and injuries) shall be amended by the insertion of the words "Subject to paragraph (*d*) of this regulation" at the beginning of that regulation.

(2) Regulation 2 of the principal regulations shall be further amended by the addition of the following sub-paragraph:—

"(*d*) occupational deafness is prescribed in relation to all insured persons who have been employed—

(i) in insurable employment at any time on or after the appointed day; and

(ii) for a period or periods (whether before or after the appointed day) amounting in the aggregate to not less than twenty years;

in one or more of the occupations set out in the second column of paragraph 48 of Part I of the First Schedule to these regulations.".

Amendment of regulation 4 *of the principal regulations*

5.—(1) In the proviso to regulation 4(1) of the principal regulations (presumption) for "38, 41 and 42" there shall be substituted "38, 41, 42 and 48".

(2) Regulation 4 of the principal regulations shall be further amended by the addition of the following paragraph:—

"(5) Where an insured person in relation to whom occupational deafness is prescribed in sub-paragraph (*d*) of regulation 2 develops occupational deafness, the disease shall, unless the contrary is proved, be presumed to be due to the nature of his insurable employment.".

Amendment of regulation 6(2) *of the principal regulations*

6.—(1) In regulation 6(2)(*b*) of the principal regulations (date of development) after the words "disablement benefit" there shall be inserted the words "(except in respect of occupational deafness)".

(2) After regulation 6(2)(*b*) of the principal regulations there shall be added the following paragraph:—

"(*bb*) a claim for disablement benefit in respect of occupational deafness, the date of development shall be the day on which the claimant first suffered from the relevant loss of faculty on or after 3rd February 1975; or, if later, the date on which such a claim is made as results in the payment of benefit; or".

Amendment of regulation 7(1) *of the principal regulations*

7. In regulation 7(1) of the principal regulations (recrudescence) for the words "pneumoconiosis or byssinosis" there shall be substituted the words "pneumoconiosis, byssinosis or occupational deafness.".

Amendment of regulation 34 *of the principal regulations*

8. In regulation 34 of the principal regulations (non-payment of injury benefit in certain cases) for the words "pneumoconiosis or byssinosis" there shall be substituted the words "pneumoconiosis, byssinosis or occupational deafness" and for the word "either" there shall be substituted the word "any".

Additions to the principal regulations

9. The principal regulations shall be amended by the addition of the following regulations after regulation 39 thereof:—

"*Special provisions relating to occupational deafness*

Time for claiming benefit in respect of occupational deafness

39A.—(1) Regulation 12 of the Claims and Payments Regulations 1964(a) as amended(b) (time for claiming benefit) shall not apply in relation to occupational deafness.

(2) Disablement benefit shall not be paid in respect of a claim for occupational deafness which is made later than 12 months after the claimant has ceased to be employed in an occupation prescribed in relation to occupational deafness.

Further claims in respect of occupational deafness

39B. In the event of a claim for disablement benefit in respect of occupational deafness being disallowed because the claimant has failed to satisfy the minimum hearing loss requirement prescribed in column 1 of paragraph 48 of Part I of the First Schedule hereto, no further claim may be made by or on behalf of that claimant and no disablement benefit shall be paid to him in respect of occupational deafness until after the expiration of three years from the date of the claim so disallowed:

Provided that if a claimant permanently ceases to be employed in any occupation specified in column 2 of paragraph 48 of Part I of the First Schedule hereto within three years of the date of a claim so disallowed, one further claim may be made by or on behalf of him in respect of occupational deafness within twelve months of his ceasing to be so employed.

Effect of presbyacusis on assessment

39C.—(1) In any case where the total assessment of disablement resulting from occupational deafness accompanied by presbyacusis amounts to not less than 20 per cent., account shall be taken of presbyacusis only to the extent that the resulting assessment shall be not less than 20 per cent.

(2) Notwithstanding the provisions of section 40(2) of the National Insurance (Industrial Injuries) Act 1965 (review of assessment on the ground of unforeseen aggravation) and Schedule 4 to that Act (assessment of extent of disablement) on any re-assessment or assessment on review of an assessment of disablement in respect of occupational deafness, account shall be taken of presbyacusis only to the extent that the resulting assessment shall be not less than the last preceding assessment.

Periods to be covered by assessment of disablement in respect of occupational deafness

39D. Subject to the proviso to section 12(5) of the National Insurance (Industrial Injuries) Act 1965 (cessation of pension on death of beneficiary), the period to be taken into account by an assessment of the extent of the claimant's disablement in respect of occupational deafness, if not limited by reference to the claimant's life, shall be not less than five years.

(a) S.I. 1964/73 (1964 I, p. 115).
(b) The amendments are not relevant to the subject matter of these regulations.

Review of assessment for unforeseen aggravation in respect of occupational deafness

39E. The provisions of section 40(2) of the National Insurance (Industrial Injuries) Act 1965 (review of assessment in case of unforeseen aggravation) shall not apply to an assessment of the extent of disablement in respect of occupational deafness until after the expiration of five years from the date of commencement of the period taken into account by that assessment.

39F. Subject to the provisions of the foregoing paragraph and notwithstanding the provisions of section 40(4) of the National Insurance (Industrial Injuries) Act 1965 (leave of medical appeal tribunal required to review assessment in certain cases) a life assessment in respect of occupational deafness made by a medical board or a medical appeal tribunal shall not be reviewed in accordance with section 40(2) of the said Act (review of assessment in the case of unforeseen aggravation) without the leave of a medical appeal tribunal and in the case of a provisional assessment in respect of occupational deafness no such leave shall be required.

No appeal against initial provisional assessment of disablement in respect of occupational deafness

39G. Notwithstanding the proviso to section 39(2) of the National Insurance (Industrial Injuries) Act 1965 but subject to the provisions of section 39(3) of the said Act, no appeal shall lie against an initial provisional assessment of the extent of disablement in respect of occupational deafness.

Lower and upper limits of assessment in respect of occupational deafness

39H. Subject to the provisions of Schedule 4 to the National Insurance (Industrial Injuries) Act 1965 and regulations made thereunder, the extent of disablement in respect of occupational deafness shall be assessed at a lower limit of 20 per cent. where the hearing loss in each ear amounts to 50dB and at an upper limit of 100 per cent. where the hearing loss in each ear amounts to 90dB measured in each case in accordance with the provisions of column 1 of paragraph 48 of Part I of the First Schedule hereto.

Commencement date of period of assessment

39I. Notwithstanding the provisions of section 37 of and Schedule 4 to the National Insurance (Industrial Injuries) Act 1965 the period to be taken into account by an assessment of the extent of disablement in respect of occupational deafness shall not commence before 3rd February 1975.".

Transitional provisions

10.—(1) Where a person, who has been employed in insurable employment in one or more of the occupations set out in the second column of the Schedule to these regulations ceased to be so employed at any time within the period of 12 months preceding the date on which these regulations come into operation, a claim for disablement benefit in respect of occupational deafness may, notwithstanding the provisions of regulation 9 of these regulations (in so far as it relates to time for claiming benefit) be made within 12 months of these regulations coming into operation.

(2) Where any person is awarded disablement benefit in respect of occupational deafness 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.

Barbara Castle,
Secretary of State for Social Services.

20th August 1974.

Regulation 2

THE SCHEDULE

Description of disease or injury	Nature of occupation
48. Substantial permanent sensorineural hearing loss due to occupational noise amounting to at least 50dB in the better ear, being the average, after exclusion of hearing losses not due to occupational noise, of pure tone losses measured by audiometry over the 1, 2 and 3 kHz frequencies (occupational deafness).	48. Any occupation involving: (i) the use of pneumatic percussive tools or high speed grinding tools in the cleaning, dressing or finishing of cast metal or of ingots, billets or blooms, or (ii) the use of pneumatic percussive tools on metal in the shipbuilding or ship repairing industries, or (iii) work wholly or mainly in the immediate vicinity of drop-forging plant or forging press plant engaged in the shaping of hot metal.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations, by making an addition to the diseases prescribed in Part I of the First Schedule to the National Insurance (Industrial Injuries) (Prescribed Diseases) Regulations 1959, extend insurance under the National Insurance (Industrial Injuries) Act 1965, subject to certain conditions, to occupational deafness in the case of persons insurably employed in occupations involving the use of certain tools in specified operations of metal manufacture, involving the use of certain tools in the ship-building industry or involving work in the immediate vicinity of certain hot metal shaping processes.

The Regulations also contain special provisions relating to claims, date of development and assessment in cases of occupational deafness.

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